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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR  
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

October 22, 2013

The Honorable Eric Holder  
Attorney General  
United States Department of Justice  
Washington, DC 20530

Dear Attorney General Holder:

I write to request that the Department of Justice (DOJ) examine whether Environmental Protection Agency (EPA) law enforcement agents are conducting criminal investigations in accordance with guidelines approved by the Attorney General. Recent events in Alaska suggest that EPA agents may be abusing their discretion during criminal investigations, perhaps encouraging excessive intimidation, and I am concerned that EPA is reluctant to address this serious issue. DOJ's input would be useful in my evaluation of EPA's law enforcement tactics, particularly when raiding small businesses.

As you may be aware, EPA and other state and federal agencies conducted an armed raid this past August against small operation miners in Alaska. According to several news outlets, EPA needlessly intimidated the miners while investigating supposed Clean Water Act violations, going so far as to wear full body armor and carry guns in confronting the surprised miners.

EPA's extreme show of force is counterproductive, and the agency's inadequate response to questions regarding the armed raid leads me to request DOJ's investigation. For example, EPA defended its actions by claiming that EPA law enforcement agents are "required to carry firearms to safely and effectively perform their responsibilities," and that environmental law enforcement "always involves the potential for physical, or even armed confrontation."<sup>1</sup> However, EPA appears not to appreciate the latitude provided when deciding to utilize armed officers, as the relevant authorizing statute makes clear that the carrying of firearms is a discretionary option for EPA agents, not a categorical requirement.<sup>2</sup> Congress thus recognized that environmental law enforcement can be safely accomplished in many instances without the use of firearms, and that there exists no mandate to intentionally intimidate.

Further, although EPA has apparently claimed the agents were armed in response to human and drug trafficking concerns raised by the Alaska State Troopers, the Troopers have

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<sup>1</sup> Alex Guillen, *Shaheen-Portman Arrives, Then Stalls . . .*, POLITICO (Sept. 12, 2013 9:30 a.m.), <http://www.politico.com/morningenergy/0913/morningenergy11628.html> (quoting EPA statement; internal quotations omitted).

<sup>2</sup> See 18 U.S.C. § 3063 (providing that EPA law enforcement officers "*may . . . carry firearms*") (emphasis added).

expressly denied this account.<sup>3</sup> This discrepancy has yet to be explained by EPA, and it raises the question from which environmental statute the agency derives enforcement authority in human and drug trafficking issues.

Indeed, as one commentator has put it, “EPA refuses to explain why it chose its Enforcement Task Force to do what were basically compliance checks of . . . mines.”<sup>4</sup> Because EPA refuses to explain its actions, and noting that federal law requires EPA to perform its criminal enforcement activities in accordance with guidelines approved by the Attorney General,<sup>5</sup> I ask that DOJ investigate this particular incident and the broader circumstances of what should have been routine compliance checks. In conjunction with this request, please provide responses to the following inquiries no later than November 29, 2013:

- 1) Concerning the armed raid in Alaska discussed above, please investigate and provide details on the exact circumstances which led to EPA’s decision to utilize the enhanced tactics. Please also specify the alleged Clean Water Act violations that EPA agents were investigating, as well as the basis for EPA’s belief that Clean Water Act violations had occurred.
- 2) Does DOJ have procedures or review mechanisms in place to ensure that EPA decisions to utilize armed enforcement agents are conducted in accordance with EPA guidelines? If so, please specify. Please also provide any DOJ analyses, memoranda, or other information from the past ten years regarding EPA’s compliance with these guidelines.
- 3) Again concerning the armed raid in Alaska discussed above, did EPA arm its agents in accordance with the latest version of agency firearms guidelines approved by the Attorney General? If yes, please explain the steps EPA took to ensure compliance with the guidelines. If no, please explain how EPA failed to ensure compliance with the guidelines.
- 4) Federal law also provides that only those EPA law enforcement officers “with responsibility for the investigation of criminal violations of a law administered by the [EPA]” may carry firearms.<sup>6</sup> Does EPA have the responsibility to administer any drug trafficking or human trafficking laws?
- 5) EPA has stated that “[e]nvironmental law enforcement, like other forms of law enforcement, always involves the potential for physical, even armed, confrontation.”<sup>7</sup> Is it DOJ’s position that environmental law enforcement equates to other forms of

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<sup>3</sup> See Sean Doogan, *Both State, Feds Probe August EPA Task Force Raids Near Chicken*, Alaska Dispatch (Oct. 10, 2013), <http://www.alaskadispatch.com/article/20131010/both-state-feds-probe-august-epa-task-force-raids-near-chicken>.

<sup>4</sup> *Id.*

<sup>5</sup> See 18 U.S.C. § 3063.

<sup>6</sup> *Id.*

<sup>7</sup> Guillen, *supra* note 1.

October 22, 2013

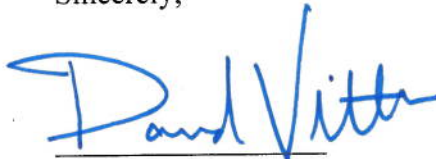
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federal law enforcement, such as border patrol, terrorism activities, and drug trafficking?

- 6) Federal law requires that EPA agents conduct certain criminal investigations “in accordance with guidelines approved by the Attorney General.”<sup>8</sup> In a 2009 law review article, a DOJ attorney wrote that EPA’s guidelines “were approved by the Attorney General on June 26, 1989.”<sup>9</sup> Please provide a copy of EPA’s 1989 guidelines as well as any Attorney General correspondence approving the guidelines. Please also provide any subsequent versions of the guidelines.

If you have questions regarding the requests, please feel free to have your staff contact the Senate Committee on Environment and Public Works at 202-224-6176. Thank you for your prompt attention to this matter.

Sincerely,



David Vitter  
Ranking Member  
Senate Environment and Public Works Committee

CC:

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave, NW  
Washington, DC 20460

Mr. Dennis McLerran  
Regional Administrator  
U.S. EPA Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

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<sup>8</sup> *Id.*

<sup>9</sup> Raymond W. Mushal, *Up From the Sewers: A Perspective on the Evolution of the Federal Environmental Crimes Program*, 2009 Utah L. Rev. 1103, 1111 (2009) (citing Memorandum from Attorney General Dick Thornburgh to Administrator William K. Reilly, Guidelines on the Exercise of Law Enforcement Powers for Special Agents of the Environmental Protection Agency, Office of Criminal Investigations (June 26, 1989)).