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January 18, 2018

Albert Kelly
Senior Advisor
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

Dear Mr. Albert Kelly,

I am writing to request information regarding your previous position as Chairman of Oklahoma-based SpiritBank, as well as to better understand your current roles as Senior Advisor at the Environmental Protection Agency's ("EPA") and Chairman of the EPA's Superfund Task Force.

On May 22, 2017, EPA Administrator Scott Pruitt appointed you as Chair of a newly-created Superfund Task Force, established to "provide recommendations...on how the EPA can streamline and improve the Superfund program"—recommendations that the Task Force released in July 2017.¹ As you know, the Superfund program was established in 1980 as a federal trust fund to be used in financing the clean-up of contaminated land.² Today, approximately 53 million people — nearly one sixth of the country's population — live within three miles of a Superfund site.³

The EPA has conceded that dangerous toxic and carcinogenic substances at dozens of Superfund sites are not adequately under control.⁴ Furthermore, the EPA recently acknowledged that recent hurricanes have washed unknown amounts of chemicals from multiple Superfund sites into waterways.⁵ A total of 327 Superfund sites across the country are similarly vulnerable due to the

¹ Environmental Protection Agency, "EPA Announces Superfund Task Force" (online at <https://www.epa.gov/newsreleases/epa-announces-superfund-task-force>).

² Environmental Protection Agency, "What is Superfund?" (online at <https://www.epa.gov/superfund/what-superfund>); Environmental Protection Agency, "Superfund History" (online at <https://www.epa.gov/superfund/superfund-history>).

³ Mathy Stanislaus, "Superfund Investigates Land Pollution from the Past...and Present," *EPA Blog* (September 9, 2016) (online at <https://blog.epa.gov/blog/2016/09/superfund-investigates-land-pollution-from-the-past-and-present/>).

⁴ Environmental Protection Agency, "Human Exposure in Superfund, Explained" (online at https://19january2017snapshot.epa.gov/superfund/human-exposure-superfund-explained_.html).

⁵ "EPA Statement – San Jacinto River Waste Pits Superfund Site Data" *Environmental Protection Agency* (September 28, 2017) (online at <https://www.epa.gov/newsreleases/epa-statement-san-jacinto-river-waste-pits-superfund-site-data>); Vann Newkirk II, "The Looming Superfund Nightmare" *The Atlantic* (September 12, 2017) (online at <https://www.theatlantic.com/health/archive/2017/09/the-looming-superfund-nightmare/539316/>).

increased threat of flooding and sea-level rise.⁶ The health and safety of American families throughout the nation depend on the EPA successfully allocating Superfund dollars and cleaning up Superfund sites.

Proper financial management of the Superfund program is critical to its success. Since 1999, funding for the Superfund program has declined from about \$2 billion to about \$1.1 billion annually.⁷ As a direct result of decreased funding, the rate of which the program has completed remedial action and construction projects to address short and long term contamination threats at nonfederal Superfund sites declined by 37% and 84% respectively from FY 1999 to FY 2013.⁸ But the Trump Administration's FY18 budget proposal seeks to further strip the program's funding by 25%.⁹ Given these financial struggles, it is essential that the EPA personnel responsible for the Superfund program — including the personnel making recommendations on the Superfund's future — are capable of properly managing and allocating the program's finances.

Because of the critical role the Superfund Program plays in financing the mitigation of environmental hazards and protecting the health of millions of Americans, as well as your role in advising Administrator Pruitt on its management, I was concerned to learn of your lack of experience in environmental policy. This concern was further intensified by your troubled history in the banking industry. Prior to your work at the EPA, you served as an executive at SpiritBank for 34 years, ultimately rising to the role of chairman.¹⁰ During this time, SpiritBank approved several mortgage loans for Mr. Pruitt in 2004 (when you were CEO and President of the bank), and loaned him funds to buy a share of a minor league baseball team, the Oklahoma City Red Hawks, in 2003.¹¹

Public information also reveals that SpiritBank faced significant financial losses under your leadership.¹² In 2007, the bank's troubled asset ratio, or the ratio of troubled loans to money set aside to cover potential losses, was nearly triple the national median. Two years later, in March 2009, SpiritBank received a \$30 million loan from the Troubled Asset Relief Program ("TARP"). Rather than use the federal bailout funds to stabilize the institution, SpiritBank

⁶ Jason Dearan, Michael Biesecker, and Angeliki Kastanis, "AP finds climate change risk for 327 toxic Superfund sites" *Associated Press* (December 22, 2017) (online at <https://apnews.com/31765cc6d10244588805ee738edcb36b/AP-finds-climate-change-risk-for-327-toxic-Superfund-sites>)

⁷ Government Accountability Office, "Trends in Federal Funding and Cleanup of EPA's Nonfederal National Priorities List Sites" (September 2015) (online at <https://www.gao.gov/assets/680/672734.pdf>).

⁸ Government Accountability Office, "Trends in Federal Funding and Cleanup of EPA's Nonfederal National Priorities List Sites" (September 2015) (online at <https://www.gao.gov/assets/680/672734.pdf>).

⁹ Coral Davenport, "Trump Budget Would Cut E.P.A. Science Programs and Slash Cleanups," *New York Times* (May 19, 2017) (online at <https://www.nytimes.com/2017/05/19/climate/trump-epa-budget-superfund.html>)

¹⁰ Associated Press, "Adviser to EPA Chief cited for federal banking violations," *ABC News* (August 28, 2017) (online at <http://abcnews.go.com/amp/Politics/wireStory/adviser-epa-chief-cited-federal-banking-violations-49475560>).

