



Vivian Daub, Director, Planning Staff  
Office of Planning, Analysis, and Accountability (Mail Code 2723A)  
Office of the Chief Financial Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. NW, Washington, DC 20460

January 2, 2014

Via Federal eRulemaking Portal

Re: Comments on Draft FY 2014-2018 EPA Strategic Plan  
Docket ID No. *EPA-HQ-OA-2013-0555*

Dear Ms. Daub:

The Center for Effective Government (CEG) is pleased to submit the following comments regarding the U.S. Environmental Protection Agency (EPA) *Draft FY 2014-2018 EPA Strategic Plan*. The Center for Effective Government's mission is to build an open, accountable government that invests in the common good, protects people and the environment, and advances the national priorities defined by an active, informed citizenry.

### **Goal 1: Addressing Climate Change and Improving Air Quality**

#### Climate Change

CEG recognizes the importance of reducing greenhouse gas emissions from vehicles and trucks to address the problem of climate change, and fully supports the implementation of vehicle and truck greenhouse gas (GHG) emission standards in conjunction with the Department of Transportation's fuel economy standards program as a FY 2014-15 priority goal. However, we note that a key strategy for reducing GHG emissions, namely carbon emission standards for modified, reconstructed, and existing power plants electric generating facilities, has not been identified as an agency priority goal. The June 25, 2013 *Presidential Memorandum -- Power Sector Carbon Pollution Standards* directs the agency to issue final standards, regulations, or guidelines, as appropriate, for modified, reconstructed, and existing power plants by no later than June 1, 2015. Given the importance of the climate change issue and the significance of the President's directive, we recommend that promulgation of carbon emission limits for modified, reconstructed, and existing power plants be included as an FY 2014-15 priority goal.



## Improving Air Quality

A key issue for improving the nation's air quality and public health is to address the public's exposure to unhealthful levels of ambient ozone air pollution. The national ambient air quality standard (NAAQS) adopted by EPA in 2008 was set at a level inconsistent with the scientific evidence regarding protection of public health and exceeded the maximum level recommended by the EPA Clean Air Scientific Advisory Committee. At the President's direction, EPA withdrew the 2010 ozone NAAQS revision proposal in September 2011 based on the presumption that an on-going review of the ozone NAAQS would be concluded by the Clean Air Act-required deadline of March 2013. However, that review has been further delayed. Given the importance of completing this NAAQS review with respect to potential additional protections of public health, CEG recommends that completion of this review should be added as a FY 2014-15 priority goal under the "Improve Air Quality" objective.

## **Goal 2: Protecting America's Waters**

CEG supports EPA's goal of protecting and preserving our nation's water resources and the two objectives set forth in the draft Strategic Plan. However, we are concerned that the plan contains too few priorities and strategic measures for protecting human health and ensuring the security and sustainability of the nation's water resources. Specifically, we recommend that EPA prioritize developing strong drinking water standards for contaminants that are harmful to human health, provide additional detail on how the agency plans to address the impact of climate change on drinking water contamination, and commit to completing a third review of the national primary drinking water standards.

Since the Safe Drinking Water Act was originally enacted in 1974, EPA has only promulgated national primary drinking water standards for approximately ninety contaminants, despite the hundreds of potentially harmful contaminants that can be found in drinking water. In the Strategic Plan, EPA provides that over the next four years the agency will work on "[d]eveloping new and revising existing drinking water standards to address known and emerging contaminants that endanger human health." While the plan states that EPA "seeks to[] address chemicals and contaminants by group, as opposed to working on a chemical-by-chemical basis," the plan fails to include a strategic measure related to the development or revision of drinking water standards. CEG urges EPA to provide more detail on this approach in the Strategic Plan, such as by specifying a number of contaminant groups for which the agency plans to develop new or revise drinking water standards over the next four years.

Additionally, CEG urges EPA to provide more detail on the actions the agency plans to take over the next four years to address the impact climate change will have on drinking water and human health protections. EPA recognizes that climate change will compound existing water quality concerns, “highlighting the need to work with [their] partners to evaluate options for protecting infrastructure, conserving water, reducing energy use, adopting ‘green’ infrastructure. . . .” However, there is no further discussion on how EPA plans to address a potential increase in drinking water contaminants in drinking water systems. Thus, we recommend that EPA provide additional detail about ongoing initiatives and future plans the agency expects to implement over the next four years.

