



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

July 1, 2021

MEMORANDUM

SUBJECT: Strengthening Environmental Justice Through Cleanup Enforcement Actions

FROM: Lawrence E. Starfield **LAWRENCE** Digitally signed by
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Date: 2021.07.01
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TO: Office of Site Remediation Enforcement Managers
Regional Superfund Division Directors and Deputies
Regional Counsels and Deputies

In his message to employees on Wednesday, April 7, 2021, the Administrator directed all EPA offices to “strengthen enforcement of violations of cornerstone environmental statutes” in communities overburdened by pollution.¹ This is consistent with Executive Order 14008.² This memorandum sets out steps to advance these environmental justice (EJ) goals through cleanup enforcement at private and federal facility sites, primarily through the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA).³

EPA uses mapping and screening tools, including EJSCREEN, in combination with local knowledge to help identify overburdened communities that may be disproportionately impacted by adverse health and environmental effects. The Agency uses its authority under CERCLA and RCRA to hold responsible parties accountable for releases or threatened releases of hazardous substances or wastes that impact communities and harm the environment.⁴ The cleanup and federal facilities enforcement programs can work within these statutes to protect overburdened communities by requiring responsible parties to take early and expedited cleanup actions, developing more robust enforcement instruments, ensuring the oversight of those enforcement instruments, and building trust and capacity through community engagement.

¹ [Administrator Michael Regan Message to EPA Employees on Commitment to Environmental Justice](#) (Apr. 7, 2021).

² Executive Order 14008 (Jan. 27, 2021), 86 Fed. Reg. 7619, calls upon EPA to “strengthen enforcement of environmental violations with disproportionate impact on [overburdened] communities through the Office of Enforcement and Compliance Assurance” (section 222(b)).

³ This memorandum complements the April 30, 2021, memorandum, [Strengthening Enforcement in Communities with Environmental Justice Concerns](#), and June 21, 2021, memorandum, [Strengthening Environmental Justice Through Criminal Enforcement](#), setting out steps to advance EJ goals through civil regulatory and criminal enforcement. This memorandum also reviewed recommendations made by the National Environmental Justice Advisory Committee pursuant to the Superfund Task Force. See [Superfund Remediation and Redevelopment for Environmental Justice Communities](#) (May 2021).

⁴ At federal facilities on the National Priorities List, EPA enters into federal facility agreements (FFAs) with other federal agencies to address releases or threatened releases of “hazardous substances” as well as “pollutants and contaminants.”

Require Responsible Parties to Take Early Cleanup Actions

Early cleanup actions to address the most urgent risks to human health can benefit overburdened communities with high levels of exposure to hazardous substances or wastes. For example, CERCLA Section 106(a) and RCRA Section 7003 authorize EPA to seek judicial action (e.g., an injunction) or take other action (e.g., issue a unilateral administrative order (UAO)) when it finds that an actual or threatened release of a hazardous substance or waste may present an imminent and substantial endangerment (ISE) to public health or welfare or the environment.

Actions

- Empower EPA regions to use CERCLA Section 106(a) and RCRA Section 7003 authorities, in conjunction with other regulatory programs, to proactively address potential releases.
- Prioritize early action and/or enforcement efforts on Superfund site operable units that most impact overburdened communities.
- Look for opportunities to issue orders for interim relief to address acute threats in conjunction with negotiating more comprehensive cleanup settlements.

Ensure Prompt Cleanup Actions by Responsible Parties

EPA can implement several procedures designed to expedite cleanups where overburdened communities are impacted.

Actions

- Continue to expedite remedial design/remedial action (RD/RA) negotiations, elevate the focus on completing negotiations within one year, and bifurcate RD and RA where needed to achieve this goal.⁵
- Require earlier involvement by the Office of Regional Counsel when potentially responsible parties (PRPs) request extensions of deadlines, miss deadlines, or are out of compliance.
- Utilize UAOs to compel PRPs to perform response actions and/or provide resources when negotiations fail or do not result in a timely settlement.
- Review PRP-lead sites designated as “human exposure not under control” (HENUC) to determine if enforcement actions can effectively reduce human exposure.
- Identify and resolve as quickly as practicable, within the FFAs’ dispute timeframes, disputes impacting cleanup work at federal facility National Priorities List (NPL) sites or operable units that are near or in communities with EJ concerns and focus resources on expediting the resolution of these disputes (e.g., Technical Facilitation and Tiered Partnering).
- Work with the Department of Justice to address situations where negotiation/cleanup delays are attributable to federal agencies by promptly elevating issues, expediting the consultation process, and enabling EPA to use all available mechanisms (including prompt issuance of CERCLA Section 106 orders to federal agencies).
- As appropriate, issue CERCLA Section 106 orders to private parties where cleanups are delayed.

