

TESTIMONY OF RICHARD A. PELLETIER
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U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE

SUBCOMMITTEE ON TECHNOLOGY, INFORMATION POLICY, INTERGOVERNMENTAL RELATIONS
AND PROCUREMENT REFORM
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

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Chairman Lankford, Ranking Member Connolly, and members of the subcommittee, thank you for the opportunity to appear before you today to testify on the United States Environmental Protection Agency's suspension and debarment program. I am the Suspension and Debarment Official for the agency.

Since 1981, the EPA has maintained a robust suspension and debarment program, and is currently one of three federal agencies that have a full-time Suspension and Debarment Official. Historically, the EPA has been a leader in this area. For over twenty years, my predecessor served as the chair of the Interagency Suspension and Debarment Committee. In 2003, together with representatives from the Air Force, the Defense Logistics Agency, and the General Services Administration, the EPA was the moving force behind the creation of the National Suspension and Debarment Training Program, which is a three-day program offered through the Federal Law Enforcement Training Center in Glynco, Georgia. The program provides detailed suspension and debarment training for government investigators, contracting officers, award officials, auditors, inspector general personnel, and lawyers. I continue to be the coordinator for this program and we provide three of the six instructors for the three or four courses offered each fiscal year.

The EPA suspension and debarment program consists of two components – statutory debarments under the Clean Air and the Clean Water Acts, as well as discretionary actions taken under either the Non-procurement Common Rule at 2 C.F.R. Part 180, or the Federal Acquisition Regulation Part 9.4. The EPA almost exclusively uses the Non-procurement Common Rule for all discretionary actions, whether procurement or non-procurement related.

At the EPA, we administer the suspension and debarment program through two separate offices – my office as the Suspension and Debarment Official and the Suspension and Debarment Division. The division consists of a director, seven attorneys, a paralegal, two investigators, an auditor, and two administrative support personnel. My office also has a hearing officer and a program analyst. All of us are work full time on suspension and debarment issues.

The division attorneys and staff develop cases referred by the Office of the Inspector General, the Office of Enforcement and Compliance Assurance, investigators from other federal and state agencies, and other sources, both public and private. The division attorneys work with the Interagency Suspension and Debarment Committee to determine the lead agency, and then coordinate with other stakeholders, including the Department of Justice and other federal and state agencies, that may have an interest in the matter. Once the assigned division counsel has developed the case, it is forwarded to my office for action. After providing the respondents with the proper notice, and affording them the opportunity to present matters and arguments in opposition, I make a final decision on behalf of the EPA and all other agencies within the Executive Branch. Under the EPA supplement to the Nonprocurement Common Rule for Suspension and Debarment, the respondent has the additional right to seek a review by the Office of Grants and Debarments Director before appealing to the US District Court under the Administrative Procedures Act. For FY 2011, the EPA initiated 98 proposed debarments, imposed 111 suspensions, 115 discretionary debarments and 42 statutory actions under the Clean Air and Clean Water ACTS. We also entered into three administrative agreements.

The ratio of EPA grants and other assistance program dollars, as compared to agency procurement expenditures, is approximately four to one. Therefore, the agency traditionally has used the Non-procurement Common Rule, as implemented and supplemented at 2 C.F.R. Part 1532, as the basis for its suspension and debarment actions. This is true regardless of whether the cause for the action originated from a non-procurement matter (grant, fellowship, etc.), or a procurement transaction (direct purchases of goods or services by the agency). An action under either the Non-procurement Common Rule or the Federal Acquisition Regulation Part 9.4 is reciprocal and is effective governmentwide. Over the years, EPA has developed and updated detailed written guidance and practice procedures to allow for continuity and consistency within the program.

Part of my duties as the Suspension and Debarment Official is to provide strategic guidance for the program. The division attorneys regularly meet with EPA investigative personnel to afford early identification and coordination of cases that may require a suspension or debarment action. My superiors actively encourage members of my office and the division to participate in

the Interagency Suspension and Debarment Committee and non-government groups such as the American Bar Association subcommittee on suspension and debarment.

The EPA is proud of its rich history of vigorously protecting the agency's and federal government's business interests by exercising its suspension and debarment authority to make non-responsible entities and other individuals ineligible to receive the taxpayers' money. Suspension and debarment are important tools in accomplishing the agency's mission of protecting public health and the environment. The agency is committed to continuing its appropriate exercise of suspension and debarment authority.

Thank you for the opportunity to testify today. I am happy to answer any questions you may have.