

EPA's Retreat from Enforcement Will Harm the Chesapeake Bay

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Issue Alert:
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Introduction

Every day, we are presented with more evidence of the need to inspect for environmental violations and enforce the nation's laws. The most recent example is the failure of federal and state regulators to discover a leaking chemical storage tank that left 300,000 people in West Virginia with water so contaminated it could only be used to flush toilets. Just as disturbing, the paucity of data about the toxicity of the chemical that spilled made it difficult for officials to determine when West Virginians could use their tap water safely.

The spill is but the latest in a series of environmental and safety disasters related to shortcomings in federal and state oversight. To compound matters, the Environmental Protection Agency (EPA), the federal regulator in charge of implementing and enforcing the nation's environmental laws, just announced that its enforcement footprint will shrink dramatically in the coming years. On November 19, 2013, EPA released for public comment its draft *Fiscal Year (FY) 2014–2018 Strategic Plan*.¹ The comment period ended on January 3rd. The draft outlines EPA's top priorities for the next five years, which include the laudable goals of mitigating climate change and protecting water quality. But, buried deep in the 86-page document, is an announcement that EPA is planning precipitous cuts to enforcement. Specifically, the agency intends to conduct 30 percent fewer in-person inspections and bring 40 percent fewer civil cases against industry scofflaws over the next five years than in the previous five.² These cuts could have a severe effect on regulated entities' compliance efforts, creating public health and environmental risks that arise not only from previously unregulated or inadequately regulated activities, such as the chemical storage tank operation in West Virginia, but also from backsliding on established controls applicable to known hazards. Traditional enforcement should be the last function to be cut among all the others that are part of the agency's mission.

Instead of traditional enforcement techniques, the agency's plan embraces a new enforcement paradigm referred to as "Next Generation Compliance" (NextGen). NextGen relies on self-monitoring and reporting, aims to make regulations "easier" to comply with, and alters how EPA measures the effectiveness of its enforcement activities.³ Instead of looking at the number of civil enforcement cases filed, for example, EPA will encourage members of the regulated community to use advanced monitoring to measure their own emissions.⁴

The strategic plan comes amidst severe cuts to the agency's budget. According to the Congressional Research Service, EPA's funding in fiscal year 2009, when adjusted for inflation, was lower than it was in fiscal year 1978,⁵ despite the significant growth in the

number of regulated pollutants and entities and dramatically increased agency responsibilities. EPA's budget has declined steadily since 2009⁶ and its budget took another hit as a result of sequestration.⁷ According to CNN, Republicans recently boasted that, with the passage of the Omnibus Spending Bill, they have cut EPA's funding by 20 percent since 2010.⁸ Instead of accepting these cuts as a given and responding with untried or inferior solutions, EPA should have used this opportunity to identify and raise the alarm about the consequences the cuts will have on public health and the environment. If legislators believe that budget cuts do not have adverse consequences for the agency's ability to effectively pursue its fundamental mission, they are likely to have no qualms about making even further, devastating cuts.

The Chesapeake Bay provides an example of a potential casualty of the agency's new approach to enforcement. EPA has delegated implementation and enforcement of the Clean Water Act's permitting regime to all the states in the Bay watershed (except Washington, D.C.). Administering these programs is increasingly expensive, but state agencies are receiving less support from the cash-strapped EPA at the same time that state legislatures are slashing budgets.⁹ These realities led the Environmental Council of the States (ECOS) to warn that "states' ability to implement federally delegated programs" is in jeopardy.¹⁰ The most recent cuts to EPA's funding will prevent the agency from providing the necessary support to the Bay states' restoration efforts, which will likely force states to scale back on environmental programs, including enforcement.

