

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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

November 5, 2013

Ms. Nancy K. Stoner
Acting Assistant Administrator for the Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Dear Acting Assistant Administrator Stoner:

I write in response to a recent federal court decision which rejected the Environmental Protection Agency's (EPA) misguided position that a West Virginia poultry farmer violated the Clean Water Act (CWA). EPA's claims against Ms. Lois Alt in *Lois Alt v. EPA* flew in the face of the CWA and were an example of EPA's continued abuse of its regulatory and enforcement powers.¹ I was pleased to learn that last month EPA was held to account.

The *Alt* case resulted from EPA's decision to threaten Ms. Alt because stormwater which flowed across her poultry farm and eventually into a "water of the United States" had (not surprisingly) come into contact with dust, feathers, and small amounts of manure located on the ground. Despite the routine nature of Ms. Alt's farm activities and her diligent implementation of environmental protection practices, EPA issued Ms. Alt a CWA compliance order and threatened her with civil penalties of up to \$37,500 per day and possible imprisonment.

Ms. Alt bravely fought back, however, and her 2012 lawsuit led EPA to withdraw its draconian compliance order. Yet Ms. Alt nonetheless continued her lawsuit against EPA, presumably because she understood that EPA would maintain its hostile approach to poultry farmers and other landowners unless someone forced EPA to answer to a court of law.

Last month, the United States District Court for the Northern District of West Virginia determined that EPA's attempt to regulate Ms. Alt's farm was unlawful, finding that "[c]ommon sense and plain English lead to the inescapable conclusion" that EPA had no business attempting to subject agricultural stormwater to National Pollutant Discharge Elimination System (NPDES) permitting requirements.²

The district court's decision serves as a vindication for Ms. Alt's fight as well as a refreshing reproach to EPA's disdain for landowners throughout the country. Indeed, in light of this decision, the Supreme Court's decision in *Sackett v. EPA*,³ and concerns expressed by elected officials and countless other Americans, EPA must seriously reconsider its CWA compliance order regime and enforcement priorities.

¹ See *Lois Alt v. United States EPA*, 2013 U.S. Dist. LEXIS 152263 (D. Wv. Oct. 23, 2013).

² *Id.* at *24.

³ 132 S. Ct. 1367 (2012).

I reiterate, it is time the agency reconsider its CWA enforcement priorities. In this regard, a good first step, and the best policy, would be for EPA to accept and implement nationally the decision's analysis of the CWA. Further, EPA should formally and immediately direct relevant staff and personnel at EPA Headquarters and throughout all regional offices to cease efforts to require farmers to obtain NPDES permits for agricultural stormwater under the dubious agency rationales repudiated in *Alt*. It would reflect poorly upon EPA to ignore this decision and to continue to bully farmers with the threat of fines at the rate of \$37,500 a day.

If EPA nonetheless believes the *Alt* case was wrongly decided in spite of the cogent analysis provided by the district court, EPA should notify this committee and the public of any intent to appeal. Rather, the proper course of action would be for EPA to accept the decision and apply it uniformly so that our farmers are not further confused or otherwise harassed by the agency.

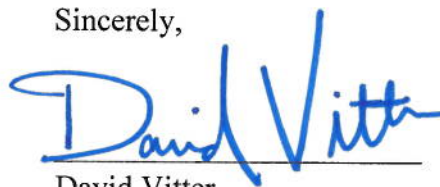
It should not take taxing litigation to remove the government's threat of ruinous fines and penalties for the productive and lawful use of private property, especially in circumstances where bureaucratic interference is clearly beyond the scope of federal regulatory authority. Accordingly, I ask the following:

1. In order to reflect your commitment to this axiom, I ask that EPA accept the court's decision and apply its ruling nationwide.
2. I ask further that EPA formally and immediately direct relevant staff and personnel to cease all efforts to require farmers to obtain NPDES permits for agricultural stormwater discharges.
3. If EPA is unwilling to accommodate the above two requests, it should file an appeal so that farmers know precisely where EPA stands with respect to the court's decision.

EPA must abandon the flawed interpretation of the Clean Water Act it maintained in *Alt*, so that the specter of *ultra vires* agricultural stormwater regulation may come to an end. If EPA disagrees with this approach, it must demonstrate so accordingly and transparently by announcing any intent to file appeal of the court's decision in *Alt*.

I look forward to your response to the above requests no later than December 5, 2013.

Sincerely,



David Vitter

Ranking Member

Environment and Public Works