

Opening Statement of the Honorable Ed Whitfield
Subcommittee on Energy and Power
Hearing on “EPA Enforcement Priorities and Practices”
June 6, 2012

(As Prepared for Delivery)

I would note that we had expected Dr. Armendariz to testify here today and we are disappointed he chose to cancel yesterday afternoon. We do plan to get to the bottom of the reasons for his failure to appear.

I’ve been concerned about the Obama EPA for more than three years now and here are a few examples of why.

The Range Resources case is one very concrete example of the approach to enforcement that concerns us. In the Range Resources case, EPA issued an emergency compliance order against a drilling company based on false accusations, even though Texas regulators warned EPA it was premature and the facts weren’t known. In the end, EPA withdrew the order, but not until after the company was forced to spend millions of dollars to defend against EPA’s false claims.

EPA’s efforts relating to the Texas Flexible Air Permits provide another example of aggressive and unprecedented regulatory actions. This permitting program had been in effect since the Clinton Administration and was working very well to improve the state’s air quality. EPA took upon itself to ‘federalize’ this program and compel more than 100 major facilities to go through a process EPA called “de-flexing.”

Those EPA actions do not appear to have the effect of furthering the environmental and public health goals of the Clean Air Act, and the agency’s actions strongly do conflict with the state-federal partnership that is at the core of this statute. EPA’s unprecedented takeover of greenhouse gas permitting in Texas to promote its climate change agency agenda is another such example as well.

It isn't just Congressional Republicans who think that EPA is overreaching. An increasing number of federal judges do to.

In the recent *Sackett* decision, the Supreme Court unanimously rejected EPA's efforts to deny due process to landowners. Justice Alito concluded:

“The position taken in this case by the Federal Government . . . would have put the property rights of ordinary Americans entirely at the mercy of the Environmental Protection Agency (EPA) employees.” He further said that “In a nation that values due process, not to mention private property, such treatment is unthinkable.”

In the recent *Luminant* case relating to EPA's efforts to disapprove Texas's standardized pollution control permit, the Fifth Circuit Court of Appeals rejected EPA's attempts and said that EPA's disapproval was based on “purported nonconformity with three extra-statutory standards that the EPA had created out of whole cloth.”

In the recent *Spruce Mine Case* decision, a federal judge appointed by President Obama rejected EPA's unprecedented attempt to invalidate a West Virginia coal mining permit. The court called EPA's rationale “magical thinking” and “a stunning power for an agency to arrogate to itself.”

In the *Avenal* case last year, a court rejected EPA's claim it was not bound by the Clean Air Act's statutory requirement to make a permitting decision within one year. The court said “The EPA's self-serving misinterpretation of Congress's mandate is too clever by half and an obvious effort to protect its regulatory process at the expense of Congress' clear intention. Put simply, that dog won't hunt.”

Overall, EPA is an agency that seems to have gotten badly off track from its proper role as a measured, balanced and objective regulator, and I hope that today's hearing will be first step towards a much-needed change in direction.