



Public Employees for Environmental Responsibility

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October 31, 2017

Vivian Daub, Director
Planning Division
Office of Planning, Analysis and Accountability

RE: Docket Number EPA-HQ-OA-2017-0533; EPA Draft Strategic Plan FY 2018-2022

Dear Ms. Daub,

Thank you for the opportunity to comment on the Environmental Protection Agency's (EPA's) Draft FY 2018-2022 Strategic Plan (hereinafter "draft Plan"). Public Employees for Environmental Responsibility (PEER) is a Washington D.C.-based non-profit, non-partisan public interest organization concerned with honest and open government. Specifically, PEER serves and protects public employees working on environmental issues. PEER represents thousands of local, state and federal government employees nationwide.

Background. The Government Performance and Results Modernization Act of 2010 (GPRAMA) requires federal agencies such as the EPA to draft strategic plans containing goals and objectives, and also requires a description of how these goals and objectives will be achieved. The strategic plans must include "a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to achieve those goals and objectives."¹ The draft Plan made available to the public on October 5, 2017 purports to comply with GPRAMA.

The draft Plan is woefully insufficient, and fails to address key responsibilities for the EPA from major environmental legislation, including the Clean Water Act and the Clean Air Act. It fails to create an accountable framework for EPA to faithfully administer the environmental laws set forth by Congress. Specifically, the draft plan does not describe how it will leverage Agency staff and other resources to accomplish the goals, and is therefore insufficient to meet the letter or spirit of the GPRAMA requirement.

More troubling is the fact that the empty words contained in the draft Plan are antithetical to the actions of the EPA under Administrator Scott Pruitt. Strategic plans prepared under GPRAMA

¹ Pub. L. No. 111-352, 124 Stat. 3866 (2011) (codified as amended in scattered sections of 5 and 31 U.S.C.)

are not a meaningless exercise; rather, they are meant to guide federal agencies in their implementation of their missions. The draft Plan makes a mockery of both GPRAMA and the EPA. Our specific comments are set forth below.

EPA’s mission is not being fulfilled. Page 3 of the draft Plan states that EPA’s mission is to “protect human health and the environment.” To that end, the Plan lays out three major goals: 1) deliver real results to provide Americans with clean air, land, and water; 2) rebalance the power between Washington and the states to create tangible environmental results for the American people; and 3) administer the law, as Congress intended, to refocus the Agency on its statutory obligations under the law. The Plan goes on to say that it “sharply refocuses EPA on its role of supporting the primary implementers of environmental programs—states and tribes—by streamlining programs and processes, reducing duplication of effort, and providing greater transparency and listening opportunities...”² We will discuss each of these goals in turn.

Goal 1: Provide Americans with clean air, land, and water

Since Administrator Pruitt was appointed to head EPA, President Trump and Administrator Pruitt have overturned 26 environmental rules, are progressing with 21 environmental rollbacks, and are attempting to rollback eight additional rules. Specifically, this Administration has: 1) revoked flood standards for federal infrastructure projects; 2) rejected a ban on the pesticide chlorpyrifos (which poses a risk to fetal brain and nervous system development); 3) revoked a freeze on new coal leases on public land; 4) revoked a rule requiring gas and oil companies to report methane leaks; 5) revoked a rule banning dumping of coal mining waste into streams; 6) approved the Keystone XL pipeline; 7) approved the Dakota Access pipeline; 8) prohibited payments to third party environmental projects through federal lawsuits; 9) repealed the ban on offshore oil and gas drilling in the Arctic and Atlantic oceans; 10) pushed for the use of seismic air guns in oil exploration, which are known to harm whales and other marine mammals; 11) revoked a 2016 order protecting the northern Bering sea in Alaska; 12) rescinded a rule requiring coal, oil and gas companies to pay fair royalties; 13) revoked guidance asking federal agencies to consider climate change in environmental reviews; 14) instituted unreasonable timelines and lighter review for federal infrastructure projects such as pipelines, power lines and bridges; 15) cancelled payments to the United Nations Green Climate Fund; 16) gave the green light to a gold and copper mine in Bristol Bay, Alaska, one of the country’s most important salmon fisheries; 17) delisted the Yellowstone grizzly bear from the Endangered Species Act list; 18) revoked a ban on the shooting of wolves and grizzlies in Alaskan wildlife refuges; 19) canceled proposed limits on endangered marine mammals being caught in fishing nets in the Pacific; 20) stopped the National Park Service from discouraging the use of plastic water bottles in National Parks; 21) canceled an order to consider climate change in the management of natural resources in National Parks; 22) withdrew a directive to federal agencies to first avoid, then minimize impacts to water, land, and wildlife in projects they permit; 23) canceled use of a calculation of the social cost of carbon; 24) revoked an amendment to the Bureau of Land Management’s planning process, making it easier for business interests to use public lands; 25) delisted copper filter cake from the hazardous waste list; and 26) rolled back pre-treatment requirements for hazardous pollutant emissions at some large publicly owned sewage treatment plants. Environmental rollbacks in progress include: 1) repeal and replacement of the Clean Power Plan; 2) withdrawal

