



EPA to Increase Enforcement Actions Under Environmental Justice Initiatives

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In conjunction with the Biden administration's renewed focus on environmental justice efforts, the Environmental Protection Agency (EPA) is stepping up its enforcement efforts by increasing facility inspections, thereby aiming to provide more immediate relief for communities near non-compliant facilities, adopting protective remedies that fully address non-compliance and increasing engagement with communities that suffer from environmental justice issues.

In an address on May 24, 2022, EPA's acting chief of the Office of Enforcement and Compliance Assurance (OECA), Larry Starfield, acknowledged that while the early years of the COVID-19 pandemic allowed EPA to refine its off-site enforcement tools, such as drone surveillance and data mining, EPA is now increasing its use of in-person inspections to identify violations and issue "imminent and substantial endangerment" orders under the Safe Drinking Water Act (SDWA) and Clean Air Act (CAA) if necessary.

While these orders are typically rare, Starfield made clear that "this administration is prepared" to issue more orders to provide "early relief" to communities. For example, in May 2021, EPA issued two CAA section 303 emergency orders, which allow the EPA to shutter a facility in cases of substantial public health endangerment, to a refinery and a pulp and paper mill for exposing nearby communities to excessive hazardous emissions.

To make sure violations do not recur, EPA is seeking to ensure that remedies address non-compliance and, as we previously reported, reviving the use of supplemental environmental projects (SEPs) to help restore harmed communities beyond the relief a court can typically provide. EPA is also increasing community engagement through the Superfund program by proactive monitoring of Superfund sites and surrounding communities and requiring creation of community mitigation plans to identify steps that will be taken if pollution continues. Additional outreach tools include the Next Door app and a listserv that provides subscribers with weekly emails on violations recorded in EPA's Enforcement and Compliance History Online

database. EPA also sent out its first “pollution accountability team” to Louisiana where it conducted unannounced inspections in three Louisiana parishes.

In addition to its environmental justice efforts, EPA is incorporating climate change resilience and mitigation protections into consent decrees, increasing its focus on coal combustion residuals (CCR) under the Resource Conservation and Recovery Act (RCRA) and per- and polyfluoroalkyl substances (PFAS) under other environmental statutes. Starfield noted the agency’s current focus is on manufacturers of PFAS.

The Biden administration EPA is expected to be active on environmental justice issues going forward. Nossaman will continue to monitor and report on any notable updates.