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OVERSIGHT OF U.S. ENVIRONMENTAL PROTECTION AGENCY ENFORCEMENT
AND COMPLIANCE PROGRAMS

Wednesday, June 29, 2016

United States Senate

Committee on Environment and Public Works

Subcommittee on Superfund, Waste Management, and Regulatory
Oversight

Washington, D.C.

The committee met, pursuant to notice, at 2:30 p.m. in room 406, Dirksen Senate Office Building, the Honorable Mike Rounds [chairman of the subcommittee] presiding.

Present: Senators Rounds, Markey, Crapo, Sullivan, and Inhofe.

STATEMENT OF THE HONORABLE MIKE ROUNDS, A UNITED STATES SENATOR
FROM THE STATE OF SOUTH DAKOTA

Senator Rounds. Good afternoon, everyone. The Environment and Public Works Subcommittee on Superfund, Waste Management, and Regulatory Oversight is meeting today to conduct a hearing entitled Oversight of U.S. Environmental Protection Agency Enforcement and Compliance Programs.

Today we will hear testimony from Cynthia Giles, the Assistant Administrator of the Office of Enforcement and Compliance Assurance at the U.S. Environmental Protection Agency. We will be conducting oversight on the EPA's civil, criminal enforcement and compliance programs, and explore suggestions for improvement.

Federal laws such as the Clean Air Act, Clean Water Act, and the Resource Conservation Recovery Act give the EPA the authority to issue penalties and pursue criminal and civil actions in order to enforcement requirements of environmental laws. The EPA Office of Enforcement and Compliance Assurance, OECA, administers EPA's environmental enforcement and compliance programs, and provides compliance assistance to the EPA's regional offices, States, businesses, local governments, and tribes.

However, in recent years, rather than providing compliance assistance, the EPA has dictated compliance by engaging in

heavy-handed environmental enforcement. We have heard multiple reports of the EPA inspecting facilities and leaving the company waiting years for the results, imposing huge fines on companies that self-reported and corrected simple administrative errors, and a lack of transparency regarding environmental violations.

Rather than assisting with compliance, the EPA chooses to simply impose aggressive and, at times, unreasonable penalties using questionable enforcement methods. For example, in 2015, the EPA threatened Andy Johnson, a Wyoming farmer and father of four, with \$16 million in fines, alleging that he had violated the Clean Water Act by constructing a stock pond on his property. It took the Johnson family over a year to settle a lawsuit with the EPA.

In 2012, the EPA was criticized for using aerial surveillance over farms in Iowa and Nebraska to investigate Clean Water Act violations rather than speaking with landowners personally about the alleged violations. Most alarmingly, in 2010, an EPA regional administrator was quoted as saying he wanted to crucify oil and gas companies like Roman conquerors, with the goal of making them easy to manage for the next few years.

Tactics and statements like this by EPA officials, who are supposed to be working collaboratively with stakeholders, are worrisome and lead to serious questions regarding the integrity

of the EPA enforcement process. Further, the EPA has expanded their use of Section 114 information requests under the Clean Air Act.

Section 114 letters allow the EPA to collect information from covered entities to use in developing our regulation or as part of an investigation for an enforcement action. The EPA has increasingly issued Section 114 letters to companies who are not the target of an enforcement action, but merely may have information relevant to a separate investigation of which they are not a part.

These information requests are extremely burdensome, can cost companies hundreds of thousands of dollars, and, despite the fact that the company receiving the request is not involved in the enforcement action, they can still be subject to criminal and civil penalties if they do not accurately comply with these requests in a timely fashion.

Additionally, the EPA has begun the implementation of their Next Generation Compliance Initiative, which, among other things, would outsource EPA enforcement responsibilities to third-party auditors who would take the place of actual EPA personnel in enforcing environmental laws.

We all want clean air and clean water. Compliance with environmental law is a requirement and there should be repercussions for breaking those laws. However, when an agency

unfairly targets certain sectors of the economy or imposes large fines on small companies who take the time to voluntarily self-report, or whose only recourse is to pay the fine because they do not have the resources to engage in a time-consuming lawsuit, it runs contrary to the true intent of the EPA's enforcement program.

The EPA should strive to be a resource that assists with environmental compliance rather than an agency that simply uses fines and scare tactics to dictate compliance. When the EPA works in a transparent, cooperative fashion with regulated communities, taxpayer dollars will be better managed, environmental laws will be more effective, and our environment will be cleaner for it.

I would like to thank our witness for being with us today, and I look forward to hearing your testimony.

Now I would also like to recognize my friend, Senator Markey, for a five minute opening statement.

But let me just say this before Senator Markey steps in. I have appreciated Senator Markey's work on the Committee and I have appreciated the fact that Republicans and Democrats sometimes have differing points of view on different issues. But I think the one thing that we both agreed on is that we want an efficient and effective delivery of services, and we want a sense of accountability from the agencies that we are here to

provide oversight to. So I just want to say that I have appreciated Senator Markey's interest in this and your willingness to work with us in going through this series of oversight committee hearings.

Senator Markey.

