

# ENVIRONMENTAL PROTECTION NETWORK

## Trump's Proposed 2018 Budget Would Decimate EPA Enforcement

**Trump budget would bring virtually all EPA civil and criminal enforcement to a halt.** The President's budget would not cover the enforcement payroll. EPA would be forced to use non-pay funds to fill the gap (pay expenses are legally obligated and must be covered first). Even with a substantially reduced workforce, explained in Appendix 1, nothing would be left to support enforcement actions. For example, there would be no monitoring equipment, inspections, sample analysis, experts and document management.<sup>1</sup>

**Trump budget cuts compliance data systems essential to EPA and state enforcement.** Enforcement actions to stop harmful pollution are built on data. EPA's multiple data systems monitor polluting facilities and track enforcement actions, a service that facilitates and makes possible state enforcement. The public can keep track of environmental enforcement (and keep the government honest) through Enforcement and Compliance History Online (ECHO), <https://echo.epa.gov/> – and made use of this last year through over 3.5 million page views. It is relatively inexpensive to run these data systems – about \$8 million a year – and, with improvements, they save states collectively over \$22 million a year.<sup>2</sup> The Trump budget would make it impossible to continue these data systems. The damage to keeping polluters honest and the public's ability to keep the government honest by tracking enforcement would be catastrophic

**Trump budget makes it almost impossible to carry out Pruitt's commitment to increasing Superfund cleanups.** Dirty properties in communities all around the United States can only be cleaned up in two ways. Either the government uses federal Superfund or state government funds or enforcement requires responsible parties to pay. The Trump budget is a Catch-22 that cuts EPA Superfund enforcement by 37% and eliminates all funding for Department of Justice Superfund enforcement.<sup>3</sup> This is penny-wise and pound foolish: In FY 16, EPA Superfund enforcement costing only \$150 million obtained over \$1 billion in responsible party commitments to perform cleanups and an additional \$147 million in payment of government costs.<sup>4</sup>

**Trump budget gives environmental criminals a free pass.** Most states rely on EPA to catch company managers who cause deaths and serious injuries by cutting corners and companies that lie about pollution in air and drinking water, putting entire communities' health at risk. The administration's

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<sup>1</sup> <https://www.epa.gov/sites/production/files/2017-05/documents/fy-2018-congressional-justification.pdf> (p.75)

<sup>2</sup> For state savings data see: <https://www.epa.gov/sites/production/files/2015-09/documents/finalnpdeselectronicreportingrulefactsheet.pdf>

<sup>3</sup> See EPA CJ, page 352 (cut EPA Superfund enforcement funding by \$40,229K, cut DOJ Superfund enforcement funding by \$20,145K) and page 353 (cut Federal Facilities Superfund enforcement funding by \$2,526K). DOJ Superfund enforcement funding has historically operated as a pass through in OECA's superfund enforcement budget; Congress allocates the money to EPA's budget, EPA gives it to DOJ. This budget eliminates that DOJ funding, severely limiting DOJ's ability to bring superfund enforcement cases on behalf of EPA in federal court, and making it nearly impossible for the EPA staff that survive layoffs to bring cases.

<sup>4</sup> <https://www.epa.gov/enforcement/enforcement-annual-results-numbers-glance-fiscal-year-2016>

proposed budget cuts EPA staff for criminal investigations by 28%. It also cuts staff at EPA research and data-producing scientific laboratories across the country by a whopping 38 %.<sup>5</sup>

**Trump budget makes it harder to know whether auto manufacturers are cheating on emissions.**

EPA's vehicles lab is cut by 18%.<sup>6</sup> Losers include Americans and the companies that play by the rules.

**Trump budget limits enforcement to the states, which means it won't happen.** Responsibility for creating a healthier environment is generally shared between EPA and the states, but the Trump budget would have EPA enforce only where EPA has sole authority to act.<sup>7</sup> This means that clean air, clean water, safe drinking water and safe handling of hazardous waste will be left entirely to the states. EPA normally picks up cases that states can't or won't do including national cases for violations in more than one state, cross state pollution, criminal cases and cases in which states lack resources, expertise or political will. Flint, Michigan and 12 other examples of EPA enforcement that would not happen under Trump rules are found in Appendix 2.

