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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
GABRIELLE BATKIN, MINORITY STAFF DIRECTOR

April 18, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
Ariel Rios Federal Building
1200 Pennsylvania Avenue, NW
Room 3000
Washington, DC 20460

Dear Administrator Pruitt:

I write with incredulity regarding a report in *Politico* stating that industry groups with close ties to you are studying whether the Environmental Protection Agency (EPA) “could hire lawyers from the private sector to redo the Obama administration’s most controversial water rule,” known as the Clean Water Rule. Active consideration of such an approach suggests either that EPA lacks the appropriate staff or budgetary resources to complete a new rule or that the agency intends to devolve its regulatory obligations to industry. Frankly, neither reason for considering such an action is acceptable. I question the legal validity of allowing industry to assist the agency in writing a rulemaking proposal, and consider it an utter and complete abdication of EPA’s responsibility to protect the water and people of this country.

According to the article in today’s *Politico*, the Waters Advocacy Coalition is involved in active discussions about how the EPA might utilize the private sector to re-write the Clean Water Rule, and do so rapidly. This group, represented by Hunton & Williams LLP, advocates on behalf of more than 60 industry organizations who seek to restrict the degree to which they are regulated. If it were employed, such outsourcing would enable EPA to avoid having to work as closely with the career officials who drafted the last version of this rule during the Obama Administration, and it would also address the failure by EPA to appoint political officials who could themselves oversee such an effort.

Another possible justification for considering outsourcing rulemaking to industry is that the EPA expects not to have sufficient financial resources to do its work. It is not surprising that the President’s proposed 30 percent cut to EPA’s fiscal year 2018 budget, and the loss of twenty percent of its workforce, would constrain the agency’s ability to function as it is obligated to do. However, the solution to that problem is not to outsource the development of rules designed to protect the air, water, and public health to the polluters themselves. I urge you in the strongest possible terms to disavow this reported industry plan, if true, and recommit yourself to ensuring that EPA’s budget and workforce are maintained at levels necessary to perform its vital mission of protecting human health and our environment.

So that I can better understand what your views and plans are with respect to this reported plan to outsource the regulatory process to the regulated industries themselves, I ask that you provide me with responses to the following requests no later than close of business on May 12, 2017:

1. Do you agree that it is EPA's sole responsibility to draft regulations designed to protect the environment by itself, after seeking input from all stakeholders? If not, why not?
2. Would you be supportive of an industry-led effort to rewrite the Clean Water Rule (or any other) regulation? If so, why, and on what legal basis?
3. Please provide me with a copy of all documents (including but not limited to emails, calendar items, white papers, memos, correspondence, presentations and telephone logs) regarding EPA's planned re-write of the Clean Water Rule that relate in any way to a) the legality of delegating part or all of the re-write to non-governmental officials; b) discussion of any resource constraints associated with EPA's planned re-write of this rule and the timeline therefor; and c) discussions between EPA (including members of its beachhead and transition teams), White House, other Executive Branch personnel or non-governmental officials regarding a non-governmental role in the process of re-writing this regulation.

[REDACTED]
[REDACTED]
[REDACTED] I very much appreciate your prompt attention to this matter.

Sincerely yours,



Tom Carper
Ranking Member