A federal retreat from enforcement could permit the states to ease up as well. A less active federal agency will likely demand less of the states; it cannot hold them to a higher standard than it holds itself. On the flip side, states may feel pressure to pick up the slack when the federal government begins initiating fewer enforcement actions. The plan itself hints at what the Bay could look like under EPA's new enforcement-lite paradigm. Hidden in the plan is a reference to projected environmental conditions in the Bay that would put restoration efforts well behind where they are legally required to be under the Total Maximum Daily Load (TMDL), the federally led plan to restore the Bay by 2025.¹¹ With a scaled-back federal enforcement presence and lowered expectations, we are concerned that the TMDL will veer off track.

In short, EPA's new enforcement scheme has at least four specific shortcomings:

- It relies on industry to police itself, an untested and unproven approach that on its face invites noncompliance;
- It signals a clear rollback in traditional deterrence-based enforcement, a tested and proven approach;
- It seeks to mask the plain harm to enforcement of congressional budget cuts with breezy, even risible, assertions of improved enforcement; and
- Its retreat from enforcement and related budget cuts could irreparably delay the restoration of national treasures such as the Chesapeake Bay.

Background

Government Performance and Results Act

The strategic plan is part of the periodic update required by the GPRA Modernization Act of 2010.¹² The Act requires agencies to develop a strategic plan, which includes a mission statement; sets out long-term goals, objectives, and strategic measures; and describes strategies to achieve them over a four-year time horizon.¹³ The plans are not binding on the agency, but, as it did with its 2011 plan, EPA's senior leadership will routinely use the *FY 2014–2018 Strategic Plan* as a management tool.

A Snapshot of Enforcement at EPA and State Agencies

Environmental law experts have recognized two broad approaches to environmental enforcement—deterrence-based compliance assurance and assistance-based compliance assurance. The former approach provides negative incentives to discourage noncompliance (the stick); the latter provides positive incentives to encourage compliance (the carrot).¹⁴ Over the years, EPA's approach has shifted along the enforcement spectrum depending on the presidential administration and other priorities. EPA's *FY 2014–2018 Strategic Plan* signals a move away from deterrence-based enforcement.

By its own admission, EPA's enforcement record has been troubled for a number of years. In 2009, then-Administrator Lisa Jackson directed Cynthia Giles, the head of EPA's Office of Enforcement and Compliance Assurance (OECA) to develop an action plan to improve enforcement performance, noting the ineffectiveness of EPA's clean water enforcement programs and the unacceptably high level of significant noncompliance with permits.¹⁵ A few months later, OECA issued a Clean Water Act Enforcement Action Plan, which concluded that “[v]iolations are . . . too widespread, and enforcement too uneven.”¹⁶ It promised to “revamp[]” enforcement of clean water laws by targeting the most important water pollution problems, strengthening state oversight, and improving transparency and accountability. The objective and highly respected Government Accountability Office (GAO) noted in 2012 that EPA “is not achieving all of the environmental and public health benefits it expected . . . because of substantial rates of noncompliance in some programs.”¹⁷ EPA was often unable to determine the full extent of noncompliance, according to GAO, because of incomplete and unreliable data.

Meanwhile, EPA's budget has been steadily declining. Funding for the agency peaked in FY 2009, but even this level, when adjusted for inflation, is less than EPA's total funding in 1978. The agency's budget has fallen since the 2009 peak.¹⁸ Funding for the Chesapeake Bay Program, the federal-state partnership that leads Bay restoration efforts, was increased in the recent Omnibus Spending Bill to \$70 million, up from about \$50 million in recent years. The increase will help EPA administer the requirements of the Bay-wide TMDL, but is not nearly enough for EPA to assume front-line responsibility for routine enforcement in the Bay states.