⁵ See [2019 Remedial Design/Remedial Action: Process for Expediting Negotiations and PRP Cleanup Starts](#) (June 20, 2019); [Bifurcating Remedial Design and Remedial Action to Accelerate Remedial Design Starts at PRP-Lead Superfund Sites](#) (June 21, 2018).

More Robust Enforcement Instruments

Enforcement instruments can be enhanced to address issues that may arise during the cleanup process and that may adversely affect an already impacted community. These enhancements may help to lessen the cumulative public health effects on a community closely connected to a contaminated site or sites. Communities can also be empowered to participate in the enforcement process through the inclusion of publicly accessible monitoring and transparency tools in enforcement instruments.

Actions

- Engage, where appropriate, the community about cleanup implementation issues and include enforceable language in enforcement instruments to minimize adverse impacts to the community (e.g., monitoring truck traffic or dust).
- Consider inclusion of provisions in settlements or agreements that provide for the performance of a specified project in the event of noncompliance with the enforcement instrument.⁶
- Require the installation of advanced monitoring equipment where appropriate to demonstrate compliance with remedial action objectives and make such data publicly available.
- Require PRPs to publish and keep current a schedule of compliance obligations, including the schedule for institutional controls (ICs) implementation, so that the community can be kept apprised of and provide input on compliance.

Increased Oversight of Enforcement Instruments

While oversight of cleanup responses occurs in all enforcement cases, particular attention to timely compliance is needed when overburdened communities may be adversely impacted by noncompliance with an enforcement instrument.

Actions

- Conduct compliance reviews at sites in communities with EJ concerns to ensure that remedial requirements in consent decrees, federal facility agreements, and other enforcement instruments are being implemented consistent with the enforcement instrument's schedule, work, and quality expectations.
- Ensure that ICs are in place and are monitored for compliance on a regular basis and review ICs to determine if they are having the intended effect or if new ICs are needed.
- Evaluate whether remedy implementation is having unintended adverse impacts (e.g., noise, odor, traffic) on the neighboring community.

Build Trust and Capacity Through Community Engagement

Building trust and capacity in an impacted community, as well as increasing transparency, is critical for the effective implementation of a Superfund or RCRA remedy. To achieve this, EPA must engage the community in a proactive, transparent, and consistent manner throughout the cleanup and enforcement process.

⁶ Such provisions may be limited by current DOJ policies and a regulation (28 C.F.R. § 50.28(c)(1)) now under review at DOJ. EPA is coordinating closely with DOJ to address any such limitations.

Actions

- Communicate with affected communities using accessible and effective communication practices (e.g., those that consider the dominant language of the impacted community) about cleanup activities in their communities, including: site-specific information; the status of a PRP's compliance with schedules and legal obligations in relevant enforcement instruments, where appropriate; the types of available enforcement tools to promote cleanup and reuse of contaminated sites; and the benefits and results of enforcement work.
- Regularly update Superfund Site Cleanup Fact Sheets and other pertinent EPA web content, in collaboration with the Office of Land and Emergency Management (OLEM), to provide cleanup enforcement information using accessible and effective communication practices.
- Encourage enforcement personnel (e.g., site attorneys) to work with the program office to participate in community engagement efforts (e.g., attend public meetings) where appropriate, to better understand the community's needs and concerns, and then address them when negotiating enforcement instruments with PRPs (e.g., Remedial Investigation/Feasibility Study Administrative Settlement Agreements and Orders on Consent and RD/RA Consent Decrees).⁷
- Work with federal PRPs responsible for community outreach at federal facility NPL sites to develop best practices when communicating with impacted communities with EJ concerns.
- Coordinate with state enforcement counterparts on communicating with impacted communities.

Conclusion

With your help, we can make a difference in the lives of overburdened communities that are affected by contaminated sites. OECA will continue to evaluate and update these and other tools to be more impactful in the future, particularly in overburdened communities. I appreciate your support in this vital effort.

cc: Acting Regional Administrators
OECA Office Directors and Deputies
OLEM Office Directors and Deputies
Regional Superfund Legal Branch Chiefs
Federal Facilities Leadership Council

⁷ See [*Community Engagement Initiative: Compilation of EPA's Activities Encouraging Community Engagement in Superfund Enforcement*](#) (Sept. 2014) for additional ideas to enhance community engagement.