² Plan, p. 3.

from the Paris climate agreement; 3) repeal and replace of the waters of the U.S. (WOTUS) rule, and a redefinition of WOTUS; 4) re-opened fuel efficiency standards on cars and trucks; 5) recommended modification or decrease of 10 national monuments; 6) reviewing 12 national marine sanctuaries for potential offshore oil and gas drilling; 7) postponed a rule limiting the discharge of toxic metals from power plants into public waterways; 8) reconsidered a rule regulating coal ash waste disposal; 9) reviewing a rule limiting carbon dioxide emissions from power plants; 10) reviewing emissions rules for power plant start-ups, shut downs, and malfunctions; 11) reconsider protections to greater sage grouse habitat; 12) planning to rescind water pollution regulations from fracking on federal and tribal lands; 13) reviewing rules aimed at protecting national parks from oil and gas drilling; 14) reviewing safety regulations on offshore oil rigs; 15) reviewing a rule intended to strengthen environmental and safety standards for exploratory drilling in the Arctic; 16) considering revocation of a ban on exploratory drilling in the Arctic National Wildlife Refuge; 17) reviewing prohibition on hunting methods such as baiting bears and killing bear cubs with the mothers present; 18) considering repeal of a rule requiring states to track vehicle emissions on federally funded highways; 19) reviewing emissions standards for gliders and trailers; 20) reassessing the New Source Review, which requires utilities to upgrade their pollution controls if they make major modifications to their power plant; and 21) revisiting national ambient air quality standards (NAAQS) for ozone, particulate matter, and other criteria pollutants. Nine additional rules attacked but currently in limbo include: 1) limiting emissions of methane at new oil and gas drilling sites; 2) suspended enforcement of methane gas collection and testing at landfills; 3) proposed delay of a rule limiting methane emissions on public lands; 4) delayed a lawsuit over a rule regulating mercury emissions from coal plants; 5) delayed a rule increasing safety at plants using hazardous chemicals; 6) reviewing a rule protecting groundwater from uranium mines; 7) delayed compliance dates for efficiency standards in federal buildings; 8) withdrew a rule which helped consumers buy more fuel efficient tires.³

The numerous instances listed above clearly demonstrate that contrary to the stated goal in the draft Plan, EPA has absolutely no intention of providing Americans with clean water, air and land; rather, they are rolling back environmental regulations at an unprecedented rate in order to line the pockets of wealthy business interests.

Goal 2: Rebalance the power between Washington and the states to create tangible environmental results for the American people

The draft Plan's insistence on returning "power" to the states and decentralize environmental protection is contrary to science and common sense. Water and airborne environmental contaminants do not recognize political boundaries. Downstream and downwind states suffer the consequences of upstream/upwind emissions. Fish and wildlife rely on habitat that crosses state lines. Prior to federal laws such as the Clean Air Act and Clean Water Act, smog choked American cities, rivers caught on fire, and human health was severely impacted. By allowing states to develop a patchwork of differing environmental laws, EPA would be increasing confusion among the regulated community, decreasing predictability, and causing severe environmental damage. The environmental impacts that would stem from rebalancing power between Washington DC and the states must be examined before any such shift is made. In fact,

³ https://www.nytimes.com/interactive/2017/10/05/climate/trump-environment-rules-reversed.html?_r=1

the draft Plan itself admits that EPA “plays a critical role across the country since states and tribes have limited capacity to prosecute environmental crimes.”⁴ If states and tribes have limited capacity to prosecute environmental crimes now, how will they have the resources and capacity to take over the basic mission of EPA, such as protecting air, water, and human health?

