

Enforcement Alert: Major Funding Increase Coming for Federal Environmental Enforcement

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The federal government may soon have many more DOJ lawyers doing civil and criminal environmental enforcement. On July 14, 2021, the House Appropriations Committee made clear that greater enforcement of federal environmental law is a priority of both the Executive Branch and Congress. Both agree there should be significantly more money for the Department of Justice's Environment and Natural Resources Division (ENRD). More money means more lawyers. And more lawyers mean more civil and criminal environmental enforcement investigations and cases.

The increase in federal funding for ENRD and environmental enforcement actually began in the last year of the Trump Administration. For fiscal year 2021, ENRD received its first General Legal Activities (GLA) budget increase in almost a decade. This \$4.8 million increase in ENRD's budget appropriation included funding for seven new positions, including five attorneys.¹ President Biden's FY 2022 budget goes further. In May 2021, the FY 2022 proposal included a \$20.3 million increase in GLA funding for ENRD to \$133.7 million. This will represent a 22% increase in ENRD's GLA funding in just two years. The President's FY 2022 budget specifically includes \$5 million to support 18 new positions, including 16 more lawyers, for:

- increasing affirmative enforcement actions to reduce emission of greenhouse gases and other pollutants;
- facilitating cleaner energy and ensuring marketplace integrity;
- defending and adjudicating water rights for federal agencies and Indian Tribes, as well as policies and decisions that support the generation of clean energy on federal lands and the outer continental shelf; and
- promoting international climate justice activities and the advancement of legislative and policy matters related to climate change.²

The House Appropriations Committee released its report on July 14. This accompanies the fiscal year 2022 Labor, Health and Human Services, Education, and Related Agencies and Commerce, Justice, Science, and Related Agencies appropriations bills. As proposed by the President, the Committee provided a funding recommendation of \$133,738,000 for ENRD. This included a request for "\$5,000,000 to enhance environmental justice enforcement."³ The full Committee markup of the bill and consideration of the report occurred on July 15.

Congressional action that will substantially increase DOJ's resources for federal environmental enforcement will come shortly after other important action at EPA. Lawrence Starfield, Acting Assistant Administrator of the Office of Enforcement and Compliance Assistance at EPA, issued two memoranda articulating how the agency will advance its environmental justice goals.

The June 21, 2021 memorandum describes how EPA will strengthen environmental justice through its criminal enforcement.^[1] EPA will enhance efforts to detect potential offenses impacting vulnerable communities, improve the identification of and assistance to crime victims, and pursue case results that will provide communities with increased protection from illegal pollution and enhanced remedies for past harms.

The July 1, 2021 memorandum describes how EPA will strengthen environmental justice through cleanup enforcement actions.^[5] This will include expanded use of CERCLA Section 106(a) and RCRA Section 7003 authorities to require responsible parties to take early cleanup actions; expedite cleanups where overburdened communities are impacted; negotiate for more robust enforcement instruments to minimize adverse impacts to communities; and increase focus on timely compliance when overburdened communities may be adversely impacted by noncompliance with an enforcement instrument.

With ENRD on a path to receive many millions of dollars more in GLA appropriations to support civil and criminal environmental enforcement, EPA can be expected to vigorously follow through on these commitments.

For further information or questions on the implications of these actions and related compliance and litigation risks, please contact Jonathan D. Brightbill,* or your Winston relationship attorney.

** Jonathan D. Brightbill served at ENRD from 2017 to 2021, including as Acting Assistant Attorney General. Government actions at the federal, state, and local levels are changing every day, and the information contained herein is accurate only as of the date set forth above.*

^[1] General Legal Activities, Environmental & Natural Resources Division FY 2021 Budget Request, available at <https://www.justice.gov/doj/page/file/1246681/download> .

^[2] General Legal Activities, Environmental & Natural Resources Division FY 2022 Budget Request, available at <https://www.justice.gov/ind/page/file/1399021/download> .

^[3] Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Bill, 2022 (Jul. 12, 2021), available at <https://docs.house.gov/meetings/AP/AP00/20210715/113908/HMKP-117-AP00-20210715-SD003.pdf> .

^[4] <https://insideepa.com/daily-news/oeca-issues-long-anticipated-criminal-ej-enforcement-guidance> .

^[5] Strengthening Environmental Justice Through Cleanup Enforcement Actions (Jul. 1, 2021), available at <https://www.epa.gov/system/files/documents/2021-07/strengtheningenvirjustice-cleanupenfaction070121.pdf>.

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