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CPR's Steinzor Raps EPA for Enforcement Failures
Steinzor: 'EPA's Enforcement Program is Falling Apart'

Washington, DC ---- Citing data developed by current and former EPA enforcement officials, Center for Progressive Regulation Board Member Rena Steinzor told a Senate subcommittee Tuesday that "Overall, enforcement of environmental laws has decreased dramatically since the Bush Administration came to power." The Senate Environment and Public Works' Subcommittee on Fisheries, Wildlife, and Water met this morning to hear testimony on Clean Water Act enforcement. Steinzor is a tenured professor of law at the University of Maryland School of Law.

Steinzor observed that:

- The number of EPA inspection and enforcement staff has fallen to its lowest level since establishment of the Agency, dropping by more than 12 percent since the Administration took office.
- Fewer violators pay penalties and those who do pay are paying less. Violators have paid 64 percent less in fines for breaking environmental laws during the first two years of the Bush Administration than they did under the Clinton Administration.
- The average civil penalty paid by polluters has dropped from \$1.36 million to \$605,455, and polluters pay 77 percent less for required supplemental environmental projects (SEPs) as part of settlement agreements.
- In his 2003 budget request the President sought to eliminate the positions of over 200 enforcement personnel.

Steinzor cited research for a forthcoming book by fellow CPR member scholar Joel Mintz, a professor at Nova Southeastern University and the author of *Enforcement at the EPA*. She said Mintz had developed preliminary findings to explain the enforcement failure:

- Most EPA enforcement cases in the past two years have been directed at relatively small violations. The Agency has largely avoided the kinds of coordinated enforcement initiatives that proved so successful in the 1980's and 90's, under both Democratic and Republican Administrations. The non-Superfund enforcement that EPA has been doing is hampered by an extraordinary shortage of attorney resources at the Justice Department.
- Part of the reason for this shortage is that DOJ has assigned a very large number of attorneys to try enforcement cases against electric utilities based on the New Source

- Review provisions of the Clean Air Act. Even as those resources are expended, other components of the Administration have systematically undercut those cases through public statements and policy changes.
- EPA's Senior Executive Service (SES) personnel, who are the high level, career civil servants with the greatest collective expertise regarding EPA enforcement policies and techniques, are almost totally isolated within the Agency. Political appointees, especially in the Agency's regional offices, almost never consult SES people on important policy questions. As a result, their morale, and the morale of many who report to them, is very low.
- Many senior enforcement managers at the Agency have retired or plan to retire shortly. This trend is causing a severe loss of the expertise and institutional memory that are crucial to the success of vigorous EPA enforcement efforts.

Said Steinzor:

“A recent report by EPA's Office of Enforcement and Compliance Assurance (OECA) on the performance of the major National Pollutant Discharge Elimination System (NPDES) permits reveals that enforcement activity ... has declined from 1999 to 2001. The percent of major NPDES permits in significant noncompliance increased from 16 percent to 24 percent from 1994 to 2001. The number of inspections declined by eight percent, and the percent of facilities that were inspected declined by six percent. There was a 50 percent decrease in the number of informal enforcement actions and a 45 percent decrease in formal actions. Initiation of administrative complaint orders (ACOs) declined by 31 percent, and the initiation of administrative penalty order (APO) complaints declined by 28 percent....

“Clean Water Act enforcement is crucial to protecting public health; as just one example, as many as 13 percent of effluent violations for major sources emitting toxic pollutants exceed regulatory limits by *more than 1,000 percent*.”

“Given its importance, what accounts for these disturbing indications that EPA's enforcement program is, quite literally, falling apart? It has become very clear that this Administration is just not committed to deterrence-based enforcement of the nation's environmental laws.”

Founded in 2002, the Center for Progressive Regulation is a nonprofit research and educational organization of university-affiliated academics with expertise in the legal, economic, and scientific issues related to regulation of health, safety, and the environment. CPR supports regulatory action to protect health, safety, and the environment. Through research and commentary, CPR seeks to inform policy debates, critique anti-regulatory research, enhance public understanding of the issues, and open the regulatory process to public scrutiny. For a copy of Steinzor's testimony, or to arrange interviews, contact Matthew Freeman at 301-762-8980, or at CPRMedia@earthlink.net. Visit CPR on the web at www.progressiveregulation.org.