

**Congress of the United States**  
**Washington, DC 20515**

April 24, 2018

The Honorable Arthur A. Elkins, Jr.  
Inspector General (IG)  
Office of Inspector General (OIG)  
U.S. Environmental Protection Agency (EPA)  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Inspector General Elkins:

We write with concerns about the governance of the EPA's Superfund program, and about Albert Kelly, the official Administrator Scott Pruitt assigned to oversee it. The Superfund is responsible for cleanup of toxic waste sites in nearly every state, and receives over one-tenth of the EPA's total budget. Mr. Kelly came to this position without the necessary qualifications, and with serious and still-unexplained red flags, and his conduct has raised ethical, regulatory and potential legal issues that we believe your office should examine.

At the time of his appointment by Administrator Pruitt, Mr. Kelly's resume showed no qualifications related to environmental regulation nor to the oversight of a government agency. His career experience was nearly all in banking, until the FDIC issued an "Order of Prohibition from Further Participation" against him – a lifetime ban, as well as a fine of \$125,000.<sup>12</sup> Mr. Kelly's only apparent connections to environmental regulation were his investments in companies deemed by the EPA to be responsible for the creation of Superfund sites and his longstanding friendship and financial relationship with Administrator Pruitt.<sup>3</sup> His family-owned bank—of which he was the President, CEO, and later Chairman--provided four substantial loans to Scott Pruitt in 2003 and 2004, totaling nearly \$1 million dollars.<sup>4</sup> On May 9, 2017, Albert Kelly was fined \$125,000 by the Federal Deposit Insurance Corporation (FDIC) because the FDIC "ha[d] reason to believe that [Kelly] violated a law or regulation, by entering into an agreement pertaining to a loan by [his] Bank without FDIC approval."<sup>5</sup> On May 22, 2017, in a memo to senior advisors, Administrator Pruitt outlined a plan to prioritize the Superfund program, which he deemed "at the center of the agency's core

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<sup>1</sup> [https://www.eenews.net/assets/2017/05/26/document\\_gw\\_04.pdf](https://www.eenews.net/assets/2017/05/26/document_gw_04.pdf)

<sup>2</sup> <https://www.apnews.com/649fb04caa70402789c667792019a0f5>

<sup>3</sup> <https://www.politicopro.com/energy/whiteboard/2018/02/pruitt-superfund-adviser-has-significant-energy-income-holdings-655922>

<sup>4</sup> <https://theintercept.com/2017/12/28/scott-pruitt-failed-banker-running-epa-superfund-program/>

<sup>5</sup> Stipulation and Consent to the Issuance of an Order to Pay, In the Matter of ALBERT C. KELLY, individually, and as an institution-affiliated party of SPIRITBANK, TULSA, OKLAHOMA, Federal Deposit Insurance Corporation (FDIC), FDIC-15-0180k, May 9, 2017.

mission,” and created a Superfund Task Force, which he announced would be chaired by his longtime donor and loan provider Albert Kelly.<sup>6</sup> On June 23, 2017, two weeks after Mr. Kelly’s appointment began, he was converted to a non-career Senior Executive Service (SES) position in the EPA.

On July 27, 2017, the FDIC issued new findings against Albert Kelly and permanently banned him from the banking industry.<sup>7</sup> The FDIC had reason to believe that Albert Kelly (a) “has engaged or participated in a violation of law or regulation, unsafe or unsound practice, and/or breach of fiduciary duty.” The FDIC’s order determined that these violations demonstrated Mr. Kelly’s “unfitness to serve as a director, officer, person participating in the conduct of the affairs or as an institution-affiliated party of the Bank, [or] any other insured depository institution....”<sup>8</sup>

Despite such a severe action from a federal financial institution, Mr. Kelly now oversees a landmark environmental program with a budget of one billion dollars. We urge you to investigate his fitness to manage the EPA Superfund program and whether his appointment followed appropriate procedures, given the serious findings and disciplinary action by the FDIC.

As an applicant to a position as a senior official in the federal government, Mr. Kelly’s behavior should have been the subject of a “suitability” review. According to the federal Office of Personnel Management (OPM) “determinations of ‘suitability’ are based on “an individual’s character or conduct that may have an impact on the integrity or efficiency of the service.”<sup>9</sup> The FDIC findings regarding Mr. Kelly should have weighed heavily on any appointment. Even if Mr. Kelly was cleared for employment with EPA prior to the FDIC’s findings against him, the questions raised by the FDIC should have warranted a new review.

