



Environmental Technology Council

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OCFO/OFM/FPPS
Environmental Protection Agency
1300 Pennsylvania Ave., NW
Washington, DC 20460

Re: EPA's Administrative Wage Garnishment Proposed Rule

Introduction

The Environmental Technology Council (ETC) submits these comments in opposition to EPA's proposed rule on administrative wage garnishment under the Debt Collection Act. The proposed rule will allow EPA to garnish non-federal wages to collect delinquent non-tax debts owed the United States without first obtaining a court order.

The ETC is a national trade association that represents the commercial hazardous waste management industry. The ETC membership includes companies that provide technologies and services for recycling, treatment, and secure disposal of industrial and hazardous wastes. ETC member companies are directly affected by the proposed wage garnishment rule because their owners, managers, and employees work in a highly regulated industry, subject to a plethora of complicated regulatory requirements. The ETC companies have sophisticated environmental and safety management programs, and meet the highest standards of continuing improvement of performance, yet they are still potentially subject to the wage garnishment procedures for disputed fines and assessments.

Background

On July 2, 2014, EPA announced that it would take direct final action to implement the administrative wage garnishment provisions of the Debt Collection Improvement Act. 79 Fed. Reg. 37644. Under the direct final rule, EPA would have been able to immediately begin garnishing the wages of citizens to collect non-tax debts without first obtaining a court order. Additionally, the direct final rule would become effective September 2, 2014, without further notice unless the EPA received adverse comments by August 1, 2014.

Upon learning of the direct final rule, many Members of Congress signed letters to the EPA delineating their clear adverse position to the notice and requesting that the EPA withdraw its direct final rule. In addition, many citizens submitted an almost

unprecedented number of adverse comments to the administrative record, most of them scathing in their criticism of EPA. The Congressional letters and opposing citizen comments resulted in EPA withdrawing its direct final rule. As noted in the July 2 notice, however, a withdrawal of the direct final rule automatically triggered the EPA Administrative Wage Garnishment Proposed Rule for public comment.

ETC Statement of Opposition

ETC acknowledges the government's legitimate interest in efficiently and effectively pursuing delinquent debt owed by U.S. citizens. However, the EPA's proposed wage garnishment rule would provide an agency that is already viewed as overreaching with even more authority over individual citizens. As noted in the proposed rule, EPA will decide for itself whether a debtor is entitled to an oral hearing before the agency based on its own determination of whether the garnishment dispute can be resolved on the documentary evidence in order to prevent the debtor from making a case orally. Further, if EPA grants a hearing, the proposed rule allows for the hearing to be held before a government official employed by EPA, such as a hearing officer. The citizen may or may not be able to afford an attorney, and there is no provision in the administrative process for court-appointed or pro bona counsel. In effect, the proposed rule allows the EPA to remove garnishment proceedings from a neutral court to a non-judicial process controlled by EPA.

ETC opposes EPA's decision to give itself the authority to garnish wages without a court order on the grounds that this will place unfair and undue pressure on individuals threatened with fines and penalties by the agency. The rule will make it both more difficult to dispute fines and provide incentives for EPA to issue and pursue penalties against more citizens. As a result, the rule's impact would most definitely create significant hardships on affected individuals.

Despite the EPA's claims, recent reports indicate that the wage garnishment proposal would not create a cleaner environment or solve delinquency issues. A report done by the American Action Forum notes that the majority of EPA fines for individuals center on paperwork infractions and not environmental violations. In terms of delinquent payments, the report showed that individuals generally pay their fines on time. The fact is that EPA already has sufficient enforcement measures in place to encourage people to pay their debts to the government and to respond when there is a failure to pay. For example, if an individual violates an EPA penalty order, the agency often refers the issue to the U.S. Department of Justice (DOJ) or to the U.S. Treasury for collection, if deemed necessary. Most people do not want the DOJ or the Treasury Department pursuing them for delinquent fine payments and thus they tend to pay their fines before the situation escalates to that level.

ETC agrees that the government should have appropriate measures in place to deal with those individuals who fail to pay their debts. However, ETC cannot support a

proposed rule that would ultimately deprive or curtail the right to a fair and impartial hearing by:

- Allowing EPA to unilaterally determine whether a debtor will have the opportunity to present a defense at an oral proceeding.
- Granting EPA sole discretion to decide whether a hearing would take place.
- Making the debtor guilty until proven innocent by placing the ultimate burden of convincing the hearing official by the preponderance of the evidence of the correctness of the debtor's position.

In reviewing comments already in the electronic docket, we could not help but observe that not one commenter supports the wage garnishment proposed rule. This outpouring of opposition to the agency's attempt to fast-track the rule is a clear demonstration that many believe the proposed rule, among other things, raises serious due process concerns. The three part test that determines whether or not an individual has received due process under the U.S. Constitution was established in *Mathews v. Eldridge*. The test balances (1) the importance of the interest at stake; (2) the risk of an erroneous deprivation of the interest because of the procedures used and the probable value of additional procedural safeguards; and (3) the government's interest. Taking these factors into account, we submit that the paramount interest of citizens to be free from unnecessary government power, the potential for abuse when wage garnishment authority is claimed by any agency whose primary mission should instead be human health and environmental protection, and the lack of a compelling governmental interest in yet another wage garnishment process in addition to judicial garnishment and cross-servicing debt collection by the Treasury Department all call for EPA to withdraw the proposed rule.

In addition, ETC understands that enforcement of environmental laws can be both civil and criminal and can be imposed against both the company and individual officers of said company. It is unclear as to whether or not, under the proposed wage garnishment rule, an individual officer of a company would be held liable for the debts of a company. ETC is opposed to holding individual officers liable for the debts owed by their companies. It would be unfair for EPA to impose wage garnishment procedures that would make an individual responsible for any unpaid fines or penalties owed by the company.

Most importantly, the Debit Collection Improvement Act does not require EPA to adopt the proposed rule. Under the DCIA, the EPA is authorized to refer debts to Treasury for cross-servicing. EPA has also 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. According to a 2002 Government Accountability Office

report, EPA represented that wage garnishment authority would not be useful to the agency. The report noted that EPA “determined that use of AWG would not be cost-effective because of its limited applicability to the agency’s debts,” and added that “[m]ost of EPA’s debts are commercial debts issued under the Superfund program, which provides federal clean-up authority and funds to address problems posed by abandoned or hazardous waste sites.” GAO, *Debt Collection Improvement Act of 1996: Status of Selected Agencies’ Implementation of Administrative Wage Garnishment* (Feb. 2002).

Overall, this proposed rule seems imprudent and unnecessary. The proposal has drawn the ire and condemnation of many ordinary citizens at a time when EPA should be concerned about protecting its credibility and reputation with the public. EPA also needs to work with Members of Congress on important budget and appropriations initiatives, and cannot afford to be seen as “The Big Green Monster” trampling on individual rights. EPA has many critical challenges ahead to better protect human health and the environment. EPA should stay focused on its mission, and not undermine its standing as protector of U.S. citizens by adopting this controversial authority to garnish wages without judicial oversight.

Respectfully submitted,



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Executive Director

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