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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

May 2, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Pruitt:

We write to request information on the actions you have taken to address actual or apparent conflicts of interest created by your role in representing the State of Oklahoma in litigation challenging the Environmental Protection Agency's (EPA's) 2015 National Ambient Air Quality Standards (NAAQS) for Ozone. On April 11, 2017, the U.S. Court of Appeals for the D.C. Circuit granted a motion the EPA filed on April 7, 2017[1] by issuing an order removing from its April 19 calendar oral argument in *Murray Energy v. EPA* (Circuit Court of Appeals for the District of Columbia, USCA Case #15-1385), the action challenging the ozone NAAQS in which you represented the State of Oklahoma as Attorney General. Moreover, the EPA's April 7 motion that requested the court's action states: "EPA intends to closely review the 2015 Rule." We believe you are required to have secured authorization from the EPA's Designated Agency Ethics Officer (DAEO) to participate in these matters. We seek your written confirmation that such authorization has been granted, or that you will recuse yourself from these matters going forward.

Under your tenure as Administrator, the EPA has already asked the courts five times to delay consideration of a lawsuit because the EPA wanted time to decide whether it should change or repeal the rule in question. In at least four of the lawsuits, you had represented the State of Oklahoma as Attorney General seeking to vacate the very rules in question. The *Murray Energy* case is one of these cases. Both the EPA's motion and the statement included in the motion that EPA now intends to review the 2015 Ozone NAAQS also seem to contradict comments made by White House officials that, "there are plenty of rules on the books already we will continue to enforce that provide for clean air… the President has been very clear that he wants the EPA to stick to that basic core mission that Congress set out for it." There is no obligation more central to the mission of the EPA than determining what levels of ozone in the air are unhealthy for our children.

In your January 3, 2017, Ethics Agreement,[1] you stated that for a one-year period, you "will seek authorization to participate personally and substantially in particular matters involving specific parties in which I know the State of Oklahoma is a party or represents a party." This commitment was reiterated in a January 16, 2017 response to a January 12 letter sent by nine Members of the Environment and Public Works Committee from Kevin Minoli, EPA's

[1] https://www.politicopro.com/f/?id=0000015b-4ab3-d932-a97b-ebff4cc30001
[1]https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/C3B4C444EB20D1FD852580C1002C7A75/$FILE/Pruitt,%20Edward%20Scott%20%20%20finalAMENDEDEA.pdf

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Designated Agency Ethics Official (DAEO) and Principal Deputy General Counsel, which also stated:

"Pursuant to the impartiality rules, any court case is considered a specific party matter. Thus, if the State of Oklahoma is a party or represents a party in a particular piece of litigation, Mr. Pruitt's ethics agreement includes a commitment to seek authorization to participate personally and substantially in that litigation. Should Mr. Pruitt seek authorization to participate in any litigation in which a person with whom he has a covered relationship is a party or represents a party, as stated above, the EPA Designated Agency Ethics Official would consider the factors set forth in 5 C.F.R. section 2635.502(d)(1)-(6) for purposes of compliance with the federal ethics rules."

Additionally, in response to questions for the record submitted to the Committee on Environment and Public Works you stated:

"As EPA Administrator I will recuse [sic] from participation in litigation in matters in which I represented the State of Oklahoma, unless I receive informed consent from the State of Oklahoma and the permission of relevant federal ethics officials."

We all continue to believe [2] that during your confirmation process you should have committed to recuse yourself extensively from a number of matters. Nevertheless, your anticipation of, and preparation for, both the filing of the motion in the DC Circuit and the intended review of the 2015 Ozone NAAQS should have triggered the more limited recusal policy to which you have already, and repeatedly, agreed.

In light of: 1) your Ethics Agreement; 2) the response of EPA's DAEO to the January 12 letter; 3) your representations to the Environment and Public Works Committee during your confirmation process; 4) your role representing the State of Oklahoma in litigation challenging the 2015 Ozone NAAQS; and, 5) EPA's April 7 motion, please respond to the following requests in writing and provide copies of all documentation supporting your responses:

1. Other than the actions reflected in the filing of the April 7 motion, have you recused yourself from the actions concerning the 2015 Ozone NAAQS contemplated in the April 7 motion, and, if so, to what extent have you done so?

2. If not, why not? If you have recused yourself from these matters, please provide the name(s) and identify the position(s) of the individual(s) you have directed to act in your stead.

3. Have you sought authorization to participate in those actions from the DAEO – and if you have done so, when did you do so? Please provide a copy of any written material submitted to the DAEO in making, or following up on, that request.

4. Has the DAEO granted such authorization, and if so, has the authorization included any restrictions or limitations on your participation? Please provide a copy of any written material conveying the DAEO's response.

5. If you have neither been recused from participation in this matter nor sought authorization from the DAEO to participate in the actions specified in the April 7 motion with respect to the 2015 Ozone NAAQS, please explain why you have not.

6. Have you requested or received a waiver to participate personally and substantially in any other particular matters involving specific parties in which the State of Oklahoma is a party or represents a party? If so, please provide copies of all such requests and all such grants from the DAEO.

Please provide your responses to these inquiries and requests by no later than May 15, 2017. If you have any questions about these requests, please feel free to contact Michal Freedhoff or Joseph Goffman at the Senate Committee on Environment and Public Works at 202-224-8832. We very much appreciate your prompt attention to this matter.

Sincerely,

Thomas R. Carper
Ranking Member

Sheldon Whitehouse
United States Senator

Cory Booker
United States Senator

Edward J. Markey
United States Senator

Kamala D. Harris
United States Senator