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OFFICE OF
ENFORCEMENT AND
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March 1, 2022

**Progress Report on Incorporating Environmental Justice into
Enforcement and Compliance Assurance Work**

In response to President Biden’s Executive Order 14008 and Administrator Regan’s directive to “strengthen enforcement of violations of cornerstone environmental statutes and civil rights laws in communities overburdened by pollution,” OECA issued four policies.¹ These policies provide direction to the civil regulatory, compliance assurance, criminal, and cleanup enforcement programs to incorporate environmental justice (EJ) considerations throughout the enforcement process. The key elements of these strategies and preliminary successes are described below.

Inspections, Compliance Monitoring, and Cleanup Oversight

Increasing EPA’s presence in overburdened and vulnerable communities is a cornerstone of OECA’s EJ strategy. Inspections to assess compliance with settlements and other legal requirements are critical to uncovering violations of environmental laws and deterring unlawful conduct that may harm communities, especially those that are overburdened or more vulnerable to the effects of contamination. OECA has set a national goal to conduct 45% of all inspections nationally in fiscal year 2022 (FY 2022) at facilities located in or affecting vulnerable or overburdened communities. This is an estimated increase of almost 20% over our historical average, and the goal will increase to 50% for FY 2023 and FY 2024, and to 55% in FY 2025 and FY 2026.

Our work to protect communities with EJ concerns is a shared goal and responsibility of EPA and our partner agencies. In California, for example, Region 9 developed an MOU with the State on enforcement in overburdened or vulnerable communities. EPA conducts joint planning with states and other co-regulators and, whenever possible, endeavors to perform enforcement and compliance work in partnership with them. However, where a community’s health may be impacted by noncompliance and our co-regulator is unable or unwilling to take timely or appropriate action, the Agency is prepared to step in and take necessary action.

¹ [Strengthening Enforcement in Communities with Environmental Justice Concerns](#) (April 30, 2021); [Strengthening Environmental Justice through Criminal Enforcement](#) (June 21, 2021); [Strengthening Environmental Justice through Cleanup Enforcement Actions](#) (July 1, 2021); and [Using All Appropriate Injunctive Relief Tools in Civil Enforcement Settlements](#) (April 26, 2021).

OECA is also incorporating EJ considerations into the Agency's six [National Compliance Initiatives \(NCIs\)](#), for example focusing more NCI inspections and compliance monitoring activities in overburdened or vulnerable communities. OECA is taking steps to better identify and target inspections for potential noncompliance in communities with EJ concerns by developing new web-based tools for environmental regulators, inspectors, and criminal investigators. As part of the follow-up to Administrator Regan's [Journey to Justice tour](#) in November 2021, EPA inspectors nationally will also conduct more inspections of suspected noncompliant facilities without prior notice to the facility, to ensure that the Agency is observing facility operations under normal conditions; where noncompliance is found, EPA will hold those facilities accountable.

Using funds made available through the American Rescue Plan (ARP), OECA will also launch air toxics, hazardous metals, and drinking water monitoring in specific communities identified with potentially elevated inhalation risks, drinking water contaminant risks, or based on other tips and complaints received by EPA and our state partners. This effort will provide communities and EPA with valuable information to understand risks associated with exposure to concentrations of specific chemicals in air and drinking water and will provide EPA with necessary information to pursue enforcement actions to address violations. OECA is also using ARP funds to provide technical assistance to small drinking water systems in underserved communities to help address the underlying causes of noncompliance.

OECA has already taken steps to provide the public with improved access to enforcement data. The [Enforcement and Compliance History Online \(ECHO\) website](#) has been updated to make it easier for the public to see information on the facilities at which EPA and States have taken enforcement or compliance actions, as well as demographic and environmental data from [EJScreen](#) relating to those facilities. EPA added new map layers to EJScreen showing climate data, which can provide insight into how some communities will be disproportionately impacted by the effects of climate change (i.e., coastal flood hazard, sea level rise). OECA has also launched an environmental justice resources page on [FedCenter.gov](#), the compliance assistance website for federal agencies, to help other federal agencies stay informed and incorporate EJ considerations into their work.