[The prepared statement of Senator Rounds follows:]

STATEMENT OF THE HONORABLE EDWARD J MARKEY, A UNITED STATES
SENATOR FROM THE STATE OF MASSACHUSETTS

Senator Markey. Thank you, Mr. Chairman, very much. You and I, last week, were at the White House sitting there while President Obama signed a bill which had equal numbers of Democrats and Republicans working together, the toxic chemical update of a law that is a 1975 law. Last night on the Senate Floor we passed out the brownfields law; both of them coming out of this Committee, both of them bipartisan, working together to try to ensure that we have commonsense laws that are on the books. And I want to thank you, as a result, for scheduling today's hearing.

I would also like to extend my appreciation to Cynthia Giles for testifying here today. The Commonwealth of Massachusetts benefited from your expertise leading the water protection program at the Massachusetts Department of Environmental Protection. We thank you for that work. You have a similar job now to make sure that these laws are enforced, and the EPA is charged with implementing and enforcing the environmental laws to protect the air we breathe, the water we drink, the use for recreation and the land we use to grow our food.

To ensure its mission is fulfilled, the EPA must have an enforcement arm with effective tools to enhance compliance with

the law. It must be empowered to deter violations that can endanger health and the environment.

The Agency's commitment to environmental protection can be seen on the front page of yesterday's New York Times, when Volkswagen agreed to pay up to \$14.7 billion to settle allegations of cheating on air emissions tests and deceiving customers. This is an excellent example of the EPA acting as a tough cop on the environmental beat, working with State governments to enforce the law and protect public health.

EPA enforcement actions have led to increased corporate compliance and environmental cleanup and mitigation of projects. EPA actions for non-compliance with environmental law have led to nearly \$2 billion from corporate owners to clean up Superfund sites, \$7 billion in investments by companies to control pollution and clean up contaminated sites, \$4 billion in court-ordered environmental projects resulting from criminal prosecutions.

Unfortunately, the EPA's ability to continue the pace of its compliance activities is strained by diminished resources. The EPA's enforcement budget has declined by nearly 9 percent from 2010 to 2016, and its enforcement and compliance force has decreased by 17 percent during that same time period. Investing in EPA enforcement activities and providing the Agency with necessary funding is critical to its success.

We must also bring EPA's compliance enforcement activities into the 21st century. The EPA's Next Generation Compliance Initiative supports the advancement of more effective and efficient ways of controlling pollution by embracing advanced monitoring technology, electronic reporting, and increased transparency. Using an advanced monitoring system like infrared video cameras to actually see dangerous emissions, reducing the paper burden on both industry and the Agency, and increased public awareness of enforcement activities are all benefits of this new 21st century approach.

Whether it is Love Canal, VW, Flint, Michigan, or Woburn, Massachusetts, where, in 1979, a woman, Ann Anderson, brought her young son, Jimmy, into my office and asked me if I would help her. She had done an epidemiological study of her own neighborhood and found that not only Jimmy, but other children in the neighborhood, had leukemia, had cancers. She had done the work and she had a city that was turning a deaf ear to her. She wasn't receiving the right kind of support from the State. So Senator Kennedy and I went to the EPA to say, can you come in, can you begin to work on those issues.

So it has to be a place where people can turn in order to make sure that their families are in fact protected.

Now, over the years, of course, there have been many who have said, well, EPA just is not an agency which is needed to do

this job. And I am reminded back in 1981 there was a guy whose name was Hernandez. He wrote a book after he had been considered and then rejected for the position of the head of the EPA, and he said he remembered the interview which he had in February of 1981 to get the job as the head of the EPA, and in the meeting he was asked whether or not he would be willing to bring the EPA to its knees; and he said he did not know how to respond, but it was with the greatest relief when he learned that somebody else had been given the job, Ann Burford, Ann Gorsuch.

Unfortunately, there is still this dynamic tension which exists between those that want to make it effective and work, and those that just want to bring it to its knees, and it is that balance that we have to strike here in order to make sure that we have an agency that is on the side of ordinary families, trying to protect their families from pollution in all of its forms.

So I thank you, Mr. Chairman, for conducting this hearing and I am looking forward to hearing from the witness.

[The prepared statement of Senator Markey follows:]

Senator Inhofe. It is not appropriate to give an opening statement, but I do have a brilliant one I want to make a part of the record.

Senator Rounds. Without objection.

[The prepared statement of Senator Inhofe follows:]

Senator Inhofe. Our witness joining us today is Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency. Ms. Giles has served as Assistant Administrator of OECA since May 12th, 2009. That was when she was confirmed by the Senate by a voice vote for the position.

She previously served as the Director of the Conservation Law Foundation's Advocacy Center in Rhode Island. Earlier in her career she served as Assistant United States Attorney in Philadelphia, head of the water protection program for the Commonwealth of Massachusetts, and the Director of Enforcement Coordination for EPA Region 3.

We will now turn to our witness, Assistant Administrator Cynthia Giles, for her opening statement of approximately five minutes.

Assistant Administrator Giles, you may begin.

STATEMENT OF CYNTHIA GILES, ASSISTANT ADMINISTRATOR, OFFICE OF
ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVIRONMENTAL
PROTECTION AGENCY

Ms. Giles. Thank you, Mr. Chairman and Ranking Member Markey and members of the Subcommittee. I am Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance, and I want to thank you for the opportunity to testify today about how EPA meets the challenge of ensuring consistent implementation and enforcement of Federal environmental laws and regulations.