While EPA is struggling with funding, state budgets have been hit even harder. In a survey of 49 states,¹⁹ the Environmental Council of the States (ECOS) found that state

environmental agency budgets shrank by approximately \$17.5 million from FY 2011 to FY 2012, an average decline of \$357,000 per state.²⁰ Of the Bay watershed states, Delaware, Pennsylvania, and Virginia cut funding; funding for environmental agencies in Maryland, New York, West Virginia, and Washington, D.C. grew. Meanwhile, the costs associated with state environmental enforcement activities have increased substantially. EPA has delegated the responsibility of running the National Pollutant Discharge Elimination System (NPDES) permit program, the Clean Water Act program under which water polluters apply for and receive discharge permits, to all of the states in the Bay watershed (except Washington, D.C.). EPA provides funding for the states to run these programs but the costs are outpacing this funding and the rate of inflation.²¹ Over the 10 years between 1997 and 2006, for example, EPA's enforcement funding to the regions declined by 8 percent in real terms. In response, regional officials said they were forced to reduce the number of enforcement staff by about 5 percent.²² While the strategic plan does not go into specific funding levels, EPA's scaled-back enforcement effort likely signals additional cuts to the agency's enforcement budget. These cuts will have trickle-down effects on state environmental agencies.

Overview of Efforts to Restore the Chesapeake Bay

For three decades, states in the Chesapeake Bay watershed entered into voluntary agreements with one another promising to clean up the Bay with little to show for their efforts. For example, six years after the states signed the *Chesapeake 2000 Agreement*, which promised to clean up the estuary by 2010, an EPA official acknowledged that restoration efforts were decades behind.²³ No single state is solely to blame; rather, the repeated failures can be attributed to a dysfunctional “collaborative partnership” between the various states, all of which came to the negotiating table with wildly different priorities.

Maryland, which derives billions of tourism dollars from the Bay each year, has more incentive to make an interstate agreement work than Pennsylvania, only half of which lies within the Chesapeake Bay watershed. As Rena Steinzor, CPR's president, and Shana Jones, former CPR executive director, wrote last year, “[w]ithout strong federal leadership, . . . disparities among the [Bay states] doom dialogue . . . to posturing and recriminations, especially when the only consequence of that behavior may be exactly what some states want: little action and more delay.”²⁴

The seemingly hopeless situation began to turn around in 2009 when the Obama administration issued Executive Order 13,508, directing EPA to take a leadership role in cleaning up the Bay. The Bay-wide TMDL, often referred to as a “pollution diet,” followed in 2010.²⁵ It imposed strict limits on the quantities of nitrogen, phosphorus, and sediment that could be discharged into the Bay and allocated the total permissible amount of each pollutant among the Bay states and the District of Columbia. The Bay TMDL is the most ambitious and largest TMDL in the country and, if implemented correctly, offers the estuary its best chance at recovery.

FY 2014–2018 Strategic Plan

Goals, Strategies & Measurements

The draft *FY 2014-2018 Strategic Plan* presents five strategic goals to accelerate protection of human health and the environment and four cross-cutting fundamental strategies for changing the way the agency does business in achieving its results.

The five strategic goals are:

1. Addressing Climate Change and Improving Air Quality;
2. Protecting America's Waters;
3. Cleaning Up Communities and Advancing Sustainable Development;
4. Ensuring the Safety of Chemicals and Preventing Pollution; and
5. *Protecting Human Health and the Environment by Enforcing Laws and Assuring Compliance.*

The four cross-cutting fundamental strategies are:

1. Working Toward a Sustainable Future;
2. Working to Make a Visible Difference in Communities;
3. Launching a New Era of State, Tribal, Local, and International Partnerships; and
4. Embracing EPA as a High-Performing Organization.

With enforcement as one of the agency's five priorities, the plan does not appear to retreat from enforcement. Digging a little deeper, however, it becomes apparent that the document redefines the meaning of enforcement. Through NextGen, EPA is committed to "promoting the use of advanced monitoring and electronic reporting, designing rules that are easier to implement, expanding transparency and sharing of data, and using innovative enforcement approaches to increase compliance and reduce pollution."²⁶ In practice, this means that EPA's enforcement footprint will shrink. Under the section titled "Maintain Enforcement Presence," the agency announces a reduction in its enforcement presence.

