



January 31, 2014

Board of Directors

John Applegate
Robert Glicksman
David Hunter
Thomas McGarity
Amy Sinden
Sidney Shapiro
Rena Steinzor
Robert R.M. Verchick

VIA U.S. MAIL

Administrator Gina McCarthy
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail code: 4101M
Washington, DC 20460

Advisory Council

Patricia Bauman
Frances Beinecke
Eula Bingham
W. Thompson Comerford, Jr.
Sally Greenberg
John Passacantando
Henry Waxman
Robert Weissman

Dear Administrator McCarthy:

We are writing to express our profound concern regarding EPA's draft *FY 2014–2018 Strategic Plan*, which signals that your agency will retreat significantly from traditional enforcement techniques over the next five years. Traditional enforcement should be the last function to be cut among all the others that are part of your agency's mission because it is the most cost-effective weapon to prevent backsliding on the progress the nation has made in reducing traditional pollution. The agency should abandon these misguided plans and, if anything, increase the funding available to enforcement.

The proposed cuts—30 percent fewer in-person inspections and 40 percent fewer civil cases filed over the next five years—are precipitous and could have a severe effect on regulated entities' compliance efforts, not only creating new public health and environmental risks like those arising from the recent West Virginia chemical spill, but also exacerbating risks created by backsliding on regulatory requirements applicable to known hazards. As the incident in West Virginia illustrates, many companies in a position to threaten public health will not behave responsibly if left to their own devices. Only the threat of criminal and civil penalties will keep such bad actors in line. Indeed, among the most troubling aspects of the draft strategic plan is its short-sighted determination to broadcast curbs on enforcement to the regulated community. Would any police chief anywhere in the country take comparable action? We think not.

The Chesapeake Bay provides an example of a potential casualty of EPA's proposed enforcement-lite paradigm. Buried in the plan is a reference to projected environmental conditions in the Bay that anticipates significantly slower progress on Bay restoration than the pace set forth in the Total Maximum Daily Load (TMDL). Whether the approximately 15 percent reduction in restoration progress was an acknowledgement that diminished enforcement will slow down restoration or the Bay-related benchmarks in the plan were the result of a failure of communication within the agency, the fact remains that the strategic plan's drastic enforcement cuts will harm the Bay. With the sharp cuts to enforcement called for in the plan, Bay cleanup efforts could easily veer this far off track.

We understand EPA's need to review its priorities given budget-cutting by Congress. We appreciate that "Next Generation Compliance" has the potential to provide innovative ways to ensure compliance and we support EPA's electronic reporting initiative. But NextGen must supplement, not supplant, existing enforcement activities and compliance measures. The agency is taking a huge risk when it relies on untested NextGen techniques to replace traditional deterrence-based enforcement efforts that are well understood and have long represented effective tools for enhancing compliance and ensuring environmental improvement.

We appreciate that your agency is facing severe budget cuts imposed by Congress, but we urge you to protest these cuts vociferously. Rather than pretending that the EPA staff can do even more with less, as this draft plan does, you should identify and raise the alarm about the consequences these cuts will have on American families. While members of Congress decry the burdens imposed by regulation and irresponsibly slash your agency's budget, who will make the case for the kind of fundamental safeguards that EPA provides if not the Administrator? By taking the budget cuts as a given and responding with untried or inferior solutions, this draft strategic plan conveys the message that your agency can accomplish all its complex responsibilities with ever-shrinking resources. If legislators believe that budget cuts do not have adverse consequences for the agency's fundamental mission, they are likely to have no qualms about making even further, devastating cuts.

We call on you to reverse the retreat from enforcement called for in the draft strategic plan while also drawing attention to the real-world consequences of congressional budget cuts. Again, traditional enforcement represents the main tool in your agency's arsenal to prevent dangerous noncompliance and backsliding. This retreat from enforcement could severely undercut regulated entities' commitment to meet their regulatory responsibilities, exposing the public to health and environmental risks that should be regarded by the agency, above all, as unacceptable. Enforcement should be the last function to suffer from inadequate budgetary allocations.

Sincerely,



Rena Steinzor
President, Center for Progressive Reform
Professor of Law
University of Maryland Francis King Carey
School of Law



Robert Glicksman
Member Scholar, Center for Progressive
Reform
Professor of Law, The George Washington
University Law School



Anne Havemann
Policy Analyst, Center for Progressive
Reform