

CONGRESSIONAL HEARING REPORT

DATE OF HEARING: June 27, 2017

SUBJECT: “Review of the FY2018 Budget Request for the Environmental Protection Agency”

COMMITTEE: Senate Appropriations

SUBCOMMITTEE: Interior, Environment, and Related Agencies

STAFF MEMBER COVERING HEARING: Michaela Boudreaux

Members Present

Republicans: Chairman Lisa Murkowski (AK), Senator Steve Daines (MT)

Democrats: Ranking Member Tom Udall (NM), Full Committee Ranking Member Patrick Leahy (VT), Senator Jon Tester (MT), Senator Chris Van Hollen (MD)

Witnesses

Scott Pruitt, Administrator, Environmental Protection Agency

- Accompanied by: Holly Greaves, Senior Advisor to the Administrator, Environmental Protection Agency

Overview

On June 27, the Senate Appropriations Committee’s Interior, Environment, and Related Agencies Subcommittee held a hearing entitled “Review of the FY2018 Budget Request for the Environmental Protection Agency.”

Topics discussed in the hearing included, but were not limited to: (1) budget prioritization; (2) information requests; (3) EPA staffing; (4) Accuracy of EPA Information; (5) Clean Power Plan; (6) Superfund sites; (7) Chesapeake Bay; (8) climate change; (9) WOTUS; (10) TSCA; (11) Air Shed Grant program; (12) Pebble Mine Clean Water Act permits; (13) Renewable Fuel Standard; and (14) methane emissions.

Member Statements

Chairman Lisa Murkowski (R-AK) stated the Environmental Protection Agency's (EPA) FY 2018 budget request totals \$5.7 billion, a change from levels provided in the FY 2017 omnibus appropriations bill. She said for years, the Agency has overstepped its appropriate role, as it has produced rules using questionable legal authority. She argued states were often treated as adversaries. She remarked the Waters of the United States (WOTUS) rule is problematic because it would subject even the most routine projects to EPA scrutiny and noted her concerns were ignored by the Obama Administration. **Murkowski** said the Agency is taking a hard look at duplicative and unnecessary financial assurance requirements for hardrock mining that were advanced during the previous Administration. She said Administrator Pruitt has signaled a desire to refocus the Agency on its core mission and spend more time moving forward on measures that have environmental benefits. **Murkowski** argued Congress can maintain responsible levels of spending at the EPA and unnecessary regulations do not always result in a cleaner environment. She asserted Congress cannot achieve the level of budget cuts proposed in the FY 2018 budget and effectively move forward on this approach. She explained the radon program helps fight the second leading cause of lung cancer and stressed she will push to reject these cuts. **Murkowski** stated she is pleased the budget proposes current funding levels for the Clean Water and Drinking Water State Revolving Fund and continues funding for the Water Infrastructure Finance and Innovation Act (WIFIA) program. She stressed her commitment to ensuring the Agency has the resources it needs to process air, water, and pesticide permits and to implement the new Toxic Substances Control Act (TSCA) law.

Ranking Member Tom Udall (D-NM) argued the budget request is "down right offensive," as it would cut research and enforcement. He said support for states is cut by 45 percent, environmental justice programs are "zeroed out," and all climate change programs are eliminated. He argued nothing was spared and EPA's core is "hollowed out." **Udall** asserted staffing has slid 10 percent over the last decade and the budget has dropped nearly \$1 billion. He argued the budget eliminates about 60 programs, including the Energy Star and WaterSense programs. **Udall** asserted many of the programs the Administration has proposed to eliminate have proven track records. He said the only bright spot is the continued funding for drinking water and clean water infrastructure for states. **Udall** noted Administrator Pruitt has expressed his intent to return responsibility back over to the states, but cut their funding. He argued states rely on the EPA for more than a quarter of the funding needed to carry out their delegated responsibilities. He said states rely on EPA to reduce ozone and monitor water pollution. He argued the budget proposes to cut enforcement by 23 percent. He noted the proposal also cuts 30 percent from Superfund cleanup despite 1,300 sites currently on a waiting list. **Udall** argued the Bonita Peak Mining District, which included Gold King Mine, needs comprehensive remediation, not a "band aid". He stressed the budget cuts research funding in half. He claimed that the budget returns to the "dark ages". He argued the chemical industry has punched loopholes in TSCA and called for the law to be implemented in the balanced way in which it was created. He noted the budget eliminates funding for climate change and the cuts go "hand and glove" with the President's decision to withdraw from the Paris Agreement. **Udall** asserted the budget is

“dead on arrival.” He noted the budget should focus on core responsibilities, but the new EPA thinks it is their core responsibility to cater to industry, to deny science, and walk away from global commitments.

