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Practitioner's Insights: Trump's EPA: Reagan II, or More Lasting Impacts?

BY TERRY YOSIE

President Donald Trump's proposals to significantly redirect public health and environmental policies, and greatly reduce budgetary and staffing levels, represent the most ambitious attempt to change the Environmental Protection Agency's priorities and resources since the administration of Ronald Reagan in 1981-1983. The magnitude of currently proposed changes, in juxtaposition with the earlier experience, provide an opportunity for a preliminary comparison of similarities and differences at EPA across two important, yet distinctive, periods of environmental decision-making.

Throughout its history beginning in 1970, EPA has been an institution immersed in a continuing series of crises. These stem from both public health and environmental incidents and major controversies arising from the agency's implementation of specific regulatory policies and programs.

Incidents that jeopardized public health and the environment over the past several decades were wide-ranging and included:

- significant air or water pollution episodes originating from widely distributed pollution sources (Los Angeles smog concentrations, Great Lakes and river contamination from agricultural run-off and industrial wastes);
- chemical releases and oil spills (e.g., Bhopal, chemical and refinery explosions, Ashland Oil's diesel

fuel tank collapse into the Monongahela River and the Exxon Valdez oil spill in Alaska);

- exposure to hazardous wastes (e.g., Love Canal, Valley of the Drums);
- concerns over acute and chronic exposures to individual contaminants (e.g., arsenic in drinking water, radon in homes);
- major regional or transboundary environmental problems (e.g., acidic deposition, PCB sediment contamination in major water bodies); and
- global health and environmental challenges (e.g., stratospheric ozone hole and global climate change impacts).

Parallel to these episodes has been a series of political crises related to periodic efforts to fundamentally redirect the agency's decision making, resource and staffing levels. Many of these controversies stemmed from specific debates involving EPA's interpretation of scientific information used in support of regulatory decisions (e.g., ambient air quality standards or individual toxic pollutants), legal disputes over EPA's statutory authority to develop regulations (e.g., climate change) and contentiousness over whether EPA had usurped decision-making responsibilities that should be implemented by state and local governments (e.g., private property rights vs. protection of wetlands, waters of the U.S. pollution controls). Countering these examples were numerous instances when EPA was criticized for being insufficiently aggressive in protecting air, land and water quality—such as the recent water crisis in Flint, Mich.—or the health of citizens with preexisting health conditions or other sensitive population groups.

The Reagan and Trump EPA: Setting the Context It is too soon to develop a detailed examination of how the Trump administration's EPA specifically compares with the agency under Reagan. However, there are several

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factors that can be analyzed based on existing information. They include:

- A common objective of both the Reagan and Trump administrations has been to fundamentally transform the direction of EPA programs, change the criteria by which public health and environmental decisions are made, decentralize decision making to state and local governments and drastically reduce the agency's budget and personnel levels. Newly appointed Administrator Scott Pruitt has emphasized both "statutes" and "states" as guiding factors for EPA's operations. The Trump administration's proposed Fiscal Year 2018 budget for EPA seeks a 31 percent reduction (to \$5.7 billion) and a staff level decrease of 3,200 employees. This compares to the earlier Reagan administration budget reductions of approximately 22 percent and staff cuts of 30 percent in the early 1980s.

- A major difference between the Trump and Reagan administrations of EPA lies in the quality of the top leadership's preparation for office. Anne Gorsuch, who served as administrator from 1981-1983, had virtually no managerial or policy experience for directing an agency as large and complex as EPA. Once in office, she invested significant time in learning the statutes providing EPA's various programmatic authorities and understanding regulatory processes. Pruitt, by contrast, has considerable experience as both an elected official and as an environmental litigator in his previous role as attorney general of Oklahoma. Unlike his Reagan-era predecessor, Pruitt has both significant knowledge of the contents of EPA's programs and of the institutional processes that EPA administers.

- Congressional oversight is a major factor in any administration, and Scott Pruitt's EPA will initially face less of it than did Gorsuch's. Republicans currently control both houses of Congress, whereas the Democrats maintained their dominance in the U.S. House of Representatives throughout Reagan's presidency. In practical terms, this means that—barring a major public health crisis or instance(s) of corruption or abuse of power—fewer congressional investigations will likely be initiated and subpoenas issued than occurred in 1981-1983.

- Public opinion also has significantly changed insofar as EPA is concerned. While the public continues to support basic public health and environmental protection—and awareness and concern over such issues as climate change has climbed—this does not directly channel into backing for EPA as an institution. One reason for this outcome is the continuous assertions of agency critics that it negatively impacts the economy and job creation, and intrudes upon, and is remote from, the needs and concerns of average citizens. One result is that, in today's political climate, EPA does not possess a bedrock of public understanding and support that it did in previous times. This is a factor that can rapidly change depending upon the public's level of fear of health and environmental risks.

Indicators to Watch While it is too early to evaluate results of the Pruitt-era EPA, there are several important indicators to examine for evaluating whether EPA's policy and program direction is akin to the Reagan era or likely to evolve differently. These indicators include:

- **Composition of scientific advisory committees.** Gorsuch/Reagan officials prepared lists of noteworthy

scientists and engineers that were serving on scientific advisory panels (principally the Science Advisory Board) and then purged them. Word of such activities leaked to both the media and the Congress and set off a wave of negative reaction. No evidence has emerged of such activity in Pruitt's EPA, but transition teams for various agencies, such as the Department of Energy, did submit requests for lists of government scientists working on climate change, and these inquiries were rebuffed. Legislation has also been introduced in Congress that would directly alter the criteria for appointing scientists to EPA's Science Advisory Board so that the representation of specific constituencies would override scientific merit in certain instances. The legislation also construes receiving government grants as a disqualifying factor in selecting scientists to serve on the SAB.

