

United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Mail Code 1101A

Re: Docket ID: EPA-HQ-OA-2017-0533
Submitted electronically to www.regulations.gov

The Environmental Protection Network (EPN) appreciates this opportunity to provide comments to the Administrator and United States Environmental Protection Agency (EPA) staff on the EPA Draft Strategic Plan for FY 2018-2022.

Executive Summary

EPA's draft *Strategic Plan* for FY 2018-2022 makes clear that Scott Pruitt and the Trump Administration have set their priorities in defiance of what robust science and common sense tells us are the human health and environmental challenges of the 21st Century. Mandated by law, EPA's strategic plan is a critical planning document for the agency's work over the four-year term of each President. It informs the public, the rest of the government and the career staff of the purposes of the agency and how it will achieve them. It should present a clear, data-based picture of the current state of the environment, including improvements made to date. And, it should provide the rationale, supported by science, for further progress in cleaning the environment and reducing risks to human health. The current draft plan deficiently is silent on significant threats to people's health and the environment – climate change, indoor air, radon, municipal solid waste, geographic-specific water-quality programs, and makes only passing references to wetlands protection and air toxics regulation. It is the wrong blueprint for EPA's next four years.

The Purpose of a Strategic Plan

The GPRA (Government Performance and Results Act) Modernization Act of 2010 (Public Law 111-352) directs EPA to prepare a strategic plan for its actions over the next four years. This is a critical part of the way EPA develops the trust of the American public and demonstrates that it is doing the job Congress directed it to do. The plan must:

- Communicate the agency's mission, identify objectives, strategies to achieve the goals and performance measures for achieving those objectives for each major program component;
- Be the basis for developing and defending annual budgets and performance plans;
- Provide a framework for internal management tracking and for the public to judge EPA's performance; and
- Transparently communicate agency policy and directions to employees, government partners at all levels, the regulated community and the public.

EPA's strategic plan must, therefore, address the full scope of environmental issues facing the nation; present a clear, data-based picture of the current state of the environment, including

progress made to date; provide the rationale, supported by science, for further reducing environmental and human-health risk; and be clear and public about what the agency and its partners will (or will not) do to make progress, including specific outcomes to be achieved.

Unfortunately, the current draft of EPA's strategic plan sets forth a plan that diminishes EPA's leadership role in protecting Americans and their families and leaves significant environmental threats to fester over the next critical four years – particularly the grave and time sensitive need to reduce the growing threat of greenhouse gas emissions.

Key Comments

No Ambition to Address Clear and Continuing Threats to the American Public

The draft plan is silent on climate change, indoor air, radon, municipal solid waste, geographic-specific water-quality programs, and makes only passing references to wetlands protection, air toxics regulation, and critically important subject matter areas. The vision presented for compliance and enforcement of environmental requirements cannot be squared with the reality of the Trump budget proposals, much less the even more cruel cuts found in the House appropriations bill, and also fails to provide any detail on how the ideas presented in the draft strategy will be carried out.

The draft FY 2018-2022 Strategic Plan must be read in the context of previous EPA strategic plans and the FY2018 and earlier budget requests and annual performance plans. If it disagrees with or differs from those priorities (and wants, as it says, to increase transparency (Goal 2)), it must provide its partners and the public with clear explanations, supported by peer-reviewed science, for the elimination of or reduced emphasis on these programs.

No Explanation of Progress Achieved and Further Progress Needed

With the exception of some cursory numbers presented in the introductions to a few of the Goal 1 objectives, the draft plan does not provide data to partners and the public about progress that the Nation has made to date or, as important, science-based explanations for how much further progress is needed and why. The explanations do not go much (or at all) beyond generalities such as “significant progress has been made” and “serious challenges remain.” EPA must address:

- How many people are actually or potentially exposed to unhealthful conditions?
- What are the health and welfare implications of that exposure?
- Of the problems remaining, which are the highest priority and why?

No Outcome-based Goals that Meet the Standards of the GPRA

The Government Performance and Results Act (GPRA) requires strategic plans with “outcome-oriented goals.” This means being clear about how EPA will move forward on the tasks assigned it by Congress and how it will evaluate its progress on those activities. Instead of following previous strategic plans that presented five outcome-oriented goals, this draft has only three goals. Of the three, only Goal 1 addresses the achievement of the human health and environmental outcomes that are EPA's mission.

The other two “goals” are in fact process- or political-based strategies that are “means” and not “ends”; they are not mission-related goals in and of themselves. “Rebalancing the power between Washington and the states” and a “refocus” on statutory obligations are not human health or environmental goals. Goals 2 and 3 would be more accurately presented as “cross-cutting strategies” or “approaches” that the administration believes (so far with no supporting evidence) will help achieve better outcomes than the status quo.

No Genuine Performance Measures of Environmental Progress

Strategic performance measures in a long-term plan communicate the agency’s priorities and provide a framework for management and accountability as the plan is turned into action. Based on the draft plan, EPA’s partners and the public could fairly believe that the agency has few ways to measure its long-term progress in protecting human health and the environment. The draft likewise implies that the agency has few priorities worthy of measurement. If transparency is a value to be pursued (as expressed in Objective 2.2 and elsewhere in the document), it’s unclear why the agency has reduced its strategic measures down to a small handful compared to those in previous strategic plans released by the three last administrations.