Full Committee Ranking Member Patrick Leahy (D-VT) stressed the budget does not uphold the Agency’s mission and the government should be doubling down on investment. He argued the for investment in the Clean Air Act (CAA) and the Clean Water Act (CWA) He said citizens have a right to clean air and it is troubling that the budget has stooped to “anti-science.” He asserted the EPA has erased the climate change website. **Leahy** noted Vermont is powerless to stop pollution from coming across its borders, which is why there are federal regulations. He argued the Administration is ignoring science and has separated the U.S. from every other country on the planet. He said decades of investment are threatened by the budget, including Lake Champlain. **Leahy** asserted people know both jobs and clean water are possible and do not support Administrator’s Pruitt’s choice between the two. He argued that Pruitt is turning the EPA into the “polluter protection agency” and the budget is “dead on arrival”.

Witness Testimony

Scott Pruitt, Administrator, Environmental Protection Agency, stated the EPA is getting back to the basics and focused on air attainment, air quality standards, clean water infrastructure, superfund, and updating TSCA. He explained when he started at the Agency, he set up three core responsibilities. **Pruitt** stated the EPA is working to bring back the rule of law. He said any action that exceeds the authority set forth by Congress cannot be consistent with the Agency’s core mission. He stressed the EPA is focused on process and regulation through litigation is something the agency will not continue. He asserted process should be respected. **Pruitt** stated the EPA realizes the importance of cooperative federalism. He said the one-size fits all strategy to achieve environmental outcomes is difficult, as states have unique environmental challenges and needs. **Pruitt** noted the EPA can fulfill its core mission with the trimmed budget and will work with the Congress to focus the national priorities with respect to the resources provided. He stated the EPA will continue to work cooperatively with the states to improve air, land, and water. **Pruitt** stressed the EPA is focused on air attainment through compliance, assistance, and enforcement. He asserted the U.S. has made tremendous progress through investment and since 1980, ozone has decreased by 33 percent. He said the EPA will continue to partner with the states to maintain drinking water infrastructure. **Pruitt** argued the EPA should only intervene when the states demonstrate an unwillingness to comply with the law. He stated in regard to contaminated land, the EPA will work to punish bad actors. He said enforcement efforts have produced billions of dollars in cleanup and stressed the Agency will work with partners to enforce the law. He stressed regulatory certainty is key and when the job is done well, there are positive environmental outcomes.

Question and Answer

Budget Prioritization

Chairman Lisa Murkowski (R-AK) asserted a budget is a prioritization of what is important and noted the Drinking Water State Revolving Funds are included in the budget. She stated many other programs have been reduced. She asked Administrator Pruitt to explain the prioritization of the budget and how it fits with the EPA's mission. **Pruitt** said it is his goal to make decisions, as there are Superfund sites across the country where it has taken the agency 27 years to make a decision. He asserted it is "unacceptable" and citizens deserve better. **Pruitt** explained with respect to air quality, pollutants have decreased since 1980, but the EPA will engage in enforcement and compliance. He stressed the EPA will collect real-time data, not model data. He stated there is a backlog of state implementation plans at the EPA and there is work to be done through management and leadership.

Ranking Member Tom Udall (D-NM) said there is a mismatch of the stated prioritizes and the funding request. He noted the budget cuts \$150 million in grants for states to reduce air pollution, including \$30 million targeted to areas with the worst air quality. He asked how states can make up for the drop in federal support when several states are still recovering from the recession. **Pruitt** explained the Targeted Air Shed Grants have served a useful purpose and the EPA will discuss the issue further. He stated air transport issues and air quality issues impact regions over state lines. He said the EPA serves an important role in cross-state air pollution issues and will work with Congress to achieve better attainment. **Udall** asserted environmental laws have been delegated to states and questioned how the EPA can expect to do more with less. **Pruitt** noted there will be cooperation and he has met with governors on a number of issues ranging from attainment to Superfund sites. He asserted the EPA needs to make decisions and assist. He explained the EPA just joined Colorado on an enforcement matter against a company. **Udall** asserted the states need the budget to do their job.

Full Committee Ranking Member Patrick Leahy (D-VT) argued that the EPA budget is the worst he has seen. He stated the EPA is providing support for states and regions across the country to clean up lakes. He noted Lake Champlain is the largest body of fresh water outside of the Great Lakes. He argued Vermont embraced the EPA's assistance to clean up point and nonpoint sources, but the Trump Administration budget would erase financial support. He asked if the proposal would be a setback to cleaning up the Lake. **Pruitt** acknowledged that the Great Lakes Initiative has meaningful objectives. **Leahy** asked if the budget cut would set back the cleanup. **Pruitt** replied the support the EPA provides is important.

Information Requests

Ranking Member Tom Udall (D-NM) said it is a long standing practice to request information from federal agencies and asked Pruitt to respond to all questions from Committee Democrats. **Pruitt** agreed and noted during the confirmation process, he

met with several majority and minority members. He stressed he will work to respond to information and to address Udall's concerns.

