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Internal EPA Memoranda Outline Approach for Regulatory Deconstruction; Stakeholders Have the Opportunity to Seek to Protect Programs at Risk

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A trio of recent internal U.S. Environmental Protection Agency (EPA) memoranda are providing insight into how EPA intends to implement President Trump's review and potential pogrom of EPA regulations. Virtually no program or regulation appears to be secure from the chopping block. Many stakeholders in industry and other sectors may be alarmed to see programs that are of benefit to them assigned a slot in the guillotine. Supporters of these programs, thus, would be wise to educate senior EPA officials to help them understand the benefits of those programs or regulations, and save them from elimination.

March 21, 2017, Memorandum -- FY 2018 President's Budget: Major Policy and Final Resources Decisions

President Trump's March 16, 2017, [budget blueprint](#) seeks to slash EPA's Fiscal Year (FY) **2018** budget by approximately 31 percent. Deeper cuts are required, as the budget seeks an increase in water infrastructure funding over FY 2016 levels, resulting in an over 40 percent reduction for the rest of EPA's programs. To meet the budget of \$5.6 billion, EPA is taking "a comprehensive look at our priorities and thinking differently about the best ways to accomplish our core statutory responsibilities." The strategy for doing so was laid out in the first of the memoranda, a March 21, 2017, directive from [EPA Acting Chief Financial Officer David A. Bloom](#), "FY **2018** President's Budget: Major Policy and Final Resources Decisions." The guidance directs senior EPA managers "to provide details on those activities that will be supported, reduced and eliminated."

Accompanying the guidance is a detailed listing of the program-specific budget cuts. The listing demonstrates the broad and deep swath that the budget knife will scour through EPA's programs. Scores of programs are teed up for elimination. The casualty list includes many high profile and seemingly popular programs. The Energy Star voluntary partnership program is to be cut, along with several other initiatives under the Climate Protection Program. Many geographical programs are to be eliminated, including the Great Lakes Restoration initiative and the Chesapeake Bay Program. As widely reported in the mainstream media, EPA's Environmental Justice Office will be culled. Numerous grants for lead poisoning prevention, pollution prevention, nonpoint source pollution, beach protection, and many others are to be eliminated. Joining the ranks of the summarily dismissed are the Resource Conservation and Recovery Act's (RCRA) Waste Minimization and Recycling initiatives, the Endocrine Disruptors Program, the Pollution Prevention Program, the Lead Risk Reduction Program, the Indoor Air: Radon Program, and the Reduce Risks from Indoor Air Program. Instead of implementing these broad initiatives, the memorandum states that EPA will center its work on "core legal requirements, federal-only and national efforts, providing support to states in implementing environmental laws, and easing regulatory burdens."



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Secrecy seems to shroud the memorandum. EPA is aware that these cuts will be unpopular and, once communicated, will ignite uproar among many stakeholders. Mr. Bloom cautions staff that the “untimely release of information is not productive and creates unintended consequences.” He admonishes staff to “share the materials only with those individuals who need to have access,” adding that “until the President releases the budget, this memorandum, attachments, and all budget presentation materials, are confidential and must be protected to prevent release outside the agency.” These constraints obviously limit, for the time being, EPA’s ability or interest in conferring with potentially affected stakeholders. But proponents of programs slated for elimination nonetheless should begin to marshal arguments to convince EPA of the utility of these programs.

March 24, 2017, Memorandum -- Executive Order 13777: Enforcing the Regulatory Reform Agenda

On February 24, 2017, President Trump issued [Executive Order 13777, “On Enforcing the Regulatory Reform Agenda.”](#) The Executive Order (EO) was issued with the intention of reducing the regulatory burdens that agencies impose, and directs federal agencies to undertake several activities to further this goal. EPA Administrator Scott Pruitt on March 24, 2017, issued a memorandum to senior staff launching EPA’s efforts to comply with the order, “Executive Order 13777: Enforcing the Regulatory Reform Agenda.” Mr. Pruitt tasked Samantha Dravis, Senior Counsel and Associate Administrator for the Office of Policy, to serve as EPA’s Regulatory Reform Officer. The memorandum also assigns Ryan Jackson, Mr. Pruitt’s Chief of Staff, to chair the Regulatory Reform Task Force that EPA (and all federal agencies) is required to establish under the EO.