For example, under air programs alone, the draft fails to provide strategic measures for:

- The reduction of risk from cancer-causing toxic air pollutants
- Indoor air pollutants
- Acid rain
- Ozone-depleting chemicals
- Visibility loss in national parks and scenic areas.

The only measure is for all of the harmful but non-toxic criteria air pollutants for non-attainment areas, rather than specific measures for concentrations and emissions of the criteria pollutants of most concern to human health and the environment (ozone, fine particles and sulfur dioxide). Measures for these exist and should be used as part of the FY 2018-2022 Strategic Plan.

The plan makes frequent references to the importance of EPA’s responsibilities on tribal lands and the disproportionate risks presented there. However, it abandons the numerous strategic measures presented in previous strategic plans for specific health and environmental outcomes on tribal lands –for safe drinking water, quality of surface water, and provision of basic sanitation for homes. If environmental and human-health outcomes on tribal lands are truly a priority, why not commit to measuring progress?

Similarly, the plan commits to strong compliance monitoring and “the rule of law,” but would no longer measure the number of EPA compliance monitoring actions or the environmental results of enforcement cases. Instead, it commits to measuring “an increase [in the] environmental law compliance rate.” This is an admirable sounding measure, but no such measure exists. Thus, there is no baseline data that would serve as a starting point or an agreed-upon data-collection regimen to support it.

No Performance Targets

If it is published in final as written in draft, this will be the first EPA strategic plan in twenty years that includes no five-year performance targets – specific outcomes that the agency (and by implication its regulatory partners) commit to accomplishing with the taxpayers’ money.

The relatively few measures presented in the draft plan convey only vague intentions, such as “reduce,” “improve,” “complete additional...,” etc., without specific targets. In a footnote on page 3, the draft plan states “EPA is working to develop targets for the strategic measures, and baseline and universe information to support them,” with no commitment on timing or who (if anyone) will have the opportunity to influence those targets before they become final. In addition to undercutting the very purpose of a strategic plan, this undercuts the purpose and nature of public comment.

By not presenting performance targets in the draft plan, the agency is depriving its partners, the public and the regulated community of the opportunity to understand and potentially influence the agency’s priorities and management paths before they become final five-year commitments. This once again calls into question the rhetoric on “transparency,” “partnership,” and “shared accountability” that permeates the draft plan.

EPA should publish a supplemental document that: 1) expands the number of performance measures and 2) provides a draft five-year target for each, so that the public and partners can comment on the measures and targets before the plan becomes final in February of 2018.

No Genuine Attention to Implementation and Compliance Assurance

A critical EPA function is to issue regulations that implement the various controlling laws and then to assure, through implementation practices and civil and criminal enforcement, that everyone plays by the same rules. These are inherently governmental functions that should be front and center in any EPA strategic plan and are largely missing here.

The draft strategic plan has an objective purporting to improve compliance – by reducing the time between the identification of an environmental law violation and its correction – and another that would increase the rate of compliance. Both are theoretically meaningful measures but in neither case does the strategic plan offer realistic alternatives for their achievement or address the budgetary-basis for action, making them rhetoric rather than planning tools.

Measure 1 proposes to reduce the time between the identification of an environmental law violation and its correction. To implement this measure, it would be necessary to know the answers to various questions: At this time, what is the timeframe between identification and correction of a violation? Where will this data come from? Currently, violations are, in large part determined either by inspections by governmental agencies (mostly states), or through analysis of data provided by states and/or regulated entities. Only where there is robust reporting of testing data, such as under the Clean Water Act National Pollution Discharge Elimination System (NPDES) program, do we really have any realistic concept of compliance or the correction of violations. To utilize the measure proposed in the draft strategic plan in any real way would require revamped reporting and information collection across programs or increased, more robust

inspections across the board. In the budget realities of the day, neither of these seems feasible.

The second proposed Strategic Measure is fraught with similar deficiencies. The measure to increase the environmental law compliance rate requires a baseline for meaningful measurement. Compliance is different under each law and rule and sometimes within rules. There has not been success to date in developing "compliance rates" for an industry, a rule or even, in most cases, a facility (the exception is in the Safe Drinking Water Act (SDWA) program where there exists a numerical system to rank noncompliance with all rules that a facility is required to comply with). Most often, "compliance rates" when utilized by states are based on inspected facilities. Whether a facility is inspected, or a violation found, or found violations are reported are all subject to many different factors including whether a state uses targeting to choose inspection targets, the expertise and experience of an inspector, and the states willingness to and conscientiousness in reporting fully and accurately. They are also dependent upon what an inspector looks at while on an inspection; the compliance status of a particular facility can only be determined as applying to those aspects inspected. They should not be applied more broadly than what is actually examined.

