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## Written Testimony

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Before the Oversight and Investigations Subcommittee of the  
U.S. House Committee on Energy and Commerce

“EPA’s Enforcement Program: Taking the Environmental Cop Off the Beat”

February 26, 2019

Thank you, Mr. Chairman and Members of the Committee, for the opportunity to testify today. My name is Eric Schaeffer and I am the Director of the Environmental Integrity Project, a public interest group established in 2002 to advocate for more effective enforcement of environmental laws. I also spent twelve years at EPA and served as Director of the Agency’s Office of Civil Enforcement between 1997 and 2002.

EPA has a proud history of enforcing the Clean Air Act, the Clean Water Act and other laws that protect public health and our natural resources, in both Republican and Democratic Administrations. That tradition is in danger today for several reasons. Thanks to relentless budget cuts, the Agency’s enforcement staff of investigators, engineers and attorneys has shrunk nearly 16% over the last six years (Attachment A). While Congress thankfully rejected the even deeper cuts President Trump proposed, funding levels over the last two years have not been enough to stop the slow erosion of the workforce.

The dedicated professionals who remain at their post face headwinds that make it harder to do their jobs. They work for a President who promised on the campaign trail to reduce EPA to little tidbits. EPA’s political leaders spend most of their time weakening environmental rules and also relaxing monitoring requirements, making it even harder to know whether industries are complying with their air and water pollution limits. And new policies aim to reduce the federal enforcement presence on the pretense that that state agencies, facing their own budget cuts along with legal constraints on their power to enforce, can pick up the slack. These rollbacks will leave violators unpunished and too many communities exposed to higher risks from toxins like lead, or carcinogens like benzene.

Shackled by these budget cuts and political restraints, EPA’s enforcement results for the 2018 fiscal year were historically low by almost every measure. The number of inspections and investigations, civil

cases either referred to the Justice Department for prosecution or concluded with a consent decree, criminal cases opened, and defendants charged with environmental crimes fell to their lowest levels since at least 2001. Looked at another way, inspections and investigations in the last year were 40% below their average level during the last two Administrations. EPA referred 123 cases to the Justice Department in 2018 compared to an average of 211 per year under President Obama, and 304 under President Bush.

Adjusted for inflation, violators will spend less to clean up their illegal pollution than any time since 2003, as the volume of pollutants removed or treated as a result of enforcement actions has also fallen sharply.

To be fair, we could see more enforcement actions and better outcomes this year. The Agency will apparently recover \$305 million from Fiat-Chrysler for installing faulty emission control devices on more than 100,000 of its vehicles, though compared to the earlier Volkswagen settlement the company will not have to spend as much (per vehicle) on environmental projects to offset the harm caused by its illegal pollution. But one or two big cases against corporate defendants will not compensate for a smaller EPA enforcement presence almost everywhere else.

You'll hear "cooperative federalism" used to justify these cutbacks, based on the assumption that states will fill the void left behind when EPA leaves the field. States are critical partners when it comes to environmental protection, which is why they are authorized to implement and enforce most federal environmental rules. But for good reason, Congress gave EPA the right to continue to enforce federal standards even after states have assumed the responsibility for implementation. And although not widely known, many state agencies do not have the same kind of power that EPA has to enforce these federal laws. For example:

- Because federal penalties established long ago are periodically indexed for inflation, EPA can ask courts to fine polluters nearly \$100,000 per day for each violation of the Clean Air Act that occurs after November of 2015. In contrast, the maximum state penalties for comparable violations are much lower, dropping to no more than \$10,000 per day in some jurisdictions. (Attachment B).
- Unlike the federal government, many states do not authorize criminal prosecution of those who intentionally or recklessly violate federal environmental rules. Creative state or local

prosecutors can sometimes charge the worst actors under statutes that prohibit fraud, but even then may lack staff trained to investigate environmental crimes. Notably, one of former EPA Administrator Scott Pruitt's first acts as Oklahoma's attorney general was to disband the environmental crimes unit established by his predecessor.

- Unlike EPA, some states do not have administrative law judges with the power to make decisions for certain environmental cases. That means if defendants refuse to settle, the agency must refer even relatively minor violations to the understaffed offices of their state's Attorneys General for prosecution in state court.

Most enforcement cases are eventually resolved through settlement that offer penalties well below the maximum limit in return for cooperation and investment in cleanup. But as any business in America knows, you need to have leverage in negotiations if you want to get a good outcome. In too many cases, states don't have the same enforcement leverage that EPA brings to the table.

