U.S. EPA REGION 2

CIVIL ENFORCEMENT UPDATE

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“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 NECIs 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.
Enhanced Community Engagement

**ECHO** ([https://echo.epa.gov/](https://echo.epa.gov/)) enables the 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.
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.
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 NECIs, 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.
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:
  o Pesticides not registered with EPA or which were distributed with unapproved claims.
  o Misbranded products (false & misleading statements, improper labels).
  o 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.
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 NECIs to be made later this year.
QUESTIONS