The mission of EPA's enforcement and compliance program is to protect both human health and the environment by ensuring compliance with environmental laws. Most of these laws are built around important ideas of federalism, where States and the Federal Government have important, complementary roles in protecting public health and the environment.

EPA is proud of the environmental progress this Country has made over the last several decades, due in large part to the combined efforts of tribal, State, and Federal governments. During the more than seven years that I have been in this position, I have learned that EPA and our partners share a strong commitment to a clean environment, and also to ensuring that there is a level playing field for companies that play by the rules.

EPA is sensitive to the need for consistency and fairness, as well as flexibility to adapt to local issues. The Agency has developed innovative tools to help the regulated community, particularly small businesses, understand and comply with environmental requirements.

EPA prepares small entity compliance guides when a rule may have significant economic impact on small entities. These guides explain in plain English the action that a small entity must take to comply. EPA also operates web-based Compliance Assistance Centers that received over 2.5 million visitors last year, and we maintain topic-specific hotlines for responding to requests.

In EPA's civil compliance program, we work closely with our State, local, and tribal partners to monitor compliance and, where significant violations are found and Federal enforcement is appropriate, work with the regulated entity to remedy the violation. Most cases brought by EPA are resolved through a mutually agreeable settlement. Judicial cases are often brought jointly by both EPA and States.

EPA also works with our partners to implement an effective cleanup enforcement program by engaging responsible parties to perform cite investigations and cleanups. Encouraging responsible parties to enter into cooperative cleanup settlements has reduced the need for litigation, cleaned up

thousands of communities, and saved the American taxpayer billions of dollars in cleanup expenses.

The Agency also undertakes criminal investigation and works with DOJ to prosecute the most egregious violators, while working closely with local law enforcement partners. States often take the lead on prosecuting crimes that endanger public health and damage the environment.

EPA is currently modernizing our enforcement program with the Next Generation Compliance Initiative. Next Gen is based on the principle that today's environmental challenges require a modern approach to compliance, using new information tools and approaches while strengthening enforcement. Better pollution monitoring and reporting helps to identify problems before they become really serious, helping save time and money for the regulated entities and for regulators at the tribal, State, and Federal levels. An example is our move towards electronic reporting. Making use of these kinds of modern information technology saves money for businesses, saves times for States, and increases transparency while improving accuracy.

Over the last four decades, EPA, working with our State, local, and tribal partners, has made tremendous progress towards achieving cleaner air, water, and land for our Nation. A strong enforcement and compliance program has helped to make this possible. We will continue to work with our partners to take

advantage of innovations and make smart choices about priorities, ensuring that the public health comes first. We know that achieving this goal requires consistency, a level playing field, and flexibility that acknowledges and allows for the diversity in our Nation's environmental, economic, and demographic conditions.

Thank you for the opportunity to testify, and I would be happy to answer any questions.

[The prepared statement of Ms. Giles follows:]

Senator Rounds. Thank you for your testimony.

Senators will now have five minutes each for questions. I will begin.

I appreciated your comments with regard to the cooperative approach with States, and specifically I would like to focus on Section 114. The EPA has increasingly issued requests for information from regulated entities under the Clean Air Act Section 114. These requests sometimes inform future regulatory actions and, in other cases, lead to enforcement action.

Despite the inherent principle of cooperative federalism in the Clean Air Act, the EPA Headquarters submits these requests without including its State partners, who are most familiar with the regulated entities. Do you think this practice is consistent with the principle of cooperative federalism in the Clean Air Act, and is there any reason not to include State regulators on such correspondence, and would you consider including these State regulators on such correspondence moving forward?

Ms. Giles. Thank you, Senator. Thank you for that question. As you point out, Section 114 is the authority that Congress gave to EPA to collect information to look for potential violations, so we use it for that purpose. I am not aware of the increasing use that you reference, but we do, and have, consistently used that authority to collect information

about potential violations, and we also do routinely share information with States about what we know about violations or issues of concern, and they, likewise, share information they have with us.

Senator Rounds. It is interesting that you bring up the fact that there is a concern as to whether or not there actually is an increasing use of it, and I am just wondering who is accountable for keeping the records of who does receive these letters and the purpose of the requests.

Ms. Giles. We use 114 authorities when it is appropriate to review specific concerns that we may have about compliance. I am not aware that we separately track them, but we are careful to use them just in those instances where we have a reason to believe that there is a concern that requires attention.

Senator Rounds. Would there be any reason why we shouldn't be able to keep track of the number of 114 requests that are made and their outcomes? Seems to me to be a reasonable metric to keep.

Ms. Giles. Well, we do track, of course, the cases that we bring, and Clean Air cases very frequently are based on information we gain from 114 letters.

Senator Rounds. Do you think that there is someone that keeps track of the number of 114s? I would just ask for the record if you don't know if there is, could we get you to follow

up with the Committee and find out whether or not there is someone responsible for keeping track of the 114s? And, if not, is there any reason that you could think of why we shouldn't be keeping track of the number of inquiries made to the 114 process?

Ms. Giles. I am not specifically aware of a separate record that is kept, but I would say each enforcement team and regional office is responsible for ensuring the appropriate use of Section 114 letters. I would be happy to look into that further and get back to you.

