



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 22 2017

OFFICE OF THE
ADMINISTRATOR

The Honorable Sheldon Whitehouse
United States Senate
Washington, DC 20510

Dear Senator Whitehouse,

Thank you for your letter dated September 13, 2017. On September 5, 2017, I joined the Environmental Protection Agency (EPA) as a Senior Advisor to the Administrator. Before accepting this position, I discussed my plans and my reasons with the staff of Senator Carper, Ranking Member, Environment and Public Works Committee. I decided to leave my position with the committee and join the EPA because I thought I could help both the career staff at the EPA and Administrator Pruitt.

The EPA is a large agency with many statutory responsibilities. Like many large organizations, the management system is structured so that a handful of people are not expected to manage thousands. At EPA headquarters, the staff who carry out the day to day work report to their branch chiefs or division directors, who report to their office directors. Those office directors report to the assistant administrator of the program office. The assistant administrator reports to the administrator, the deputy administrator and the chief of staff. I know from my experience as an assistant administrator of what is now the Office of Land and Emergency Management that the role of the assistant administrator is critical. That person provides the link between the career staff in each program office and the administrator's senior staff. That coordinating function ensures that the recommendations of career staff are heard and activities are not delayed for want of senior management attention. Simply put, the EPA needs Senate-confirmed assistant administrators to facilitate the work of the Agency in protecting human health and the environment.

I am very sensitive to the prerogatives of the Senate and the requirements of the Federal Vacancies Reform Act. My position description is attached. The position is a Non-Career Senior Executive Service Limited Term position. It is located in the Office of the Administrator and my supervisor is Administrator Pruitt. It is not a managerial position so I supervise no one. I have no delegated authority. I am not carrying out the functions or authorities of an assistant administrator.

As you note, I have signed an ethics agreement, which you have. I am bound by that agreement. I also am bound by the ethics pledge, a copy of which is attached. I have no waivers or recusals. My EPA email address is bodine.susan@epa.gov. That is the only EPA email address I have. I do not expect to use any aliases or pseudonyms but if for some reason that takes place, I will provide that to you.

I have been and will continue to communicate regarding work-related matters using my EPA email.

My schedule is a public record subject to the Freedom of Information Act.

With respect to your questions regarding enforcement of the New Source Performance Standard methane oil and gas rule, I was not involved in the formulation of the statement you reference in your letter. I have not authored or reviewed any guidance on enforcement of that rule. The statement you refer to is not a "No Action Assurance;" the EPA's no action assurance policy has not changed.

The statement you refer to merely says that the EPA will review matters related to the methane oil and gas rule on a "case by case" basis. I would observe that that is no different from how the EPA reviews any potential enforcement matters. The EPA cannot take all potential environmental cases and uses prosecutorial judgment to decide where to expend its resources. That judgment is informed by many things, including the degree of risk and the nature of the conduct. In my current position, I am not the person who makes those decisions.

Regarding state enforcement of the methane rule, it is my understanding that the following states have authority (although this list is subject to change): Maryland, Virginia (partial), West Virginia, Pennsylvania (including Philadelphia Air Management Services and Allegheny County Health Department), Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Texas, New Mexico (excluding Albuquerque), Arkansas, and Wyoming.

The EPA reviews potential enforcement actions when a state requests assistance. Which actions are taken or what assistance is provided is a case by case determination in all cases, not just those relating to the methane oil and gas rule.

States report their clean air enforcement actions, both informal and formal, to the EPA using the Integrated Compliance Information System (ICIS). This information is then made available to the public via the Enforcement and Compliance History Online (ECHO) database.

As you note, in my responses to questions for the record, I pledged to seek a briefing on various EPA matters following confirmation. I am not yet confirmed and in the 14 working days I have been at the EPA, I have not yet received the nine briefings discussed. EPA staff, including myself, have been very focused on responding to Hurricanes Harvey and Irma. To avoid taking

staff away from their work, I instead asked for information on these matters and have had the opportunity to read the relevant EPA guidance so I can now respond to your questions.