¹¹ Sharon Lerner, "Banned from the Banking Industry for Life, A Scott Pruitt Friend Finds a New Home at the EPA," *The Intercept* (December 28, 2017) (online at <https://theintercept.com/2017/12/28/scott-pruitt-failed-banker-running-epa-superfund-program/>; https://www.eenews.net/assets/2017/05/26/document_ew_06.pdf).

¹² Sharon Lerner, "Banned from the Banking Industry for Life, A Scott Pruitt Friend Finds a New Home at the EPA," *The Intercept* (December 28, 2017) (online at <https://theintercept.com/2017/12/28/scott-pruitt-failed-banker-running-epa-superfund-program/>; https://www.eenews.net/assets/2017/05/26/document_ew_06.pdf).

instead appears to have allocated the capital toward additional residential loans. As a result, SpiritBank was unable to reimburse 70% of the \$30 million-dollar, taxpayer-funded federal loan it received.¹³

Ultimately, your work as Chairman of SpiritBank placed you under the scrutiny of the Federal Deposit Insurance Corporation (“FDIC”). On May 9, 2017 – just 13 days before you were appointed by Administrator Pruitt to your EPA post – the FDIC ordered you to pay a civil penalty of \$125,000 after you “enter[ed] into an agreement pertaining to a loan...without FDIC approval”.¹⁴ Two months later, the FDIC issued a lifetime ban prohibiting you from managing financial institutions after determining that your violations “demonstrated...unfitness to serve as a director, officer, [and] person participating in the conduct of the affairs or as an institution-affiliated party of the bank, [or] any other insured depository institution.”¹⁵

Given your troubled financial history, as well as your lack of experience in environmental policy and regulation, I am concerned that you served as Chairman of the Superfund Task Force and that you continue to serve as a Senior Advisor at the EPA. This concern is only amplified by reports that, nearly six months after the release of the Task Force’s report, there is no record of any meeting agendas, minutes, or reference materials about the work conducted and sources used to compile the findings of the report.¹⁶

To address these concerns, I request that you answer the following questions no later than February 1, 2018.

1. For what time period did you serve as CEO and Chairman of SpiritBank, and what were your responsibilities in that position? What other roles did you serve in at SpiritBank, and what were your responsibilities in these roles?
2. Please describe your role in managing SpiritBank’s TARP funding from 2009-2012.
3. Please describe your role in directing SpiritBank’s implementation of FDIC and the Oklahoma State Banking Department’s recommendations from 2012 related to the bank’s troubled asset ratio.
4. What actions did you take as CEO and Chairman of Spirit Bank that resulted in the FDIC civil penalty and permanent ban from financial work?
5. Were you personally involved in the SpiritBank decision to approve a home mortgage loan, a loan to purchase a share of a minor league baseball team, or any other loan or any

¹³ SIGTARP, “Quarterly Report to Congress,” (October 26, 2016) (online at https://www.sig tarp.gov/Quarterly%20Reports/October_26_2016_Report_To_Congress.pdf)

¹⁴ Federal Deposit Insurance Corporation “Stipulation and Consent to the Issuance of an Order to Pay” (online at <https://assets.documentcloud.org/documents/4336500/2017-11-17-08-59-12.pdf>).

¹⁵ Federal Deposit Insurance Corporation “Order of Prohibition From Further Participation” (online at https://www.eenews.net/assets/2017/08/28/document_gw_10.pdf)

¹⁶ Michael Biesecker, “EPA says Superfund Task Force created by Pruitt kept no records of meetings,” (December 20, 2017) (online at <http://www.chicagotribune.com/news/nationworld/politics/ct-epa-pruitt-superfund-task-force-records-20171220-story.html>)

other financial investment or instrument for Scott Pruitt, either before or during his tenure as a state Senator or Attorney General? If so, please provide detail on the nature and timing of your involvement, and the nature and terms of the loan, investment, or instrument.

6. What background and experiences do you believe qualified you for the Superfund Task Force chairmanship?
7. You were named Chair of the Superfund Task Force on May 22, 2017. The FDIC imposed its banking ban on you two months later. When you took the position as Chair, were you aware of the impending ban? Had you had any discussions with the FDIC about a potential ban on or prior to May 22, 2017? Did you disclose the pending ban or any discussions of FDIC penalties to Administrator Pruitt, or to any other EPA staff on or prior to May 22, 2017? If so, please describe the nature and timing of these discussions, and the EPA staff involved in them.
8. What were your responsibilities as Chairman of the EPA Superfund Task Force during the production of the Superfund Task Force recommendations? Has your role changed now that the Task Force has released its recommendations?
9. Did the EPA comply with the Federal Advisory Committee Act when picking the committee members of the Superfund Task Force? Please provide a complete list of the members chosen for the EPA Superfund Task Force.
10. The EPA has stated that the Superfund Task Force kept no records of the analysis used to form recommendations for the Superfund program. Please provide justification or reasoning for the lack of record keeping when compiling a report that would shape the management of the Superfund program.
11. What resources did you use in drafting the Superfund Task Force report?
12. Did you consult, or direct the Task Force to consult, with any outside organizations or individuals in drafting the Superfund Task Force report? If so, please list those individuals and organizations.
13. What are your responsibilities as Senior Advisor at the EPA? What specific policy areas and programs are you responsible for in this role?
14. The FDIC has banned you from banking for life because you “demonstrated...unfitness to serve as a ... person participating in the conduct of the affairs ...[of] any ... insured depository institution” Will you be managing or providing advice on Superfund program funding or any other program funding in your role as Senior Advisor? If so, what is the nature of these responsibilities? Will you recuse yourself from any specific agency activities or issue areas as a result of the ban?

I appreciate your prompt and complete response to these questions no later than February 1, 2018. If you have any questions, please do not hesitate to contact Courtney Brunson of my office at 202-224-4543.

Sincerely,



Elizabeth Warren
United States Senator