Goal 3: Administer the law, as Congress intended, to refocus the Agency on its statutory obligations under the law

It is abundantly clear that Pruitt’s EPA does not understand or care what Congress intended EPA’s obligations to be. The draft Plan says rules will now “reflect common sense,”⁵ which is simply a euphemism for allowing politics and money to trump science. The draft Plan stresses the importance of “accelerat[ing] permitting-related decisions,”⁶ which, if Administrator Pruitt knew anything about science and environmental analyses, is very often impossible. In discussing this goal, the draft Plan reiterates EPA’s desire to “create consistency and certainty for the regulated community,”⁷ which – as discussed above – is exactly the opposite of what they would accomplish in their attempt to decentralize environmental laws and “return” power to the states in a patchwork of differing laws and regulations.

Science. The draft Plan states that “[t]he rule of law must also be built on the application of *robust science* that is conducted to help the Agency meet its mission and support the states in achieving their environmental goals” (emphasis added).⁸ As a reminder, EPA’s concept of “robust science” includes, but is not limited to:

- Administrator Pruitt falsely claiming that carbon dioxide is not a primary contributor to climate change;
- John Konkus cutting all references to climate change;
- Barring EPA scientists working at the Narragansett Lab from speaking at a conference;
- Firing members of EPA’s Science Advisory Board; and
- Scrubbing EPA’s websites of the term “climate change.”

Unfortunately, neither Administrator Pruitt nor his appointees appear to understand the meaning of the word “science.” According to Merriam-Webster, the common definition of the word science is “knowledge or a system of knowledge covering general truths or the operation of general laws especially as obtained and tested through scientific method.” The scientific method, a process known and used by all real scientists, poses a question, conducts research on the question, develops a hypothesis, tests the hypothesis with experiments, then analyzes the data and draws conclusions. Sometimes, the testing and analyses show that the hypothesis was correct; other times, it proves the hypothesis wrong.

⁴ Plan, p. 27

⁵ Plan, p. 25

⁶ See, e.g., Plan, p. 4

⁷ Plan, at p. 25

⁸ *Id.*

Under Administrator Pruitt, EPA has abandoned the scientific method, and instead grabs onto the answer they want to hear, and finds people who will agree with them. There is no science occurring at the top levels of EPA today, let alone “robust science.”

The Plan also states, “EPA will identify, assess, conduct, and apply the best available science to address current and future environmental hazards, develop new approaches, and improve the scientific foundation for environmental protection decisions... [o]ver the next four years, the Agency will: Assess human and ecosystem exposures and effects associated with air pollutants on individual, community, regional, and global scales.”⁹ However, despite this lofty claim, the draft Plan does not even mention climate change. The most serious environmental threat facing our country and our planet has been scrubbed from EPA’s Strategic Plan for the next four years. Failure to address climate change in EPA’s draft Plan is nonsensical and fraudulent.

Basing decisions on science. One of the draft Plan’s objectives is to “prioritize robust science...to inform policy making” and “[i]ncrease the percentage of decisions using EPA research and scientific analysis.”¹⁰ As stated above, EPA has done everything in its power to delegitimize science, and rely on “alternative facts” (e.g., claiming that carbon dioxide is not a primary contributor to climate change). Moreover, EPA scientists report repeated instances of being told to rewrite scientific and other technical analyses by political appointees. By instructing employees to ignore scientific facts, and replacing scientists with business interests and lobbyists, EPA is demonstrating that it intends to base decisions on the wants and needs of industry and political supporters, rather than on science. While EPA has always been somewhat politically susceptible, under both Republican and Democratic administrations, the Pruitt administration has abandoned *all* pretense of well-reasoned decision-making in favor of political favors. This is no longer a matter of political susceptibility, but rather a war on sound science based decisions.

Air quality will not be improved. The EPA’s draft Plan does not establish sufficient strategic measures for improving air quality by which it can actually assess the Agency’s effectiveness in implementing the Clean Air Act. The single strategic measure proposed for air quality—“reduce the number of non-attainment areas”¹¹—is vague and bureaucratic, and ultimately unrelated to the EPA’s core mission of protecting public health and the environment. Prior strategic plans have included numerous, nuanced and pointed strategic measures for the air program alone to encompass the breadth and depth of the EPA’s obligations and ambitions to protect air quality. This paltry document boils it down to one simple and insufficient strategic measure.

There are many ways that the EPA could satisfy the draft strategic measure without actually improving air quality—by setting weaker air quality standards, by removing air quality monitors in the most polluted areas so as to not have evidence upon which to determine an area is not meeting the standards, by reclassifying as “attainment” areas that are already failing to meet standards without requiring needed controls on polluting industries in those areas, or by

⁹ Plan, p. 31

¹⁰ *Id.*

¹¹ Plan, p. 6

administratively consolidating multiple areas into one.