CEG is also concerned that the plan fails to mention EPA’s responsibility for completing a third review of the national primary drinking water standards (NPDWS) during the next four years. Section 1412(b)(9) of the Safe Drinking Water Act requires the Administrator of EPA to conduct a review of the national primary drinking water standards every 6 years, and revise those standards if appropriate. Since the enactment of SDWA, only two of the 6-year reviews have been completed, most recently in 2010. EPA should commit to completing a third review no later than 2016. The review would allow EPA to identify standards that should be revised based on new information and technology. Given EPA’s focus in the plan on data sharing and investing in technology, completing a third review would allow the agency to realize the expected benefits by incorporating new information into the 6-year review.

#### **Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution**

CEG supports the selection of assessing and reducing risks posed by chemicals and promoting the use of safer chemicals in commerce as a priority goal for FY 2014-15. However, EPA has not provided the baseline for assessing the adequacy of the specific goal of completing more than 250 assessments of pesticides and other commercially available chemicals by September 30, 2015 to evaluate risks they may pose to human health and the environment, including the potential for some of these chemicals to disrupt endocrine systems. If EPA considers the process for developing human health benchmark values for 363 pesticides in drinking water as “assessments” for the purposes of this goal, then the target of completing “more than 250 assessments” by the end of FY 2014 -15 has already been achieved and the goal should be reevaluated to reflect a more ambitious target.

Two strategic measures relate to this priority goal: 1) EPA will complete Endocrine Disruptor Screening Program (EDSP) decisions for 100 percent of chemicals for which complete EDSP data is expected to be available by the end of 2017; and 2) EPA will have issued draft risk assessments for all currently identified TSCA Work Plan Chemicals by 2018. Since EPA hasn’t provided an estimate for the number of chemicals that will have completed EDSP data by the end of 2017 for use in assessments,

the number of EDSP assessments that would be completed by the end of 2017 is unknown and should be provided as well as an estimate of the number of EDSP assessments that would be completed and potentially contribute to the priority goal of completing more than 250 assessments by the end of FY 2014-15.

To achieve the objective of ensuring chemical safety, the plan establishes a strategic measure of issuing draft risk assessments for all currently identified TSCA Work Plan Chemicals identified in the March 2012 work plan by 2018. EPA should not limit its strategic measures to issuing draft risk assessments; rather the agency should seek to finalize risk assessments for as many chemicals as possible within the four-year timeframe. Since full risk assessments may not be conducted for all 83 identified TSCA Work Plan Chemicals, we urge EPA to set a goal of finalizing risk assessments for at least 75 percent of the 83 chemicals by 2018. As a component of the FY 2014-15 priority goal, EPA should commit to finalizing risk assessments for the two chemicals included in the March 1, 2012 TSCA Work Plan announcement for which draft risk assessments were not published in 2013. This assumes that EPA will have completed final risk assessments in FY 2013-14 for the five chemicals for which EPA published draft risk assessments in January 2013. EPA should also include an objective to complete risk assessments by the end of FY 2014-15 for the three non-flame retardant chemicals identified in the March 27, 2013 announcement of the second group of Work Plan chemicals as well as for the chemicals selected for full risk assessments from the 12 grouped chemicals included in the 2013 list.

### **Goal 5: Protecting Human Health and the Environment by Enforcing Laws and Assuring Compliance**

CEG is very concerned about the substantial reductions in compliance and enforcement measure targets included in the draft Strategic Plan. While EPA asserts that it will "maintain enforcement presence," the draft plan contains troubling reductions in critical agency enforcement goals. We urge EPA to reconsider its plan to significantly reduce on-the-ground inspections and enforcement actions that are proven strategies to effectively enforce our nation's environmental laws.

We are especially concerned that EPA's plan includes significant decreases in inspections and civil enforcement actions. According to the draft 2014-2018 Strategic Plan, inspections and evaluations will fall 33 percent compared to the past five years. EPA plans to conduct, on average, only 14,000 inspections and evaluations annually by 2018. This is far below the annual average of 21,000 for FY 2005-09. In FY 2012, EPA conducted 19,835 inspections and evaluations, exceeding its target of 19,000. And, in its FY 2013 Annual Performance Plan, EPA set a five-year cumulative strategic measure goal of 105,000 inspections and evaluations by 2015, based on an annual average of 21,000.

Without adequate inspections, EPA cannot ensure compliance or sufficiently evaluate the success of approaches intended to deter noncompliance or improve reporting. Eliminating thousands of inspections and evaluations each year for the next five years could allow compliance rates to regress and undermine gains in environmental quality and compliance assurance. CEG therefore recommends that EPA revise its FY 2014-18 inspections and evaluations target to at least 20,000, a level similar to that included in the FY 2013 Annual Performance Plan and consistent with FY 2012 results.