The Agency is also taking steps to enhance oversight of cleanup agreements between EPA and responsible parties. At toxic waste sites near vulnerable communities, EPA plans to increase its oversight of the cleanup work to ensure it is timely executed and that the work meets all the requirements of the enforcement instrument.

Timely and Comprehensive Relief

EPA is committed to exercise the full breadth of our statutory authorities to pursue injunctive relief that prevents future violations and remediates past harm caused by excess pollution. To facilitate early action in situations that may pose immediate risks to overburdened communities, OECA is improving cross-program coordination and planning training that promotes the use of all enforcement authorities appropriate to a situation, including imminent and substantial

endangerment authorities.

In 2021, EPA issued two Clean Air Act emergency orders to facilities and 47 Safe Drinking Water Act orders to public water systems in vulnerable or overburdened communities to protect the health of residents. While underlying noncompliance issues may take time to resolve, use of these authorities can provide rapid interim relief for communities. For example, in June 2021, EPA issued a Clean Air Act Section 303 Emergency Order to the Limetree Bay Refinery to pause all operations at its St. Croix, U.S. Virgin Islands facility following multiple air emissions incidents that created an imminent and substantial endangerment to public health or the environment. EPA set up a community hotline, worked closely with the nearby community, and monitored the air near the refinery for harmful pollutants, while pursuing longer term relief. Similarly, in July 2021 EPA, in partnership with State regulators, issued Safe Drinking Water Act Section 1431 Emergency Orders to the Clarksburg Water Board in Clarksburg, West Virginia, in response to elevated lead levels found in tap water, and to the City of Cahokia Heights in the East St. Louis, Illinois Metro area, to address potential drinking water issues related to chronic raw sewage overflow issues in residential areas. OECA will continue to pursue these types of early actions to make sure that harm to communities caused by environmental violations is addressed quickly.

EPA also vigorously pursues case resolutions that ameliorate harm to overburdened communities, such as mitigation requirements for matters involving excess pollutant emissions. For example, in October 2021, EPA and the U.S. Department of Justice (DOJ) finalized a settlement with [Navistar, Inc.](#) for violations of the Clean Air Act based on Navistar's introduction of 7,749 non-conforming heavy-duty diesel engines into commerce. The settlement requires Navistar to implement a mitigation program designed to result in at least a 10,000 ton reduction of nitrogen oxide emissions through projects that take into consideration geographic diversity, and benefit communities that are overburdened by air pollution.

At toxic waste sites impacting vulnerable communities, EPA has increased efforts to ensure that cleanups are not delayed due to lengthy negotiations with responsible parties. OECA is building on existing guidance for EPA regional offices to expedite negotiations with responsible parties to perform work, and bifurcate them when necessary to improve the pace of cleanups. OECA is now closely tracking the negotiation timelines for remedial design/remedial action (RD/RA) consent decrees with a goal of completing negotiations for long-term cleanups within one year. If the goal is not met, EPA regions, DOJ and OECA will elevate the focus on the protracted negotiations and consider other enforcement options to require prompt action. In communities impacted by delayed or stalled cleanup work at a federal facility, EPA will utilize a robust process for elevating disputes and evaluating order authorities to timely address risks to communities resulting from cleanup delays.

As opportunities arise, EPA is also increasing the use of air monitoring technology, third-party monitors/audits, emission verifications, and real-time monitoring as part of our negotiated remedies. For example, in April 2021, EPA and Texas finalized a settlement agreement with the [City of Houston](#), which required the city to install more than 3,000 real-time sensors capable of

sending alerts when conditions indicate a problem in the sewer system that may lead to a sanitary sewer overflow.

OECA is also integrating EJ considerations into every environmental criminal investigation and prosecution. Nearly 30% of the defendants charged in FY 2021 committed crimes that impacted overburdened or vulnerable communities. For criminal violations, EPA seeks punishments that serve as effective deterrents and that assure communities that illegal pollution is not recurring. OECA's criminal enforcement teams are considering a wide array of probation conditions such as sentences imposing advanced monitoring, audits, and/or court-appointed monitors, and electronically and publicly reported compliance data. Finally, EPA is seeking restitution and community service to redress harm from the offense.

