

## Trump's Shrunk EPA Budget Would Also Hinder States

By Juan Carlos Rodriguez

*Law360, New York (March 16, 2017, 9:52 PM EDT)* -- President Donald Trump's newly unveiled budget proposal aligns with his promises to drastically cut the U.S. Environmental Protection Agency's funding, but would also make it difficult for states to step up and fill the gap left by a diminished EPA.

As part of the 31 percent, \$2.6 billion EPA budget reduction, the White House suggested to Congress — which will have plenty of say on any spending related to the EPA — that it eliminate hundreds of millions of programming dollars that flow to states. A Trump budget would eliminate funding for regional, multistate projects like restoring the polluted Chesapeake Bay watershed, more localized efforts to reduce air pollution in areas that don't meet federal standards, and a variety of other endeavors that require a combination of federal and state resources.

On one hand, the 2018 budget proposal jibes with statements that Trump made during his presidential campaign to dismantle the EPA and that his EPA Administrator Scott Pruitt made during his Senate nomination hearing that the EPA should relinquish some state-level regulatory and enforcement control to the states themselves. By cutting the budget so drastically, the EPA will have no choice but to contract.

But on the other hand, by cutting so much funding for state programs, the president's budget doesn't leave much room for states to pick up the slack if they are so inclined, said Alexandra Dunn, executive director and general counsel for the Environmental Council of the States, a nonprofit coalition of environmental agency leaders from 52 states and territories.

"There's an odd disconnect going on. States are ready to step up and play the federal role. But the funding component is a part of the relationship, it's part of cooperative federalism," she said. "States already contribute a significant amount and the question is whether state legislatures will fill that gap. I think the answer is likely not. And then the question becomes what is the result of such a reduction?"

ECOS said if Trump's budget were to be enacted, it would affect grants that support an average of 27 percent of state environmental agency budgets. And it said federal funding has already been declining over the past few years as the EPA's budget has been trimmed.

Stan Meiburg, who served as the EPA's acting deputy administrator under President Barack Obama from 2014 until January, noted that Trump would cut "categorical grants," which provide money to states to implement various water, air, waste, pesticide and toxic substances programs, by \$482 million, or

roughly 45 percent. He said those programs make up much of the day-to-day permit and enforcement work related to federal statutes like the Clean Air Act and Clean Water Act that have been delegated to states.

"As a budget statement, that is inconsistent with the philosophical presumption of the administration," he said.

The Trump administration also would slash the budget of the EPA's Office of Enforcement and Compliance Assurance, which investigates violations of environmental laws, from \$548 million to \$419 million. The budget "blueprint" said the cut would help avoid duplicative efforts by focusing the OECA on programs that are not delegated to states.

Dunn said there are sometimes instances when federal inspections duplicate state inspections, but fixing the issue doesn't require such steep cuts to the enforcement budget.

"I think there is some concern that there has to be integrity in the system, there has to be sufficient EPA oversight capacity to just look over the state work that's required by law," she said. "We do still need a meaningful enforcement inspection presence and we need meaningful oversight of states."

The EPA's criminal enforcement division, which along with the U.S. Department of Justice investigated and prosecuted BP Exploration and Production Inc. for its role in the 2010 Deepwater Horizon oil spill and Volkswagen AG for its recent emissions cheating scheme, would also have to stretch already strained resources to fulfill its mission, said Doug Parker, the recently retired head of the EPA's Criminal Investigation Division who now works at Earth & Water Group.

"I think criminal enforcement at the EPA will remain a backstop," he said. "On the civil side, by necessity, where there is no state backstop you will see a shift in the EPA's more limited resources to nondelegated federal responsibilities like vehicle engine testing and certification, enforcement related to the ozone depleting substances and other work in the fuels sector."

He said industry groups who see weaker enforcement as a threat to market fairness may speak up and push back against severe funding reductions. He remembered that during his time at the EPA, companies that were playing by the rules would see competitors who they believed weren't and would often bring the other companies' behavior to the attention of the civil or criminal enforcement divisions.

And Congress will still be a major obstacle for Trump's budget to overcome, said Tom Lorenzen, a partner at Crowell & Moring LLP.

"It is notoriously hard to cut grant programs to states because the congressional members have vested in returning those funds to their home districts or home states," he said.

But he added that the budget may present those in Congress that support a smaller EPA — one with 3,200 fewer employees than it currently has — with a unique opportunity, since Republicans control the House, Senate and presidency.

"If Congress really does want to cut back the EPA's personnel by 20 percent, expect there also to be some talk about perhaps modifying some of those environmental statutes," he said. "Staff cutbacks make more sense if you're going to do those other structural reforms."

The reaction from Republicans was mixed Thursday. Rep. Tom Cole, R-Okla., who serves on the House Appropriations, Budget and Rules Committees, said he could support cutting funding for climate science, but held back about other funding reductions.

"If it's in some of the regulatory or climate change areas, that probably is sustainable. On the other hand, I think the tribal and water grant monies are very important," Cole said. "I think you have to remember [the EPA has] been cut pretty substantially already ... it's down to 1989 staffing levels. But to be fair to the president, he's put a proposal forward, I think we ought to look at it."

And White House Office of Management and Budget Director Mick Mulvaney, a former Congressman from South Carolina, acknowledged some of Trump's proposals won't go over well.

"I've been on the hill long enough to know that some of these will be very unpopular," he said.

Democrats including Senate Environment and Public Works Committee ranking member Tom Carper, D-Del., and Tom Udall, D-N.M., and many environmental organizations were more strident in their opposition, declaring the Trump budget blueprint, "dead on arrival" in Congress.

Lorenzen said there is a long road ahead.

"The White House's budget proposals are always starting points in what is a complex and lengthy negotiation," he said.

--Additional reporting by Michael Macagnone. Editing by Katherine Rautenberg and Kelly Duncan.