



EPA Administrator Directs EPA to Cease its “Sue and Settle” Practice

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On October 16, 2017, EPA Administrator Pruitt issued a [directive](#), requiring EPA to immediately cease a practice known as “sue and settle,” in response to concerns that EPA has lately been defending against suits brought by environmental organizations with insufficient vigor. The “sue and settle” concept is not defined in relation to a specific political party or view of environmental protection. Rather, it is the concept that political parties in power sometimes half-heartedly defend against lawsuits, when the relief sought by such suits is actually favored by the party in power.

In the case here, the clear message of the directive is that the past EPA administration worked cooperatively with environmental organizations, sometimes in a closed-door manner, to resolve lawsuits brought by such organizations. According to the directive, environmental organizations, which frequently have brought lawsuits alleging that EPA regulations are insufficiently stringent, have been able to advance their policy objectives by suing EPA and then resolving the lawsuits via backroom deals with EPA. The Administrator’s directive states that such backroom deals have routinely been made without the input of states or other interested stakeholders, and they have resulted in EPA agreeing to implement new priorities or rules without undergoing EPA’s required administrative processes. Furthermore, they have sometimes required EPA to pay plaintiff’s attorney’s fees. There is even concern that these settlements have sometimes been the result of collusion between EPA and environmental plaintiffs, as noted in the directive.

The EPA Administrator’s directive requires EPA to implement 10 practices, devised to publicize and increase accountability for EPA’s management of suits filed against it. Amongst these 10 practices are: 1) never agreeing to harsher terms in a settlement than a court would have had the authority to order; 2) submitting proposed consent decrees and settlement agreements to public notice and comment; and 3) declining to pay a plaintiff’s attorney’s fees whenever possible.

Whether these measures result in a noticeable impact on EPA’s future priorities remains to be seen, but the Administrator’s directive sends a clear message that EPA dealings with special interest groups will be conducted in a more transparent manner than they have been in the past.

This post was drafted by [Paul Jacobson](#), an attorney in the Kansas City, MO office of Spencer Fane LLP. For more information, visit [spencerfane.com](#).

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