Senator Rounds. It would be very interesting to find out the number of 114s. As you say, if there is a perception out there that the 114s have increased, and you are not sure if they have, it would be a fact one way or another that would be useful to have in front of us for these purposes. Fair enough?

Ms. Giles. I will look into that and get back to you, Senator.

Senator Rounds. Okay, thank you.

How does the EPA justify the use of 114 letters to require operators to require a lengthy and rather expensive design evaluation that are not expressly required by current regulations? Isn't this a backdoor way of requiring the industry to change its operations without a transparent public rulemaking process of notice and comment?

Ms. Giles. Thank you, Senator. The 114 authority does allow EPA to ask facilities to collect information about emissions or other relevant information to determine if there is compliance. It is not for the purpose of rulemaking; it is for the purpose of determining if there is a pollution problem that requires enforcement attention.

Senator Rounds. Thank you.

Senator Markey?

Senator Markey. Thank you, Mr. Chairman, very much.

Over the last six years your office has seen a 9 percent decrease in funding and a 17 percent reduction in your workforce. Your responsibilities have not decreased over the last 6 years; you still have the same statutory and regulatory responsibilities. So you have been really asked to do more with a lot less over the last 6 years, is that correct?

Ms. Giles. Senator, that is certainly correct. We have, along with the rest of the Agency, struggled with declining budgets.

Senator Markey. And how is that working out?

Ms. Giles. Well, we have made every effort to innovate, as both of you mentioned in your opening remarks, to innovate to make sure that we are making use of new technologies to find the most serious pollution problems, and we direct our enforcement attention to the most serious situations.

Senator Markey. Well, let me ask this. A report released this week by the National Resources Defense Council states, "At State and Federal levels, resources for the enforcement of the Safe Drinking Water Act have been decimated by poor funding and bureaucratic indifference." Overall, do you agree with the NRDC recommendations to strengthen drinking water enforcement and address environmental injustices?

Ms. Giles. We certainly agree that drinking water compliance and enforcement is at the very top of the list for EPA's priorities, and we know that the States feel the same way about it, and we are heightening our attention to this important topic and appreciate the input of organizations like NRDC drawing more attention to it.

Senator Markey. Well, it turns out that, in 2015, enforcement actions have been taken on only 11 percent of the 8,000 violations of regulations designed to ensure that our drinking water is free of dangerous levels of lead and copper. Might the cuts in your budget and workforce be partially responsible for the limited enforcement actions?

Ms. Giles. Senator, I am not really sure where NRDC got their numbers. I can tell you that, in 2015, which is, I think, the year that they were focused on in their report, there were about 6,000 enforcement actions for drinking water taken across

the Country, primarily by States, to address concerns about drinking water compliance.

Senator Markey. How about the EPA?

Ms. Giles. EPA takes a much smaller number because we have an oversight role, primarily, with respect to drinking water. I think we had somewhere over 100 enforcement actions for drinking water.

Senator Markey. So what additional actions are you taking at the EPA in order to oversee this Flint mess at large across the whole Country, community after community, and are reporting that they have the same problem?

Ms. Giles. Well, specifically with respect to Flint, as you mentioned, EPA did issue an enforcement order back in January, and we are working closely weekly, daily with the City of Flint and the State of Michigan to return that system to acceptable condition. I am pleased to say we are making good progress, but we are going to stay at it until we make sure that that system is in good shape.

Senator Markey. So, when you look at Flint, you are looking at a disadvantaged community. They obviously need a lot of help in order to make sure that these issues get resolved. It is not always a disadvantaged community. Woburn, Massachusetts was a good example of the community that had just been ravaged by industries, Monsanto, W.R. Grace and others,

just using the land and the water as a dumping ground for TCE. By the way, under TSCA, the EPA just might be able to ban TCE in the years ahead, so that is about a year wait, but hopefully TSCA will make that possible.

So, can you talk a little bit about how disadvantaged communities need a little bit more help from the Federal Government is they are going got be able to deal with these environmental issues that endanger their children?

Ms. Giles. Senator, thank you. We totally agree that the overburdened communities in America require our attention and they need to know we have their backs, so that is what our EJ 2020 agenda that is out for public comment now is designed to accomplish, to make sure that we are focused in rulemaking, permitting, enforcement, cleanup, and in our science on addressing the questions that these communities struggle with.

Senator Markey. I just want to say, Mr. Chairman, through you to Chairman Inhofe, that I actually called Ann Anderson last week to tell her that we had overhauled TSCA and that this chemical which was the principal culprit in giving her son leukemia, and other children in that neighborhood, was now going to be potentially regulated and potentially banned under this new law.

And she obviously, 40 years later, because of the incredible courage which she showed and resourcefulness, the

Government had failed her, she had to do it by herself to do this epidemiological study of her own neighborhood. Ultimately Superfund got created because of her story, and that ultimately became a movie called A Civil Action, a famous book called A Civil Action. But that plus Love Canal kind of led to Superfund being passed, and now on the Superfund site out there we have a lot of industrial development, but we also have the Jimmy Anderson, named after her son, Transportation Center.

So that is a good example of where public sector investment or oversight then led to economic development that now serves the long-term best interests of the community of Woburn. So there is a good enforcement action that turned into something that was economically much more beneficial for that community.