The plan presents five-year cumulative goals and compares them to a one-year baseline, masking the true reductions. The table below breaks down select measures using an annual as well as a five-year baseline to provide a true comparison.

Table 1. Select Enforcement Measures Compared²⁷

	Cumulative Target for 2018	Annual Rate Between 2014–18	Annual Rate Between 2005–09
Inspections	70,000	14,000	21,000
Civil Cases Filed	11,600	2,320	3,900
Civil Cases Concluded	10,000	2,000	3,800
Reduction in Water Pollutants	1,100 million lbs.	220 million lbs.	320 million lbs.

The table shows that EPA will reduce the number of inspections conducted on an annual basis over the next five years by 40 percent. It will shrink the number of civil cases filed annually by 30 percent in the next five years as compared to the annual average from 2005 and 2009. The agency will conclude almost 50 percent fewer civil cases in the next five years as compared to the previous five. In addition, it aims to eliminate 30 percent less water pollution annually over the next five years than in the previous five.

The agency's rationale for changing its approach to inducing compliance is that traditional metrics, such as number of inspections, "tell only part of the story."²⁸ Traditional metrics do not adequately account for work to prevent pollution, according to the agency, and successful enforcement in past years should cut the number of pounds of pollution reduction needed in future years. In other words, fewer pounds of pollution reduced per year is a sign of success, not an indication that the agency is retreating from enforcement.

Without further explanation, the agency claims that over-enforcement can discourage companies from developing innovative solutions to pollution problems.²⁹ It is difficult to parse this assertion. Is it arguing that sources that might otherwise have developed long-term strategies that would result in large pollution reductions will not do so if an enforcement action now forces them to spend money getting into immediate compliance? Is it claiming that sources will become less cooperative and willing to commit to reducing pollution out of anger at agency enforcers? Four years after acknowledging that violations of the CWA are "widespread,"³⁰ is it now saying that its enforcement efforts have been too aggressive? While its rationale is not clear, the argument that enforcing regulations chills innovation is straight out of the Chamber of Commerce's playbook. The truth is that tough, fair enforcement levels the playing field for environmentally compliant companies by deterring those who might otherwise profit from violating the law.

After rationalizing its new approach, EPA announces that it intends to rely less on traditional measures such as the number of inspections and more on measures such as the number of enforcement settlements that incorporate advanced monitoring technologies. It plans to focus less on the number of cases filed or won and more on the number of regulated sources that are using advanced monitoring to measure their own emissions.

The table below illustrates the planned changes to performance measures.

Table 2. Strategic Enforcement and Compliance Measures³¹

Enforcement Presence Measures	Compliance, Deterrence, and Outcome Measures	Next Generation Compliance Measures
<ul style="list-style-type: none"> • Inspections and evaluations • Initiated & concluded civil judicial & administrative enforcement cases • Compliance status of open, non-Superfund consent decrees • Address cost recovery statute of limitations cases with total past costs above \$500,000 • Reaching settlement with potentially responsible parties (PRPs) • Criminal cases with charges filed • Criminal cases with defendants convicted 	<ul style="list-style-type: none"> • Air, water, hazardous waste, toxic, and pesticide pollutants reduced as a result of enforcement actions • Contaminated media reduced through enforcement actions • Criminal cases with most significant impacts • Criminal cases with individual defendants 	<ul style="list-style-type: none"> • <i>Number of enforcement settlements that resulted from or that incorporate advanced monitoring technologies</i> • <i>Regulated sources using advanced monitoring to measure their own emissions</i> • <i>Percent of facilities electronically reporting Clean Water Act NPDES data to authorized states and tribes and EPA</i> • <i>Public use of compliance transparency tools (ECHO, pollutant loading tool, etc.)</i> • <i>Sectors for which measurable compliance rate strategies adopted</i>

We understand EPA’s need to review its priorities in an era of shrinking resources. We appreciate that NextGen has the potential to provide innovative ways to ensure compliance and we support EPA’s electronic reporting initiative, especially the agency’s commitment to make enforcement and environmental data more accessible to the public, although the information provided by the program will be generated by industrial sources and must be verified carefully. But traditional enforcement should be the last function to be cut among all the others that are part of the agency’s mission because it is the most cost-effective weapon to prevent backsliding on the progress the nation has made in reducing traditional pollution.