- **Managing conflicts of interest.** Such conflicts were very problematic for the Gorsuch EPA as leading officials accepted lunches and other favors from business lobbyists, intervened to influence the conclusions of scientific assessments and violated criminal statutes. Given the historic closeness of some Trump EPA appointees to the fossil fuel and other industries, many external stakeholders will maintain a vigilant watch for potential conflict of interest violations.

- **Companies seeking to alter regulatory policies through extra-legal channels.** This was a frequent occurrence in 1981-1983, as both individual companies and their trade associations intervened in scientific assessments and policy reviews for acrylonitrile, dioxins, formaldehyde, methylene chloride, and particulates and sulfur oxides, to name a few. Such interventions often occurred through informally established "science courts" that existed outside the legal parameters of the Federal Advisory Committee Act and via non-disclosed meetings with EPA and White House officials. Presently, some individual companies and trade associations are planning similar efforts to influence EPA decision making, and these initiatives will undoubtedly be leaked again to the media, environmental organizations and other stakeholders. In addition, proponents of unorthodox scientific claims will seek to substitute their conclusions for peer-reviewed methodologies and assessments. In a major change, however, an expanding number of U.S.-based global companies are unlikely to support these efforts because of their ongoing public commitments to advancing sustainable development and fears of ultimately experiencing a public backlash (similar to what happened in 1981-1983). Their opposition will manifest itself on such issues as climate change, energy efficiency, and maintaining a leading U.S. role in international environmental policy initiatives.

- **Degree of transparency of agency decision making.** Anne Gorsuch and most of her senior leadership team never understood one of Washington's cardinal rules that hardly anyone can ever keep a secret. As a result, many of their private meetings, secret science courts and other attempts to manage information were revealed and greatly undermined their credibility. Scrutiny of EPA has only intensified in the intervening years making non-transparent behavior even more difficult to mask. Following Trump's Jan. 20 inauguration, immediate changes were made to remove selected content from EPA's website. On the other hand, Pruitt has been

very specific and transparent about some of his priorities to rescind major regulations such as the Clean Power Plan, vehicle efficiency standards and the waters of the U.S. rule, to name several examples.

What Is the Agenda? New administrations frequently enter office with their agendas defined in terms of opposition towards their predecessors' policies rather than a positive vision of what they wish to achieve. The Gorsuch leadership team was appointed to downsize EPA, delegate more authority to state and local governments and reverse the expansion of rulemaking at the federal level. It failed at all three tasks as measured by the reversal of these priorities immediately after she left office.

This is not to deny some individual accomplishments during her tenure, such as the initial phaseout of lead in gasoline, acceptance of the scientific evidence that ultimately led (in a 1986 standard) to controlling smaller sized particulate matter and making more explicit the role of scientific review for the technical basis of regulatory policies and standards.

The Pruitt era at EPA has also begun with priorities to reverse Obama-approved decisions on climate change, altering federal and state responsibilities and reducing the size of EPA resources and staff. Assuming that he will utilize his legal authorities and political support from the executive and legislative branches to achieve a number of these short-term objectives, the question then shifts to the longer-term vision for EPA. On that question, the new EPA leadership has been relatively silent except for reiterating the importance of "process, rule of law and cooperative federalism" in the administration of air, land and water quality statutes.

Who Makes EPA Decisions? This is not an abstract nor simple question. Rather, it reflects the fact that, across the history of many administrations, the locus of decision-making authority on many key issues resided outside of EPA at the Office of Management and Budget or the White House. Several early EPA administrators—such as William Ruckelshaus, Russell Train, Douglas Costle, and William Reilly—possessed great personal ability and stature and were able to keep EPA at an arms' length from direct White House political control even while reconciling their roles as repre-

sentatives of specific presidential administrations. Gorsuch lacked such a viewpoint and capability and both acquiesced and supported OMB and White House decisions on major environmental policy and budget issues. As the multiple crises engulfed her leadership, she belatedly realized that White House backing for her continuation in office had evaporated.

Pruitt and his newly appointed senior staff have entered office with considerable experience in state government and congressional staff positions. At present, there appears to be relative unity between their policy agenda and that of the White House. However, on proposals for reducing EPA's budget, OMB and White House officials appear determined to scale back EPA's resources beyond Pruitt's initial expectations and given him little ability to appeal the outcome. The size and scope of the proposed budget and staff reductions are probably unachievable in the congressional appropriations process, thus providing Pruitt with an opportunity to restore key program support by becoming a more influential broker between the White House, Congress and influential stakeholders.

As the Trump Administration's tenure in office continues, and as the initial agenda for rolling back Obama-era policies reaches whatever outcome that emerges, the EPA and OMB/White House relationship will likely become more complicated if not contentious. Pruitt, if he hasn't already, will realize that his colleagues in the Trump White House are not always his best friends in managing the current agenda or in addressing the challenges to come.

Do these developments presage an era of transformative change at EPA? While budget and staff reductions are certainly impactful, they are unlikely to become permanent. Ultimately, public opinion will shape both the limits and possibilities of instituting more fundamental changes at EPA. As former EPA Administrator Bill Ruckelshaus recently wrote, "The public will tolerate changes that allow the agency to meet its mandated goals more efficiently and effectively. They will not tolerate changes that threaten their health or the precious environment." Welcome to Washington, Mr. Pruitt. And don't forget Harry Truman's sage advice—if you want a friend, get a dog.