

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<https://oversight.house.gov>

November 14, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, D.C. 20460

Dear Administrator Regan:

The House Committee on Oversight and Accountability is conducting oversight of the use of secretive “sue-and-settle” practices between special interests and the U.S. Environmental Protection Agency (EPA). On March 28, 2022, you revoked a policy designed to protect the American taxpayer from the veiled influence special interests exercise on federal policy through sue-and-settle consent decrees and settlement agreements.¹ Because of your action, sue-and-settle abuses appear to have proliferated at the Biden Administration EPA.² We request documents and information to examine how the Biden Administration is using sue-and-settle practices to skirt congressional oversight and promulgate burdensome regulations at the bidding of special interests.³

Sue-and-settle litigation has plagued the federal regulatory system for decades,⁴ allowing special interest groups to dictate federal policy through lawsuits without adherence to normal regulatory processes. Building upon congressional Republicans’ sustained oversight and legislative efforts started in the 112th Congress,⁵ a 2017 directive issued by former Administrator Pruitt ensured public visibility into consent decrees and settlement agreements spawned by these

¹ Memorandum from Michael Regan, Administrator, EPA, to Staff, *Consent Decrees and Settlement Agreements to Resolve Environmental Claims Against the Agency* (Mar. 18, 2022) (Regan Memorandum).

² See EPA, Programs and Projects of the Office of General Counsel (OGC), *Proposed Consent Decrees and Draft Settlement Agreements*, available at <https://www.epa.gov/ogc/proposed-consent-decrees-and-draft-settlement-agreements> (last visited Oct. 19, 2023).

³ See Letter from Ali Nouri, Assistant Secretary, Congressional and Intergovernmental Affairs, U.S. Dep’t of Energy to Hon. Pat Fallon, Chairman, Subcomm. on Economic Growth, Energy Policy, and Regulatory Affairs, House Comm. on Oversight and Accountability (May 18, 2023).

⁴ See U.S. Chamber of Commerce, *Sue and Settle Updated: Damage Done 2013-2016* (May 2017), available at https://www.uschamber.com/assets/archived/images/u.s._chamber_sue_and_settle_2017_updated_report.pdf.

⁵ See, e.g., H.R. 3862, the *Sunshine for Regulatory Decrees and Settlements Act of 2012* (112th Congress); H.R. 1493, the *Sunshine for Regulatory Decrees and Settlements Act of 2013* (113th Congress); H.R. 712, the *Sunshine for Regulatory Decrees and Settlements Act of 2016* (114th Congress); H. Comm. on Oversight and Gov’t Reform, Subcomm. on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, *Hearing on Mandate Madness: When Sue-and-Settle Just Isn’t Enough* (June 28, 2012).

suits.⁶ The directive’s accompanying memorandum championed the termination of sue-and-settle “regulation through litigation.”⁷ You voided this order despite asserting that you are “committed to transparency for the American people...”⁸

Concerns over the renewal of sue-and-settle abuses are well-founded. The Obama Administration engaged in 60 Clean Air Act sue-and-settle cases in its first term alone—and those involved but one federal statute.⁹ In the wake of your decision to revoke past policy, it remains unclear how many sue-and-settle consent decrees and settlement agreements have been entered into by your agency as well as their costs. Recent reports indicate that the Biden Administration has already shoveled out “over double the amount in taxpayer-backed payouts to liberal climate activists and other groups” in sue-and-settle litigation than the previous administration did over four years.¹⁰

To enable our oversight over sue-and-settle practices and possible abuses at the Biden Administration EPA, please provide the following documents and information, covering the time period January 20, 2021 to the present unless otherwise noted, no later than November 28, 2023:

1. All documents and communications referring or relating to the March 18, 2022, Memorandum from Michael Regan, Administrator, EPA, to Staff, *Consent Decrees and Settlement Agreements to Resolve Environmental Claims Against the Agency*, including all internal EPA documents and communications and all documents and communications exchanged between EPA and the Council on Environmental Quality, other White House offices, the U.S. Department of Justice, or any other federal agency;
2. All documents and communications referring or relating to EPA’s rescission of the October 16, 2017 *Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements*, E. Scott Pruitt, Administrator, EPA;
3. A list of all lawsuits in which EPA has entered as the defendant into a consent decree or settlement agreement, specifying whether the plaintiff in the case sued on the basis of an allegation that EPA had violated a mandatory duty imposed by statute, an allegation that EPA had unreasonably delayed agency action, or allegations concerning other forms of agency liability;
4. A full copy of any consent decree or settlement agreement, including all attachments or addenda thereto, used to resolve EPA’s alleged liabilities in the lawsuits identified in response to request 3;

⁶ *Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements*, E. Scott Pruitt, Administrator, EPA (Oct. 16, 2017).

⁷ *Adhering to the Fundamental Principles of Due Process, Rule of Law, and Cooperative Federalism in Consent Decrees and Settlement Agreements*, Memo from E. Scott Pruitt, Administrator, EPA, to Staff (Oct. 16, 2017).

⁸ Regan Memorandum, *supra*, n.1.

⁹ *Supra*, n. 4.

¹⁰ Gabe Kaminsky, ‘Sue and Settle’ Business Is Booming at Biden’s EPA, WASHINGTON EXAMINER (Aug. 13, 2023).

5. All motions, briefs, memoranda and judicial opinions regarding such motions, filed in the lawsuits identified in response to request 3 concerning the consent decrees and settlement agreements identified in response to request 4;
6. All documents and communications related to the lawsuits identified in response to request 3 in which:
 - a. the plaintiff in the suit conveyed to EPA a notice of intent to sue the agency;
 - b. EPA or the U.S. Department of Justice considered, evaluated or otherwise discussed such notice;
 - c. EPA or the U.S. Department of Justice communicated with the Council on Environmental Quality, other White House offices, or any other federal agency about such notice; or
 - d. EPA or the U.S. Department of Justice responded to such notice;
7. All documents and communications between EPA and the U.S. Department of Justice or any plaintiff in a lawsuit identified in response to request 3 preceding the plaintiff's filing of said lawsuit and regarding whether EPA might or should voluntarily enter into a consent decree or settlement agreement, before the filing of any motion to dismiss or for summary judgment in the lawsuit, requiring EPA to issue any proposed or final agency action;
8. All documents and communications concerning how any commitments to take proposed or final agency action identified in documents or communications responsive to request 7 would affect the ordering or timing of these or other EPA actions;
9. All documents and communications regarding requests that EPA agree to pay, or in which EPA did agree to pay, attorneys' fees or costs to any plaintiff in any lawsuit identified in response to request 3; and
10. A list of all amounts paid by the U.S. Government for plaintiffs' attorneys' fees and costs in the lawsuits identified in response to request 3, including specifications of whether the amounts paid to each plaintiff were paid out of EPA's agency funds under the Equal Access to Justice Act or, instead, the Judgment Fund administered by the U.S. Department of the Treasury.

Additionally, please provide a staff-level briefing on this matter as soon as possible, but no later than November 21, 2023.


The Honorable Michael S. Regan

November 14, 2023

Page 4 of 4

To schedule the briefing, arrange for delivery of responsive documents, or to ask any related follow-up questions, please contact Committee on Oversight and Accountability Majority Staff at (202) 225-5074. Attached are instructions for producing the documents and information to the Committee. The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate, “any matter” at “any time” under House Rule X. Thank you for your attention to this important matter.

Sincerely,



James Comer
Chairman
Committee on Oversight and Accountability



Pat Fallon
Chairman
Subcommittee on Economic Growth,
Energy Policy, and Regulatory Affairs

cc: The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability

The Honorable Cori Bush, Ranking Member
Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs