

4 Areas EPA Could Expand With House's 23% Budget Boost

By Juan Carlos Rodriguez

Law360 (July 29, 2021, 5:28 PM EDT) -- With the House approving its biggest budget boost in a decade, the U.S. Environmental Protection Agency is potentially poised to go on a hiring spree, increase its funding for programs at the state and tribal level, ramp up enforcement efforts and expand its commitment to environmental justice issues.

The House of Representatives on Thursday passed a spending package that includes \$11.3 billion for the EPA, a 23% increase over the previous fiscal year's allowance and the agency's biggest budget ever. It's the steepest spending increase since fiscal year 2010, when the nation was looking to rebound from the financial crisis, and highlights the areas where President Joe Biden and Congress' Democratic leaders agree.

Following House passage, the government funding process moves to the Senate. The two chambers will have to reconcile their differences before sending any bills to Biden's desk.

The potential funding increase stands in sharp contrast to proposed budget cuts under former President Donald Trump, said Stan Meiburg, director of graduate programs in sustainability at Wake Forest University, who served as the EPA's acting deputy administrator under former President Barack Obama. While lawmakers during the last administration did not make the drastic cuts the Trump White House recommended, funding remained flat and staffing levels declined.

"The single biggest problem facing EPA was that the underpinnings of the agency were being eroded," Meiburg said. "And the most important thing that this budget does, apart from any particular policy initiatives, is help to restore the ability of the agency to act effectively once more."

Here are four areas where an expanded EPA budget could have the most impact.

Shoring Up Agency Capabilities

The House budget is slightly more than what the White House requested in its April budget proposal, which puts the EPA in good shape to deliver on many of the Biden administration's priorities, including potentially adding roughly 1,000 new staffers, Meiburg said.

Not only that, but the agency can begin to backfill positions that were left empty during the Trump administration, he said.

"When you look at it, they are adding funds into such things as contract management, human resources, financial assistance grants and interagency agreements," he said. "That's basic blocking and tackling stuff that, if you don't do them well, nothing else happens. ... You will see a more effective EPA."

The money won't be a cure-all, though, because the agency will have to not only recruit new people but also help develop a new generation of managers, since some have left the agency and some will soon. Meiburg said there is a contingent of managers who stayed on through the Trump administration and may now be ready to retire.

"EPA has been in the process of sort of aging out, so that's going to be a challenge in terms of training and recruiting and developing a new generation of leadership," he said.

State and Tribal Programs

A very large part of the EPA budget is money that is passed along to state, local and tribal partners through grants, and there's been a big increase in funding there, said Byron Brown, senior counsel at Crowell & Moring LLP, who served as the EPA's deputy chief of staff for policy in the early part of the Trump administration.

"I think something a lot of people don't realize with the EPA's budget is that most of the funding goes out to states, local communities and tribes," Brown said. "It's not necessarily funding that EPA sees and that EPA itself gets to utilize. So the grants are an important thing to keep an eye on, since many of the regulatory programs are actually managed at the state level or by tribes."

The State and Tribal Assistance Grants, as they're known, cover infrastructure assistance, which is used primarily for projects that directly improve air or water quality or clean up contaminated sites and generally support environmental protection. They also include categorical grants, which help governments run environmental programs, and environmental justice implementation grants for state, local and tribal governments and community stakeholders.

"They also support geographic programs and programs like the diesel retrofit program," Meiburg said. "The big money for infrastructure, which is always one of the biggest parts of EPA's budget, will be in the infrastructure bill, but there was a boost up in the capitalization grants for the state revolving loan fund."

Environmental Justice

In prior years, funding for environmental justice initiatives was included as part of other programs. This year, however, the House has elevated environmental justice to its own program area for the first time.

"Environmental justice traditionally was considered under each program, when a federal action was supposed to be considering environmental justice impacts or there was an executive order or some other general principles," said Cynthia Taub, a partner at Steptoe & Johnson LLP. "But now, if they're going to create an actual program, that obviously is going to make a difference in terms of EPA's role."

One of the areas where environmental justice funds could have a real tangible impact is in Superfund cleanup and water infrastructure projects, Brown said. He said those are often some of the most troublesome areas for vulnerable communities, so dedicating resources toward improving conditions there will have real health and environmental improvements.

And he said technical assistance grants that will help communities engage in and get involved with projects in their areas could make a difference as well.

"One of the significant aspects of environmental justice concerns is making sure that the people who are affected by EPA's actions or actions by state regulatory agencies have a meaningful opportunity to participate and influence the decision-making process," Brown said. "Technical assistance grants can be incredibly helpful in providing third-party support to help communities engage on EPA issues, which sometimes can be very technical and scientific."

Enforcement

Meiburg said EPA enforcement programs will likely begin to "rebound" after years of declining efforts, both on the civil and criminal sides. He noted that there's a particular budget focus on directing compliance and enforcement activities toward underserved communities, highlighting the environmental justice aspect of that work.

He said there is likely to be an enforcement and compliance staffing increase, perhaps with more criminal agents being hired, for example. In addition, staffers will likely have increased access to necessary resources such as contractors who can do work including sampling, document reviews and data analysis, he said.

"I think this gives them an opportunity to make sure that the civil and criminal investigators will more readily have the tools they need in contract support to do the job," Meiburg said. "That's an often unnoticed but important detail."

In a report issued by the House Appropriations Committee, lawmakers said they see a need for "additional guardrails" to protect the integrity of the Office of Enforcement and Compliance Assurance's work.

"The agency is directed to work with Congress as it develops and implements policies to prevent future abuses," the report said.

--Editing by Alanna Weissman and Emily Kokoll.