NextGen must supplement, not supplant, existing enforcement activities and compliance measures. In recommending that EPA develop a strategic plan for NextGen, GAO called on the agency to “integrate” novel approaches to enforcement into EPA’s existing enforcement and compliance program, not replace traditional, deterrence-based enforcement.³² Although the agency describes NextGen as a program it is “initiating” and “experiment[ing]” with,³³ the plan tells a different story. The reality is that EPA will immediately begin performing fewer traditional enforcement actions than it has in the recent past. As Table 1 demonstrates, EPA’s enforcement footprint is likely to look quite different in the coming years, with trickle-down effects on state environmental agencies.

How the Strategic Plan Addresses the Bay

The Strategic Plan is peppered with references to the Bay. As part of EPA’s second goal to protect America’s waters, the agency will “focus on nutrient pollution, which threatens the long-term health of important ecosystems such as the Chesapeake Bay.”³⁴ The agency also promises to reinvigorate efforts to improve water quality by focusing efforts in key areas such as the Chesapeake Bay.³⁵ To meet its fifth goal of enforcing laws and

ensuring compliance, the agency's "enforcement program is also working to address pollution from animal waste, helping to clean up large aquatic ecosystems . . . like the Chesapeake Bay."³⁶ This promise stems from the agreement EPA reached with the Chesapeake Bay Foundation in 2013 in which EPA agreed to review state oversight of industrial animal farms. As two of the authors have pointed out elsewhere, the agreement only obligates EPA to inspect a paltry 16 farms in the 64,000-square-mile Bay watershed over the next three years.³⁷

The agency lays out specific benchmarks to meet its five stated goals. To meet its second goal of protecting America's waters, the plan provides a glimpse of what the Bay could look like under EPA's enforcement-lite paradigm. Under the TMDL, 60 percent of all the measures needed to reduce nitrogen, phosphorous, and sediment deposition in the Bay and its tidal rivers must be in place by 2017, with 100 percent of the measures in place by 2025.³⁸ The draft plan states that by 2018 EPA will "achieve 45 percent attainment of water quality standards for dissolved oxygen, water clarity/underwater grasses, and *chlorophyll a* in the Chesapeake Bay and tidal tributaries."³⁹ While the plan masks the relationship between the nutrients—nitrogen, phosphorus, and sediment—and the indicators—dissolved oxygen, water clarity, *chlorophyll a*—the amount of nutrients in the Bay directly affects these environmental indicators. We understand that there is unavoidable lag time between putting pollution measures in place and having them take effect, but the plan's target environmental conditions would put Bay restoration efforts approximately 15 percent behind where they are legally required to be under the TMDL. Whether the agency was attempting to alter its Bay restoration policy with these benchmarks or they were the result of a failure of communication within the agency, the fact remains that the strategic plan will harm the Bay. With the sharp cuts to enforcement called for in the draft strategic plan, Bay cleanup efforts could easily veer far off track.

The plan encourages federal agencies and departments to consistently evaluate programs to improve performance results by learning what works and what does not. As an example of an upcoming program evaluation, EPA notes that in 2017 it will assess the progress toward meeting the Bay-wide TMDL. It plans on using the results of this program evaluation to inform future Bay restoration efforts.⁴⁰ This type of adaptive management is smart policy, but it can and should retain traditional enforcement techniques as a tool for accomplishing its overall goals.