Both these proposed measures would require further defining baselines, data to be used, and methodologies of how to apply across programs, rules and industries. Changes would need to be made in operational practices across programs and data collected, an issue that is not addressed. Both would require substantially improved reporting and information collection across programs and/or ramped up inspections across the board, commitments that would be totally at odds with the budget priorities of the administration. These are just examples of why the strategy, while superficially well-meaning, is ultimately meaningless.

A third area of concern involves the roles of delegated/authorized states, tribes, and local governments (here referred to as "states") in the process of implementing environmental programs. These are a much-needed boots-on-the-ground presence. But their engagement requires resources and reports on various state program implementation [the NPDES Permitting for Environmental Results (PER) review and the Enforcement Program's State Review Framework (SRF) analyses of state enforcement implementation of the Clean Air Act (CAA) Stationary Sources Program, the Resource Conservation and Recovery Act (RCRA) hazardous waste program and the Clean Water Act (CWA) NPDES program have documented that states have challenges with resources, expertise, political will to enforce; limitations within state laws and the ability and willingness to fully and accurately report to EPA and the public. EPA cannot simply turn programs over to the states; it must stay engaged and that requires resources and personnel.

Ultimately, EPA is accountable to Congress and the American public for environmental implementation. When issues cross state lines, when there are powerful industries that are difficult or impossible for states to take on alone, when information on national trends in the environment or in program implementation are needed, EPA must meet those needs. EPA is responsible for ensuring that permits are protective and enforceable. EPA is responsible for ensuring that states are enforcing national as well as state laws. No other organization can take on those responsibilities.

Misleading, Opaque, and Unsupported Rhetoric

The agency should review the goal language and text of the strategic plan in light of speeches that Administrator Pruitt and President Trump have given and budgetary and regulatory actions enacted or announced in 2017. To the extent the language in the plan isn't supported by actual administration policies and actions, the language should be amended for accuracy, as well as transparency.

For example:

- Page 5 of the plan states, "With our partners, we will pay particular attention to vulnerable populations. Children and the elderly, for example, may be at significantly greater risk from elevated exposure or increased susceptibility to the harmful effects of environmental contaminants." Despite this avowed policy, the agency declined to ban the pesticide chlorpyrifos, even though it presents disproportionate risks to children.
- The plan repeatedly assures the agency's state, tribal, and local partners of its support for them as the primary implementers of environmental programs. However, the President's Budget for 2018 cuts grants to states and tribes by \$678 million dollars.
- The plan commits to a strong EPA compliance monitoring program, but the 2018 budget provides funding for 4500 fewer EPA inspections in 2018 than it committed to do in 2017, a reduction of 32%. Likewise, newly initiated civil enforcement cases will drop by 35% and completed civil enforcement cases will drop by 38% in 2018 compared to 2017 commitments.

Goals 2 and 3 of the plan use known code words of environmental policy backtracking that are not explained clearly in the supporting text. If EPA wishes to "rebalance the power between Washington and the states," it should enumerate the activities EPA has been undertaking that allegedly no longer support environmental and human health protection and how their elimination or reduction will improve net public value.

Similarly, to "refocus the Agency on its statutory obligations" can fairly be interpreted (based on Administrator Pruitt's public statements") as meaning that the agency has been doing much more than it has the authority to do. If so, this alleged overreach should be explained in detail in this section of the plan and partners and the public should be fully informed of the activities they can no longer expect the agency to undertake. The agency should also acknowledge under Goal 3's "refocus" on statutory obligations that EPA will continue to be obligated under the federal environmental statutes to step in when its oversight of delegated or authorized state and tribal programs indicates that a program is not being administered as stringently as the law requires. There should also be acknowledgement that the avowed goal of "consistency and certainty" for the regulated community applies to delegated and authorized state and tribal programs as well as federal implementation of environmental laws.

Conclusion

All organizations can be improved and EPA is no different. One purpose of a periodic strategic review is to identify areas where the agency can do a better job and set a pathway for achieving that objective. But such suggestions must be read in context. A major context for assessing this plan is the administration's budget proposals, which reduce capacity in ways that make

achievement of any objectives very difficult. A substantially reduced workforce in Washington and in the 10 regions makes it very hard to carry out even the reasonable ideas contained in the draft strategy. The strategy references "rebalancing the power" between the states and Washington without mentioning how the proposed budget would cut back resources that flow to the states to achieve these objectives. Buzz words like delivering "real" results, revitalizing Superfund, providing "better leadership" and "proper management" are meaningless if they are not backed up with resources. A strategic plan should be hard-nosed and realistic; this one is not.

Submission

These comments are submitted on behalf of The Environmental Protection Network (EPN), by Ruth Greenspan Bell as President of the Board. EPN is a nonprofit network comprised of former EPA officials and employees with significant expertise in the regulatory process under both political parties and over the many years of EPA's history. EPN's mission is to preserve and advance the nation's bipartisan legacy of progress towards clean air, water and land and climate protection for all Americans. Questions can be directed to: info@environmentalprotectionnetwork.org or ruthgreenspanbell@gmail.com