

EPA Ramps Up Climate Enforcement

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Facilities operating across the country need to be prepared for increased climate-driven enforcement at all levels of federal government—especially at the U.S. Environmental Protection Agency (EPA). With EPA’s **Climate Enforcement and Compliance Strategy** announcement last week, the Agency has gone all-in on enforcement and compliance programs “to address climate change, wherever appropriate, in every matter within their jurisdiction.” This initiative is consistent with President Biden’s Executive Order 14008, which calls for a government-wide approach to tackling the climate crisis. The strategy also underscores the Agency’s announcement of its first-ever **National Enforcement and Compliance Initiative (NECI)** on climate change, which targets, among others, methane emissions at oil and gas facilities and landfills, as well as illegal importation of hydrofluorocarbons (HFCs). Companies with exposure to high-Greenhouse

Gas (GHG) emissions and related climate risks, both in the Clean Air Act (CAA) and non-CAA context, should be on notice of increased scrutiny moving forward, including climate-focused auditing and inspections by the Agency and GHG-driven injunctive relief.

In the wake of EPA's announcement of this new enforcement and compliance strategy, watch for the following developments:

- EPA will increasingly prioritize enforcement and compliance actions to mitigate climate change, including further scrutiny of high-GHG emitters through information requests, inspections, and formal enforcement. Oil and gas facilities and landfills have been specifically targeted, but any facility with high GHG emissions should expect greater enforcement scrutiny.
- Enforcement demands will likely include higher penalties, compared to other non-GHG-driven cases, more GHG-related injunctive relief, as well as more climate adaptation and resilience requirements. This relief could include more fence-line monitoring or flare gas reductions or recovery, among other priorities.
- Climate-focused injunctive relief measures will not be limited to CAA. Expect a renewed emphasis on green remediation technologies at Superfund and Resource Conservation and Recovery Act corrective action sites, as well as a push for green infrastructure, resiliency planning, and stormwater management enhancements in Clean Water

Act settlements.

- Plan for EPA to scrutinize GHG emissions reports more closely. Carefully evaluate these submissions to ensure consistency with reporting regulations.
- EPA will be interested in Supplemental Environmental Projects that reduce GHGs. Consider clean and renewable energy projects or other GHG mitigation projects as part of any strategy to resolve an enforcement case, particularly if the penalty demand is large.

Facilities located in Environmental Justice (EJ) communities should particularly expect additional climate-related scrutiny, as EPA has indicated that “[t]hese efforts are particularly necessary in overburdened and marginalized communities that are on the frontlines of the climate crisis.” Facilities will need to engage in more extensive consultation with local communities to evaluate remedy selection, including any climate adaptation efforts, as well as more protracted enforcement negotiations to evaluate community-focused injunctive relief (i.e., climate risk reporting, additional community engagement, etc.).

Finally, be prepared to respond to these issues quickly, including the Biden Administration’s broader EPA enforcement agenda, which is **expected to increase enforcement dramatically over the coming months and years.**

Apart from EPA, broader scrutiny of corporate climate reporting will become

more common as the Securities and Exchange Commission looks to finalize its proposed **Climate Risk Disclosure Rule**, requiring public companies to disclose climate-related risks and emissions data, among other requirements. Facilities should review publicly available information and emissions reporting for consistency and accuracy.

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