Budget cuts have also eaten into state capacity, making it harder to recruit or retain the kind of expertise needed to sustain an enforcement action, especially where the defendants are large and well-lawyered corporations. Some of the most dangerous forms of pollution are invisible to the naked eye, and can only be seen with specialized equipment like infrared cameras or uncovered through painstaking analysis of sample results and plant records. Routine inspections aren't enough to find the biggest violations and you cannot just wait for them to show up, like the highway patrol car waiting behind a billboard for someone to speed by.

EPA's work more often involves carefully targeted investigations to find serious violations exposing the public to dangerous pollutants that might otherwise never be found. You can certainly find that focus in the best state programs, some of which have done ground-breaking environmental work for years. My point is simply that there aren't enough states with both the legal authority and capacity to replace the enforcement work done by EPA.

Most regulated sources make good faith attempts to comply with the rules, and we would be lost without those efforts. But voluntary compliance will never be enough to prevent the serious violations that result from backsliding, carelessness, or the temptation to cut corners to save money. You can get some idea of that by reviewing the federal National Response Center's online record of tips from citizens reporting companies blowing lead dust into the air, illegally burning hexavalent chromium,

methanol, and other hazardous substances, dumping toxic chemicals or coal ash in the backlot, down the drain, or into creeks and rivers. We've been able to match company names to the location of these incidents and will ask EPA to investigate these allegations. (Attachment C).

Without stronger enforcement programs at both the federal and state level, we leave law-abiding companies at the mercy of unscrupulous competitors and too many communities exposed to pollution that is illegal, noxious, and in some cases downright dangerous. To illustrate what's at stake, Attachment 4 provides examples of some of the violations that EPA investigators have uncovered at sites across the United States, with some background on the people who live nearby. The data comes from discharge monitoring reports, notices of violation, or inspection reports that date back 18 months to more than five years ago. The allegations concern illegal emissions of lead, hydrochloric acid, dioxin, carcinogens that are deadly in minute concentrations, and smog forming chemicals, and unpermitted wastewater discharges of bacteria, nitrogen, and toxic metals. To the best of our knowledge, EPA has yet to take final action to require those responsible to invest in clean up and pay penalties for violating the law.

Three of these cases were unearthed by teams from EPA's National Enforcement Investigations Center in Colorado, which has lost a quarter of its staff over the past few years. Their inspection reports are worth reading. For example, NEIC's 2016 investigation found thousands of violations at the Denka polymers plant in Louisiana's St. John the Baptist Parish, including airborne chloroprene concentrations above open wastewater drains that NEIC estimated were up to 800 times above the level considered safe by the Occupational Safety and Health Administration. Chloroprene is a likely carcinogen, and while airborne concentrations in the adjacent African American neighborhoods have declined, cancer risks are still well above levels that EPA considers acceptable.

Louisiana has responded with an administrative order that incorporates Denka's "voluntary" agreement to take some action to reduce the plant's chloroprene sources. Based on the detailed findings in the NEIC's inspection report, now more than three years old, this company needs to pay a big fine and its cleanup needs close supervision. Complying with our environmental laws isn't voluntary, and it isn't something you have to do only after the government has knocked on your door.

The people who live near some of these sites include neighborhoods that are predominately African American or Latino, and almost all of the sites are in communities where poverty levels are high. But whether black, brown, or white, the Americans exposed to so much illegal pollution do not have

powerful political connections or access to well-connected lobbyists or expensive law firms. In other words, they are the very people who most need the protection of federal laws to protect public health and keep our air and water clean. They have never heard of cooperative federalism and can't afford to wait for it. They need EPA's help today.

Thank for the opportunity to speak and I look forward to answering your questions.

Attachment

## Attachment A: EPA Enforcement Workforce from 2006 - 2018

EPA Enforcement Workforce (Full Time Equivalent Employees)			
Year	Criminal Enforcement	Civil Enforcement / Compliance Monitoring	Combined
2006	271	1919	2189
2007	259	1909	2168
2008	255	1903	2158
2009	292	1899	2191
2010	284	1896	2180
2011	300	1928	2228
2012	294	1884	2179
2013	279	1771	2051
2014	267	1717	1984
2015	252	1636	1888
2016	248	1653	1901
2017	238	1641	1879
2018*	224	1618	1842

Note: EIP estimated FTEs based on the funding approved by Congress for FY 2018. For FY 2006 through 2017, FTEs came from the Justification of Appropriation Estimates for the Committee on Appropriations for each year for EPA.