**Contact for more information**

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<sup>5</sup> CJ page 149 (Criminal enforcement staff cut by 74.5 FTE); CJ page 54 (Lab staff cut by 30.6 FTE)

<sup>6</sup> CJ page 716 (cuts Federal Vehicle and Fuels Standards and Certification by \$17,060K). Note that the vehicles testing lab is funded through the Office of Air and Radiation, not OECA, but the work of this lab is the foundation for EPA's vehicle emissions enforcement.

<sup>7</sup> See, e.g., CJ page 26.

## Appendix 1: How the Trump enforcement budget zeroes out funding for enforcement cases

The budget would eliminate one in four full time enforcement employees (FTEs) for a total of 757, probably through layoffs. Layoffs cannot happen quickly because employees are entitled to some due process before termination and the government has to develop a thoughtful plan that complies with the rules. Likely, savings from layoffs cannot occur until late in the fiscal year, and certainly not on day one.<sup>8</sup> So the amount provided for “pay” in FY18 – which is based on the proposed reduced number of people – will not cover the actual cost of paying the people who will be there for much if not most of the year. This \$83 million gap will likely be covered by turning to the non-pay budget. Only \$47,609K is available in that budget, because \$14,500K of the \$62,109K listed is slated for state grants for pesticide and toxics enforcement.<sup>9</sup> It is likely that 100% of the non-pay funds will be required to cover the pay shortfall, and even that may not be enough.

Consequently, funding necessary to bring cases against polluters will effectively be zeroed out. The administration can maintain plausible deniability by saying they kept some civil and criminal enforcement staff, while not admitting that their budget makes it impossible for those staff to do anything.

The total amount provided to the EPA Office of Enforcement and Compliance Assurance in the proposed president’s budget (\$419,000K) is more than \$20 million less than the amount of pay alone in FY17 (\$440,354K). \$419,000K will not be enough to cover pay in FY18, leaving zero available to cover even the relatively modest amounts needed to support bringing civil and criminal cases.

This penny-wise/pound foolish approach emphasizes the cost of enforcement over the benefits, including significant amounts of money returned to the U.S. Treasury and invested in environmental protection. Last year, polluters were required to invest more than \$13.7 billion in actions and equipment to protect the American public. The case against Volkswagen alone secured an additional \$14.7 billion to remedy Clean Air Act violations, including \$2.7 billion in funding, which is available to every state in the country. American air is cleaner as a result.

| FY 2017 annualized CR |               |             |       | FY 2018 President Budget |               |             |       |
|-----------------------|---------------|-------------|-------|--------------------------|---------------|-------------|-------|
| Pay (\$K)             | Non-pay (\$K) | Total (\$K) | FT    | Pay (\$K)                | Non-pay (\$K) | Total (\$K) | FT    |
| \$440,354             | \$104,252     | \$544,606   | 2,888 | \$356,891                | \$62,109      | \$419,000   | 2,131 |

<sup>8</sup> Once a layoff plan that complies with the rules is developed and individual people are identified for layoff, they have to get a 60 day notice. Appeals and grievances can then be filed. After that people can exercise rights to bumping and retreat. All of this means that layoffs that comply with the rules take time. See the OPM guidance on RIFs: <https://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force/#url=Summary>

<sup>9</sup> CJ, page 28. But elsewhere the CJ says the grant money to states will total \$11,050K, e.g., CJ, page 470. The document does not reconcile this apparent inconsistency.

## **Appendix 2:** Examples of enforcement cases that would no longer be possible under Trump rules

### **Complex matters difficult for states to handle:**

*Flint, Michigan:* The city and state had primary responsibility for delivering clean water to city residents (Michigan has assumed primacy under the Safe Drinking Water Act), but an EPA order started the city on the road to recovery. [https://www.epa.gov/sites/production/files/2016-01/documents/1\\_21\\_sdwa\\_1431\\_emergency\\_admin\\_order\\_012116.pdf](https://www.epa.gov/sites/production/files/2016-01/documents/1_21_sdwa_1431_emergency_admin_order_012116.pdf)