EPA Staffing

Ranking Member Tom Udall (D-NM) stated the budget proposes to cut 3,800 employees. He noted the FY 2017 bill provided funding to maintain the current staffing level. He stressed the Committee will have a say on any decisions and asked if Pruitt will take the Committee's direction on staffing. **Pruitt** responded there have been no "pink slips" issued by the Agency. He said EPA respects the role of Congress.

Chairman Lisa Murkowski (R-AK) asked the Agency's progress in filling regional administrator positions acknowledging they are not subject to Senate confirmation. **Pruitt** explained the EPA is making progress and expressed hope that regional administrators will be appointed soon.

Accuracy of EPA Information

Senator Chris Van Hollen (D-MD) contended that there is inaccurate information coming out of the EPA. He said there was an article in the New York Times reporting a case in which the EPA tried to change the testimony of a staff member. He asked Administrator Pruitt if he is aware of the instance. **Pruitt** replied he is not familiar with the article. **Van Hollen** asked if accuracy was important. **Pruitt** stressed he takes scientific review very seriously.

Clean Power Plan

Senator Steve Daines (R-MT) noted there are flaws in the Clean Power Plan and the standards were unattainable. He argued it was an economic disaster, as 7,000 jobs were lost in Montana.

Superfund Sites

Senator Steve Daines (R-MT) expressed concern with the proposed cuts to the Superfund program, as Montana has 19 sites. He noted during the confirmation process, he asked for a commitment to cleaning up the sites. He stressed there is a lack of transparency with local governments. He asked Pruitt what aspects he would like to improve. **Pruitt** stressed sites are not isolated in the length of time they are listed. He stated the EPA will work closely and collaboratively at the local level and will make sure local voices are heard. **Daines** asked how to respond to the criticisms of the EPA and how to engage communities and those who are frustrated with the lack of progress. **Pruitt** stressed there are several vendors involved with remediation and he is working to

gain more consistency in how the EPA responds to Superfund sites. He stated he is working to update best practices and there are several opportunities in remediation. **Daines** asked for a commitment to review each of Montana's Superfund sites. **Pruitt** agreed and said he would work to set up a work management plan for cleanup. He noted in several sites across the country there is a lack of urgency. **Daines** stated he would submit recommendations on how to improve the program.

Senator Jon Tester (D-MT) noted the Superfund program budget is cut by \$215 million. He stated Butte, Montana has a pit full of toxic water that is so bad, geese are dying. He asserted the Superfund site will start impacting drinking water and it is a "big dollar project." He argued it would consume the entire Superfund budget. **Tester** noted **Pruitt** said he would punish the bad actors. He asked how the budget meets the core mission of the EPA. **Pruitt** said 60 percent of Superfund sites are privately funded. He stressed the EPA goes to the responsible parties and negotiates rather than demanding funds for cleanup. **Tester** asked what would happen if the polluter refuses to pay. **Pruitt** stated the EPA would sue. **Tester** noted the EPA negotiates and the local communities are often left out of the conversation. He asked **Pruitt** to include community groups. **Pruitt** replied it will not be "business as usual."

Chairman Lisa Murkowski (R-AK) said she has interests that she has been trying to advance over the years and has worked with former EPA Administrator McCarthy. She asked **Pruitt** to work on those issues. **Pruitt** agreed. **Murkowski** noted the federal government has failed to cleanup land, including lands given to Alaskan natives. She said there is no lead agency on the issue and there should be interagency cooperation. She asked **Pruitt** to meet with her on the issue. **Pruitt** replied there are Superfund sites that have multiple agency jurisdictions and interagency collaboration is important. He argued many times, decisions are dragged on over years and noted working with agencies is difficult.

Chesapeake Bay

Senator Chris Van Hollen (D-MD) asserted the Chesapeake Bay is a "national treasure" and explained six states and the EPA formed a compact to clean up the bay. He said there was an effort to enforce the Total Maximum Daily Load (TMDL) program. He recalled **Pruitt's** confirmation hearing and noted he committed to working with the states. He asked how the budget meets that commitment. **Pruitt** asserted the TMDL program is reflective of what is good about state cooperation on cleaning up point and nonpoint sources. He said the EPA will work with states to ensure concerns are addressed. **Van Hollen** asserted eliminating the funding would make it more difficult to reach the goals and opposition to the cut to the Chesapeake Bay program has united the Maryland Congressional delegation. **Pruitt** acknowledged it is difficult to get six states together to reach that type of cooperation and commended the states. **Van Hollen** asked **Pruitt** to meet with the Chesapeake Bay Commission. **Pruitt** agreed.