## Attachment B: Maximum Civil Judicial Penalties for Violation of Federal Clean Air Act Requirements

Maximum Civil Judicial Penalty: For Violation of Federal Clean Air Act Requirements			
Entity	Penalty (per violation/day)	Citation	
EPA	\$	99,681	<a href="#">84 Fed. Reg 2059 (Feb. 6, 2019)</a>
VA	\$	32,500	<a href="#">Va. Code § 10.1-1316</a>
AL	\$	25,000	<a href="#">Alabama Code § 22-22A-5 (18)(c)</a>
GA	\$	25,000	<a href="#">O.C.G.A. § 12-9-23(a)</a>
IN	\$	25,000	<a href="#">Indiana Code 13-30-4-1</a>
MD	\$	25,000	<a href="#">MD Env Code § 2-610 (2013)</a>
OH	\$	25,000	<a href="#">Ohio Revised Code § 3706.06</a>
TX	\$	25,000	<a href="#">TCEQ Penalty Policy (April, 2014)</a>
ND	\$	10,000	<a href="#">North Dakota Century Code § 23.1-06-14 (4)</a>
OK	\$	10,000	<a href="#">27A OK Stat § 27A-2-5-117 (2014)</a>
PA	\$	10,000	<a href="#">35 P.S. § 4009.1</a>

Note: Applies to violations by stationary sources. EPA penalty applies to violations that occurred after November 2, 2015 that were discovered after January 15, 2019. The \$10K penalty amount for Pennsylvania applies to violations within the first three years and increases to \$25K by five years.



## Attachment C: Complaints called in to the National Response Center (NRC) in 2018

Date	Nearest City	State	Description of Event
1/19/2018	Portland	OR	Caller reported a company buried hazardous materials for a while and it is seeping from the soil.
4/1/2018	St. Joseph	MO	Caller stated that the company has personnel blow lead dust with a blower into the environment as well as wash battery acid into a storm drain.
4/16/2018	Fairless Hills	PA	Caller reported the mixture of rain water and a pile of coal is being pumped into the Delaware River. This is an ongoing event.
4/17/2018	Oak Grove	MO	Caller is reporting the company is dumping concrete solvent, tar, and unknown oil into the creek behind the location and are dumping into the city sewer system. The company dumps the materials and oils into a large pit that leads directly into the city sewer system.
4/26/2018	Trenton	OH	Caller reported an unknown amount of swarf (a heavy metal) is being released onto the ground from a water jet machine. This has been ongoing for two years.
6/6/2018	St Petersburg	FL	Caller is reporting that a company is dumping material (hexavalent chromium) into the street from a hose at the facility. Caller stated company is heating up the material so that it releases into the air to save money for disposal. Material spilled in the facility is being put into a hole inside the shop and there is a yellow powdery substance on the surrounding area. This is occurring on a daily basis.
6/11/2018	Logansport	IN	The local division was notified of a hazardous release at the cement plant. The initial reporting source stated that for over five months there has been a release of hazardous waste fuel leaking from secondary containment into the lower dike and contaminating groundwater. Also the liner underneath the containment at the bulk solid facility has a hole and when ground water comes through the floor, the waste fuels seeps into the groundwater.
6/12/2018	Midland	TX	Caller is reporting that a company is dumping chemicals in the soil behind the west and south yard locations.

## Attachment C: Complaints called in to the National Response Center (NRC) in 2018

Date	Nearest City	State	Description of Event
7/15/2018	Hazard	KY	Caller is reporting the recycling company at the incident location is intentionally dumping transmission fluid, motor oil, gasoline, and anti-freeze onto the ground and into Lotts Creek. Caller stated they are recycling vehicles and all the fluids are being dumped all over the property and in the water. Caller stated the ground is saturated in several areas and that the fish in the waterway have sores on them.
7/30/2018	Mulberry	FL	Caller stated that the suspected responsible party is dumping S9 (fertilizer), GMAP, MAP (mono ammonium phosphate), pelletized sulphur, and DAP (diammonium phosphate) at the back of the property, which is then running into a storm drain.
8/10/2018	Pittsburg	OK	Caller is reporting the dumping of black water and chemicals from storage tanks that oil fields personnel use. The company dumps the chemicals onto the owners various properties.
8/24/2018	Livonia	MI	Caller reported trichloroethene (TCE), tetrachloroethene (PCE), 1-dichloroethene (DCE), cis-1,2-dichloroethene (CDCE), trans-1,2-dichloroethene (TDCE), vinyl chloride (VC), 1,4-dioxane, Inapl, dnapl, are being released from a transmission plant into the soil, water, and air due to Ford Motor Company dumping.
9/5/2018	Beech Bottom	WV	Caller reports that this company is dumping fracking related materials onto the ground from a variety of sources and letting the material run into the Ohio River.
9/26/2018	Midland	TX	Caller reports the company has oils and chemicals on the ground at the facility and the ground is contaminated. There is a storage tank that is corroded and is releasing material onto the ground. Bins are filled with acid that are not being disposed of. Oil is leaking onto the ground when equipment is being worked on. Caller stated this has been ongoing for the past several years.

