



Decline in EPA enforcement won't keep climate bill from coming

BY JOEL A. MINTZ, OPINION CONTRIBUTOR — 04/21/18 03:30 PM EDT [136](#)
THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

APRIL 22, 2018

[Copyrighted image suppressed]

© Getty Images

The recent attention on the extravagant spending of taxpayer funds and other reported ethical lapses by Environmental Protection Agency (EPA) Administrator Scott Pruitt has obscured a longer-term problem: the disturbing impact of Pruitt and the Trump White House on the institutional functioning and future viability of EPA. That impact is especially apparent in the performance of EPA's crucial, but much diminished, enforcement program.

The agency's recently released enforcement statistics for fiscal year 2017 (which includes nine months of the Trump administration and just over three months at the end of the Obama era), as well as other publicly available enforcement data, speak for themselves.

In the first full year of Donald Trump's presidency, EPA and the Department of Justice resolved 44 percent fewer civil cases — and recovered 49 percent less in agreed-to civil penalties — than those institutions resolved and recovered during the initial years of the Clinton, George W. Bush, and Obama administrations averaged together. Moreover, according to an analysis of federal environmental consent decrees prepared by the nonpartisan Environmental Integrity Project, during Trump's first year in office, environmental violators agreed to spend less than one-third of what they spent to limit their pollution during the first year of the Obama presidency.

In fairness, while these statistics demonstrate a major decline in EPA enforcement activity in 2017, this pronounced downward trend actually began during Obama's second term. The total number of in-person plant inspections conducted by EPA decreased from more than 20,000 in 2010, to just over 15,000, in 2015 to roughly 11,700 inspections in 2017. Similarly, that same period saw exceptionally large declines in the number of criminal enforcement cases and civil judicial enforcement actions referred by the EPA to the Justice Department.

Beyond these past drop-offs in EPA enforcement activity, however, lurks troubling evidence that EPA is now processing a decreasing number of new enforcement cases. In May 2017, EPA's top management issued a memo instructing the agency's regional offices to obtain permission from EPA headquarters before they seek information about pollution emissions and discharges from suspected environmental violators.

While the ultimate impact of this directive cannot yet be measured numerically, in a number of EPA regions, this policy shift appears to have had a "chilling effect" on the initiation of new investigations into industrial non-compliance with environmental standards.

Declining numbers and bureaucratic impediments alone, however, do not convey the depth of Pruitt and Trump's misguided leadership in obstructing EPA's enforcement work. As early as one year ago, newspaper articles began to report that the morale of the agency's professional staff suffered immensely since Donald Trump became president. EPA's enforcement professionals have by no means been immune from the gloom that has pervaded their colleagues in other corners of the agency. With the encouragement of financial "buy-out" packages, a number of experienced EPA enforcement professionals have left the agency in the past year, and more seem likely to follow. As they depart, EPA is continuing to lose a reserve of know-how and institutional memory that are critical components of enforcement productivity and success.

It is simply too soon to evaluate whether the arrival of Susan Bodine, EPA's recently confirmed assistant administrator for Enforcement and Compliance Assurance, will improve or further hinder the agency's faltering enforcement program. Bodine is seen by some EPA enforcement professionals as able and there are some encouraging indications that EPA will soon undertake an initiative to redress violations by mobile sources of air pollution.

On the other hand, if applied indiscriminately, Bodine's announced emphasis on "informal enforcement" in response to environmental violations may undercut the deterrent impact of the agency's enforcement work. Moreover, since many states lack adequate resources and/or the political will to enforce environmental laws effectively, Bodine's stated preference for deferring to state agencies on a number of important enforcement matters may further diminish environmental enforcement across the country.

We may not be able to see the long-term impact of the ongoing decline in EPA enforcement for some time. Nonetheless, unless current trends are reversed, damage to public health and the environment from the deconstruction of this vital aspect of the agency's work will ultimately be among the most pernicious legacies of Donald Trump and Scott Pruitt.

Joel A. Mintz is a professor of Law at Nova Southeastern University College of Law and a member scholar of the Center for Progressive Reform. He has written several books and numerous articles concerning environmental enforcement.

TAGS SCOTT PRUITT DONALD TRUMP ENVIRONMENTAL POLICY IN THE UNITED STATES ENVIRONMENTAL CRIME ENVIRONMENTAL POLICY OF THE DONALD TRUMP ADMINISTRATION