Thank you, Mr. Chairman.

Senator Rounds. Thank you.

Senator Inhofe, in this case Chairman Inhofe, I just would like to add that Senator Markey earlier had indicated the success that you clearly had the responsibility for with regard to the creation and the upgrade of TSCA, and also your success the other evening in the brownfields; and I would also like to add my congratulations to you for this bipartisan effort as well.

Senator Inhofe. Well, this was a huge joint effort, right?

Senator Markey. Thank you for saying that, because I was praising you behind your back.

Senator Inhofe. Oh.

Senator Markey. On brownfields and TSCA.

Senator Inhofe. Well, I certainly forgive you for that.

[Laughter.]

Senator Inhofe. Let me get back, Ms. Giles, to something the Chairman was talking about on the 114s, because we have heard from people that the oil and gas companies, that these are used to pressure them to curb and monitor methane emissions before the EPA has even issued a methane rule for the industry. Now, are you contending that these are not enforcement letters, but they are, I think you said, informational letters?

Ms. Giles. Thank you, Senator Inhofe. Yes, 114 letters are for the purpose of collecting information, they are not enforcement actions.

Senator Inhofe. So would you confirm that they are not targeting methane, let's say, in future consent decrees?

Ms. Giles. I am not aware of the specific matter that you are referring to, but Section 114, that section of the statute, does give EPA the authority to ask companies for information about pollution and emissions as we are looking into the potential violations that may be occurring.

Senator Inhofe. We all talked about and made our own comments about what happened in Paris and the President coming up with a commitment that he would be reducing CO2 emissions by between 26 and 28 percent by 2025, and then we made an effort through every group we could find, including the EPA, to determine how he is going to do that and we haven't been able to find anyone who has any idea.

In fact, I don't think it can be done. I don't think he does either. But it appears that your office stepped up enforcement of VOC emission requirements against the oil and gas sector, and the chairman commented, as a backdoor effort for the EPA to cut greenhouse gas emissions.

Now, the question I would ask you is have you been pressured or do you have any kind of a mandate to reduce greenhouse gas emissions through enforcement against utilities and the oil and gas industry to help the President meet these climate commitments? Has that happened?

Ms. Giles. No, it hasn't. Senator, I think what you may be referring to is some enforcement work that EPA has done with respect to VOC emissions, as you mentioned, from the oil and gas sector, which is with respect to existing laws that have long been in effect, and deal with pollution issues in some communities that are quite significant in the formation of ozone as a result of some of these industries.

Senator Inhofe. In a broader perspective on your regulations that you are in the process of doing, have you been talking to the Administration about seeing what regulations can be adjusted or changed or put forth that would help them meet these requirements? In other words, nobody knows how he is going to get to a 26 percent reduction, and I am if you have had conversations with them saying, through the regulation, what can you get done.

Ms. Giles. Senator, the Enforcement Office doesn't write regulations, so I am not aware of what conversations --

Senator Inhofe. So you haven't had conversations.

Ms. Giles. I personally have not.

Senator Inhofe. You know, it wasn't long ago that Al Armendariz made the statement, when he was talking to a bunch of subordinates, that, you know, what we have to do to the oil and gas industry is the same thing that the Romans did when they went through Turkey; they went into various small villages, crucified the first four people, get their attention. And we actually got the wording that he used on that, and after that happened he was let go.

What is your evaluation of a comment like that, that a man who is working for the EPA, making to subordinates and going after a particular industry?

Ms. Giles. I would disagree with that comment in the strongest possible terms. I do not agree with what he said and I disavowed it in public at the time.

Senator Inhofe. If that is the case, why is it you praised him for it when you wrote him a letter saying, I just want to say how impressed I am at the terrific work the region did in the range order, what specifically he was talking about at that time. Great job.

Ms. Giles. Senator, the comment I was making to him was with regard to a specific enforcement action, it was not with respect to his comment.

Senator Inhofe. Well, it was a terrific job, and this was right after he did that.

Ms. Giles. I don't believe it was after he said that.

Senator Inhofe. Oh, yes it was. The date was specifically the 8th of December of 2010. And it was the spring of 2008 that he made the statement.

Ms. Giles. Thank you for refreshing my recollection. It may have been after he made that comment, but it was not after I knew about the comment that he had made.

Senator Inhofe. Thank you, Mr. Chairman.

Senator Rounds. Senator Sullivan.

Senator Sullivan. Thank you, Mr. Chairman.

Administrator Giles, good to see you. I am appreciative and I always think it is important to emphasize that everybody on this Committee certainly is focused on making sure we have the cleanest air and cleanest water in the Country; certainly something that is a big issue in my State, in Alaska, where we do have some of the most pristine environments and clean air.

One of the things I have raised on the Committee a lot is my concern about legal issues where I think the EPA is not following the law. I think it is not just us, but it is frequent court cases. And it also relates to the area that you are in charge of in terms of enforcement and compliance.

I want to talk a little bit about the summer of 2013 in Alaska. Are you familiar with what happened in Chicken, Alaska during that summer?

Ms. Giles. Generally, yes.

Senator Sullivan. So that was when I think it was seven armed EPA agents, rifles, body armor, several ATVs, made a raid. Anything less than calling it a raid on a plaster mining operation, of a bunch of Alaskans who were out plaster mining, looking for Clean Water Act violations. The State of Alaska did an extensive report on that and one of the things you talked about, working closely with law enforcement, they said that there was actually very little coordination with law enforcement when you came in, scared the living daylights out of a bunch of

Alaskan miners looking like, you know, the U.S. Army as opposed to the EPA.

Have you learned any lessons on coordinating better with State officials on something like that? The governor's report in Alaska said that there could have been a terrible tragedy, terrible accident; a bunch of EPA enforcers coming in, rapid raid. You said that you are focused on working closely with law enforcement. What have you learned from that raid?

Ms. Giles. Senator Sullivan, thank you for the question. As you know, the governor's special council did do a review of that situation and found that the investigation was done professionally and courteously; and I would add not just by EPA, but --

Senator Sullivan. Oh, I don't think so. Did you find any violation of the Clean Water Act in that investigation?

Ms. Giles. The information that was found was turned over to the State and to the prosecutors for their evaluation.

Senator Sullivan. The answer is no. There were no Clean Water Act violations in that raid that was conducted.

How much does EPA spend on training your officials, your agents, in terms of high-powered military weapons and arms training?

Let me get to just a more direct question. When EPA started out for the first 20 years, you did not have armed

agents. Why do you believe you need armed agents now, when in your initial 20 years you didn't have armed agents? Why do you need armed EPA agents now? You spend millions of dollars on training, weapons, bullets. Why do you need that?

Why can't you rely on, for example, if you go to Chicken, Alaska, why can't you rely on the State troopers to work with you for cooperation and coordination, so they can go in, if you think it is dangerous? Why is EPA spending so much money on having armed agents, when the first two decades of your Agency's existence you didn't have that?

Ms. Giles. Senator, the reason that was sought and the reason that Congress decided to give that authority to EPA was because the mechanism that was working up to that point was not working now. President Reagan is the president who specifically sought that authority. In his signing statement he said, I am pleased to sign this bill into law because it contains the explicit law enforcement authority for the Environmental Protection Agency, which this administration actively --

Senator Sullivan. Well, my first amendment as a U.S. Senator, my first bill was actually to disarm the EPA, because I don't think you need the weapons. I think it would force you to actually cooperate, which you didn't in the Chicken, Alaska case, with local law enforcement, and to have them be in charge of any kind of weapons in terms of any kind of dangerous

mission. I still think that the vast majority of Americans don't know that we have had a dramatic increase in the arming of our Federal bureaucracy.

I am someone who is a strong Second Amendment supporter. I believe in an armed citizenry, but I don't believe in an armed bureaucracy. And I think that I am going to continue to work with my colleagues here to throttle back on this area of the Federal Government's increasing power to arm Federal agents. I think the EPA has not shown that it needs these weapons, and I think that that is something that the Chicken, Alaska raid in particular demonstrated.

Let me turn to the Gold King Mine site issue. If a private company had released 3 million gallons of contaminated water into a river, would your office have charged them criminally or brought civil or criminal charges to a private company that did something like that?

Ms. Giles. Senator, the law and enforcement distinguishes between the company who makes and releases pollution and the entities that are trying to respond and clean up pollution that other people created. So, in the case of EPA's action in Gold King, we were acting as a responder, trying to prevent releases of pollution that were left there by others.

Senator Sullivan. The EPA Administrator told us in a Committee hearing that she would hold the EPA to a higher

standard that a private sector company. There have been numerous instances where the EPA has actually criminally charged people who accidentally, not on purpose, polluted rivers with much less amounts of pollution.

Why has nobody in the EPA been held liable, been criminally charged? The EPA administrator told this Committee she would hold the EPA to a higher standard, and yet nothing has happened. And if a private sector company did this, it is likely that the CEO or some members of that company would actually be in jail right now.

You have not demonstrated any commitment similar to what the EPA administrator said she would do, which is hold EPA to a higher standard than the private sector. How come that has not happened?

Ms. Giles. I totally agree, Senator.

Senator Sullivan. You agree with what?

Ms. Giles. I agree that EPA is responsible and that we should hold ourselves to the same standard or higher that we would expect from a private party.

Senator Sullivan. Then why has that not happened and people have gone to jail for doing something less than you did?

Ms. Giles. In the event of a response action, if somebody causes a spill, as part of a response action, not pollution they created, we generally do not assess fines or pursue them for

violations as you are discussing here. We do that in the case of someone who creates the pollution and is responsible for releasing it.

Senator Sullivan. Didn't you create the pollution and release it?

Ms. Giles. We did not. We were responsible for the release. The pollution was not created by EPA; we were attempting to remedy the pollution that was left there by someone else.

Senator Sullivan. But for the EPA's action that day, would the Animus River have been polluted?

Ms. Giles. I totally agree we are responsible for that. And what we expect from private parties when they are in that situation, if they are doing a response action and they make the situation worse, we expect them to fix it, and that is what EPA has been attempting to do.

Senator Sullivan. But no one is civilly liable or going to jail, as has happened in the past.

Ms. Giles. EPA does not typically assess penalties or pursue enforcement actions other than to get response parties to clean up the mess that they made, and that is what EPA is taking responsibility for doing, which we should do.