Climate Change

Chairman Lisa Murkowski (R-AK) noted Alaska has seen the effects of the changing climate and the budget eliminates climate change programs. She asked what common sense elements of the proposal would have a positive impact on the environment. **Pruitt** replied the greatest progress has been with mobile sources, including Corporate Average Fuel Economy (CAFE) standards. He stressed there has also been progress on the CO2 footprint from industry. He said technology has contributed to some of the progress and reiterated the most progress has been made on the mobile source category.

Ranking Member Tom Udall (D-NM) asked **Pruitt** for his position on climate change. **Pruitt** explained CO2 is impacting the climate and human activity contributes to that in some measure. He stated when the Clean Air Act was amended in 1990, there was discussion on whether CO2 was meant to be regulated. He asserted the EPA is responding to the CO2 issue and evaluating the tools in the tool box.

Senator Chris Van Hollen (D-MD) asked why the EPA took down the climate change website. **Pruitt** explained there were changes to the website. He said there have been changes to the CAA and there is ongoing review with regards to what authority the EPA has to address the issues.

WOTUS

Chairman Lisa Murkowski (R-AK) asserted she is pleased with the reexamination of the WOTUS rule. She asked for the Agency's schedule once the previous rule has been rescinded. **Pruitt** replied that the proposed rule to repeal the WOTUS rule has been sent to the Federal Registrar for publication. **Murkowski** asked for the process moving forward. **Pruitt** explained the 2015 rule created a lack of clarity and a situation in which land owners across the country were unsure if their streams were subject to EPA jurisdiction. He said the EPA is aiming to provide clarity and submit a proposed rule replacing the WOTUS rule by the end of this year. **Murkowski** noted about two-thirds of the land in Alaska is considered a wetland and asked for Alaska to have an opportunity to work on the impact of the proposal. **Pruitt** explained the EPA has already engaged with tribes and states on the issue and robust discussions are occurring.

TSCA

Ranking Member Tom Udall (D-NM) noted the proposal cuts programs vital to TSCA and argued strong implementation requires a strong EPA. He asked how to reconcile the cuts with support for a timely TSCA implementation. **Pruitt** noted TSCA requires that any new chemicals are approved by the Agency, and he is working to address the backlog of chemicals. He stressed that the Office of Research and Development (ORD) can provide technical assistance to the states to address air attainment and water quality issues. **Udall** expressed concern with the TSCA framework rules and asked

Pruitt to provide a comprehensive review of chemicals. He asked Pruitt for a commitment not to “cherry pick” conditions of use when evaluating chemicals for safety. **Pruitt** replied the statute requires a risk-based assessment on chemicals and that is what the EPA will apply.

Pebble Mine Clean Water Act Permits

Chairman Lisa Murkowski (R-AK) noted there was a settlement reached with the Pebble Limited Partnership that would allow Pebble to apply for a Clean Water Act permit. She stated as part of the settlement, EPA agreed to withdraw the proposed clean water determination and agreed to do so within 60 days. She expressed concern if the Agency uses the entire 60 days, the withdrawal could happen in July, which is in the middle of the fishing season. She said the timing may limit participation. She asked Pruitt for a commitment to have a reasonable comment period of 90 days. **Pruitt** explained all voices should be heard and the EPA’s decisions are based on the restoration of due-process.

Renewable Fuel Standard

Ranking Member Tom Udall (D-NM) expressed concern with the Renewable Fuel Standard’s (RFS) implementation as it has lead to widespread land conversion and said the EPA is charged with the reviewing standards. He asked Pruitt for a response to his recently submitted letter and the production of reports required by the statute. **Pruitt** replied he would respond to the letter. **Udall** argued the RFS is not working in the way Congress intended. He asked Pruitt if he agrees Congress should encourage more advanced biofuels rather than only promoting conventional corn ethanol. **Pruitt** asserted Congress set forth four categories under the advanced and conventional banners. He explained the statute is difficult to administer because Congress has been prescriptive and the very specific blended gallons have not been achieved in the various categories. He stated he will work with Congress to address the requirements.

Methane Emissions

Ranking Member Tom Udall (D-NM) noted Pruitt recently proposed a two year suspension for the oil and gas industry to comply with the leak detection and repair requirements of the new source performance standard that limits methane emissions. He asserted the regulation was designed to cut methane pollution by 40 percent from 2012 levels. **Udall** stated the cost savings for the oil and gas industry will be more than \$173 million. He argued the suspension puts children’s health at risk and asked if the suspension signals that the EPA will begin a formal rule making process to replace it with a new rule that will protect the health of the environment and children. **Pruitt** stressed it is not intended to send a message in any particular way. He explained there is insufficient information and the delay was put in place to address the missing information needed for implementation. **Udall** asked if the EPA should have a role in regulating methane emissions. **Pruitt** asserted the EPA should have a role.

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