

ADMINISTRATOR PRUITT ISSUES DIRECTIVE TO END EPA “SUE & SETTLE”

“The days of regulation through litigation are over,” – EPA Administrator Scott Pruitt

WASHINGTON – In fulfilling his promise to end the practice of regulation through litigation that has harmed the American public, EPA Administrator Scott Pruitt issued an Agency-wide directive today seeking to end “sue and settle” practices within the Agency, and promote transparency in consent decrees and settlement agreements.

“The days of regulation through litigation are over,” **said EPA Administrator Scott Pruitt.** “We will no longer use consent decrees and settlement agreements to resolve lawsuits filed against the Agency by special interest groups where doing so would circumvent the regulatory process set forth by Congress. Additionally, gone are the days of routinely paying attorney’s fees to these groups with which we settle.”

Over the years, outside the regulatory process, special interest groups have used lawsuits that seek to force federal agencies – especially EPA – to issue regulations that advance their interests and priorities. EPA gets sued by an outside party that is asking the court to compel the Agency to take certain steps, either through change in a statutory duty or enforcing timelines set by the law, and then EPA will acquiesce through a consent decree or settlement agreement, affecting the Agency’s obligations under the statute.

More specifically, EPA either commits to taking an action that is not a mandatory requirement under its governing statutes or agrees to a specific, unreasonable timeline to act. That is regulation through litigation, and it is inconsistent with the authority that Congress has granted this Agency.

“Sue and settle” cases establish Agency obligations without participation by states and/or the regulated community; foreclose meaningful public participation in rulemaking; effectively force the Agency to reach certain regulatory outcomes; and, cost the American taxpayer millions of dollars.

Administrator Pruitt is directing the Agency to help increase transparency and improve engagement by:

1. Publishing any notices of intent to sue the Agency within 15 days of receiving the notice;
2. Publishing complaints or petitions for review in regard to an environmental law, regulation, or rule in which the Agency is a defendant or respondent in federal court within 15 days of receipt;
3. Reaching out to and including any states and/or regulated entities affected by potential settlements or consent decrees;
4. Publishing a list of consent decrees and settlement agreements that govern Agency actions within 30 days, along with any attorney fees paid, and update it within 15 days of any new consent decree or settlement agreement;
5. Expressly forbidding the practice of entering into any consent decrees that exceed the authority of the courts;
6. Excluding attorney’s fees and litigation costs when settling with those suing the Agency;
7. Providing sufficient time to modify proposed rules, take and consider public comment; and
8. Publishing any proposed consent decrees and settlements for public comment.

The full directive and memo can be read [here](#).

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