

FRIDAY, JUNE 16, 2017

PERSPECTIVE

What we can learn from the Trump administration's EPA budget

By William Sloan and Fred Wagner

President Donald J. Trump's proposed budget for the U.S. Environmental Protection Agency has received a great deal of attention, and rightly so. The approximately 31 percent proposed cut from current spending levels is a staggering figure for any institution, public or private.

Yet, some perspective on the true importance of the administration's proposal and its implications for future interactions with EPA is also warranted. The White House budget rollout in recent years has become an exercise in contributing to the paper recycling industry, more than a substantive policy mover. "Dead on arrival" is the phrase most often heard from members of both parties as soon as the cellophane is torn from the covers of the glossy budget pamphlets.

Budget gridlock further diminishes the significance of any administration proposal. Funding of the federal government has been done by Congress in a series of continuing resolutions (CRs) or other eleventh-hour compromise actions to avoid conflict on things like raising the debt ceiling. (That tango is about to start again sometime this summer.) Most often, funding levels are continued at or close to existing levels, with some exceptions. The most recent omnibus funding bill is a perfect example of that trend.

The same is expected this September. There will be the usual fire and brimstone about budget deficits and the rest, but congressional leadership will not tolerate another government shutdown. So what difference does the Trump administration's proposed EPA budget really make, if not in terms of true dollars and cents?

A budget is the clearest articulation of an administration's set of priorities. It's a simple matter of putting one's money where one's mouth (or tweet) is. With respect to EPA, those priorities are clear.



New York Times News Service

EPA Administrator Scott Pruitt at the White House, June 2.

First, the agency will shrink, although how much is uncertain. Money will be set aside for career civil servant early buy-outs or other retirement incentives. Those positions will not be filled. Cutting by attrition is the favorite tool of agency leadership in order to avoid harming current employees — other than leaving them increased workloads. Estimates of how much EPA's workforce could be reduced in this manner range widely, but could be as high as 7-10 percent. That will make a difference for all day-to-day dealings with the agency. Work on any number of initiatives, not just legacy programs from the previous administration, could slow to a crawl. Clients requiring feedback from EPA regarding compliance programs will have to be far more persistent and aggressive. Even more distressing may be the potential for a backlog on permitting. Mindful of the old adage that delay is the deadliest form of denial, holding the agency accountable to its permitting deadlines should be a top priority for anyone pursuing new projects.

Second, even if certain programs targeted for elimination or severe cuts in the Trump proposal survive for now as a result of a CR, the time and attention paid to those programs by political leadership will mean a tremendous reduction in productivity. There is little chance, for example, that the EPA Office of Civil Rights

will advance environmental justice administrative claims. Other offices or staff that had been focused on climate issues may be repurposed to other air quality/pollution efforts. As long as the individual appropriation adheres to the general office mission, that could be done consistent with Anti-Deficiency Act requirements. Administrator Scott Pruitt has consistently spoken about focusing his organization's efforts on the "core missions" of air and water pollution. While it is unclear how that core mission will be defined, companies would be well advised to confirm ongoing compliance with basic air and water permits, as the most likely targets of any federal enforcement.

Speaking of which: Third, enforcement activity will decline and most likely be directed to cooperative agreements with regulated entities. Ironically, this was a major initiative of the Bill Clinton EPA under Carol Browner. It seems apparent based on all public statements from Administrator Pruitt that typical air and water pollution matters will continue. Beyond that, however, staff who had been tasked with performing investigations may need to get used to reviewing company audits or monitoring reports as a more frequent form of "compliance assurance," as part of that EPA office's name indicates. More likely than not, look to the states (especially California) to pick

up the enforcement banner, as well as public interest groups to compel action through more frequent citizen suits, where authorized by statute. With the advent of more transparent and accessible reporting on environmental compliance, citizen suits are well poised to fill the void in traditional federal agency enforcement caused by these budget cuts.

Fourth, EPA's research programs will change substantially. Again, even if actual dollars remain close to current spending levels, agency leadership has a fair amount of discretion to target particular topics over others. To the extent that certain industry sectors have policy priorities for new research topics, it may be worth pursuing those efforts now, as previous allocations for climate-related investigation will clearly be shelved.

Having witnessed administrations come and go over several decades, we have helped clients continue to conduct business through these challenging transition periods. A thorough business strategy will include a game plan for agency interactions, anticipated timelines, and alternative contingencies. While EPA's budget may or may not be pared down as severely as advocated by the administration, there is no doubt that the policies underlying those fiscal proposals will impact how the agency functions over the next 3+ years.

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