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Stopping Sue and Settle

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The EPA moves to limit extortion by environmental lawsuit.

Editorial

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Scott Pruitt continues to press reform at the Environmental Protection Agency, this week issuing a directive to curb the collusive Washington game of “sue and settle” lawsuits. This is a victory for democratic consent over legal extortion.

For years green activists have used sue and settle to impose policies they can't get through Congress. Their allies in the EPA would invite lawsuits, then settle with the greens by agreeing to implement some or all of their policies in consent decrees. When citizens or business complained, EPA would claim its hands were tied by the settlement

Mr. Pruitt saw the abuses first-hand as Oklahoma's attorney general, notably as the state battled over the EPA's Regional Haze Plan. Under the Clean Air Act, states are supposed to develop programs to reduce emissions. Oklahoma came up with a smart plan to do so at minimal cost by replacing coal with natural gas.

But under a consent decree between the EPA and green litigants, the federal government prescribed a plan that required retrofitting six Oklahoma power plants with sulfur-dioxide controls. The cost: \$1.8 billion. Even as the state's utility bills skyrocketed, “the resulting impact on regional haze would be practically imperceptible,” Oklahoma Gas & Electric concluded.

The agency overrode 17 states' regional haze programs after sue-and-settle agreements. In total, the Obama EPA imposed a record-breaking 55 federal implementation plans under the Clean Air Act. And since 2009 EPA agreements with litigious environmental groups have resulted in no fewer than 137 new Clean Air Act regulations. The costs of several of these rules run well into the billions, including some of the most expensive ever written.

Mr. Pruitt's directive says the EPA will no longer commit to specific policy outcomes in its settlements or consent decrees, instead agreeing only to review a rule or provision. It will also require the EPA to provide vastly more opportunity for diverse public comment.

Too often, bureaucrats and greens have been the sole parties involved in sue-and-settle negotiations. That has meant no dissenting perspectives and no representation for voters and consumers who pay for heavy-handed federal regulation. Under the new directive, the EPA will invite

states and industries affected to weigh in. Proposed consent decrees and settlements will be open to public comment the way new or modified regulations are now.

Environmental groups will also no longer be considered the “prevailing party” when litigation does end in settlement. This is an immediate victory for taxpayers, given that green activists have used their prevailing party status to get the EPA to reimburse them for millions of dollars in legal fees.

These are useful changes that will improve transparency and lead to more honest policy. They are also a lesson to Congress that it needs to write environmental law with more precision so the next EPA Administrator can’t easily revive sue and settle.

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