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July 31, 2014

The Honorable Gina McCarthy  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator McCarthy,

I write to express concern regarding Environmental Protection Agency's recent notice in the Federal Register seeking to expand the agency's power to garnish wages. While I am pleased that you have decided to reverse your decision to offer a direct final rule regarding administrative wage garnishment, it remains troubling that the agency continues to move forward with a proposed rule that contends that EPA has the authority under the Debt Collection Improvement Act (DCIA) of 1996 "to garnish non-Federal wages to collect delinquent non-tax debts owed the United States without first obtaining a court order."<sup>1</sup>

This proposal raises serious due process concerns. As currently written, it appears that the burden of proof falls on the debtor to prove they are not liable. This could be used as a means of coercing citizens to acquiesce to questionable regulations or allegations of misconduct. Rather than face wage garnishments, citizens may be unwilling or unable to challenge EPA's actions in federal court. Unfortunately, EPA has a track record of using punitive measures to force acceptance of expansive and dubious regulations.

Additionally, I question why this change is necessary. EPA has used federal court orders to enforce its fines prior to the enactment of the DCIA and in the 18 years following its enactment. The use of the DCIA wage garnishment authority has largely been confined to federal agencies that offer direct payments or loans to citizens as opposed to a means of collecting agency imposed fines and penalties. For example, the Government Service Administration can seek to garnish wages to recoup the excessive payment if an employee was erroneously overpaid. Such wage garnishment authority is hardly used as a fine enforcement mechanism, given the earlier stated possibility that due process could be denied. According to a 2002 Government Accountability Office report on the topic, EPA had no use for wage garnishment authority in the past. The report noted that EPA "determined that use of [administrative wage garnishment] would not be cost-effective because of its limited applicability to the agency's debts"<sup>2</sup> and added that "[m]ost of EPA's debts are commercial

<sup>1</sup> Federal Register, Vol. 79, No. 127, Wednesday, July 2, 2014, Rules and Regulations, p. 37644.

<sup>2</sup> Government Accountability Office, Debt Collection Improvement Act of 1996: Status of Selected Agencies' Implementation of Administrative Wage Garnishment, February 2002, p. 9, <http://www.gao.gov/assets/240/233765.pdf>.

debts issued under the Superfund program, which provides federal clean-up authority and funds to address problems posed by abandoned or hazardous waste sites.”<sup>3</sup>

I would respectfully suggest that this appears to be a solution in search of a problem. I urge they agency to reconsider the appropriateness and necessity of the proposed rule. At a minimum, should EPA move forward with this ill-conceived proposal, the agency must ensure that the wage garnishment authority is not used as a means of fine collection. I appreciate your attention to this matter, in strict accordance with agency rules, regulations, and ethical guidelines.

Sincerely,



Jeff Flake  
United States Senator

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<sup>3</sup> Government Accountability Office, Debt Collection Improvement Act of 1996: Status of Selected Agencies' Implementation of Administrative Wage Garnishment, February 2002, p. 9, <http://www.gao.gov/assets/240/233765.pdf>.