



## **Rule of Law? Not So Much. Scott Pruitt's Losing Litigation Record at EPA**

More than 140 lawsuits have been filed against the United States Environmental Protection Agency (EPA) in response to efforts by Administrator Scott Pruitt to repeal regulations, delay their implementation or deny the public access to agency information.<sup>1</sup> In addition, EPA has been formally put on notice that nearly three-dozen other lawsuits could be filed any day, and more are expected as EPA finalizes pending rulemaking proposals.<sup>2</sup> Some have described Administrator Pruitt as “a star” and the “most effective” Cabinet member because of his deregulatory zeal.<sup>3</sup> However, a look at the mounting legal challenges questioning his actions and his losing litigation record paints quite a different story, one that is not dissimilar to his losing litigation record as the Attorney General of Oklahoma seeking to overturn Obama Administration environmental protections.<sup>4</sup>

The lawsuits filed against Pruitt's EPA cover a broad range of issues, including Pruitt's efforts to unlawfully delay the implementation of air, water and chemical safety rules promulgated by the Obama Administration.<sup>5</sup> Litigation that is pending or planned also includes challenges to Pruitt's efforts to repeal Obama Administration regulations themselves after verbally directing the deletion of key cost-benefit data in repeal proposals,<sup>6</sup> using mathematical sleights of hand designed to minimize the health and environmental benefits of rules<sup>7</sup> and relying on flimsy or legally questionable justifications.<sup>8</sup> Nearly half of the filed lawsuits against the agency allege that EPA has failed to comply with rules regarding government transparency or ethics.

More than a year after Administrator Pruitt was confirmed, his record of success is hardly stellar:

- Approximately 66 cases have been filed regarding EPA's alleged failures to comply with government transparency and ethics rules. In 7 of those cases, the plaintiffs voluntarily dismissed their case after working or reaching a settlement with the agency. In another 13 cases, a court ordered EPA to produce records that had been withheld. In only one case of approximately 21 that have resulted in a court order or otherwise reached resolution, did EPA prevail (on procedural, not substantive grounds) – a litigation “success” rate of about 5%.
- Approximately 79 cases have been filed regarding the Pruitt EPA's environmental regulatory actions. Of the 6 cases that have had a court fully review them, EPA lost 4 cases outright. In the other 2 cases, EPA

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<sup>1</sup> This figure does not include lawsuits filed during the Trump Administration regarding actions taken, or deadlines missed, by the Obama Administration.

<sup>2</sup> <https://www.epa.gov/noi>.

<sup>3</sup> <https://www.nytimes.com/2018/04/05/climate/epa-chief-scott-pruitt-pressure.html>.

<sup>4</sup> <https://www.eenews.net/stories/1060046900>

<sup>5</sup> <https://insideepa.com/daily-news/epa-environmentalists-agree-formaldehyde-rule-compliance-deadline>.

<sup>6</sup> <https://www.carper.senate.gov/public/index.cfm/2017/9/carper-questions-epa-on-verbal-direction-to-delete-economic-data-in-clean-water-rule-rewrite>

<sup>7</sup> <https://www.carper.senate.gov/public/index.cfm/pressreleases?ID=E419D663-12E5-4B37-B1D9-FFB8250ED058>

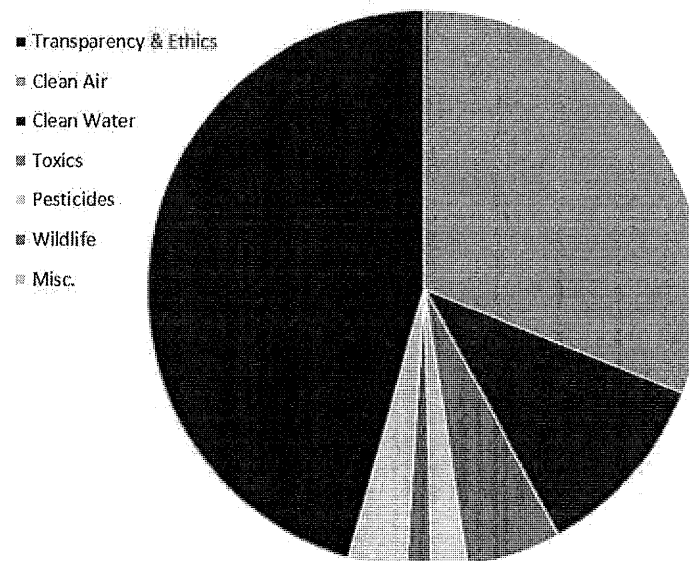
<sup>8</sup> <https://www.carper.senate.gov/public/index.cfm/2018/3/carper-udall-question-epa-decision-to-repeal-air-emissions-standards-for-high-polluting-glider-trucks>

succeeded in delaying arguments on one, and got another dismissed on mootness grounds after withdrawing the challenged rule.

