



CRWI Update February 28, 2018

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Clean Harbors Environmental Services
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Eastman Chemical Company
Heritage Thermal Services
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Ross Incineration Services, Inc.
Veolia ES Technical Services, LLC

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METCO Environmental, Inc.
O'Brien & Gere
Spectrum Environmental Solutions LLC
Strata-G, LLC
SYA/Trinity Consultants
TestAmerica Laboratories, Inc.
TRC Environmental Corporation

INDIVIDUAL MEMBERS

Ronald E. Bastian, PE
Ronald O. Kagel, PhD

ACADEMIC MEMBERS

(Includes faculty from:)

Clarkson University
Colorado School of Mines
Lamar University
Louisiana State University
Mississippi State University
New Jersey Institute of Technology
University of California – Berkeley
University of Dayton
University of Kentucky
University of Maryland
University of Utah

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EPA strategic plan

EPA released their final strategic plan for FY 2018 – FY 2022 on February 12, 2018. This plan largely reflects the same goals that were in last year's draft but the final version includes specific targets for meeting these goals. The three overall goals are to: (1) refocus the agency back to its core mission; (2) restore power to the states through cooperative federalism; and (3) lead the agency through improved processes and adhere to the rule of law. The plan contains six Agency priority goals (with two year timelines) and 26 strategic measures (with 5 year timelines).

Agency priority goals (September 30, 2019, deadlines).

- EPA, in close collaboration with states, will reduce the number of nonattainment areas to 138 from a baseline of 166.
- EPA will increase by \$16 billion the non-federal dollars leveraged by EPA water infrastructure finance programs.
- EPA will make an additional 102 Superfund sites and 1,368 brownfields sites ready for anticipated use (RAU).
- EPA will complete in accordance with statutory timelines (excluding statutorily-allowable extensions):
 - 100% of required EPA-initiated Toxic Substances Control Act (TSCA) risk evaluations for existing chemicals;
 - 100% of required TSCA risk management actions for existing chemicals; and
 - 80% of TSCA pre-manufacture notice final determinations.
- EPA will increase compliance by reducing the percentage of Clean Water Act National Pollutant Discharge Elimination System permittees in significant noncompliance with their permit limits to 21% from a baseline of 24%.
- EPA will reduce by 50% the number of permitting-related decisions that exceed six months.

All 26 of the strategic measures have September 30, 2022 deadlines. Some are listed below.

1. Reduce the number of nonattainment areas to 101.
2. Make 255 additional Superfund sites ready for anticipated use (RAU).
3. Make 3,420 additional brownfields sites RAU.
4. Make 536 additional RCRA corrective action facilities RAU.
5. Complete 56,000 additional leaking underground storage tank cleanups.
6. Complete all EPA-initiated TSCA risk evaluations for existing chemicals in accordance with statutory timelines.
7. Complete all TSCA risk management actions for existing chemicals in accordance with statutory timelines.
8. Complete all TSCA pre-manufacture notice final determinations in accordance with statutory timelines.
9. Eliminate the backlog and meet statutory deadlines for responding to Freedom of Information Act requests.
10. Reduce the average time from violation identification to correction.
11. Increase the environmental law compliance rate.
12. Meet 100% of legal deadlines imposed on EPA.
13. Eliminate unnecessary or duplicative reporting burdens to the regulated community by 10,000,000 hours.
14. Reach all permitting-related decisions within six months.

This plan is somewhat unusual in that the metrics are specific. This will make it easy to determine whether the Agency is meeting these goals. In addition, one of the highest priorities in the plan calls for creating consistency and certainty on how the laws and regulations are applied across the nation. The plan also seems to rely on increased efficiency using electronic reporting and permitting systems to achieve part of these goals. A copy of the final plan can be found at <https://www.epa.gov/planandbudget/strategicplan>.

Generator improvements rule

On February 27, 2018, EPA announced they have published a set of frequently asked questions on the implementation of the 2016 Hazardous Waste Generator Improvement Rule. These can be found at <https://www.epa.gov/hwgenerators/frequent-questions-about-implementing-hazardous-waste-generator-improvements-final-rule>. In addition, they announced that there have been some cancelations for the April 11, 2018 training event. If interested, you can sign up at <https://www.eventbrite.com/e/training-on-the-hazardous-waste-generator-final-rule-tickets-41763031351>.

Sue and settle policy

In October 2017, EPA released revised instructions on how the Agency would handle deadline suits filed by various entities. The revisions would make the process more open and would not include attorney's fees and litigations costs in the settlement

agreement. Following these new guidelines, the Agency started letting these suits go through the judicial system instead of entering into negotiations. This did not turn out well for the Agency in that for one litigation EPA was given 90 days to issue a proposed rule and have that rule finished by the end of 2018. In another, EPA was given a month to finalize its response to a petition. The fundamental problem is that it is very difficult for the Agency to defend against deadline suits because they have already missed a deadline and the courts have not been very sympathetic to additional delays. Learning from past failures, when Sierra Club filed a suit challenging EPA non-discretionary duty to report to Congress on the impacts of the renewable fuels standards, the Agency decided to negotiate rather than litigate. On February 5, 2018, both parties asked the District Court to hold this suit in abeyance because the parties are actively engaged in exploring options to resolve this dispute. The court granted the motion that day. In this negotiation, it does not appear that the Agency is following the “more open process” part of the revised guidance. It will not be clear whether attorney’s fees will be included in the settlement agreement until it is final.

EPA personnel

On February 4, 2018, Kathleen White withdrew her nomination to head the White House Council on Environmental Quality. Her nomination drew strong opposition from a number of Democrats who vowed to stop all EPA nominations until she withdrew. Now that Ms. White has withdrawn, it should clear the way for Andrew Wheeler’s nomination to be the next Deputy Administrator. His nomination was reported favorably by the Senate Environment and Public Works Committee on February 7 but the full Senate has not brought the nomination to the Floor for a vote. Meanwhile, President Trump appointed Steven Cook to be the Deputy Assistant Administrator for the Office of Land and Emergency Management (OLEM). This position does not require Senate confirmation. Mr. Cook was recently a corporate counsel for LyondellBassell, a plastic and chemical company. Mr. Cook started on February 20, 2018. There is currently no nominee for the Assistant Administrator slot for OLEM.

Approximately 700 employees left EPA in 2017. As of January 3, 2018, EPA had 14,172 employees. EPA Administrator Scott Pruitt has stated it is his goal to reduce the Agency staff to 8,000 in the next five years. Just how this correlates with the goals outlined in the strategic plan is unknown.

Treated railroad ties

In 2016, EPA added creosote-treated railroad ties as a categorical non-hazardous secondary material when burned as a fuel under certain circumstances. To meet the criteria for the non-hazardous designation, the material must be processed (metal removal and shredding or grinding at a minimum) and burned during normal operations in an existing unit designed to burn both biomass and fuel oil (or natural gas). This material cannot be burned during startup or shutdown. In addition, combustion is restricted to stoker, bubbling bed, fluidized bed, or hybrid suspension grate boilers and the material must be less than 40% of the total fuel used on an annual basis. On

February 7, 2018, EPA published a final rule that added creosote-borate, copper naphthenate, and copper naphthenate borate treated railroad ties to the list of categorical non-hazardous secondary materials. This rule did not change any of the criteria for including the materials into this designation. The rule was effective on the publication date.

EPA budgets

In March of 2017, the Trump Administration proposed to reduce EPA's FY 2018 budget from \$8.1 billion to \$5.7 billion. Congress has not yet passed an appropriations bill for EPA for 2018 but has extended the FY 2017 funding through March 23, 2018. Thus, the Agency has not received any reduction in funds for the first five months of FY 2018. The current funding level being considered by Congress is in the range of \$7.5 billion, only a slight decrease from FY 2017 and significantly more than requested by the Administration. It is unclear if all of the details will be worked out prior to March 23 or if another continuing resolution will be needed.

Meanwhile, the Administration released its FY 2019 budget request on February 12, 2018. In this, the Administration asks for \$6.1 billion for EPA. Some programs stay funded at 2017 levels (e.g., Superfund and State and Tribal Assistance Grants (includes funds for water infrastructure, etc.)) while other programs are cut dramatically. This budget proposes that some programs (e.g., Energy Star) be funded with user fees. The request includes a fact sheet on modernizing government that includes a general intent to consolidate offices at federal agencies. One should always remember that Congress controls the purse strings and tells agencies how much money to spend and often where to spend that money. Congress often disregards what the Administration asks for.

Enforcement

In a January 25, 2018, memo, the Department of Justice (DOJ) set a new policy on using guidance documents during enforcement actions. This memo states that guidance documents cannot be used to create requirements that do not already exist in statute or regulations; DOJ may not use its enforcement authority to convert guidance documents into binding rules; and non-compliance with guidance documents cannot be used to show non-compliance of the applicable laws or regulations. The memo goes on to say that DOJ can use guidance documents where it paraphrases legal mandates from existing laws or regulations and may use evidence that the party has read such guidance to establish the party knew of the requirements. A copy of the memo can be found at <https://www.justice.gov/file/1028756/download>.

On February 8, 2018, EPA Office of Enforcement and Compliance Assurance released their annual results for FY 2017. Included in these results are comparisons to previous years. The general overview of this report can be found at <https://www.epa.gov/enforcement/enforcement-annual-results-fiscal-year-2017>. If one were to click on the "Analysis and Trends" button, scroll to the bottom of the page, and

click on the “FY17 Enforcement Annual Results Data Graphs” link, it will take you to a series of graphs showing how enforcement for FY 2017 compares to each year back to FY 2007. The value of fines for FY 2017 is the third highest with \$2.98 billion. This is much higher than the typical values for the 10 year period (less than \$100 million). But the graph notes that the three years with high fines are related to one or two extremely large cases each year (BP in FY 2013, and Duke Energy in FY 2015, Volkswagen in FY 2017). The number of criminal cases opened has steadily declined since FY 2011 and the number of defendants has slightly decreased since FY 2013 while the years of incarceration have slightly increased since FY 2012. The amount of hazardous waste treated has remained fairly steady since FY 2013 with the exception of the large increase in FY 2016 (phosphate mine cleanup). The estimated environmental benefits have declined since FY 2012. The federal inspections have declined from over 20,000 in FY 2007 to approximately 12,000 inspections in FY 2017. The total number of civil enforcement cases has declined from about 3,700 cases in FY 2007 to less than 2,000 in FY 2017. One environmental group released a study showing that the enforcement under the current Administration is decreasing. While their numbers may be correct, they appear to ignore the longer trend over the past 10 years of decreasing enforcement (with the exception of the four large cases mentioned earlier).

On February 16, 2018, EPA published a proposed settlement agreement with Shell Chemical. The alleged violations related to improper use of flares at their Norco, LA facility. The proposed decree will require Shell to minimize the amount of materials sent to the flares, put systems in place to ensure proper combustion efficiency for each flare, install a fence-line monitoring system, and pay a civil penalty of \$350,000. Additional details can be found in the *Federal Register* notice.

West Lake Superfund site

On February 6, 2018, EPA released a proposed cleanup plan to partially excavate the radioactive part of the West Lake Landfill Superfund site in Bridgeton, MO. In the proposed plan, areas with materials showing greater than 52.9 picoCuries per gram would be excavated. This would be followed by a low-permeability engineering cover that would meet the uranium mine tailings standards to limit radon release, protect groundwater, and be effective for at least 200 years. This is in contrast to a potentially responsible parties (PRP) proposed plan to install an engineered cap. This decision is similar to that for three other sites (San Jacinto Waste Pits, in Houston, TX; B. F. Goodrich site in Calvert City, KY; and the U. S. Smelter and Lead refinery site in Chicago, IL) where the Administrator has chosen a more costly solution (excavation) than favored by the PRPs. Comments on this plan will be accepted until March 22, 2018.

EPA to close research lab

On February 6, 2018, EPA staff was told that the Office of Research and Development would be closing the National Exposure Research Laboratory in Las Vegas, NV as of September 30, 2018. Staff can choose to move to other EPA locations (EPA has

research labs in Cincinnati, OH and Research Triangle Park, NC). This process started with a 2012 Government Accountability Office report suggesting consolidation of the more than 37 labs housed in 170 facilities in 30 cities.

CRWI meeting

The next CRWI meeting will be held in early May. Details will be forthcoming.