

U.S. EPA REGION 2

CIVIL ENFORCEMENT UPDATE

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Regional Counsel
May 19, 2023

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EPA CIVIL ENFORCEMENT POLICY DIRECTIONS

- *“A robust compliance monitoring and enforcement program is necessary to ensure communities get the environmental and human health benefits intended by environmental statutes and EPA’s regulations.”* (EPA Strategic Plan, FY 2022-2026).
- EPA will focus federal enforcement resources on the most serious environmental problems where noncompliance with environmental statutes and regulations is a significant contributing factor and where federal enforcement can have a significant impact on the nation’s air, water, and land.
- This work will include targeting and screening to prioritize and increase inspections and enforcement cases in **overburdened and vulnerable communities**.
- For FY 2022, OECA and the EPA Regions committed to conduct 45% of their on-site inspections at facilities in communities with **potential environmental justice concerns**. EPA surpassed that goal, conducting **over 56%** of on-site inspections at facilities located in such communities.
 - Implementing EPA’s policy of **“Strengthening Enforcement in Communities with Environmental Justice Concerns”** (OECA, 4/30/21)

EPA CIVIL ENFORCEMENT POLICY DIRECTIONS

- EPA focuses on strengthening enforcement and resolving environmental noncompliance through **remedies with tangible benefits for the impacted community**, including:
 - Preventing further pollution due to noncompliance, **mitigating** past impacts from pollution, and securing penalties to recapture the economic benefit of noncompliance and deter future violations.
 - Seeking early and innovative relief (e.g., fence line monitoring and transparency tools).
 - Incorporating Supplemental Environmental Projects (SEPs) in settlements, where appropriate.
- We continue to initiate enforcement actions to protect against **children's health hazards** in areas such as exposure to **lead paint**, the presence of lead and other contaminants in **drinking water**, and **particulate air emissions** that aggravate asthma.

EPA CIVIL ENFORCEMENT POLICY DIRECTIONS

- Tackling Climate Change Through Enforcement:
 - To advance EPA's efforts to tackle the climate crisis and mitigate **GHG emissions**, EPA will target violators of the **American Innovation and Manufacturing (AIM) Act**, the Renewable Fuel Standard, and regulations that apply to **oil and gas** sources and **landfills**.
 - AIM Act directs EPA to phase down production and consumption of hydrofluorocarbons (HFCs) by 85% over a 15-year period through an allowance allocation and trading program.
- Continue focus on the **National Enforcement & Compliance Initiatives**, which target the most serious environmental and public health problems where noncompliance is a significant contributing factor (more about NEICs on later slides).
- EPA's national enforcement program also addressing additional issues that threaten public health and the environment, such as **coal combustion residuals** and **per- and polyfluoroalkyl substances (PFAS)**.
 - EPA will continue to use enforcement authorities to compel parties that manufacture or release PFAS or other chemicals in violation of the law to return to compliance. Where such parties are causing or may cause an imminent and substantial endangerment, EPA enforcement program can also compel the parties to address the potential endangerment.

EPA CIVIL ENFORCEMENT POLICY DIRECTIONS

- EPA is also conducting early and more frequent **engagement with overburdened communities** affected by enforcement decisions.
 - Recent Region 2 community engagement examples:
 - St. Croix, USVI oil refinery
 - EPA held numerous meetings w/ community in the wake of serious incidents that led to EPA issuing emergency CAA order to refinery. EPA set up toll-free hotline for community (hundreds of calls received) and a dedicated Web page, and provided frequent updates to community. EPA installed air monitors and notified community of exceedances
 - Toa Alta, PR municipal solid waste landfill – RCRA §7003 judicial case.
 - EPA/DOJ held meeting with public, inviting community to weigh in on potential settlement, prior to signature.

Real-time community access to monitoring data

- Following EPA's 12/5/22 administrative order to Port Hamilton Refining, req'g. removal of chemicals from refinery with nearby residential areas:
 - EPA began conducting air monitoring in community and on fence line on continuous, 24 hour basis.
 - Set up website where mon. data is uploaded. Sampling locations color coded on map, in real time, based on how the measurements compare to action levels.


Port Hamilton Refining and Transportation




Air Monitoring Readings

The current air monitoring readings for the fence line and community monitors can be viewed below. Past air monitoring readings can be viewed [here](#).