### Chart: Breakdown of Filed Litigation Challenging Actions by the Pruitt EPA

- Transparency & Ethics (66)
- Clean Air Act (45)
- Clean Water Act (16)
- Toxics (8)
- Pesticides (3)
- Wildlife (2)
- Miscellaneous (5)

### Lawsuits Filed Over Conduct by Pruitt-Trump EPA



**Transparency & Ethics Cases:** In the transparency arena, The Pruitt EPA has been subject to an unprecedented number of lawsuits alleging failures to comply with transparency and ethics rules. One of the most recently filed cases concerns EPA’s allegedly failure to release documents regarding, among other things, Scott Pruitt’s “propensity to misstate factual information to the public and media,” the “possibly illegal use of EPA staff time to covertly lobby,” and “EPA’s coordination with a public affairs firm closely associated with right-wing political causes.”<sup>9</sup> Multiple lawsuits allege that EPA has missed deadlines under FOIA to produce documents about new policies *that have themselves extended or slowed document production under FOIA*.<sup>10</sup> Overall, approximately 62 lawsuits have been filed alleging that the Pruitt EPA failed to produce documents it was required to produce under FOIA. While 49 of those cases are still in early stages, 14 have already resulted in either a court order requiring EPA to produce documents (8) or the plaintiffs voluntarily dismissing their lawsuit after working or settling with EPA (7). In only one instance has the Pruitt EPA won a FOIA records case—and there for reasons unrelated to EPA’s compliance with the law (the plaintiffs had not sent EPA notice of the lawsuit through proper channels).<sup>11</sup>

**Delays of Rules’ Implementation Dates, Failure to Meet Statutory Deadlines and Rule Repeals:** A significant number of the cases filed concerned missed statutory deadlines by the Pruitt EPA, particularly under the Clean Air Act (17) and Clean Water Act (3). In some cases, EPA has reversed course after being sued, as it did when it restored mercury protection rules after being sued by the Natural Resources Defense Council (NRDC).<sup>12</sup> In other cases, the courts themselves have stepped in. Only a handful of Pruitt-Trump EPA actions have received final judgments on the merits, with Administrator Pruitt’s EPA losing 4 out of 6 cases:

<sup>9</sup> <https://www.courthousenews.com/wp-content/uploads/2018/04/Global-warming.pdf>.

<sup>10</sup> *NRDC v. EPA*, No. 17-2734 (D.D.C. Dec. 21, 2017); *Sierra Club v. EPA*, No. 3:18-cv-722 (N.D. Cal., Feb. 1, 2018); <https://insideepa.com/daily-news/high-level-awareness-reviews-stall-epas-foia-releases-prompting-suits>.

<sup>11</sup> [http://foiaproject.org/case\\_detail/?distcode=VAW&case\\_no=3:2017cv00035](http://foiaproject.org/case_detail/?distcode=VAW&case_no=3:2017cv00035).

<sup>12</sup> <https://www.nrdc.org/experts/nrdc/epa-brings-back-mercury-pollution-rule-after-nrdc-sues>.

- An illegal attempt by Administrator Pruitt to suspend regulations on methane leaking from certain oil and gas operations;<sup>13</sup>
- Illegal attempts by Administrator Pruitt to delay a rule on the books regarding training requirements for the use of pesticides so dangerous they cannot be sold to the public;<sup>14</sup>
- An illegal attempt by Administrator Pruitt to delay regulations on cancer-causing fumes from household products like cabinets, flooring and furniture—in violation of a bipartisan law passed in response to health problems reported by displaced victims of Hurricane Katrina;<sup>15</sup> and
- An illegal failure by Administrator Pruitt to identify which areas of the country have unhealthy levels of smog, particularly for children, older adults, people with lung diseases, and outdoor workers.<sup>16</sup>

EPA recently got a case dismissed, on mootness grounds, concerning an “indefinite” delay of rules limiting discharges of toxic pollution like lead, mercury and arsenic from power plants. Before the judge in that case could rule on whether EPA had complied with the law, EPA replaced the indefinite delay with a more formal postponement of the rules until 2020, thus mooting the case without a judgment on the merits.<sup>17</sup>

The Pruitt EPA’s only win on the merits concerns EPA’s decision not to ban chlorpyrifos, an insecticide linked to long-term, potentially irreversible brain damage in infant children.<sup>18</sup> In that case, however, the court noted that its opinion only concerned “the *timing*, not the *substance*” of EPA’s refusal to ban chlorpyrifos, and that it would consider whether EPA’s decision comported with science and law in a subsequent case.<sup>19</sup>

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<sup>13</sup> *Clean Air Council v. Pruitt*, No. 17-1145 (D.C. Cir., July 3, 2017) (vacating 82 FR 25730).

<sup>14</sup> *Pineros y Campesinos Unidos del Noreste v. Pruitt*, No. 4:17-cv-3434 (N.D. Cal. Mar. 21, 2018) (vacating the delay aspects of 82 FR 8499; 82 FR 14324; 82 FR 22294; 82 FR 23148; and 82 FR 25529).

<sup>15</sup> *Sierra Club & A Community Voice-Louisiana v. Pruitt*, No. 17-cv-6293 (N.D. Cal., Feb. 16, 2018) (vacating 82 FR 44533).

<sup>16</sup> *In re Ozone Designation Litigation*, Nos. 17-cv-6900, 17-cv-6936 (N.D. Cal. Mar. 12, 2018).

<sup>17</sup> *Clean Water Act v. Pruitt*, No. 17-cv-817 (D.D.C. Mar. 18, 2018).

<sup>18</sup> <https://www.carper.senate.gov/public/index.cfm/2017/4/carper-requests-more-information-from-epa-on-decision-to-allow-previously-banned-pesticide>.

<sup>19</sup> *In re Pesticide Action Network N. Am.*, 14-72794 (9th Cir. July 18, 2017).