1. EJ 2020 Action Agenda

Before I arrived at the EPA, Administrator Pruitt decided to elevate the Office of Environmental Justice to the Office of Policy in the Office of the Administrator, to complement the work already being done by the Office of Community Revitalization within the Office of Policy. Plans for that reorganization are underway and are expected to be complete by October 2, 2017. Accordingly, if confirmed, I will not be the manager of that office. However, I have read chapter 4 of the EJ 2020 Action Agenda, on compliance and enforcement, which is an OECA function. I agree with the three strategies outlined in that chapter and believe that they align with the commitment in the President's FY 2018 budget request to prioritize inspections and enforcement activities based on the degree of health and environmental risk. Environmental justice communities often are those that face the greatest risks.

2. EJ Strategic Plan

Please see my response above, regarding the enforcement and compliance aspects of this document.

3. Enforcement of Title VI

As I noted in my responses to questions for the record from my nomination hearing, the EPA office with responsibility for enforcing Title VI is the Office of General Counsel. I have now reviewed the September 2016 report entitled: "Environmental Justice: Examining the Environmental Protection Agency's Compliance and Enforcement of Title VI and Executive Order 12,898." That report alleges that EPA has failed to meet the regulatory guidelines for processing and handling the Title VI complaints it receives. I have insufficient information to agree or disagree with that allegation. In December 2016, the prior administration sought to address this issue by moving the Title VI enforcement function to the Office of General Counsel. It is my hope that this change will successfully address the concerns identified.

4. NPM Guidance

It is my understanding that the draft OECA National Program Manager's guidance has been revised to respond to public comments, including a revision to acknowledge the opportunity for states to gain approval of alternative compliance monitoring strategies. If confirmed, I will work with the Regions on streamlining

the approval process, while maintaining its integrity. If confirmed, I will work with states to ensure that alternative compliance monitoring strategies are tracked and displayed in the same way as traditional plans.

5. Technology-based tools

In 2015, OECA issued a regulation requiring electronic reporting by NPDES permit holders. Implementation began in December 2016 and will be complete by December 2020. Electronic reporting saves money and increases efficiency. If confirmed, I will look for similar opportunities to expand the use of technology-based tools.

6. Enforcement authority of Regional Administrators

Almost all of EPA's enforcement authorities are delegated to Regional Administrators, who in turn delegate that authority to division directors and branch chiefs within the Region, as appropriate. However, to ensure national consistency, many actions require either concurrence, consultation, or notice to OECA headquarters, generally to office directors, division directors, and branch chiefs at OECA headquarters.

7. Sessions memo

The Sessions memo does not prohibit payments to states, tribes, and local governments. Of course, such payments must comply with other existing EPA policies, such as the 2012 Mitigation Policy.

The Sessions memo did not prohibit any provisions of the VW settlement. I am not aware of the specific matters to which Attorney General Sessions referred when he announced his mitigation memo. The part of the Harley Davidson settlement that required payment of \$3 million to the American Lung Association of the Northeast to replace wood stoves is an example of an action which does not comply with the Sessions memo.

OECA's Supplemental Environmental Projects Policy already meets the requirements of the Sessions memo. I do not have any plans to revise that policy, if confirmed.

8. Drinking water analytical test methods

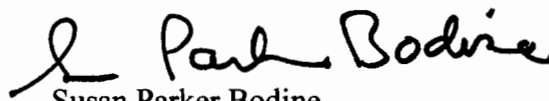
Under the Safe Drinking Water Act (SDWA), compliance monitoring for regulated contaminants by all covered water systems must be performed by state-certified laboratories using EPA-approved analytical methods. Additionally,

monitoring for contaminants of emerging concern, under EPA's Unregulated Contaminant Monitoring Rule, must be performed by EPA-approved laboratories using EPA-approved methods. The EPA publishes new/alternative methods approximately annually to provide greater flexibility and incorporate new technology. While most states have primary enforcement responsibility for the public water system program and would take the lead on ensuring owners and operators comply with SDWA's applicable requirements, including approved analytical methods, the EPA has independent enforcement authority and works with the states to achieve this goal. Under a December 2009 policy, the EPA focuses its enforcement attention on systems with the most serious or repeated violations. If confirmed, I would also like to explore making compliance with the Safe Drinking Water Act a National Enforcement Initiative.

9. Use of pollution control equipment during ozone season

I am told that where a plant is not subject to a unit specific emission rate, a plant may lawfully reduce the use of pollution control equipment and may lawfully purchase allowances in lieu of running pollution control equipment.

Sincerely,


Susan Parker Bodine

Enclosures

cc: Senator Tom Carper
Senator John Barrasso