Senator Rounds. I think what we will do is just in terms of since there are just a few of us here, I think we are going

to try to do one more round. We are going to limit it to three minutes per senator, and we will roll on through, and I will begin.

I have a specific question concerning the follow-ups on the inspections. When the EPA conducts an inspection on facility, what are the policies and guidelines that the EPA follows in order to keep in communication with the facility and report the results of the inspection in a timely fashion? If there such a thing as an average time that it takes to report the results of an enforcement action to an inspection facility, what is it? Do you keep track of that? What should be considered timely for a follow-up response?

Ms. Giles. We do. Thank you, Senator. We certainly do attempt to respond and communicate in a timely way with the facilities, all the way from talking to them at the time when the inspector is there through what subsequent action may be appropriate; and I would say the time for that probably varies quite a bit by the extensiveness of the inspection and the seriousness of the issues found there.

Senator Rounds. If the EPA delays reporting the results of an inspection to a facility, what recourse does a facility have to get a more timely response from the EPA? I think you probably understand the reason. You inspect a facility; there is a threat of an enforcement action, clearly, with the

inspection; there is a concern about whether they get a clean bill of health or whether they have to look at defensive actions coming in in the future. It seems to me that there ought to be some kind of a timeframe in which the EPA should have a responsibility to at least let the organization know whether there is going to be an enforcement action that they are going to be following.

Ms. Giles. Yes, Senator. I would agree that it is important for us to stay in communication with the facilities, and we do certainly support and encourage folks in doing that. Any facility that does not think that they are getting information in a timely way, we would certainly hope they would call us, and we would make an attempt to communicate with them at that point.

Senator Rounds. When you do the enforcement actions, do you communicate with your partners, the States in this particular case? And at what point does the communication with the State begin, or is there a process that you have in place within policy that directs that communications begin once again with the State, or are you in communication with the States during the entire time?

Ms. Giles. Senator, thank you. Yes, the regions have regular communications with their State counterparts in the different compliance programs, and that varies from weekly to

monthly to quarterly, and the purpose of those is to share information, what the States know, what EPA knows, and to see if we can reach joint decisions about what the best way of proceeding should be.

Senator Rounds. What about in cases where you have specific enforcement actions that at least an inspection has been done with a facility? Is there any way for communication with the States? Would the States know what is going on with the activity that you brought or that you may bring with a facility within their jurisdiction as well?

Ms. Giles. I think, Senator, generally the regions do have that communication with States around inspections that they are doing and what they have found, and, likewise, States share with EPA information that States have about pollution problems and compliance issues and discuss the best way to approach them.

Senator Rounds. Thank you.

I will just say earlier I had requested the information concerning the number of 114 requests, and what I will put into my official request will be that you just simply look at it over a 10-year period of time, over the last 10 years, including the most recent data that you might have. And we will extend you a formal letter on that, okay? Thank you.

Senator Markey.

Senator Markey. Thank you, Mr. Chairman, very much.

May I ask, Ms. Giles, if EPA's special agents have ever been attacked or killed as they are in the line of duty in enforcing the law?

Ms. Giles. It is unfortunately the case that EPA agents who are executing search warrants or arresting people for serious environmental crimes have been assaulted, and it also happens, unfortunately too frequently, that the agents find significant quantities of firearms in these locations. So having a sidearm is a standard piece of equipment for any law enforcement officer, and we do the same at EPA, along with, of course, the training and the requirements that they follow the rules.

Senator Markey. And I think that that is very appropriate. These are crimes, in many instances, that the EPA is investigating, and those who have committed these crimes, or alleged to have committed these crimes, could have guns themselves.

So to send an EPA law enforcement officer into a situation without a gun, while there could be a gun on the other side of the door, I think would basically differentiate an EPA enforcement officer from every other enforcement officer at every other level of government in the United States. And we know that the person behind the door could have a gun.

We know that there is no law that if you are on a no-fly terrorist list that you can't buy a gun in the United States. We know that people can buy guns in gun shows without having gone through a background check. We know that people can go on Instagram and buy an Instagun.

So we know that we don't have all the safeguards that are in place, and yet why should we say to an EPA enforcement officer, when there have been officers which have been attacked in the past, that they can't have a gun to protect themselves? Not to use it in an arbitrary way, but at least to have that kind of protection, which I think each law enforcement officer in our Country is entitled to.

So I just think it makes no sense to have everybody else in America be able to buy a gun because of all the loopholes that we have, and that the only one subgroup in the whole Country that would not have a gun would be actually a law enforcement officer for the EPA. It just doesn't make any sense whatsoever, given the fact that they are in fact enforcing the laws of the United States of America.

So I would just like to put a good word in for those EPA special agents who are risking their lives every time they knock on a door, every time they are investigating a crime. The consequences for the person that they are investigating could be quite severe and, as a result, a reaction to an EPA special

agent could be something that is life-threatening. So I just want to put in a good word for all those people who are out there and work every day for us.

Ms. Giles. Thank you, Senator. They greatly appreciate that.

Senator Markey. Thank you.

Senator Rounds. Senator Sullivan.

