

EPA Sees New Challenges Ahead for Superfund

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Published on www.lorman.com - June 2018

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Written by Eric L. Klein and Loren R. Dunn - 2/16/18

EPA released a four-year “strategic plan” on February 12 that continues to emphasize the Superfund program as one of Administrator Scott Pruitt’s top priorities. While it has been clear since last summer’s Superfund Task Force report that the agency’s new leadership wants to accelerate Superfund site cleanups, the agency’s new strategic plan reveals for the first time that EPA also sees emerging challenges ahead for Superfund.

“A number of factors may delay cleanup timelines,” the agency wrote in its strategy document. These factors include the “discovery of new pathways and emerging contaminants” such as vapor intrusion and per- and polyfluoroalkyl substances (PFAS), and new science such as “new toxicity information or a new analytical method.”

According to the strategic plan, the emergence of this kind of new information can reopen previously settled remedy determinations – and the Superfund sites that still remain on the National Priorities List (NPL) already tend to be the harder cases, with more difficult patterns of contamination and more complex remedies. EPA flagged in particular its waste management and chemical facility risk programs, where “rapidly changing

technology, emerging new waste streams, and aging infrastructure present challenges[.]”

It remains to be seen whether the agency’s cautions in the Superfund section of its strategy document represent a meaningful shift in the agency’s frequently-stated intention to reinvigorate the Superfund program. Early in his tenure, Mr. Pruitt charged his Superfund Task Force with generating a series of recommendations centered around Mr. Pruitt’s goals for Superfund: faster cleanups, the encouragement of cleanup and remediation investments by PRPs and private investors, and a process centered on stakeholder engagement and community revitalization. In December, in response to one of the Task Force’s recommendations, the agency released a list of 21 high-priority NPL sites that Mr. Pruitt targeted for “immediate and intense attention,” according to an EPA press release. The cautionary notes in this week’s strategic plan are a subtle shift in tone for EPA.

At the same time, the document also sets forth a plan for improving the consistency and certainty of EPA’s enforcement activities in the regulated community. It remains to be seen how EPA intends to achieve consistency while being responsive to state and tribal interests.

These goals, of course, will depend on the details of implementation, which are not set forth in the strategic plan. And such details will depend on the agency’s budget, which remains in flux for 2019 and beyond. For example, EPA’s proposed budget for fiscal year 2019 sought a roughly \$327

million cut in the Superfund program, but the funds were added back into the budget proposal as part of last-minute budget agreement reached in Congress last week, securing the program's funding in the short-term. Last year, the administration proposed a 30% cut in the agency's funding but Congress balked and eventually approved a budget that cut roughly 1%.

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