The draft Strategic Plan five-year cumulative target number for initiating judicial and civil enforcement actions of 11,600 cases, or an annual average of 2,320 represents a 40 percent reduction in comparison to the FY 2005-09 annual average of 3,900 cases and a 23 percent reduction from the FY 2012 result of approximately 3,000 cases. A similar significant reduction in the five-year cumulative goal of concluding 10,000 judicial and civil enforcement actions, or 2,000 annual actions, represents a 47 percent reduction from the FY 2005-09 annual average and a 33 percent reduction from FY 2012 results. These substantial reductions in projected enforcement actions, presumably based on the yet unproven assumption that EPA's "Next Generation Compliance" program will substantially improve compliance and therefore translate into the need for fewer enforcement actions, will undermine the deterrent effect of EPA's enforcement program. CEG therefore recommends that EPA revise its FY 2014-18 targets for initiating and concluding judicial and civil enforcement actions to at least FY 2012 levels of 3,000 actions.

- *Decreases in pollutant reductions achieved through enforcement*

EPA's draft Strategic Plan targets cleaning up less than 2 billion pounds of waste each year through enforcement cases. This is down from 4.4 billion pounds last year and 6.5 billion pounds in 2008. EPA also projects reducing the amount of toxic and pesticide pollutants reduced, treated, and eliminated as a result of enforcement cases to an average of 2.2 million pounds per year, down from 3.8 million per year from 2005 to 2008. Although EPA reduced, treated, or eliminated only 1.4 million pounds of toxic pollutants in FY 2012, falling far short of its FY 2012 target of 3.8 million pounds, the solution to this shortfall should not be to simply lower the future target. In recent years, EPA has substantially exceeded the 3.8 million target, reducing 8.3 million pounds of toxic and pesticide pollutants in FY 2010 and 6.1 million in FY 2011. EPA has demonstrated the ability to reduce substantially more toxic pollutants than the modest 2.2 million pounds per year target.

In addition, EPA's draft Strategic Plan enforcement targets would result in eliminating far fewer pounds of water pollutants through enforcement actions than in previous years. During FY 2005- 08, EPA reduced, treated, or eliminated, on average, 320 million pounds of water pollutants annually via enforcement actions. In FY 2012, that number improved, with EPA reducing 500 million pounds.

However, EPA plans to reduce, treat, or eliminate only 220 million pounds of pollutants annually for FY 2014-18. Given the EPA's historical success in reducing or eliminating water pollutants through enforcement actions, EPA's planned decrease in its water pollutant reduction target seems extreme. This approach would result in over 100 million pounds of pollution remaining in our nation's waters compared to historical annual averages.

We appreciate that efforts such as the Next Generation Compliance program have potential to provide innovative approaches for ensuring compliance. However, these approaches, especially voluntary reporting and compliance measures, are not adequate substitutes for inspection and enforcement activities. A key concern with relying on Next Generation Compliance approaches is that compliance depends on receiving accurate data from reporting entities. For example, EPA plans to expand recent compliance approaches such as its Drinking Water Targeting Tool, which relies on the accuracy of the data provided by states to conduct oversight of compliance with the Safe Drinking Water Act. In 2011 the Government Accountability Office (GAO) found that states did not provide accurate drinking water compliance data to EPA.<sup>1</sup> All of the 14 states investigated inaccurately reported 84 percent of monitoring violations and 26 percent of health-based violations that should have been reported. We are concerned that EPA's plan includes compliance approaches that rely heavily on receiving complete, accurate data from regulated entities and states. Human error, technological malfunctions, and intentional under or incorrect reporting can all reduce the reliability of reported information. Reporting entities have an incentive to report favorable compliance data, especially when data may show instances of regulatory violations.

Next Generation Compliance approaches may help to bolster, not replace, existing enforcement activities and compliance measures. EPA's planned enforcement target reductions assume that real-time monitoring of emissions will also contribute to a decline in enforcement actions. However, this assumption is premature, as there is no long-term historical data to support the assumption that Next Gen Compliance approaches will result in the need for fewer enforcement actions. EPA should reconsider its plan to substantially reduce enforcement efforts based on the possibility of achieving improved compliance through untested new approaches.

Aggressive inspection and enforcement efforts have historically produced major gains in environmental quality. The significantly reduced inspection and enforcement targets in the draft Strategic Plan sends a message to potential violators of environmental laws that EPA is scaling back its enforcement presence

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<sup>1</sup> U.S. Government Accountability Office, *Unreliable State Data Limit EPA's Ability to Target Enforcement Priorities and Communicate Water Systems' Performance*, GAO-11-381 (June 2011), *available at* <http://www.gao.gov/assets/320/319780.pdf>.

on the ground. To ensure effective compliance with environmental laws, EPA must revise the draft Strategic Plan inspection and enforcement targets back to historical norms.