Community Engagement and Crime Victims Assistance

Early and frequent community engagement with pollution-burdened and underserved communities is an essential element of OECA's efforts to address environmental injustice. OECA has increased its efforts to listen to and engage with communities in order to investigate environmental threats of most concern to communities. For example, in response to concerns voiced by residents during Administrator Regan's [Journey to Justice tour](#) in November 2021, OECA is doing more to investigate air quality concerns in overburdened communities visited by the Administrator. EPA plans to deploy state-of-the-art air pollution monitoring equipment in the sky and on the ground to identify potential sources of pollution, and will, in discussion with our State partners, address any violations that are found. Understanding communities' concerns also better informs EPA's ability to negotiate injunctive relief and cleanup work that is responsive to those concerns.

OECA is also revising its model cleanup settlement agreements to better address community concerns about impacts of cleanup work and to provide more information about the progress of cleanup to communities. In August 2021, OECA updated its [model RD/RA cleanup settlement documents](#) to provide for regular evaluation of the remedy implemented at contaminated sites, and to ensure that cleanup activities do not result in unintended adverse impacts (e.g., noise, odor, traffic) to neighboring communities. The revised model language also provides for increased monitoring of impacts to communities, public availability of cleanup data and cleanup schedules, and increased monitoring and review of institutional controls to ensure that these mechanisms are having their intended effect. Enforcement staff are working to include these and other community-focused provisions in cleanup agreements moving forward. OECA is actively seeking opportunities to include community-focused provisions in other model cleanup settlement agreements.

Greater public access to compliance data can enable communities to better understand and manage risks and monitor compliance at facilities and sites in their area. In Spring 2022, OECA will publicly launch "ECHO Notify," which will allow community members to receive customizable, weekly notifications of enforcement-related activities within their geographic area based on their zip code. OECA is also developing a best practices guide to help promote

effective community involvement at federal facility sites on the National Priorities List where overburdened communities are impacted. OECA is publicizing the availability of the “Report a Violation” tool for members of the public to report suspected violations and exploring ways to make it more user friendly.

Enhanced community outreach is also essential to reach victims of environmental crimes, particularly in underserved communities. Language barriers or lack of internet access can delay identification and notification of crime victims, which may in turn result in a delay of, or failure to access, services to which victims of crimes are legally entitled. EPA, in partnership with DOJ, is creating the Environmental Crime Victims Assistance Program to improve attention and support to the victims of environmental crimes. OECA is conducting outreach in overburdened communities in the dominant language of the community using press releases, social media, and other media sources. Recently, the Agency used the application Nextdoor to conduct outreach to vulnerable communities in southeast Texas and plans to conduct similar outreach to one community in every EPA Region beginning in February of 2022.

Conclusion

In a short period of time, OECA has made significant progress implementing strategies to strengthen enforcement of violations in communities overburdened by or particularly vulnerable to pollution. In FY 2021, EPA’s civil enforcement program concluded 599 cases that addressed noncompliance in areas with potential environmental justice concerns, with an estimated 33.3 million pounds of pollution reduced, including nearly 18 million pounds of air pollutants and 15.2 million pounds of water pollutants that were reduced, treated or eliminated (see [Enforcement Annual Results for FY 2021](#)). The Agency is increasing its presence in these communities through more inspections and enhanced oversight of cleanup work. Additionally, the Agency is using the full breadth of its authorities to provide comprehensive and timely relief to communities, remediate past harm, foster meaningful engagement, and assist crime victims. EPA’s actions are already bringing meaningful improvements to communities and the Agency is laying the groundwork to reap greater results in the coming years. More information about OECA’s efforts to address EJ is available on [OECA’s Environmental Justice in Enforcement and Compliance Assurance website](#), including information on recent enforcement and compliance assurance activities benefiting overburdened and vulnerable communities.