

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

June 27, 2013

The Honorable Gene Dodaro
Comptroller General
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Dodaro:

We write to seek your assistance in our examination of the Environmental Protection Agency's (EPA) process for negotiating and concluding settlements of litigation that may lead to new rulemakings by the agency. EPA regularly faces litigation relating to implementation or enforcement of statutes or of its regulations, rulemaking activities, and other actions. Several environmental statutes have provisions that allow citizens – including individuals, states, non-governmental organizations, industry, associations and other entities – to file a lawsuit against EPA challenging certain agency actions or inaction, including lawsuits relating to potential new regulations. Between Fiscal Year 1995 and Fiscal Year 2010, the Department of Justice (DOJ) represented EPA in about 2,500 cases filed in federal court, of which 59 percent were brought under the Clean Air Act.¹

In many instances, EPA has entered into settlements or consent decrees committing the agency to undertake significant new rulemakings subject to specific timelines or schedules, including rulemakings that may result in substantial new compliance costs. Concerns have been raised about the transparency of EPA's negotiations and entry into such settlements, about the agency's development of timelines and schedules, and about the ability of affected stakeholders or the public to participate meaningfully in the process before the settlements are finalized, as well as about the impacts of these citizen-suit settlements on agency regulatory processes and priorities.

To assist us in understanding EPA's settlement practices involving citizen-suit litigation seeking to compel the agency to undertake new rulemakings, we request that the Government Accountability Office (GAO) provide answers to the following questions:

¹ GAO, *Environmental Litigation: Cases Against EPA and Associated Costs Over Time* GAO-11-650 (Washington, D.C.: August 2011). <http://www.gao.gov/assets/330/322395.pdf>.

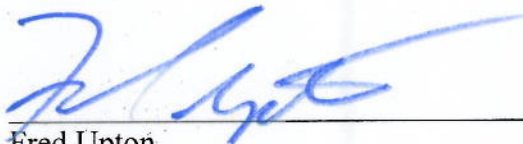
1. What types of EPA rulemaking settlements or consent decrees are publicly accessible and can be commented on by the public before they are finalized by the agency?
 - a. When and how can the public obtain access to such EPA rulemaking settlements or consent decrees before they are finalized by the agency?
 - b. Are they electronically available on EPA or DOJ's websites, in the Federal Register, or in a docket repository library before they are finalized by the agency?
 - c. When and how can the public comment on such EPA rulemaking settlements or consent decrees before they are finalized by EPA?
 - d. How many instances have there been in which public comments altered an EPA rulemaking settlement or consent decree before it was finalized by EPA?

2. How do EPA and DOJ seek input from the public or third parties prior to entering a settlement or consent decree concerning an EPA environmental rulemaking?
 - a. What statutes and regulations require public comment periods on EPA settlements or consent decrees concerning environmental rulemaking?
 - b. What policies do EPA and DOJ have regarding public comment or third party input on settlements or consent decrees concerning environmental rulemaking?
 - c. What processes do EPA and DOJ use to obtain public comment or third party input for a rulemaking settlement?

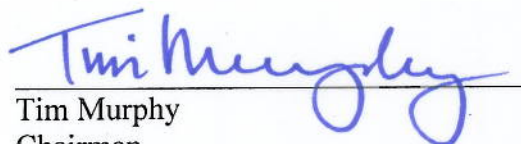
3. Have EPA's recent economically significant rulemakings been associated with settlements or consent decrees?
 - a. Identify all economically significant rulemakings completed in the past five years and whether or not there is an associated settlement or consent decree; in each case, please identify the type and the party.
 - b. Identify whether there was an opportunity for public or third party comment on the settlement or consent decree.
 - c. Did the settlement or consent decree specify a deadline for rulemaking?

Please have your staff work with Sam Spector or Peter Spencer with the Majority Committee staff, at (202) 225-2927, on the details and scope of this request.

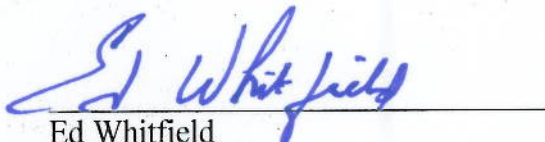
Sincerely,



Fred Upton
Chairman



Tim Murphy
Chairman
Subcommittee on Oversight and Investigations



Ed Whitfield
Chairman
Subcommittee on Energy and Power

Letter to the Honorable Gene Dodaro

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cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power