

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

September 19, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Pruitt:

Hurricanes Harvey and Irma have underscored the importance of the U.S. Environmental Protection Agency's (EPA) Superfund program and the need to ensure effective and timely cleanups of contaminated sites nationwide. Unfortunately, we have serious concerns regarding your administration of this essential public health program, particularly with your reliance on your Senior Advisor Albert Kelly.

This summer, the Federal Deposit Insurance Corporation (FDIC) fined Mr. Kelly \$125,000 and prohibited him from working in the financial industry ever again.¹ The FDIC determined it had reason to believe that Mr. Kelly "engaged or participated in a violation of law or regulation, unsafe or unsound practice, and/or breach of fiduciary duty as an institution-affiliated party of SpiritBank, Tulsa, Oklahoma."² According to FDIC documents, Mr. Kelly demonstrated "willful or continuing disregard for the safety or soundness of the bank" and "unfitness to serve as a director, officer, [or] person participating in the conduct of the affairs or as an institution-affiliated party of the Bank, [or] any other insured depository institution ..."³

¹ Federal Deposit Insurance Corporation, *Order to Pay: FDIC-15-0180k* (July 27, 2017) (https://www.eenews.net/assets/2017/08/28/document_gw_09.pdf); Federal Deposit Insurance Corporation, *Order of Prohibition from Further Participation: FDIC-15-0179e* (July 27, 2017) (https://www.eenews.net/assets/2017/08/28/document_gw_10.pdf).

² *Id.*

³ *Id.*

Further, the FDIC found reason to believe that these actions led to financial losses or other damage to the bank.

As part of his settlement with the FDIC, Mr. Kelly has been barred from ever participating in the conduct of affairs for any financial institution or any other organization that is federally insured. Despite this, Mr. Kelly has been selected as and remains in a senior role at the EPA and is tasked with protecting the solvency and continued effectiveness of the Superfund program and the Superfund Trust Fund. In fact, you selected him to head your task force on Superfund management.⁴

Approximately 53 million people, or about 17 percent of the U.S. population, live within three miles of a Superfund site.⁵ These communities depend on EPA's administration of the Superfund program, including the Superfund Trust Fund and Superfund Special Accounts.

The Superfund Special Accounts raise particular concerns. These interest bearing accounts must be actively managed to ensure the greatest benefit to the public. In the past, EPA has had difficulty effectively managing these accounts, as noted by the U.S. Government Accountability Office.⁶ Despite this, the task force headed by Mr. Kelly has recommended increasing the use of Special Accounts.

Billions of dollars move through these accounts. These funds should not be entrusted to someone who has been barred from working for every financial institution from credit unions to Wall Street banks.

We therefore request a briefing on this issue and a response to the following, no later than October 3, 2017:

⁴ Memorandum from E. Scott Pruitt, Administrator, U.S. Environmental Protection Agency, to Deputy Administrator, General Counsel, Assistant Administrators, Inspector General, Chief Financial Officer, Chief of Staff, Associate Administrators, and Regional Administrators, Prioritizing the Superfund Program (May 22, 2017).

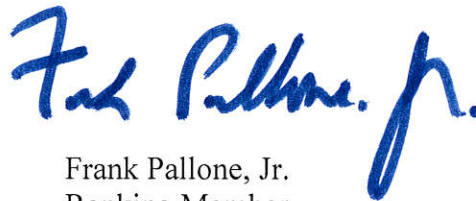
⁵ U.S. Environmental Protection Agency, *Superfund Investigates Land Pollution from the Past...and Present* (Sept. 9 2016) (<https://blog.epa.gov/blog/2016/09/superfund-investigates-land-pollution-from-the-pastand-present/>).

⁶ U.S. Environmental Protection Agency, *Statement of Alan S. Larsen, Counsel to the Inspector General, to the Committee on Energy and Commerce*; and U.S. Government Accountability Office, *Superfund: Status of EPA's Efforts to Improve Its Management and Oversight of Special Accounts* (Jan. 2012) (GAO-12-109).

- 1) What actions have you taken or are you taking to block Mr. Kelly from participating in the management of the Superfund Trust Fund and Superfund Special Accounts?
- 2) When and how were you informed of the FDIC inquiry and subsequent fine and prohibition, and on what date? Please provide all communications and documentation associated with Mr. Kelly's notice to EPA of the issue.
- 3) Upon being informed of the matter, what action(s), if any, did EPA officials take in response, and when were these actions taken?

The American public deserves EPA public servants who protect human health and the environment and uphold the public trust. We appreciate your timely response to these concerns. Should you have any questions, please contact Jon Monger or Jacqueline Cohen with Democratic Committee staff at (202) 225-3641.

Sincerely,

A handwritten signature in blue ink that reads "Frank Pallone, Jr." with a stylized flourish at the end.

Frank Pallone, Jr.
Ranking Member

Cc: The Honorable Greg Walden