The charge of the Regulatory Reform Task Force is broad and will have a significant impact. It is to evaluate existing regulations and recommend “those that can be repealed, replaced or modified to make them less burdensome.” As a first step, the memorandum states that by **May 15, 2017**, “the Offices of Air and Radiation, Land and Emergency Management, Chemical Safety and Pollution Prevention, Water, Environmental Information, Congressional and Intergovernmental Relations and Small and Disadvantaged Business Utilization should provide the Task Force with recommendations regarding specific rules that should be considered for repeal, replacement or modification.”

Under the EO, EPA’s Regulatory Reform Task Force is required to seek input from entities significantly affected by EPA’s regulations -- regulations that are potential candidates for repeal, replacement, or modification. The memorandum goes further and directs EPA’s offices to hold public meetings to seek input directly from affected stakeholders. We urge potentially impacted parties to use these opportunities to reach out to EPA, and to provide input on the suite of programs that may be negatively impacted.

March 24, 2017, Memorandum -- Improved Management of Regulatory Actions

Mr. Pruitt issued a second memorandum on March 24, 2017, “[Improved Management of Regulatory Actions.](#)” The memorandum is intended to expand and improve EPA’s internal mechanisms for information sharing. It requires that EPA’s programs and regional offices “report all regulatory actions in the agency’s regulatory management system and adopt such reporting as common practice moving forward.” Those actions required to be reported include “those related to any statutory or judicial deadlines, petitions, pesticide tolerances, significant new use rules, national priority listings or de-listings, permits, federal implementation plans and state implementation plans.” Officials entering the information must certify its accuracy.

This new directive will ensure that few, if any, regulatory decisions escape the scrutiny of EPA’s political appointees. Obviously, it is intended to ensure that these appointees are able to identify any and all regulations that can be repealed, replaced, or modified to make them less “burdensome.”

Response from Democratic Senators to the Memoranda

The issuance and leakage of the memoranda have attracted the attention of several democratic lawmakers. On April 5, 2017, Senators Brian Schatz (D-HI), Ed Markey (D-MA), and Sheldon Whitehouse (D-RI) sent a letter to Mr. Pruitt raising concerns that his two March 24 memoranda could jeopardize EPA’s mission. They seek assurances to assuage their concerns.

The letter predicts that “the [two March 24] memorandum will make unscientific and anti-scientific decisions ... more common in the future, and it will force the public to question whether their chief health and environmental enforcer really has their best interests at heart.”

The Senators fault the Improved Management of Regulatory Actions memorandum for vesting political appointees with the authority to determine “what is and what is not ‘sound science,’” even though Pruitt and his senior staff lack “any meaningful scientific background.” The letter goes on to state that “[c]onsolidating decision-making in this manner would allow these and other political appointees to overrule the actions of any agency scientist or

career public servant, the vast majority of whom have devoted their careers to environmental protection and public health.”

To address their concerns, the Senators ask Pruitt to assure them that the Regulatory Reform Task Force will engage stakeholders to understand the scope of the benefits associated with each regulation under consideration, not just the negative impacts. They ask Mr. Pruitt to post on EPA’s website the names and affiliations of the Regulatory Reform Task Force members. The letter also cautions Mr. Pruitt to ensure that political appointees do not meddle with “routine and non-controversial regulatory actions performed by career EPA scientists,” and to “justify all decisions [he makes] that ignore the advice of EPA scientists with the body of peer-reviewed scientific literature relied upon in arriving at [his] decision.”

These internal memoranda demonstrate that the regulatory dismantling of EPA’s programs is being robustly carried out by EPA. Those stakeholders who wish to save a program benefitting their interests should act immediately to educate EPA.

On **Wednesday, April 12, 2017, from 11:00 a.m. to 12:30 p.m. (EDT)**, the American Bar Association’s Section of Environment, Energy, and Resources will be hosting a teleconference on this very topic, entitled “What Happens Now at EPA: Assessing the Executive Orders and Upcoming Regulatory Reform.” Registration is available online. More information regarding President Trump’s regulatory reforms is available on our Toxic Substances Control Act Blog under key phrases OMB and Executive Order.

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