

## Air and Waste Management – St. Louis Chapter

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### Speaker Notes – Transition Update

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### General Thoughts.

- a. We are in uncharted territory with the change in administration in DC and in Jefferson City. This is a civics lesson on administrative law and effectuating policy change.
- b. Difficult to turn such a large ship around especially amid countervailing efforts.
- c. The Administration cannot simply ignore rules in place. There will have to be another set of Notice and Comment to remove or alter CPP, WOTUS, or others.
- d. Legislative changes will be more difficult.
- e. No evidence that EPA is backing out of inspections and enforcement or that the day to day functions will change significantly. However, one study concludes that DOJ penalties are down by 60% from similar six-month periods in the three previous Administrations. The number of enforcement actions, however, are not down by the same number so this may be evidence that the “compliance approach” statement is being adhered to.
- f. **Cathy Stepp**, former Secretary at Wisconsin DNR has been named the Acting Regional Administrator for EPA Region 7.
- g. **Carol S. Comer**, former Secretary at the Indiana Department of Environmental Management is the new MDNR Director.

### 1. Cooperative Federalism.

- a. “Rebalancing the Scales” – Scott Pruitt, EPA Administrator
- b. “We don’t live in our parent’s basement or need permission to stay out late” – Carol Comer, MDNR Director
- c. Environmental Counsel of States (ECOS) taking a lead on Cooperative Federalism discussion.
- d. States are the “frontline” implementers.

### 2. EPA Policies.

- a. Back to Basics. Core mission is the same.
- b. Nothing on climate or geographic initiatives (Pruitt says he has no legislative authority).
- c. Rule of Law and Certainty are key to Pruitt.
  1. Clear and understandable laws and rules
  2. Nothing done without clear legal authority
  3. Executive Order 2:1 in effect (recently survived legal challenge)
- d. Expedite Superfund and get properties back into productive use
- e. Invest in water infrastructure
- f. Speed up TSCA reviews
- g. Faster permitting

### 3. Enforcement.

a. **Dave Cozad, Regional Counsel, EPA Region 7**, said recently that EPA would NOT be overfiling on state enforcement **OR** taking independent enforcement action if the State has taken the lead -- unless invited by the State.

b. Any facility that wants EPA to be engaged in a State enforcement action can make that request. (NOTE: if a facility reaches an agreement with the State, it may be a good idea to also ask for EPA's approval of the settlement as well).

c. Compliance is the goal.

d. Enforcement is one tool but prefer compliance assistance

e. Less likely to enforce where rules are not clear

f. No settlements that push beyond the rules (no "voluntary" measures or EPA is essentially "rulemaking by enforcement").

g. SEPS will likely continue if you have a clear nexus. (recent caselaw that prohibits cash from going to an NGO third party does NOT impact EPA since they never did that. The case involved banking).

h. VW diesel settlement example: Any settlement money that goes for electric charging stations or other activities other than diesel reduction would not pass muster with Administrator Pruitt.

i. No more "fine and fix" but it is unclear where EPA will draw the line.

4. EPA National Enforcement Initiative. Administrator Scott Pruitt has not shown any indication to back off from day-to-day enforcement or EPA's National Enforcement Initiative or the National Enforcement Initiative.

a. Air

Reducing Air Pollution from the Largest Sources

Cutting Hazardous Air Pollutants (Expanded initiative for FY17-19)

b. Energy Extraction

Ensuring Energy Extraction Activities Comply with Environmental Laws

c. Hazardous Chemicals

Reducing Pollution from Mineral Processing Operations (Returning to base program level in FY17)

d. Reducing Risks of Accidental Releases at Industrial and Chemical Facilities (New initiative for FY17-19)

e. Water

Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters

Preventing Animal Waste from Contaminating Surface and Ground Water

Keeping Industrial Pollutants Out of the Nation's Waters

5. MDNR Legal Matters.

a. Katie Jo Wheeler is the new General Counsel of MDNR (formerly at Spencer Fane). She has also hired two new (but very experienced) legal counsel.

b. Facilities that bring Legal Counsel to meetings should expect MDNR legal counsel to be there as well.

c. MDNR Director Comer appears to want increased engagement at every level of MDNR.

6. Transition Issues.

- a. Everything is in flux but EPA core missions continue.
- b. Pruitt's team is largely made up of people with Oklahoma connections and nearly all advisors are from the private sector. Key personnel from Senator James Inhofe's office are also critical to day to day operations.
- c. Pruitt is operating without key appointees in each media. There are 12 key political appointees and none has been named. Only one, Susan Bodine, named to head OECA, has had a Senate hearing though others are scheduled including David Ross for Water Program and William Wehrum for the Air Program.
- d. No Regional Administrators have yet been appointed. Although Cathy Stepp, as noted, has been named the Acting Regional Administrator for Region 7. Ed Chu is back at Deputy Regional Administrator. David Cozad is back at Regional Counsel. Karen Flournoy will be retiring at the end of the year. The Acting Director Water, Wetlands, and Pesticides is Jeff Robichaud. The Director of Air and Waste Management remains Becky Weber.