Senator Sullivan. So, Administrator Giles, I want to go to another issue. I talked about the frustration of the Animus River example. I think that there is a sense, certainly in my State, of a do-as-I-say-not-as-I-do approach to some of the EPA enforcement, and I have raised this issue a number of times in this Committee, but you mentioned earlier a statement by a senior EPA administrator that you said you immediately disavowed.

On the eve of the EPA vs. Michigan case, where EPA Administrator Gina McCarthy was asked if she thought that the EPA was going to win that case in front of the Supreme Court, she said she was confident that the EPA would; and then she said, "But even if we don't win, it was three years ago. Most of them," meaning all the companies and private sector businesses, "are already in compliance. Investments have been made and we'll catch up. We're still going to get at the toxic pollutions from these facilities."

Do you see a problem with that statement and do you disavow that statement? I mean, I find that statement to be remarkable because, in my view, it ignores the rule of law. It is essentially saying, heads, we win, tails, we win; it doesn't matter. Do you understand why a statement like that from the head of the EPA brings so much frustration to the average American who is trying to comply with the law, the average small business?

Do you disavow that statement from the EPA Administrator and do you understand why -- as you probably know, that statement has been quoted all over the Country. People were shocked when they heard her say that. Do you understand why people were shocked? First of all, do you disavow that statement by your boss?

Ms. Giles. Senator, are you referring to the mercury toxic standard?

Senator Sullivan. I am referring to the quote that the Administrator made on the eve of the EPA vs. Michigan Supreme Court decision, which the EPA lost, by the way.

Ms. Giles. Well, from an enforcement perspective, what I can tell you is when rules become final, companies do make progress towards complying with them, and if rules are overturned many years later, many companies have already gone a long distance towards compliance.

Senator Sullivan. But it seems to me that she has that as part of EPA's strategy, kind of like it doesn't matter whether we were right or wrong on the rule because the companies had to comply. Do you understand why that makes people frustrated? Do you want me to read the quote again?

Ms. Giles. No, Senator. I understand what you are saying, your frustration --

Senator Sullivan. No, it is not mine. I would say it is probably millions of Americans who are frustrated with that approach to the law and regulations by the EPA.

Ms. Giles. Well, it certainly is the case that sometimes it takes quite a while for judicial cases to come to conclusion, and, meanwhile, companies do comply with the laws, has been my experience.

Senator Sullivan. But you don't understand why a statement from the head of EPA just like I read would make a lot of Americans very frustrated with how Federal agencies, particularly yours, operates? You don't get that?

Ms. Giles. I think the Administrator is expressing her view and confidence about the outcome of that litigation.

Senator Sullivan. No, actually, she wasn't. I mean, I am fine with her saying that she thinks they are going to win; she has good lawyers. That is fine. That is actually a strong statement from the EPA Administrator. That is expected. That

part of her statement is fine. It is the part of her statement that says, "But even if we don't win, it was three years ago. Most of them are already in compliance. Investments have been made. We will catch up." That is really, even if we lose, we win. Like there is no way to lose.

Ms. Giles. Senator, I think it is a statement of fact that many companies had made investments to comply with the regulation.

Senator Sullivan. Oh, I know it is a statement of fact, but I am just asking you do you understand why that frustrates people. Can you see it? Can you sympathize with the small business person who fought that, thought it was illegal, and then the Supreme Court came out and said it was illegal, and then the head of the EPA says, hey, too bad, it was illegal, but you already had to pay for it; good luck. Do you see how that makes people frustrated?

Ms. Giles. I think I am getting pretty far out of my zone in enforcement and regulations.

Senator Sullivan. Well, that is enforcement. That has a lot to do with enforcement.

So you don't see how that frustrates people. No sympathy there?

Ms. Giles. It is not a matter of not sympathy. I think it is a statement of fact, which is a correct statement.

Senator Sullivan. Thank you, Mr. Chairman.

Senator Rounds. Thank you.

Before we close, Senator Barrasso was not able to be here. We have three separate subcommittees that are all meeting at the same time and Senator Barrasso asked that I highlight the practical recommendations for improving the partnership between your office and State regulatory agencies.

The Wyoming Department of Environmental Quality submitted, in October 14th of 2015, a letter to your office, of which I have a copy here that I will enter into the record, and I understand that the Wyoming DEQ has not yet received any response or outreach from your office on this letter. In the letter, I would like you to check and see what the follow-up was.

If they have received it, if they have reviewed the recommendations that the Department of Environmental Quality in Wyoming has made, and if I could get from you a response back in writing once you have had a chance to find the letter and so forth. If you would agree to make sure that we get a copy of the response that you would expeditiously follow up on and get back to the Wyoming DEQ.

Ms. Giles. Certainly, Senator, I will look into that.

Senator Rounds. Thank you.

Senator Markey, thank you once again for this participation.

I would like to thank Ms. Giles once again for your participation in our meeting today.

I think it is important that we get in and we ask the questions and we get the follow-up and so forth, and at least share some of our thoughts, frustrations on both sides of the aisle in some cases with activity. But, nonetheless, I think it is important that we continue with these oversight hearings and, once again, I want to thank you for attending today.

The record for this meeting will be open for two weeks, which brings us to Tuesday, July 13th. This hearing is adjourned.

[Whereupon, at 3:35 p.m. the committee was adjourned.]