

Client Alert

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EPA Announces National Enforcement Initiatives for 2017-2019

EPA has announced new [National Enforcement Initiatives](#) for the first time in more than five years. The enforcement initiatives will direct EPA inspection and enforcement resources where EPA has concluded there is significant non-compliance and where its enforcement efforts can most benefit human health and the environment. For FY2017-19 (beginning in October of this year), EPA will pursue seven enforcement initiatives, including two brand-new initiatives and a new area of focus to an existing initiative. EPA will also continue to pursue four previously announced enforcement initiatives. The regulated community can expect inspections and enforcement to be targeted consistent with these enforcement initiatives and should, therefore, act proactively to understand the initiatives and prepare accordingly.

EPA's two new enforcement initiatives are:

- **Keeping Industrial Pollutants Out of the Nation's Waters.** EPA will focus enforcement priority on discharges from specific industries, including chemical manufacturing, metals manufacturing, mining and food processing. According to EPA, these industries are responsible for nutrient and metal pollution in lakes, rivers and streams, which can degrade water quality and threaten drinking water sources. EPA will use water pollution data to target potential violations of discharge permits, seeking to reduce unauthorized discharges, achieve compliance and reduce water pollution across the nation. Clients in these industries are encouraged to evaluate compliance with any NPDES permits authorizing discharges from their facilities pursuant to the Clean Water Act.
- **Reducing Risks of Accidental Releases at Industrial and Chemical Facilities.** EPA will increase its enforcement response to catastrophic accidents and explosions that kill or injure employees and emergency responders, and release chemicals that threaten human health and the environment in neighboring communities. This initiative will target preventing accidents, by focusing on training, equipment maintenance, inspection routines and other precautions facilities should take to reduce dangers to employees and the surrounding communities. EPA also makes clear that it will continue to focus particularly on industrial facilities located in low-income or minority communities. EPA will continue responding to and investigating accidents at industrial facilities, together with OSHA and other relevant federal agencies. Clients that maintain Risk Management Plans required by Section 112(r) of the Clean Air Act are encouraged to evaluate their chemical accident prevention programs.

EPA is expanding its current enforcement initiative addressing toxic air pollution emissions. This initiative has focused on reducing the emissions of hazardous air pollutants from leaks and flares. EPA's expansion will target large product storage vessels, impoundments and facilities that generate, treat, store or dispose of hazardous wastes. EPA will also concentrate on violations of leak detection and repair requirements at these facilities.

EPA plans to continue focusing inspection and enforcement resources on four targeted areas that were first identified in 2011:

- In the Air program, EPA will focus on ensuring that large industrial facilities, like coal-fired power plants and acid, glass and cement manufacturing facilities, comply with Clean Air Act New Source Review and Prevention of Significant Deterioration requirements when building new facilities or making modifications to existing ones.
- Energy extraction activities, particularly in the natural gas sector, will continue to be under close scrutiny, with a particular focus by EPA on air emission violations.
- In the Water program, EPA will continue to focus its enforcement efforts on unpermitted raw sewage and stormwater discharges that threaten water quality.
- EPA will continue to target violations at concentrated animal feeding operations (CAFOs) that impair natural resources or adversely impact communities.

In pursuing the national initiatives, EPA will use Next Generation Compliance strategies, including in permitting, emissions/pollutant detection technology and electronic reporting, and through the use of innovative enforcement approaches such as data analytics and targeting.

EPA's enforcement announcement comes after another year of reduced federal inspections attributed by EPA to a declining budget. Nevertheless, EPA uses its enforcement initiatives to prioritize its available investigatory and enforcement resources. We expect that the enforcement initiatives will also influence state enforcement trends, as EPA will include these new enforcement initiatives in an update to the National Program Manager Guidances, which are distributed to states and tribes.

Companies with activities that fall under any of the enforcement initiatives should be aware that EPA will increase the scrutiny of compliance issues in these sectors. For example, we expect that EPA will more thoroughly scrutinize reported monitoring data and target its inspection resources on facilities falling within the scope of the enforcement initiatives. Regulated industry would benefit from identifying and correcting any violations in advance of EPA attention and working with counsel to evaluate whether violations should be self-reported.

Hunton & Williams LLP offers a deep bench of legal professionals focused on helping companies proactively address compliance risks and issues and defend against EPA and US Department of Justice enforcement actions. Our regulatory and environmental practice team includes former US Department of Justice and EPA enforcement lawyers who understand how to navigate EPA's regulatory and enforcement programs. Our lawyers partner with our clients on corporate strategy in environmental affairs, from preventative, cost-saving strategy to risk and crisis management and defense. Our team will alert you to risks, and help you make decisions as you navigate complex regulatory requirements. We also ensure that you maintain environmental compliance, and assist in avoiding or minimizing costly exposure to government investigations and enforcement actions. In doing so, our lawyers provide experience that allows our clients to focus on their core business and continue uninterrupted operations.

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