## Attachment C: Complaints called in to the National Response Center (NRC) in 2018

Date	Nearest City	State	Description of Event
10/18/2018	Perry	FL	Caller is reporting that a pulp and paper company has a system extracting methanol and hydrogen sulfide and attempting to burn it, but they are creating more methanol than they are permitted to burn. They are taking 55 gallon drums of methanol and hand pumping it into the boilers with out reporting and metering how much they are burning. They divert methanol to the waste water tank trying to delate the methanol and over flowing the waste water tank, making 6 employees sick enough to need to go to the emergency room. They reboil the waste water and the methanol and it evaporates into the plant. Methanol is also being sent to the waste water treatment plant. Employees are exposed to airborne methanol
10/25/2018	Central City	KY	Caller is reporting an ash pond is being pumped out and improperly dumped. Kentucky Utility is dumping the ash pond water off of a haul road between power plant and the Bickett Farm to the east. Caller indicates that they were told not to dump by the farm owner and now they are dumping the contaminated water on haul roads and on the power plant property. Caller indicates that the ash pond water is contaminated with arsenic and other harmful materials.
11/1/2018	Allentown	PA	Caller reports that 100 x 55-gallon drums of isopropyl alcohol are being dumped down the drain at this facility. This is in opposition to the normal disposal procedures per the caller. Caller states that this happens weekly and started in January.
11/5/2018	Midland	TX	Caller reports the suspected responsible company is dumping an unknown blue-green chemical onto the ground and into a ditch for an unknown reason.
11/15/2018	Newark	DE	Caller reported an unknown amount of hydraulic oil, kerosene, gasoline, and diesel is being dumped into soil at a recycling facility. Caller stated this has been going on for 20 years.
12/15/2018	Society Hill	SC	Caller is reporting that there is a company that is dumping unknown chemicals and fly ash onto the ground and it impacts nearby creeks. Caller stated that the incident occurs often.

## Attachment D: 10 Examples of EPA Cases Awaiting Final Enforcement Action

Owner / Operator	City	State	Violations	Date Violation Identified	Population within 1 mile	Minority	Children / Seniors	Poverty
Magnetics International*	Burns Harbor	IN	Failed to meet emission limits or pollution control standards for: HCl and chlorine	6/28/2016	2026	18%	9% / 9%	14%
American Iron Oxide*	Portage	IN	Failed to meet emission limits or pollution control standards for: HCl and chlorine	6/28/2016	262	9%	6% / 22%	26%
United Taconite**	Forbes	MN	Failed to meet emission limits or pollution control standards for: Particulates, NOx, SO2, and heavy metals	2/21/2014	405	5%	3% / 18%	23%
Gopher Resource	Eagan	MN	Failed to meet emission limits or pollution control standards for: Lead, dioxins, and furans	11/25/2015	3780	23%	7% / 6%	8.9%
Globe Metallurgical**	Waterford	OH	Failed to meet emission limits or pollution control standards for: Particulates Extended capacity of electric arc furnace, resulting in higher emissions of: Particulates, SO2	1/30/2015	1050	2%	5% / 15%	45%
Denka Performance Elastomer	LaPlace	LA	Failed to meet emission limits or pollution control standards for: chloroprene	3/17/2017	1579	97%	6% / 14%	69%
Magellan Midstream Partners	Galena Park	TX	During Hurricane Harvey, Magellan released gasoline into the surrounding waters and emitted VOCs into the surrounding air.	8/23/2017	7300	92%	9% / 11%	53%
Dow Chemical Company**	Pittsburg	CA	Storing millions of gallons of hazardous waste without a permit, which were eventually discharged into the local wastewater treatment plant.	4/8/2016	61875	76%	8% / 9%	40%
Phillips 66 Refinery	Los Angeles	CA	Failure to control both air and water emissions from hazardous waste tanks	1/23/2017	9067	81%	8% / 9%	48%
Keystone Protein	Fredericksburg	PA	Discharging excess nitrogen pollution	1/1/2016	1043	5%	6% / 15%	16%
Mountaire Farms	Selbyville	DE	Plants effluent had concentrations of enterococci bacteria, oil, grease, and waste solids in violation of permit limits	9/29/2015	2033	47%	8% / 16%	48%

Reflects noncompliance identified through notices of violation, inspection reports, or discharge monitoring reports. In some cases, violations began much earlier.

Demographic data were obtained from EPA Environmental Compliance History Online (ECHO) database.

\* Magnetics International and American Iron Oxide are separate facilities but the same case, as they received one NOV.

\*\*These facilities had populations under 100 within a 1-mile radius, so data from the 3-mile radius were used.