Consequences for the Chesapeake Bay

The draft *FY 2014–2018 Strategic Plan* is the equivalent of the police force advertising that it is cutting down on the number of cops on the beat. The primary concern is that the plan indicates a retreat from federal enforcement activities across the board, leaving enforcement of the TMDL in the hands of the cash-strapped states. The one bright spot is that congressional funding for the Bay Program increased from approximately \$50 million to \$70 million this year, and we hope this funding level becomes the norm, not the exception. Yet these funds are not nearly enough for EPA to assume the primary enforcement role in the Bay states. Equally concerning is that the plan signals to the

states that they may also step away from enforcement without fear of negative responses from EPA. EPA requires states to meet certain standards, as laid out in yearly performance commitments.⁴¹ These standards are mostly narrative, however, and EPA cannot hold the states to a higher standard than it holds itself.

As a result of EPA's announcement to industry that it is scaling back enforcement, some regulated entities will be less likely to comply with regulations because of their perception that the likelihood of being caught is diminished. The well-accepted theory of compliance decisionmaking is that regulated entities make rational calculations on whether to comply by comparing the cost of compliance with the cost of being penalized for not doing so, multiplied (or discounted) by the chances of getting caught. If EPA announces a decreased chance of getting caught, then the calculation will necessarily shift toward less compliance. The agency is taking a huge risk when it relies on untested NextGen techniques to replace traditional deterrence-based enforcement efforts that are well understood. No police chief genuinely concerned about deterring unlawful conduct would announce he was taking cops off the beat if he could possibly avoid it.

The proposed changes raise a number of additional concerns. With the plan's focus on self-monitoring and reporting, EPA will likely amass a tremendous amount of information on regulated entities across the country. Even if this information revealed a number of new violators, the reduced enforcement targets and resources outlined in the plan would reduce the chance that EPA would pursue them. We do not question the commitment of EPA's career staff, but rather the decisions of senior leadership, who appear to treat increased information through NextGen programs and retention of historic enforcement expectations as mutually exclusive. In addition, the influx of data could overwhelm EPA. One of the most encouraging aspects of NextGen is that it promises increased public access to information relating to compliance. Without a periodic audit of the quality of any data, however, it could be rendered virtually useless to state agencies and the concerned public. The plan also fails to detail how the federal government and states will work together to collect and then use this wealth of information. Advanced monitoring, for instance, cannot be an across-the-board approach. While a 600-megawatt coal plant can be expected to implement advanced monitoring technologies, a farmer who raises 200 head of cattle may not even have Internet access.

Conclusion

The draft *FY 2014–2018 Strategic Plan* is the result of a budget-strapped EPA cobbling together an enforcement strategy that stretches dollars as far as they can be stretched. In an era of shrinking resources, we want agencies to be as efficient as possible, while keeping a handle on regulatory violations. While EPA does not control the level of funding provided by Congress, it should vociferously protest budget cuts and identify the likely consequences for agency enforcement initiatives and for water quality in places like the Bay. Rather than pretending that it can do even more with less, it should be making noise—and plenty of it—about the problems that budget stinginess is creating. The agency's retreat from enforcement, as signaled in this strategic plan, will not only

hinder efforts to clean up the Chesapeake Bay, but will also negatively affect everyone who drinks water or breathes air. It is likely to make incidents like the leaking storage tanks in West Virginia all too common.

Endnotes

¹ U.S. ENVTL. PROTECTION AGENCY, DRAFT FY 2014–2018 EPA STRATEGIC PLAN (Nov. 19, 2013), available at <http://www2.epa.gov/planandbudget/strategicplan> [hereinafter PLAN].

² *Id.* at 82.

³ *Id.* at 62.

⁴ *Id.* at 64.

⁵ ROBERT ESWORDY ET AL., CONG. RESEARCH SERV., R42520, ENVIRONMENTAL PROTECTION AGENCY (EPA) APPROPRIATIONS FOR FY2013 34 fig.A-1 (2012) [hereinafter EPA APPROPRIATIONS].