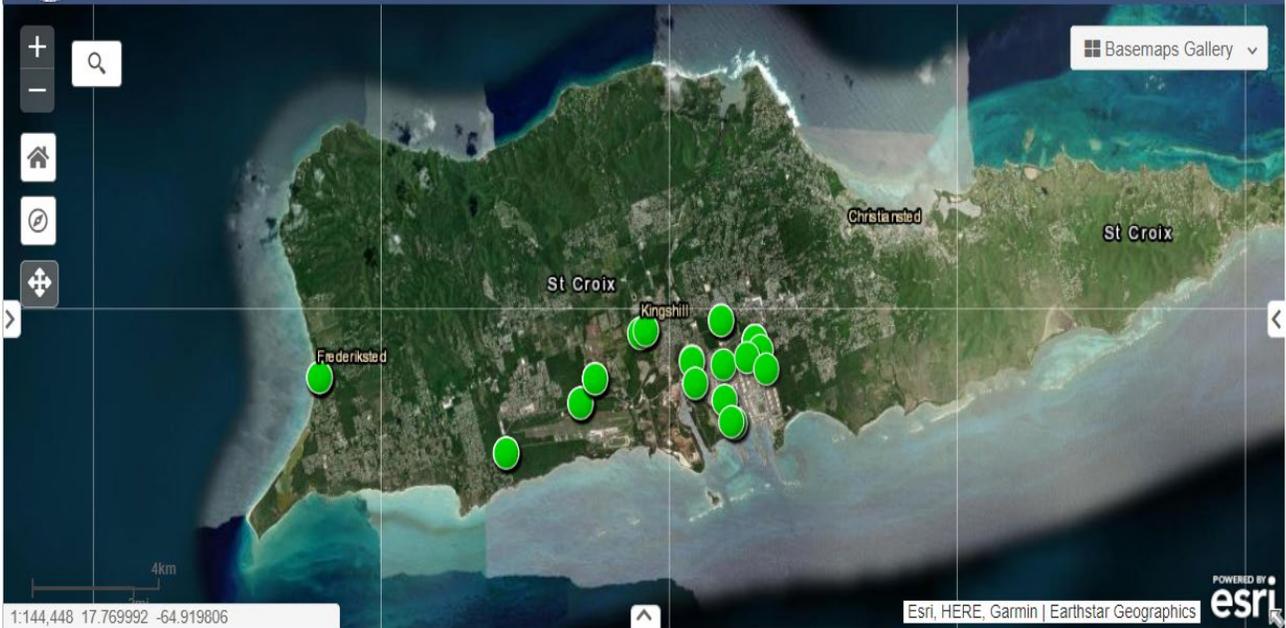

EPA Region 2 Viewer
 PHRT

Help









Basemaps Gallery


1:144,448 17.769992 -64.919806
Esri, HERE, Garmin | Earthstar Geographics 

	Tier	Color	Recommended Actions at Each Tier
 Alarm State = Green	1	Green	<ul style="list-style-type: none"> While odors may be detected, no adverse health effects are anticipated. No actions required.
 Alarm State = Yellow	2	Yellow	<ul style="list-style-type: none"> The general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic non sensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.

Enhanced Community Engagement

ECHO (<https://echo.epa.gov/>) enables public to search EPA and state data for more than 800,000 regulated facilities to check on their environmental compliance status.

Recent improvements to ECHO:

- EPA has integrated environmental justice metrics into the basic ECHO features, allowing users to, e.g., investigate pollution sources in areas with possible EJ concerns.
- **“ECHO Notify”** launched – an email service that allows communities to get email alerts when a local facility has a violation or enforcement action.
- Benzene monitoring data dashboard added.

The screenshot displays the ECHO website interface. At the top, the EPA logo and navigation menu are visible. The main header includes the ECHO logo and the text "Enforcement and Compliance History Online". A search bar is present in the top right corner. Below the header, a "Quick Search" section is highlighted with a purple background. This section contains a search form with two tabs: "Location" (selected) and "Facility Name/ID". The "Location" tab has a text input field labeled "Enter city, state, and/or zip code" and a "Search" button. A link for "More Search Options" is located below the search form. To the left of the search form is a vertical sidebar with several menu items: "Search Options", "Analyze Trends", "Find EPA Cases", "Data Services", "Help", and "News". Below the search form, there is a paragraph of text explaining the purpose of the website and a list of five search capabilities. To the right of the list are three icons with corresponding links: "Read the Quick Start Guide", "Watch a Video Tutorial", and "Explore the Tool Guide".

