

A Closer Look At EPA Inspector General's New Strategic Plan

By **Brian Stansbury and Leah Min** (October 19, 2018, 11:16 AM EDT)

On Oct. 4, the U.S. Environmental Protection Agency's Office of Inspector General released its strategic plan for 2019 to 2023. The OIG is charged with the prevention of fraud, waste, abuse, mismanagement and misconduct in the EPA and the U.S. Chemical Safety and Hazard Investigation Board, or CSB. Previously in February 2018, the EPA released its strategic plan for fiscal year 2018 to 2022. Unlike the EPA strategic plan, which differs drastically from the prior EPA strategic plan for 2014 to 2018 and charts a new course for the EPA, the OIG strategic plan largely resembles the OIG's prior strategic plan for 2012 to 2016. As in the 2012 to 2016 OIG strategic plan, the OIG strategic plan adopts the goals of the EPA and identifies how it will help the EPA perform its stated goals.[1] This article focuses on a few aspects of the OIG strategic plan worth noting for industry and other stakeholders with interest in environmental regulatory enforcement:

- The OIG will hold the EPA accountable for meeting 2019 targets identified in the EPA strategic plan.
- The OIG provides less guidance on how it will support other EPA goals, such as rebalancing regulatory power to the states and returning the EPA to its statutory obligations.
- The OIG will rely on data and business analytics to meet its goals.
- The OIG characterizes its oversight role as creating value propositions.
- The OIG reinforces its commitment to staff retention, satisfaction and diversity.



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Importantly, the resignation of Inspector General Arthur A. Elkins Jr., which took effect on Oct. 10 of this year, creates the possibility of a subsequently appointed inspector general changing the OIG's focus. In the meantime, Charles J. Sheehan, who has served as Elkins's deputy inspector general since 2012, is the acting inspector general, and there has been no indication that he intends to deviate from the OIG strategic plan.

The EPA Strategic Plan Was a Drastic Departure From the Prior Strategic Plan

The current EPA strategic plan is in stark contrast to the prior strategic plan and could be characterized as a repudiation of the prior administration's vision for an inclusive and proactive EPA. In the new EPA strategic plan, the stated goals reflect a new direction for the EPA:

- **Core Mission:** Deliver real results to provide Americans with clean air, land and water, and ensure chemical safety.
- **Cooperative Federalism:** Rebalance the power between Washington, D.C., and the states to create tangible environmental results for the American people.
- **Rule of Law and Process:** Administer the law as Congress intends, to refocus the agency on its statutory obligations under the law.

Whereas the previous 2014 to 2018 EPA strategic plan included the following goals:

- Addressing climate change and improving air quality.
- Protecting America's waters.
- Cleaning up communities and advancing sustainable development.
- Ensuring the safety of chemicals and preventing pollution.
- Protecting human health and the environment by enforcing laws and ensuring compliance.

Moreover, the "Administrator's Message" at the beginning of that report reinforced the EPA's commitment to environmental justice and its "focus on urban, rural and economically disadvantaged communities to ensure that everyone — regardless of age, race, economic status or ethnicity — has access to clean water, clean air, and the opportunity to live, work, and play in healthy communities."

Gone in the current EPA strategic plan is the goal of addressing climate change or environmental justice, and, in fact, refocusing the EPA on its "statutory obligations" could be interpreted as a repudiation of both of those objectives.

Main Goals of the OIG Strategic Plan

From a high-level perspective, the OIG strategic plan varies little from its prior incarnation, as the stated goals of both plans are largely the same. The similarity between the two plans is not entirely surprising given that Elkins was the inspector general of the EPA when both plans were created. Divided into three primary goals and 13 strategic measures, the new OIG strategic plan outlines the ways in which the OIG plans to provide oversight to the EPA while extending leadership and support.

- **Goal 1:** Contribute to improved EPA and CSB programs and operations protecting human health and the environment, and enhancing safety. The OIG plans to perform targeted audits and evaluations that assess the EPA's processes and procedures, so the programs and operations protecting human health, the environment and safety can be made more effective and efficient. The focus is on being agile while addressing key aspects of air quality standards, clean drinking water, land remediation and chemical safety. Within this goal, OIG creates specific targets for the next five years to increase its impact on laws and regulations regarding human health, the environment and safety, and to reduce environmental risks and challenges.

- **Goal 2:** Conduct audits, evaluations and investigations that enable the EPA and the CSB to improve business practices and accountability. The second goal is targeted toward accountability and reducing waste in the EPA. It focuses on assisting the EPA with improving business practices by conducting audits, evaluations and investigations. Under this goal, OIG plans to monitor and review the EPA's use of operational resources in an effort to promote efficiency while detecting and preventing fraud, waste, abuse, mismanagement and misconduct. Notable here is the focus on mitigating potential for fraud and loss through establishing governance over enterprise risks. The OIG places increased focus on maximizing resources by utilizing automated tools to target investigations. The OIG anticipates using enterprise risk management and internal control assessment tools as well as data and business analytic technology in order to achieve this goal. The OIG makes it a priority to reduce wasteful misconduct not just for the sake of efficiency but with an eye toward proactively creating monetary benefit for the agency.
- **Goal 3:** Improve OIG processes, resource allocation and accountability to meet stakeholder needs. The third goal is focused internally toward the OIG itself and is oriented toward ensuring that the OIG is equipped to provide the greatest return on investment. The objectives described within this goal address improving the OIG's processes, resource allocation and accountability to meet stakeholder needs. Particular focus is given to ensuring that products and services provided to stakeholders and the agency are timely and that high-risk and high-vulnerability items are minimized. Within this goal are also numerous workforce-focused objectives to ensure a well-trained, satisfied and diverse staff. Specific employee-related goals include being rated "above satisfactory" in the Federal Employee Viewpoint Survey and for the majority of employees to indicate satisfaction in working with the OIG as assessed by the "Best Places to Work" score administered by the Partnership for Public Service.

