



THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

June 4, 2012

TO: Members, Subcommittee on Energy and Power

FROM: Committee Staff

RE: Hearing on "EPA Enforcement Priorities and Practices"

On Wednesday, June 6, 2012, at 10 a.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Energy and Power will hold a hearing to address enforcement priorities and practices of Environmental Protection Agency. The hearing is entitled "EPA Enforcement Priorities and Practices."

I. WITNESSES

Panel 1

Alfredo J. Armendariz, Ph.D.

Former Regional Administrator, Region 6
U.S. Environmental Protection Agency

Panel 2

Bryan W. Shaw, Ph.D.

Chairman
Texas Commission on Environmental Quality

Barry T. Smitherman

Chairman
Texas Railroad Commission

Stephen B. Etsitty

Executive Director
Navajo Nation Environmental Protection Agency

Allen Short

General Manager
Modesto Irrigation District

Robert J. Sullivan, Jr.

Chairman, Oklahoma Independent
Oklahoma Independent Petroleum Association
Owner, Sullivan and Company, LLC

Joel A. Mintz

Professor of Law
Nova Southeastern University

II. BACKGROUND

Congress has granted the Environmental Protection Agency (EPA) broad regulatory and enforcement authority under a wide range of environmental statutes.¹ Since 2009, under the Clean Air Act and other statutes, EPA has issued a suite of new regulations that EPA estimates will impose compliance costs that sum to tens of billions of dollars annually. These new regulations apply across the U.S. economy and will increase the cost of energy as well as impose complex new compliance, permitting, and other regulatory requirements on a wide range of sectors. Affected facilities include coal-fired power plants, manufacturing facilities, energy extraction, agricultural and food processing operations, industrial facilities, refineries, commercial buildings, educational and healthcare institutions, and municipal and other facilities.

At the same time, EPA's enforcement efforts have targeted coal-fired power plants, energy extraction processes and other energy-related activities that impact the economy broadly.² Furthermore, EPA has taken enforcement actions against States, including the disapproval of regulatory approaches that States have adopted in State implementation plans and the imposition of costly Federal implementation plans.³ In addition, EPA's actions with respect to individual regulated entities include "de-flexing" of numerous permits for major facilities in Texas,⁴ and the pursuit of controversial enforcement orders.⁵

The combined national and regional regulatory and enforcement actions have raised concerns that the agency's current priorities and enforcement-related activities contribute to an environment that deters new investments; delays or blocks large new projects; and adversely impacts economic growth, job creation, and economic competitiveness. In connection with these concerns, on April 27, 2012, the Majority Members of the Committee on Energy and Commerce sent a letter to the EPA Regional Administrator, Region 6, asking for information relating to EPA's overall enforcement philosophy, and enforcement priorities, strategies, and

¹ See [EPA Link - Laws & Regulations](#).

² See [EPA National Enforcement Initiatives](#).

³ See e.g., EPA [Press Release](#) and [Final Rule](#) (Disapproval of Texas Flexible Permit Program); EPA [Press Release](#) and [Final Rule](#) (EPA Disapproves Components of TCEQ's NSR Permitting Program); EPA [Press Release](#) and [Final Rule](#) (Texas Qualified Facilities SIP Final Disapproval); EPA [Final Rule](#) (Partial Disapproval of Oklahoma Regional Haze SIP); [Final Rule](#) (Partial Disapproval of North Dakota Regional Haze SIP); [Final Rule](#) (Partial Disapproval of New Mexico Interstate Transport SIP); "EPA Completes Framework for Greenhouse Gas Permitting Programs" ([Press Release](#)).

⁴ See EPA [Press Release Re "Voluntary" Audit Program and Notice \(Voluntary Audit Program\)](#); EPA "Opportunity to Confer" [Follow-up Letter](#) sent to Flexible Permit Holders.

⁵ See, e.g., [Sackett v. EPA decision](#) (involving EPA compliance order alleging Idaho landowners had violated the Clean Water Act); [Mingo Logan Coal Company, Inc. v. EPA decision](#) (involving EPA determination purporting to retroactively invalidate mining permit); *U. S. v. Range Production Company et al* (recently dismissed case involving EPA emergency order alleging well contamination).

procedures. This hearing represents part of the information gathering effort initiated in that letter.

III. ISSUES

The following issues are expected to be examined at the hearing:

- EPA's current enforcement priorities;
- EPA's enforcement strategies and procedures;
- EPA enforcement actions affecting the energy and other sectors;
- EPA enforcement relating to State implementation plans and permitting; and,
- Potential impacts of EPA enforcement actions on jobs, the economy and consumers.

IV. STAFF CONTACT

If you have any questions regarding the hearing, please contact Mary Neumayr at (202) 225-2927.