



Written by [William F. Jasper](#) on August 17, 2015

EPA Chief Faces “Criminal Liability” for “False, Misleading Statements”

The EPA’s [toxic mega-spill](#) of millions of gallons of heavy metal-laden wastewater into Colorado’s Animas River is not EPA Chief Gina McCarthy’s (shown) only problem; a congressional committee has sent her a letter posing the possibility of charging her with “criminal liability” for making “false and misleading” statements during her testimony at a committee hearing on July 9.



A key issue of the hearing, which was entitled “Examining EPA’s Regulatory Overreach,” was the U.S. Environmental Protection Agency’s use of “secret science” to further its ever-expansive, intrusive, oppressive, and enormously expensive regulatory agenda. EPA critics have been charging for some time that the agency has been basing many of its most outrageous claims and grabs for power upon supposed “scientific studies” and data that are not available for public examination, or even for members of Congress to evaluate.

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In a [letter](#) dated August 11, Representative Lamar Smith (R-Texas), chairman of the House Committee on Science, Space and Technology, and 12 other committee members told President Obama’s EPA administrator: “The Committee has found several instances where your responses to questions posed by Members were false and misleading. Prior to further investigative action by the Committee, we want to invite you to reflect on your testimony and provide further details. Should it be necessary to clarify or amend your testimony, then we request you do so as quickly as possible.”

“One of the main topics at the July 9 hearing,” the committee letter continued, “was the transparency of EPA’s regulatory agenda. Many of the Members asked questions regarding EPA’s use of secret science and the access that Congress and the American people have to the data that justifies the agency’s rulemakings. Ensuring that all of the data on which EPA relies for its rulemaking is publically available is an important goal of this Committee.”

A major focal point of the hearing was the EPA’s claim to authority to set standards and regulations for “Waters of the United States” (WOTUS), a huge federal usurpation of state and local authority, as well as a dangerous attack on private property rights. (See [“EPA Water Police Coming to Your Farm, Business — and Back Yard”](#)).

During McCarthy’s testimony, Committee Vice Chairman Frank Lucas (R-Okla.) asked her if the science studies used to justify the agency’s WOTUS rules had been made publicly available. She affirmed that they had been. But the committee found otherwise.

The committee letter states that “EPA’s [WOTUS] determination ... does not rely on peer reviewed science nor on publically available Scientific Advisory Board (SAB) determinations. Clearly, EPA’s determination relies upon some other analysis that is not public in the docket.”



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Moreover, the committee letter continues, EPA's WOTUS rule conflicts with the science findings of the U.S. Army Corps of Engineers. "EPA has not provided any scientific or legal justification for the figures outlined in Mr. Lucas' questioning," the committee charged. It noted further, "In an April 24, 2015, memorandum, the Corps asserts that EPA provided no scientific basis for the 4,000 foot limit listed in the final rule. Moreover, the Corps states very clearly that its belief is that the number is entirely arbitrary."

Then the committee notes:

Your statement that the information and data requested in Mr. Lucas' question was publically available in the EPA docket was false and misleading. Based on the Corps' memorandum, it is apparent that the figures outlined in EPA's filial WOTUS rule were completely arbitrary and not based on any science. These numbers are neither mentioned in the Connectivity Report nor in the SAB documents. In fact, EPA never had any scientific justification for these figures, so it could not provide them in the docket for the public to review nor could it provide them to the Corps, the co-agency charged with promulgating the WOTUS rule. The lack of scientific justification and lack of appropriate collaboration with the Corps on the final rule calls into question the legality of this rule. Moreover, the public never had an opportunity to provide comment on the validity of these distances in the proposed rule as they appeared only in the final rule.

The letter also takes McCarthy to task for alleged false and misleading statements during the hearing on matters regarding the EPA's draconian background ozone regulations in its proposed National Ambient Air Quality Standards (NAAQS).

The letter reminds Administrator McCarthy that her "false and misleading" statements may be considered a criminal matter. It states:

Providing false or misleading testimony to Congress is a serious matter. Witnesses who purposely give false or misleading testimony during a congressional hearing may be subject to criminal liability under Section 1001 of Title 18 of the U.S. Code, which prohibits "knowingly and willfully" making materially false statements to Congress. With that in mind, we write to request that you correct the record and to implore you to be truthful with the American public about matters related to EPA's regulatory agenda going forward.

In addition to Chairman Smith and Vice Chairman Lucas, the members who wrote and signed the letter to McCarthy include Representatives Ralph Lee Abraham (R-La.), Randy Hultgren (R-Ill.), Bill Posey (R-Fla.), Jim Bridenstine (R-Okla.), Randy Weber (R-Texas), Bill Johnson (R-Ohio), John Moolenaar (R-Mich.), Steve Knight (R-Calif.), Bruce Westerman (R-Ark.), Gary Palmer (R-Ala.), and Barry Loudermilk (R-Ga.).

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