In addition to serious concerns about Mr. Kelly’s suitability to enter government service, it appears that now, as a senior official at EPA, his practices already may have violated EPA policy. According to media reports and a Department of Justice (DOJ) response to a Freedom of Information Act (FOIA) request for EPA documents, under Kelly’s leadership, the Superfund Task Force which he oversees has failed to document its meetings or properly record its activities.<sup>10</sup> The creation, retention, and provision of public access to federal records generated by the task force is required under the Federal Records Act and the EPA’s own Records Management Policy.<sup>11</sup> Such records are of great importance because they document the point of origin for policy proposals by the Superfund Task Force, and whether such proposals are conceived and advanced by political staff, scientific advisers, or industry. Transparency and public accountability on such matters have been recurring problems for Administrator Pruitt’s team, and in this case may have included the violation of regulations or even federal law.

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<sup>6</sup> [https://www.epa.gov/sites/production/files/2017-05/documents/prioritizing\\_the\\_superfund\\_program\\_memo\\_5-22-2017.pdf](https://www.epa.gov/sites/production/files/2017-05/documents/prioritizing_the_superfund_program_memo_5-22-2017.pdf)

<sup>7</sup> <https://www.apnews.com/649fb04caa70402789c667792019a0f5>

<sup>8</sup> Order of Prohibition from Further Participation, In the Matter of ALBERT C. KELLY, individually, and as an institution-affiliated party of SPIRITBANK, TULSA, OKLAHOMA, Federal Deposit Insurance Corporation (FDIC), FDIC-15-0179e, July 27, 2017.

<sup>9</sup> <https://www.opm.gov/investigations/suitability-executive-agent/policy/decision-making-guide.pdf>

<sup>10</sup> <https://apnews.com/64759348d0da4c7b8ebff04570d26f71>

<sup>11</sup> <https://www.epa.gov/sites/production/files/2015-03/documents/cio-2155.3.pdf>

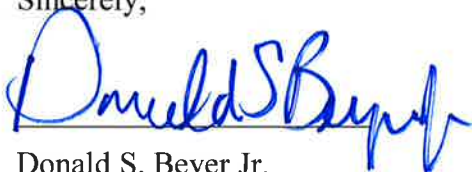
Based on the information above, we request that the EPA's Office of Inspector General (OIG) investigate the following matters:

- Did Mr. Kelly appropriately disclose to EPA and/or OPM that he was under investigation by FDIC when he was hired as Administrator Pruitt's senior advisor on April 23, 2017?
- Did Mr. Kelly violate any federal ethical guidelines, regulations, statutes or laws related to failure to disclose details of the FDIC investigation into his improper banking activities?
- Did EPA officials conducting Mr. Kelly's background investigation and suitability review adequately vet his background, including contacting the FDIC?
- Given the FDIC's ultimate decision on July 27, 2017, to ban Albert C. Kelly from the banking industry, did EPA seek a new suitability review of Mr. Kelly?
- Did EPA Administrator Pruitt, or any other senior EPA officials, interfere with the Agency's background investigation or suitability review of Mr. Kelly?
- Whom did Mr. Kelly consult in the process of drafting his May 22 list of recommendations?<sup>12</sup> Did any of those recommendations include requests made to Mr. Kelly by entities regulated by the EPA, or their advocates?
- Did Mr. Kelly ask or advise Superfund staff not to keep proper records of their meetings?
- Did Mr. Kelly, or any other EPA official, violate the Federal Records Act (FRA) or EPA records policies or practices regarding the creation and retention of federal records that should have been created and maintained by the Superfund Task Force?

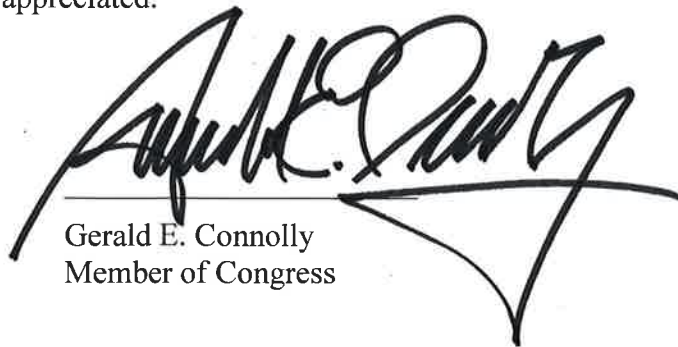
To discuss this request in more detail or to answer any questions please have your staff contact Lauren Sarkesian of my staff at (202) 226-0055.

Your assistance in this matter is greatly appreciated.

Sincerely,



Donald S. Beyer Jr.  
Member of Congress



Gerald E. Connolly  
Member of Congress

<sup>12</sup> [https://www.epa.gov/sites/production/files/2017-07/documents/superfund\\_task\\_force\\_report.pdf](https://www.epa.gov/sites/production/files/2017-07/documents/superfund_task_force_report.pdf)