7. Federal budget.

- a. The "skinny" budget was supposed to be secret but it was leaked. It had a 24% cut in EPA's budget. The public budget ended up with a 31% cut in EPA funding including the loss of 3,800 staff. Grants to States cut by similar amount in draft.
- b. House hearing on the budget proposed a 6½ % cut in the budget and a 9½ % cut in payroll.
- c. EPA employee buyouts began September 1. We will see a lot of experienced people leave the Agency.

8. EPA focus. There are 8-10 areas where EPA is the only game in town. This will likely continue. For example:

- a. 112r
- b. lead
- c. mobile sources
- d. issues that impact multiple states
- e. cross boundary issues
- f. State Agency v. State Agency
- g. Areas where States have asked EPA to help
  1. Industrial storm water for example.
- h. National Enforcement Initiative.
  1. Still on the EPA website and agenda
  2. Administrator Pruitt has kept but may alter the specifics

9. Missouri Transition.

Director Carol Comer.

a. Has vision for the Agency in terms of returning to core functions, standing up to EPA where appropriate, reducing excess staff, and recognizing the impact MDNR has on business development.

b. Leadership team. New or returning to MDNR: **Dru Buntin**, Deputy Director; **Ed Galbraith**, Director, DEQ; **Katie Jo Wheeler**, General Counsel; and **John Juergensmeyer**,

Director, Hazardous Waste Program. Elevated staff: **Chris Wieberg**, Director, Water Protection Program. Remaining from previous administration is **Kyra Moore**, Director, Air Pollution Control Program.

c. Efficiency and metrics drivers; wants to be able to document change (hence emphasis on permit timeliness).

d. "Risk Assessment Section."

1. Director Comer has indicated that she will set up a Risk Assessment Section  
2. Director Comer indicated that the Department also plans to move all risk assessment analysis into MDNR and out of DHSS.

3. Risk-based Decision Making is a driver for the Department under Director Comer.

10. Regulatory burden and Governor's Executive Order 17-03 (aka Red Tape Reduction for each agency).

a. High priority of Gov. Greitens. MDNR lead is **Dru Buntin**. MDNR wants 100 rules to present to the governor by December 31, 2017.

b. Comments to MDNR by the end of the year (though early is better). Final suggested revisions by May 31, 2018. **[NOTE: if any member of AWM has a rule they would like REGFORM to include on its list, please give me a call or send it my way].**

c. Goal is to identify overly burdensome, outdated, ineffective, or expensive restrictions.

d. In Missouri, DNR has the most restrictions (these are word counts of restricting words like "shall," "must," etc.) of any other agency in Missouri: 24,000. DEQ accounts for 75% of those restrictions: 17,000. Within DEQ, Clean Water has 4200 restrictions and Drinking Water has 3000 restrictions. Together they account for 42% of the restrictions on the books for DEQ.

e. Within the Water Program 71 rules will be scrutinized under this process.

f. Other states have undertaken this effort and in some cases have achieved as much as 70% reductions in restrictions. Missouri's goal (and MDNR's goal) in particular is 1/3 reduction.

11. Air Update.

1. Permit backlog is driving APCP these days.

2. No extensions of statutory timelines going forward.

3. APCP is working through revised application forms for Construction Permit, Operating Permit, and Basic OP.

4. Director Comer hopes to make the St. Louis ozone nonattainment areas smaller and fight hard against any new areas.

5. Director Comer hopes to eliminate both SO<sub>2</sub> nonattainment areas.

12. Water Update.

1. Our Missouri Waters as a state effort is over - but some regional planning groups are still hosting watershed meetings.

2. WPP also is pushing hard to speed up permit reviews and eliminate the backlog.

3. Since Carol Comer took over MDNR the NPDES permit backlog has been cut in half from 1800 to 847. He asked stakeholders to help them get long-expired permits out of the back log. He said "we're being 'reasonable.'" And innovative. So bring your creative solutions to the table to help get your long-expired permit current.

4. The construction permit group will be more aggressive about returning construction permit applications that are administratively incomplete. They do not want the clock to be running while they are waiting for information from the applicant to make the application complete.

5. 44% of the permitted universe is now set up and using the eDMR system. If you are not using eDMR now, you will see it as a requirement in your next permit renewal.

6. The Red Tape Reduction have is consuming a lot of staff time. Everyone who is an expert on a particular rule is undertaking an effort to look at the rule and see if it can be improved or eliminated. 40-45 staff have been working on this RTR effort.

7. Current rule changes will impact the nutrient standard for lakes and other WQS.

### 13. Hazardous Waste Update.

1. The HazWaste Program has been pretty silent. No stakeholder meetings or forums.  
2. Generator Improvement Rule continues to draw criticism  
3. Director Comer has indicated an interest in establishing MDNR expertise in risk assessment.

4. **Hazardous Waste Seminar** (annual event), November 15 in Columbia. See [www.regform.org](http://www.regform.org)