OIG Holding EPA to Stated 2019 Benchmarks

In a document comprised primarily of broad discussion of goals and methods, one of the most explicit statements in the OIG strategic plan is the intent to audit whether the EPA meets its "Agency Priority Goals" for FY 2018 to 2019. Specifically, the OIG will "conduct audits that assess the EPA's progress toward its goals to implement the following by September 30, 2019":

- Reduce the number of nonattainment areas from 166 to 138.
- Increase by \$16 billion the nonfederal dollars leveraged by the EPA water infrastructure finance programs.
- Make an additional 102 Superfund sites and 1,368 brownfield sites ready for anticipated use.
- Complete 100 percent of the EPA-initiated Toxic Substances Control Act risk evaluations and risk management actions for existing chemicals and 80 percent of TSCA premanufacture notice final determinations.
- Reduce the percentage of Clean Water Act National Pollutant Discharge Elimination System permittees in significant noncompliance with permit limits to 21 percent from a baseline of 24 percent.
- Reduce by 50 percent the number of permitting-related decisions that exceed six months.

To the extent that an EPA stakeholder — including a company being regulated by the EPA — is involved with a project that would further one of the above stated goals, the EPA is likely to respond proactively. Additionally, to the extent that the EPA fails to meet any of the goals above, the OIG may scrutinize any ongoing sites or regulatory actions that played a role in EPA's failure to meet its goals.

OIG Does Not Specifically Address Other EPA Goals

Notably missing from the OIG strategic plan are concrete measures to support the goals in the EPA strategic plan to (1) rebalance regulatory powers to the states and (2) refocus the EPA to its statutory obligations. In the EPA strategic plan, the EPA emphasizes its intended collaboration with state, local and tribal organizations, addressing the shared responsibility for environmental enforcement actions. The EPA's "refocus" on its "statutory obligations" likely means a movement away from issues like addressing climate change. The OIG strategic plan does not identify any metrics or goals that it will use to assess whether the EPA is meeting either goal. The OIG strategic plan does indicate that it will conduct "major investigative activities" that will include identifying any "criminal activities related to agency grants and contracts dealing with state revolving funds and interagency and cooperative agreements that help state, local, and tribal governments, universities, and nonprofit recipients; ..."

OIG Will Rely on Data and Business Analytics to Meet its Goals

With spending at the EPA on the decline since President Donald Trump took office and environmental regulation under increased scrutiny, the OIG recognizes that it will have to leverage technological innovation in order to achieve more with less. The OIG places particular emphasis on technological solutions such as the E-Enterprise Web Portal, data analytics and business analytical tools. The OIG strategic plan does not provide great detail on exactly which analytics will be used and how they will be used, but industry and environmental stakeholders can expect to see increased utilization of technological and automated tools by the EPA and the OIG.

OIG Characterizes its Role as Creating a Value Proposition

The OIG states that it will not just support the EPA's stated goals and promote efficiency, but it will proactively create a monetary benefit through its efforts. The OIG articulates an ambitious plan to create a 20:1 return on investment within the next five years. Whereas previous OIG strategic plans describe creating savings and results, in the new OIG strategic plan, the OIG recognizes the urgent need to create ongoing value in realizing immediate and measurable monetary benefit, thus ensuring the watchdog's worth and longevity.

For businesses and stakeholders with an interest in environmental regulation, the increased focus on creating monetary benefit likely means increased scrutiny from the OIG, particularly on larger projects where the "return" on identifying any malfeasance would involve larger sums of money.

OIG Will Focus on Staff Retention, Satisfaction and Diversity

Previous OIG strategic plans identify diversity as a priority for its workforce, and not only does the OIG retain that goal, but there is a greater emphasis on the importance of staff retention and satisfaction. The OIG strategic plan provides several measures focused toward quantifiable metrics of workforce satisfaction. This is noteworthy at a time when the EPA has been accused of a "brain drain" as high-level, long-time experts have left the agency and numerous others have admitted concern. Moreover, the

EPA's movement away from environmental justice and a focus on addressing environmental issues that specifically impact communities of color has not gone unnoticed in these communities. The OIG's commitment to diversity in the workforce conveys an important message to all stakeholders. What remains to be seen is whether this commitment to diversity and workplace satisfaction will continue when and if a new inspector general is confirmed.

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[1] The CSB also periodically issues strategic plans. However, the CSB strategic plans issued during the Obama and Trump administrations are largely unchanged, as is the OIG's discussion of its CSB oversight in the current OIG strategic plan and the prior incarnation. Accordingly, this article focuses on the OIG report as it relates to the EPA.