



EPA Priorities

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Overview

- Change of Administration (again ...)
- Policy Directions
 - Miscellaneous (SSM, Self-Audit, SEPs)
 - Climate Change (Green House Gas (GHG))
 - Environmental Justice (EJ)

Miscellaneous - Enforcement/Compliance

- Campaign Keys – Climate Change & Environmental Justice
- Day 1 Executive Order (EO) – Evaluate selected executive actions and all EPA actions during previous administration, including methane emission rules
 - Congressional Review Act (CRA) targets – allows disapproval of regulations passes within last 60 days of previous Congressional Session (i.e., after 08/21/2020)
 - Department of Justice’s (DOJ) 12/16/2020 policy document prohibiting Supplemental Environmental Projects (SEP)

Miscellaneous - ssm

- Start-up, Shut-down, Malfunction (SSM) Exemption
 - 09/30/2021 EPA Memo – Addressing SSM in State Implementation Plans (SIP) and Implementation of the prior policy
 - Removed 10/09/2020 Memo & reinstated 2015 SSM SIP Action
 - Automatic exemptions, discretionary exemptions, and overly broad enforcement discretion are inconsistent with Clean Air Act (CAA)
 - In essence, emissions limitations must be in effect on a “continuous basis” (e.g., established in permit limits)

Miscellaneous - Enforcement/Compliance

- EPA Self-Audit and Self-Disclosure
 - Introduced in mid-1990's
 - EPA updated Frequently Asked Questions in 01/2021 with the effect of reemphasizing the self-audit program and the Self-Disclosure traditional 9 conditions
 - Notes indicate that EPA typically honors utilization of the programs with some exceptions (e.g., Title V certification items likely not eligible)
- State Self-Audit & Self-Disclosure
 - Possible to utilize both EPA and State programs

Miscellaneous - Enforcement/Compliance

(cont'd)

- Supplemental Environmental Projects (SEPs)
 - 02/2021 – DOJ withdrew several policy documents implemented by previous administration, including those forbidding use of SEPs
 - Return to 2015 EPA SEP Policy – To qualify:
 - Action not legally required to perform
 - Improve, protect, or reduce risks to public health or environment
 - Benefit the community impacted
 - Nexus to the alleged non-compliance or health concern

GHG – Government Wide Approach

- **ALL** Federal Divisions & Agencies involved – Climate goals & policies to be at forefront of all Federal decisions & programs (EPA, DOI, DOJ, DOT, etc.)
 - Climate team embedded everywhere under direction of White House
 - Interim “Social Cost of Carbon” reinstated
 - Reentry into Paris Agreement
 - Elimination of fossil subsidies
 - Stimulus funding – large \$ proposed
 - Enforcement Initiatives (EPA & SEC via Environmental, Social, & Governance (ESG) reporting)

GHG – NSPS Subpart 0000a

- 0000a – Set methane standards for sources in the Oil & Natural Gas (O&G) sector
- Tortured History:
 - 06/2016 – Rule finalized
 - 09/2020 – Policy modifications that removed (1) methane standards and (2) applicability for O&G transportation & storage segment
 - 06/2021 – CRA resolution executed by President, thus erasing the 09/2020 policy modifications, i.e., like they never existed

Environmental Justice – Government Wide Approach

- Many similarities to climate approach. EJ at the forefront of consideration across all federal decisions and programs
 - Administered out of White House by the White House Environmental Justice Advisory Council (WHEJAC) and the White House Environmental Justice Interagency Council (IAC)
 - Michael Regan appointed EPA Administrator
 - Oversaw development of EJ and climate programs in North Carolina
 - 04/07/2021 Memo – Instructed all EPA offices to “integrate EJ considerations into their plans and actions”

Environmental Justice – Proposed Budget

- You might be thinking “yeah, but the EJ concept has been around a long time,” but I submit that it may be different this time around because ...
- EPA – Budget upped to more than \$11 billion
- EJ – Budget upped substantially to more than **\$900 million**
 - If finalized, that amount puts it roughly on par with Air, Water and Waste Programs

Environmental Justice – Authority

- Statute – Underlying authority is found in Title VI, Civil Rights Act of 1964 (42 USC §2000d, et. sec.)
 - “each federal agency shall ensure that all programs or activities receiving federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin.” – EPA EJ Web Citation

Environmental Justice – Authority

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- 40 CFR Part 7 – Broad set of rules that requires “Nondiscrimination in programs or activities ...” – Sets up complaint process
- 07/20/2021 Memo citing EOs 14008 and 13985 – Justice 40 Initiative created where 40% of funds to flow to communities that have been marginalized by pollution ...
- Builds on EO 12898 and corresponding Memo as issued by President Clinton in 02/1994

Environmental Justice – Authority

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- EPA Guidance (2000 & 01/2017)
 - Intentional discrimination (different treatment)
 - Disparate Impact (adverse impact)
 - EPA will evaluate “totality of the relevant facts”
- EJ Screen
 - EPA website screening program that allows anyone to evaluate industrial and commercial entities positioned near any location in the United States
 - EPA has been updating this screening program under the current administration

Environmental Justice – Next Steps from 04/07/2021 EPA Memo

- Strengthen enforcement of violations of cornerstone environmental statutes and civil rights laws in communities overburdened by pollution
- Take immediate and affirmative steps to incorporate EJ into EPA's work, including assessing impacts to pollution-burdened, underserved, & Tribal communities in regulatory development processes and to consider regulatory options to maximize benefits to these communities

Environmental Justice –

Next Steps from 04/07/2021 EPA Memo *(cont'd)*

- Take immediate and affirmative steps to improve engagement with pollution-burdened and underserved communities affected by agency rulemakings, permitting and enforcement decisions, and policies ...
- Consistent with the Administration's Justice 40 Initiative, consider and prioritize direct and indirect benefits to underserved communities in the development of requests for grant applications and in making grant award decisions, to the extent allowed by law

Environmental Justice – What next?

- Potential pro-active steps
 - Conduct Self-Audit under attorney client privilege & available Self-Audit programs
 - Evaluate EJ Screen Program and other available information about surrounding communities
 - If potential concerns identified
 - Prepare for comments during permit publications
 - Prepare for potential enforcement actions & SEPs
 - Evaluate potential mitigation efforts
 - Consider community outreach efforts
 - Transactions – Recommend audit process for normal reasons, but also to evaluate potential EJ concerns

Questions?

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