⁶ *Id.* at 32–33 tbl.A-1.

⁷ The recent Omnibus Spending Bill reversed some of the most damaging sequestration cuts. The bill provided \$86 million additional funds above sequestration to avert the continuation of furloughs and directed EPA to distribute \$1.054 billion to state environmental programs, \$22 million above the post-sequestration level. News Release, Chairwoman Barbara Mikulski, Comm. on Approps., Summary: Fiscal Year 2014 Omnibus Appropriations Bill, p.32 (Jan. 13, 2014), available at <http://www.appropriations.senate.gov/news.cfm?method=news.view&id=5aa8e660-f52e-4074-945f-9618eb963ae9>.

⁸ Lisa Desjardins, *Winners and Losers in Congress' \$1 Trillion Spending Deal*, CNN, Jan. 14, 2014, available at <http://www.cnn.com/2014/01/14/politics/budget-winners-losers/>.

⁹ U.S. Env'tl. Protection Agency, *White Paper on Meeting the Challenges of Environmental Protection Together: Building Strong EPA-State Partnerships* 11 (Oct. 2012) [hereinafter *EPA-State Partnerships*].

¹⁰ R. STEVEN BROWN ET AL., ENVTL. COUNCIL OF THE STATES, ECOS GREEN REPORT: STATUS OF STATE ENVIRONMENTAL BUDGETS, 2011–2013, at 6 (Sept. 2012) [hereinafter ECOS GREEN REPORT].

¹¹ See *infra* text accompanying notes 39–40.

¹² Pub. Law No. 111-352, 124 Stat. 3866 (2011) (codified at 31 U.S.C. § 1101 (2006)).

¹³ The Act also requires agencies to develop Annual Performance Plans, which provide annual performance measures and activities toward the long-term Strategic Plan, and Annual Performance Reports, which evaluate an agency's success in achieving the annual performance measures. *Id.*

¹⁴ See Robert L. Glicksman & Dietrich Earnhart, *Depiction of the Regulator-Regulated Entity Relationship in the Chemical Industry: Deterrence-Based v. Cooperative Enforcement*, 31 WM. & MARY ENVTL. L. & POL'Y REV. 603 (2007). For an in-depth examination of the dynamic between deterrence-based and assistance-based implementation as applied to the EPA effort in the 1990s to enforce the Clean Air Act's new source review requirements, see Thomas O. McGarity, *When Strong Enforcement Works Better Than Weak Regulation: The EPA/DOJ New Source Review Enforcement Initiative*, 72 MD. L. REV. 1204 (2013).

¹⁵ Memorandum from Lisa Jackson, Adm'r, Env'tl. Protection Agency, Improving Water Quality and Transparency and Effective Enforcement of Clean Water Act Requirements,

to Cynthia Giles, Assistant Adm'r for Enforcement and Compliance Assurance, Env'tl. Protection Agency (July 2, 2009), *available at* <http://www.epa.gov/compliance/data/results/performance/cwa/jackson-ltr-cwa-enf.html>.

¹⁶ OFFICE OF ENFORCEMENT & COMPLIANCE ASSURANCE, ENVTL. PROTECTION AGENCY, CLEAN WATER ACT ENFORCEMENT ACTION PLAN, at Executive Summary (Oct. 15, 2009), *available at*

<http://www2.epa.gov/sites/production/files/documents/actionplan101409.pdf>.

¹⁷ U.S. GOV'T ACCOUNTABILITY OFFICE, GS-13-115, EPA SHOULD DEVELOP A STRATEGIC PLAN FOR ITS NEW COMPLIANCE INITIATIVE 1 (2012) [hereinafter STRATEGIC PLAN FOR NEXTGEN].