ECHO Enforcement and Compliance History Online

Quick Search

Search By

Location Facility Name/ID

Enter city, state, and/or zip code Search

[More Search Options](#)

Use EPA's Enforcement and Compliance History Online website to search for facilities in your community to assess their compliance with environmental regulations. You can use ECHO to:

- Search for Facilities
- Investigate Pollution Sources
- Search for EPA Enforcement Cases
- Examine and Create Enforcement-Related Maps
- Analyze Trends in Compliance & Enforcement Data

[Read the Quick Start Guide](#) [Watch a Video Tutorial](#) [Explore the Tool Guide](#)

Supplemental Environmental Projects

- Supplemental Environmental Projects (SEPs) are projects, not otherwise legally required, that are included as part of an EPA enforcement settlement and will provide a tangible environmental or public health benefit.
- SEPs are available as a settlement tool again. DOJ rescinded prior Administration's rule, which had restricted SEPs.
- Defendants in enforcement actions are encouraged to consider whether proposing a SEP as part of settlement discussions makes sense for them.
- See EPA's SEP Policy at: <https://www.epa.gov/enforcement/supplemental-environmental-projects-seps>. Spells out requirements such as that a project submitted by a defendant for consideration must have a strong "nexus" to the violations being resolved, and advance the goals of the statute from which the violations stemmed.
- A defendant's voluntary agreement to perform a SEP is one factor that is considered in determining an appropriate settlement penalty.
- EPA encourages defendants to reach out to the affected communities about project ideas.

OVERSIGHT OF STATE ENFORCEMENT

- Feb. 17, 2023 Administrator Regan memo rescinds and replaces 2018 Administrator Wheeler memo on principles and best practices for oversight of federal environmental programs implemented by states.
- Recognizes key role each state has in enforcing and assuring compliance with federal env'tal laws that the state has been authorized to implement, but also emphasizes the critical role of EPA to ensure the just and equitable implementation and enforcement of state-implemented programs, and to take direct action where appropriate.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

February 17, 2023

THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Principles and Best Practices for Oversight of State Implementation and Enforcement of Federal Environmental Laws

FROM: Michael S. Regan
Administrator

A handwritten signature in black ink that reads "Michael S. Regan".

TO: Assistant Administrators
Regional Administrators
Deputy Assistant Administrators
Deputy Regional Administrators

FY 2020-2023 NATIONAL ENFORCEMENT & COMPLIANCE INITIATIVES

- Focuses enforcement and compliance assurance resources on the most serious environmental violations
- In addition to the 6 current NEICs, EPA enforcement program also contributes to the Agency-wide priority on reducing **childhood lead exposures**.

Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants

Stopping Aftermarket Defeat Devices for Vehicles and Engines

Reducing Hazardous Air Emissions from Hazardous Waste Facilities

Reducing Risks of Accidental Releases at Industrial and Chemical Facilities

Reducing Significant Non-Compliance in the National Pollutant Discharge Elimination System (NPDES) Program

Reducing Non-Compliance with Drinking Water Standards at Community Water Systems

Examples of EPA Region 2 Enforcement Work under the NECI's

- ***Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants***
 - Initiative is focused on reducing excess emissions of VOCs and Hazardous Air Pollutants
 - 11/30/22 consent decree with **TotalEnergies Marketing PR** requires corrective measures and \$500,000 penalty to resolve CAA violations at petroleum storage facility in Guaynabo, PR
 - 12/15/22 consent decree with **Stony Brook Regional Sewerage Authority (NJ)**: \$335,750 penalty and injunctive relief requiring sewage sludge incinerators to be operated in accordance with CAA.
 - 11/24/21 consent decree with **NYC Dept of Education**: \$1M penalty and inj. relief resolving failure to properly monitor and control emissions from oil-fired boilers in public schools.

Examples of Region 2 Cases under NECI's (cont'd)

- ***Reducing Risks of Accidental Releases***

- 12/5/22 administrative order to **Port Hamilton Refining** for noncompliance with CAA's General Duty Clause; requires safe removal of chemicals posing a threat from oil refinery on St. Croix, USVI.
- Region 2 has taken several enforcement actions against **ammonia refrigeration facilities** for failure to comply with **Risk Management Program** requirements

- ***Reducing Non-Compliance with Drinking Water Standards***

- In FY 2022, EPA Region 2 issued 70 administrative orders to public water systems that were in violation of Safe Drinking Water Act rules, *e.g.*, the **Lead and Copper Rule** (LCR) and the Stage 2 Disinfectant and Disinfection Byproducts Rule.
 - Example: City of Geneva, NY signed consent order with EPA, requiring corrections to its lead & copper water monitoring protocol.

Examples of Region 2 Cases under NECI's (cont'd)

- ***Reducing Significant Non-Compliance in the NPDES Program***
 - Jersey City Municipal Utilities Authority – We finalized Consent Decree modification in 2022 that includes significant injunctive relief (\$1.1 billion) that will reduce CSO discharges and increase the City's resiliency to impacts caused by climate change, as well as replace >12,000 lead service lines.
- ***Stopping Aftermarket Defeat Devices for Vehicles and Engines***
 - PARTSiD (formerly known as Onyx Enterprises) (NJ)
 - EPA found that PARTSiD was selling hardware and software specifically designed to defeat required emissions controls on vehicles and engines.
 - 9/30/22 consent agreement required company to stop this practice and pay civil penalty of **\$491,474**.

