

# United States Senate

WASHINGTON, DC 20510

April 9, 2018

## VIA ELECTRONIC DELIVERY

The Honorable Gene Dodaro  
Comptroller General of the United States  
U.S. Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Comptroller General Dodaro:

I am writing to request that the U.S. Government Accountability Office (GAO) review potential violations of the Antideficiency Act at the U.S. Environmental Protection Agency (EPA) and issue an Appropriations Law Decision addressing whether EPA violated Federal law.

There is ample evidence indicating that EPA violated the Antideficiency Act when two individuals were appointed pursuant to section 300j-10 of title 42, United States Code (42 USC §300j-10) without the knowledge, involvement or approval of the EPA Administrator. 42 USC §300j-10 was established through enactment of the Safe Drinking Water Act (SDWA) and it provides a sole official, the EPA Administrator, with special hiring authority:

***§300j-10. Appointment of scientific, etc., personnel by Administrator of Environmental Protection Agency for implementation of responsibilities; compensation***

*To the extent that **the Administrator of the Environmental Protection Agency** deems such action necessary to the discharge of his functions under title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.] (relating to safe drinking water) and under other provisions of law, **he may appoint** personnel to fill not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5 [emphasis added].*

In addition, paragraph 7 of section 300f of title 42, United States Code, provides a clear statutory definition of the term “Administrator” under the SDWA: “*The term “Administrator” means the Administrator of the Environmental Protection Agency.*” This statutory definition makes clear that the title is singular and refers specifically to the EPA Administrator, and should not be interpreted to reference multiple individuals or a broader office.

When two individuals were appointed to EPA positions pursuant to the special hiring authority provided by 42 USC §300j-10, the Administrator of EPA, Scott Pruitt, was required to carry out two actions to comply with Federal law:

1. Administrator Pruitt was required to deem the appointment of each individual "...necessary to the discharge of his functions under title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.] (relating to safe drinking water) and under other provisions of law"; and
2. Administrator Pruitt was required to make the appointment pursuant to the authority provided solely to the EPA Administrator.

However, Administrator Pruitt admitted in an April 4, 2018 interview with Fox News reporter Ed Henry<sup>1</sup> that he failed to perform either action required under the law:

**Henry:** If you're committed to the Trump agenda, why did you go around the president and the White House and give pay raises to two staffers?

**Administrator Pruitt:** I did not. My staff did, and I found about it.

**Henry:** Was somebody, you mean, fired for that?

**Administrator Pruitt:** That should not have been done.

**Henry:** So, who did it?

**Administrator Pruitt:** There will be accountability.

**Henry:** A career person or political person?

**Administrator Pruitt:** I don't know.

**Henry:** You don't know? You don't know who did it?

**Administrator Pruitt:** I found out about this yesterday. And I corrected the action. And we are in the process of finding out how it took place and correct it.

Administrator Pruitt finished addressing the topic in the interview by stating, "It should not have happened. And the officials that were involved in that process should not have done what they did."

If Administrator Pruitt is telling the truth, then he is confirming that he, as EPA Administrator, was not aware of, or involved in, the appointment of two individuals pursuant to a hiring authority that requires the EPA Administrator to make a determination that an appointment is mission-necessary, prior to making the appointment.

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<sup>1</sup>Rush Transcript, "The Story," *Fox News Channel* (April 4, 2018). Available online at: <http://www.foxnews.com/transcript/2018/04/05/epa-chief-pruitt-addresses-criticism-in-fox-news-interview.html>

However, a public report indicates that Administrator Pruitt may have been attempting to mislead the public in his interview with Ed Henry. This article reports that Administrator Pruitt did in fact order the two appointments be made under the special hiring authority:

*“After the White House rejected their request, Pruitt’s team studied the particulars of the Safe Drinking Water provision, according to the source with direct knowledge of these events. By reappointing Greenwalt and Hupp under this authority, they learned, **Pruitt could exercise total control over their contracts and grant the raises on his own.**”*

***Pruitt ordered it done.** Though Hupp and Greenwalt’s duties did not change, the agency began processing them for raises of \$28,130 and \$56,765, respectively, compared with their 2017 salaries. Less than two weeks after Pruitt had approached the White House, according to time-stamped Human Resources documents shared with *The Atlantic*, the paperwork was finished [emphasis added].”<sup>2</sup>*

If Administrator Pruitt did not make false and misleading statements to Ed Henry, then it appears EPA violated the Antideficiency Act when finalizing the two appointments – which public reports indicate increased obligations of fund for salaries by \$28,130 and \$56,765, respectively. These obligations of funds were likely in excess of amounts available for the purpose of appointments under 42 USC §300j-10, since these two appointments went beyond EPA’s statutory authority under the SDWA and in turn, may have also violated relevant civil service statutes contained in title 5, United States Code.

To bring clarity and understanding to these potential violations of Federal law, I am requesting that GAO review these actions and produce an Appropriations Law Decision addressing whether EPA, under the leadership of Administrator Pruitt, violated the Antideficiency Act, as a consequence of first violating the SDWA and related civil service statutes. Thank you in advance for your consideration of my request.

Sincerely,



Tammy Duckworth  
Ranking Member  
U.S. Senate Subcommittee on  
Fisheries, Water and Wildlife

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<sup>2</sup> Elaina Plott and Robinson Meyer, “Scott Pruitt Bypassed the White House to Give Big Raises to Favorite Aides,” *The Atlantic* (April 3, 2018). Available online at: <https://www.theatlantic.com/politics/archive/2018/04/pruitt-epa/557123/>