Thus, the proposed strategic measure for improving air quality is so broad and simple as to be essentially meaningless. This strategic measure should be revised so as to relate to reducing population exposure to air pollution.

In proposing to rescind the Clean Power Plan, the EPA indicated that it is considering a new rule to regulate greenhouse gas (GHG) emissions from the power sector “in the near future.” The EPA is legally required to do so under the Clean Air Act, because the EPA’s own conclusions indicate that GHG emissions from power plants are endangering public health and welfare. Yet, the EPA’s draft strategic plan is silent on this issue. The EPA should restore the robust discussion of climate change that was present in the previous strategic plan and include one or more robust strategic measures to address it. Specifically, the EPA should identify a GHG emission reduction target for the power sector as an independent strategic measure. The EPA should also retain quantitative strategic measures consistent with existing programs for GHG emissions reductions from vehicles.

Finally, the air quality section provides perfunctory discussion of mobile source emissions standards, air toxics, stratospheric ozone protection, and radiation levels, all of which EPA is responsible for regulating, but fails to set any strategic measures relating to those topics. The proposed metric related to nonattainment areas has nothing to do with any of these goals. Thus, the Agency apparently intends to be unaccountable for any progress (or backsliding) on these important environmental issues. The EPA should include strategic metrics associated with each of these air quality topics in order to measure progress on these fronts over the next four years.

In addition, the draft Plan states that EPA will “Work with states to accurately measure air quality and ensure that more Americans are living and working in areas that meet high air quality standards.”¹² However, in reality, the Trump administration wants to burn more coal for power generation and relax standards for public exposure to particulate matter.

Similarly, the Plan states that emerging issues will affect how EPA “protects the public from unnecessary exposure to radiation...” Given that EPA just declared radiation exposures equivalent to as many as 5,000 chest x-rays “usually result in no harmful health effects,” contradicting the agency’s decade-old position that “there is no known safe amount of radiation,” PEER is unconvinced that EPA will protect us from radiation at all.

Human health will be endangered. The draft Plan states that “[s]ustaining the quality of our water resources is essential to safeguarding human health. More than 300 million people living in the United States rely on the safety of tap water provided by public water systems that are subject to national drinking water standards. EPA will help protect human health and make America’s water systems secure by ...Continuing to protect and restore water resources, including sources of drinking water, from contamination...”¹³

¹² Plan, p. 6

¹³ Plan, p. 10

The Plan also boasts:

The nation's water resources are the lifeblood of our communities, supporting our economy and way of life. Across most of the country, we enjoy and depend upon reliable sources of clean and safe water. Just a few decades ago, many of the nation's rivers, lakes, and estuaries were grossly polluted, wastewater sources received little or no treatment, and drinking water systems provided very limited treatment to water coming through the tap. Now over 90 percent of the population receives safe drinking water from community water systems regulated by EPA or delegated states, and many formerly impaired waters have been restored and support recreational and public health uses that contribute to healthy economies.¹⁴

In order to preserve the quality of our drinking water, EPA suggests that it will “[w]ork with partners to protect and restore wetlands and coastal and ocean water resources; Prevent or reduce the discharge of pollutants...”¹⁵

Once again, EPA's words are belied by its actions. Last month, Administrator Pruitt proposed to repeal the 2015 Clean Water Rule, which protected the drinking water of 117,000,000 Americans (by EPA's own estimate). Moreover, Pruitt has proposed to redefine “waters of the United States” such that 60% to 90% of wetlands and streams in the country will no longer be protected by the federal Clean Water Act. This proposed repeal and re-definition fly in the face of EPA's goal of maintaining safe drinking water for the nation.

The draft Plan also states that “EPA will help protect human health and make America's water systems secure by...[t]aking actions to address known and emerging contaminants that endanger human health.”¹⁶ However, key EPA decision-makers in this area now all come from the American Chemistry Council or have financial ties to its members who are chemical manufacturers.

Similarly, the Plan states, “Recent challenges in Flint, Michigan and elsewhere have highlighted the need to strengthen EPA's implementation of the Safe Drinking Water Act to ensure we protect and build upon the enormous public health benefits achieved through the provision of safe drinking water throughout the country.”¹⁷ Yet the Plan's reliance on “cooperative federalism” would cede more autonomy to state programs – like Michigan's.