¹⁸ EPA APPROPRIATIONS, *supra* note 5, at 32–32 tbl.A-1; ROBERT ESWORTHY & DAVID M. BEARDEN, CONG. RESEARCH SERV., R43207, ENVIRONMENTAL PROTECTION AGENCY (EPA): APPROPRIATIONS FOR FY2013 IN P.L. 113-6, at 5 tbl.1 (2013).

¹⁹ In the survey, ECOS considered Puerto Rico and Washington, D.C. to be states.

²⁰ ECOS GREEN REPORT, *supra* note 10, at 1.

²¹ *EPA-State Partnerships*, *supra* note 9, at 11.

²² GOV'T ACCOUNTABILITY OFFICE, GAO-07-883, EPA-STATE ENFORCEMENT PARTNERSHIP HAS IMPROVED, BUT EPA'S OVERSIGHT NEEDS FURTHER ENHANCEMENT (2007), *available at* <http://www.gao.gov/assets/270/264845.pdf>.

²³ *See* CHESAPEAKE BAY PROGRAM, *Chesapeake 2000*, http://www.chesapeakebay.net/content/publications/cbp_12081.pdf (*Chesapeake 2000 Agreement*); David A. Fahrenthold, *A Revitalized Chesapeake May Be Decades Away*, WASH. POST, Jan. 5, 2007, *available at* <http://www.washingtonpost.com/wpdyn/content/article/2007/01/04/AR2007010401051.html> (quoting an EPA official as saying, “If we go at the current rate that we’re doing, we’re talking about restoring the Chesapeake decades from now, a generation or two.”).

²⁴ Rena Steinzor & Shana Jones, *Collaborating to Nowhere: The Imperative of Government Accountability for Restoring the Chesapeake Bay*, 4 J. ENERGY & ENVTL. L. 51, 55 (2013).

²⁵ CHESAPEAKE BAY PROGRAM, *Chesapeake Bay TMDL*, <http://www.chesapeakebay.net/about/programs/tmdl>.

²⁶ PLAN, *supra* note 1, at 6.

²⁷ *Id.* at 82–83.

²⁸ *Id.* at 62.

²⁹ *Id.*

³⁰ *See supra* note 16.

³¹ PLAN, *supra* note 1, at 64.

³² STRATEGIC PLAN FOR NEXTGEN, *supra* note 17, at 12.

³³ PLAN, *supra* note 1, at 63, 64.

³⁴ *Id.* at 21.

³⁵ *Id.* at 17 & n.3.

³⁶ *Id.* at 43.

³⁷ Rena Steinzor & Anne Havemann, Center for Progressive Reform Issue Alert #1310, *Falling Behind: Processing and Enforcing Permits for Animal Agriculture Operations in Maryland is Lagging* 4–5 (Nov. 2013).

³⁸ ENVTL. PROTECTION AGENCY, CHESAPEAKE BAY TMDL EXECUTIVE SUMMARY, ES-1 (Dec. 29, 2010).

³⁹ *Id.* at 72.

⁴⁰ PLAN, *supra* note 1, at 46.

⁴¹ *See EPA-State Partnerships, supra* note 9, at 8–9 (explaining the process of aligning EPA and state environmental priorities).

About the Center for Progressive Reform

Founded in 2002, the Center for Progressive Reform is a 501(c)(3) nonprofit research and educational organization comprising a network of scholars across the nation dedicated to protecting health, safety, and the environment through analysis and commentary. CPR believes sensible safeguards in these areas serve important shared values, including doing the best we can to prevent harm to people and the environment, distributing environmental harms and benefits fairly, and protecting the earth for future generations. CPR rejects the view that the economic efficiency of private markets should be the only value used to guide government action. Rather, CPR supports thoughtful government action and reform to advance the well-being of human life and the environment. Additionally, CPR believes people play a crucial role in ensuring both private and public sector decisions that result in improved protection of consumers, public health and safety, and the environment. Accordingly, CPR supports ready public access to the courts, enhanced public participation, and improved public access to information.

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