

PUBLICATION

Obama Administration Proposes New EPA Enforcement Priorities

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On January 4, 2010, the United States Environmental Protection Agency (EPA) formally solicited comments on what should be EPA's enforcement priorities for fiscal years 2011 through 2013. The EPA's draft list of priorities indicates a new emphasis on certain sectors of the economy, including manufacturers that cause disproportionate environmental impact to minority neighborhoods, manufacturers and users of pesticides, developers with projects impacting wetlands, and owners, operators and industrial users of municipal wastewater treatment facilities. EPA's request for public comments is published at 75 Federal Register 146-148.

Every three years EPA announces its priorities for enforcement, to allow the alignment of its resources—in the form of inspections, compliance assistance and enforcement actions—with these priorities. EPA uses three criteria in its selection of enforcement priorities. First, EPA selects areas where it finds that its enforcement efforts can lead to significant environmental benefits. Second, EPA selects areas where it perceives there is a high degree of non-compliance. Third, EPA selects areas in which it believes EPA is in the best position to take action.

Some enforcement priority areas on EPA's proposed list for fiscal years 2011 through 2013 remain unchanged from EPA's priorities list for fiscal years 2008 through 2010: air toxics, concentrated animal feeding operations, mineral processing, and new source review/prevention of significant deterioration. So far, EPA's proposed list for the upcoming fiscal years leaves off storm water and financial assurance for site closure and clean-up. In the last few years, EPA applied significant resources to inspect commercial developments for storm water violations.

EPA's proposed list is more specific than its predecessor list in one area. The priorities list for fiscal years 2008 through 2010 included a broad focus on environmental non-compliance in tribal areas. The proposed list for fiscal years 2011 through 2013 narrows the prioritization of compliance in tribal areas to drinking water.

At this time, EPA's list of enforcement priorities for the next three years also includes the following new areas of emphasis: environmental justice, marine debris, municipal wastewater infrastructure, hazardous waste, pesticides at day care facilities, surface impoundments, wetlands and worker protection standards.

Comments on EPA's proposed list or suggestions for different priorities may be posted at www.regulations.gov at Docket ID No. EPA-HQ-OECA-2009-0986. Comments must be received by January 19. It should be remembered that comments received by EPA are posted for public review without change. Alternatively, the American Bar Association's Environmental Crimes and Enforcement Committee, on which Baker Donelson lawyers serve, has offered to submit comments collectively from clients of the various member firms.

For a more in-depth analysis or for general information on the various aspects of the EPA enforcement priorities and how it affects you, please contact any of Baker Donelson's environmental attorneys.