*Interstate Power and Light Company:* Reduced dangerous air pollution by over 35,000 tons a year from 7 power plants in Iowa. <https://www.epa.gov/enforcement/interstate-power-and-light-company-clean-air-act-settlement#reductions>

*ExxonMobil Pipeline Company:* Obtained penalties to the federal government and to Arkansas and improved environmental and safety practices after the 2013 crude oil spill from the Pegasus Pipeline in Mayflower, Arkansas. The agreement also obtained \$600,000 to improve water quality at Lake Conway, and \$280,000 to the Arkansas Attorney General's Office for the state's litigation costs. <https://www.epa.gov/newsreleases/us-settles-exxonmobil-over-violations-stemming-2013-oil-spill-mayflower-arkansas>

*Appalachian Laboratories:* A criminal case against two employees of Appalachian Labs in West Virginia who falsified water pollution data from coal mining operations. <https://www.justice.gov/usao-sdvw/pr/second-former-lab-manager-sentenced-federal-prison-falsifying-water-sample-data>

*Mississippi Phosphates:* A criminal case resulting from the discharge of more than 38 million gallons of acidic wastewater in Pascagoula, Mississippi, resulting in the death of more than 47,000 fish and the closing of Bayou Casotte. <https://www.justice.gov/opa/pr/mississippi-phosphates-corp-pleads-guilty-clean-water-act-violation-and-agrees-transfer-320>

*Duke Energy:* A prosecution for Clean Water Act crimes associated with the massive coal ash spill from Duke's Dan River steam station into the Dan River near Eden, North Carolina, in February 2014. In addition to criminal penalties, Duke spent \$34 million on environmental projects, and committed funds to assure that they could cover their clean up obligations, estimated to be approximately \$3.4 billion. <https://www.justice.gov/opa/pr/duke-energy-subsiaries-plead-guilty-and-sentenced-pay-102-million-clean-water-act-crimes>

*Freedom Industries:* The company and six individuals prosecuted for putting toxic chemicals into the Elk River in West Virginia, shutting down drinking water for a community of 300,000 for over five days. <https://www.justice.gov/usao-sdvw/pr/freedom-industries-and-former-freedom-industries-plant-manager-sentenced-roles-chemical>

### **Cross-state pollution:**

*Arch Coal:* Fixed hundreds of Clean Water Act violations for illegal discharges of water pollution at the companies' Kentucky, Pennsylvania, Maryland, Virginia and West Virginia coal operations. <https://www.epa.gov/newsreleases/arch-coal-subsiaries-make-system-wide-upgrades-reduce-pollution-entering-us-waters>

*Continental Carbon:* Required Continental Carbon Company to significantly reduce air pollution from carbon black manufacturing plants in Oklahoma, Alabama and Texas.

<https://www.epa.gov/newsreleases/settlement-continental-carbon-company-reduce-air-pollution-manufacturing-facilities>

*Guardian Glass:* Required flat glass manufacturer to install state-of-the-art controls to reduce unlawful air emissions at facilities in California, Iowa, Michigan, New York, Pennsylvania, South Carolina and Texas.

<https://www.epa.gov/newsreleases/guardian-industries-corp-cut-harmful-air-pollution-flat-glass-manufacturing-plants>

*Sears Home Improvement Products, Inc.:* Required Sears to control lead in renovations in cities across Minnesota, Wisconsin, California, Georgia, Nevada and New York. This was one of over 100 EPA lead paint enforcement actions in 2016.

<https://www.epa.gov/enforcement/fy2016-enforcement-actions-lead-renovation-repair-and-painting-rule-rrp>

*Tesoro Refinery:* Required six refineries to fix unlawful air pollution in Alaska, California, Hawaii, North Dakota, Utah and Washington, including a civil penalty of \$10.45 million.

<https://www.epa.gov/newsreleases/oil-refiners-reduce-air-pollution-six-refineries-under-settlement-epa-and-department-o>

*Simplot:* Under this settlement, J.R. Simplot Company committed to upgrade air emission controls and implement improved emissions monitoring at its five sulfuric acid plants in California, Idaho, and Wyoming, at an estimated cost of \$42 million.

<https://www.epa.gov/enforcement/jr-simplot-company-clean-air-act-cao-settlement>