Additional Civil Enforcement Focus Areas

Lead Paint

- Reducing childhood exposures to lead is a high priority for EPA. Dust from chipped or peeling lead-based paint (LBP) in homes built before 1978 is the most common source of elevated blood lead levels in U.S. children.
- EPA enforcement for the LBP program focuses on the **Renovation, Repair and Painting (RRP) Rule** and the **Lead Disclosure Rule**.
- Recent Region 2 Case Examples:
 - In re: Passaic Housing Authority – Jan. 2023 consent agreement resolved Lead Disclosure and RRP Rule violations in numerous apartments and required comprehensive injunctive relief.
 - U.S. v. CISNE NY Construction, Inc., et al. – April 2023 consent decrees resolved RRP violations in multi-unit residential apartment buildings in Manhattan.

Additional Civil Enforcement Focus Areas

- Surge of imports and sales of products (e.g., disinfectants) claimed to prevent or kill **COVID** virus, many of which not in compliance with **Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)**. For example:
 - **Pesticides not registered with EPA** or which were distributed with **unapproved claims**.
 - **Misbranded products** (false & misleading statements, improper labels).
 - Pesticides applied by methods that were not approved (“**pesticide misuse**”)
- EPA’s enforcement program has taken many FIFRA actions to address this noncompliance, e.g., penalty actions, stop-sale orders, advisory letters, Notices of Refusal of Admission.

Recent examples of EPA Region 2 FIFRA enforcement

- TZUMI Innovations, LLC v. Regan (SDNY) – 8/26/22 settlement resolved EPA’s claim that Tzumi had illegally distributed and sold millions of products claiming to have antimicrobial properties in violation of FIFRA, during height of COVID-19 pandemic. The products had not been registered with EPA. Tzumi issued corrective statements and paid **\$1.5 million civil penalty**, one of the largest civil penalties ever obtained by EPA under FIFRA.
- Zoono USA and Zoono Holdings – September 2022 settlements req’d. \$325,000 in penalties for distributing and selling “Zoono Microbe Shield,” a registered pesticide, with false and misleading claims about its effectiveness and suitability for use as a disinfectant or sanitizer.

PRESS RELEASE

U.S. Attorney Announces \$1.5 Million Settlement With Tzumi Innovations, LLC For Selling Unregistered Antimicrobial Household Products During The Covid-19 Pandemic

Monday, June 13, 2022

Share >

For Immediate Release

U.S. Attorney's Office, Southern District of New York

Damian Williams, the United States Attorney for the Southern District of New York, and Lisa F. Garcia, Regional Administrator of the U.S. Environmental Protection Agency (“EPA”), announced today that the United States has filed and simultaneously settled a

EPA Takes Enforcement Action Against Two New Jersey Companies for Violations Related to Misbranded Pesticide Spray

September 21, 2022

Contact Information

Elias Rodriguez (rodriguez.elias@epa.gov)

212-637-3664

NEW YORK – The U.S. Environmental Protection Agency (EPA) today announced settlements with two New Jersey companies for

Proposed Nat'l Enforcement & Compliance Initiatives FY24-27

In 1/12/23 Federal Register notice, EPA proposed NECI's for next 4-year cycle:

- *Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants.*
- *Reducing Risks of Accidental Releases at Industrial and Chemical Facilities.*
- *Reducing Significant Non-Compliance in the National Pollutant Discharge Elimination System (NPDES) Program*
- *Reducing Non-Compliance with Drinking Water Standards at Community Water Systems.*
- ***Mitigating Climate Change (reduce GHG emissions)***
- ***Addressing PFAS Contamination***

EPA also invited comment on whether to add an NECI to address **Coal Combustion Residuals** pollution and/or **lead contamination**.

Final selection of NECI's to be made later this year.

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2022-0981; FRL-10417-01-OECA]

Public Comment on EPA's National Enforcement and Compliance Initiatives for Fiscal Years 2024-2027

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting public comment and recommendations on the National Enforcement and Compliance Initiatives (NECIs) for fiscal years 2024-2027 (formerly called "National Compliance Initiatives"). The EPA focuses enforcement and compliance resources on the most serious and widespread environmental problems by

on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michele McKeever, Chief, National Planning and Measures Branch, Office of Enforcement and Compliance Assurance, Mail Code: M2221A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202-564-3688; fax number: 202-564-0027; email address: mckeever.michele@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to the EPA.

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QUESTIONS