Superfund. The Plan claims that Superfund clean ups are one of its top priorities. Specifically, it states:

One of EPA's top priorities is accelerating progress on Superfund sites. EPA recently convened a Superfund Task Force that identified 42 recommendations to streamline and improve the Superfund process. Over the next four years, these recommendations and

¹⁴ Plan, p. 9

¹⁵ Plan, p. 11

¹⁶ Plan, p. 10

¹⁷ *Id.*

other innovative ideas will be considered and applied to Superfund sites with priority given to addressing National Priority List (NPL) sites.¹⁸

It goes on to state that EPA will “accelerate the pace of cleanups and promote reuse,”¹⁹ And that a “number of factors may delay cleanup timelines. For example, new scientific information (such as new toxicity information or a new analytical method) can call previous determinations into question.”²⁰

PEER is extremely concerned about EPA’s “new toxicity information” and “new analytical methods,” given that, as stated above, EPA has abandoned all signs of using science, and key EPA decision-makers in this area now all come from the American Chemistry Council or have financial ties to chemical manufacturers. We have no confidence that these biased employees and advisors would adequately protect human health and the environment.

In fact, Pruitt recently tabled a 2016 order that General Electric Co. (GE) spend \$613 million to complete removal of toxic PCBs (polychlorinated biphenyl) the company discharged into the Housatonic River in Western Massachusetts. Pruitt is now inviting GE to negotiate a new compromise for handling the massive contamination caused by its Pittsfield transformer factory.

It appears that the EPA is striving to do substandard clean ups – ones that risk human health and the environment – in order to speed re-use of these properties and allow donors and/or supporters to save money.

Transparency. The draft Plan touts EPA’s transparency: it claims it will refocus EPA to provide “greater transparency and listening opportunities”²¹ and that “EPA and its state partners work from a foundation of transparency, collaboration—including public participation—and a spirit of shared accountability for the outcomes of this joint work.”²² One of EPA’s steadfast policies has always been to operate, as Administrator William D. Ruckelshaus said in 1983, as if “in a fishbowl” – that is, as transparent and visible to the public as possible.²³

A big part of transparency and collaboration comes from the Freedom of Information Act (FOIA), whereby citizens can access federal information and documents. In fact, the Plan states that EPA will strive to “[r]educ[e] the backlog and meet statutory deadlines for responding to Freedom of Information Act (FOIA) requests and appeals.”²⁴ However, on October 11, 2017, the EPA Office of Public Affairs informed people requesting Agency documents that “Based on the current number of FOIA requests pending in OPA and the resources involved to process each of those FOIA requests from start to finish, we anticipate completing your FOIA Request by 9/28/2018...Thank you very much for your interest in the EPA.”

¹⁸ Plan, p. 12

¹⁹ *Id.*

²⁰ Plan, p. 14

²¹ Plan, p. 3

²² Plan, p. 18

²³ <https://www.regulationwriters.com/downloads/EPA-Fishbowl-Memo-05-19-1983-Ruckelshaus.pdf>

²⁴ Plan, p. 22

Moreover, the claim that EPA will “increase transparency” is laughable, in light of the fact that Administrator Pruitt refuses to use an agency computer (presumably to avoid leaving a paper trail), and just spent \$25,000 to install a secure, surveillance-proof phone booth, called a Sensitive Compartmented Information Facility, in his personal office. Once again, the words in the draft Plan belie EPA’s actions. EPA is not now, nor does it plan to, live up to the claims written in the draft Plan.

Resources. The draft Plan states that, “Sustainable resource levels and a strong workforce are critical to success.”²⁵ However, EPA has proposed to cut both its budget and workload by approximately one-third. It is abundantly clear that EPA is no longer in the business of protecting the environment; and as such, Pruitt believes that the budget and staff can be slashed. However, this is contrary to both Congressional intent, and to the will of the people.

Conclusion. When President Nixon established the EPA, he stated, “The Congress, the Administration and the public all share a profound commitment to the rescue of our natural environment, and the preservation of the Earth as a place both habitable by and hospitable to man.”²⁶ Thanks to EPA, our environment has become cleaner and healthier.

Unfortunately, the current administration is making a mockery of these values - values that affect our national well-being. Without clean air, clean water, and our health, we have nothing.

The draft Strategic Plan not only violates GPRAMA, but it threatens our future. The Plan is fraudulent and disregards both science and common sense. As such, we request that EPA withdraw this fatally flawed draft Strategic Plan, and re-issue one that complies with GPRAMA, congressional intent, and also truly protects the air, water, land, and human health in this nation.

Sincerely,

Jeff Ruch
Executive Director

²⁵ Plan, p. 30

²⁶ <http://www.presidency.ucsb.edu/ws/index.php?pid=2575&st=environmental+protection+agency&st1>