



CalEPA
California Environmental
Protection Agency



ENVIRONMENTAL JUSTICE 2023 ENFORCEMENT ACTION PLAN

2023 Environmental Justice Enforcement Action Plan

Memorandum of Understanding on Collaborative Efforts on Enforcement and Compliance Assurance in Overburdened Communities

Background

On September 10, 2021, U.S. EPA Region 9 (USEPA) and California EPA (CalEPA) entered into a Memorandum of Understanding (MOU) on Collaborative Efforts on Enforcement and Compliance Assurance in Overburdened Communities. The MOU set a strategic direction and formalized a partnership between the state and federal government to focus on three areas: strategic targeting of inspections, enforcement actions, and community engagement.

Since signing the MOU, USEPA and CalEPA have held brainstorming sessions with overburdened communities across the state and engaged with community leaders to inform the direction of the partnership. These discussions highlighted concrete environmental problems that are impacting communities as well as opportunities to improve how USEPA and CalEPA work with each other and with communities to identify and address environmental problems.

USEPA and CalEPA are continuing to pursue solutions to specific concerns that have been brought to our attention. We are also working on systemic changes that will lead to long-term improvements in enforcement outcomes for residents in overburdened communities. This Action Plan focuses on new processes for how USEPA and CalEPA will engage with each other and with communities to improve outcomes. The new approaches will be implemented through pilot efforts in 2023, providing an opportunity to assess successes and challenges, iterate, and expand the efforts to additional geographies and facilities in future years.

The Action Plan includes three focal areas: (1) Enhanced, sustained community engagement; (2) Creation of a Rapid Response Task Force; and (3) Development of tools for coordinated enforcement engagement.

Enhanced, Sustained Community Engagement

USEPA and CalEPA receive many tips and complaints from community members of alleged noncompliance with environmental laws. USEPA and CalEPA are committed to examining every tip received and assessing the appropriate response by them or a partner agency, including following up with the tip provider if contact information is provided.

There are many challenges in overburdened communities due to the complexity of environmental problems. Challenges include prolonged noncompliance, problems that do not easily fit under a single environmental statute, bad or non-responsive actors, respondents with limited resources to provide relief, diffused responsibility, and unique community needs. In this context, we believe there is a need for consistent, sustained enforcement engagement that is focused on addressing the problems that are priorities for residents.

USEPA and CalEPA commit to pursuing enhanced engagement with overburdened communities over environmental enforcement concerns. We will show up consistently, listen to concerns, proactively seek enforcement solutions that are responsive to community needs, and regularly communicate with residents about our progress and any challenges. This engagement will require USEPA and CalEPA to coordinate closely with each other and to empower enforcement staff to work across the silos that exist within each agency.

Action 1. Establish Sustained Community Engagement Pilot Programs. USEPA and CalEPA will select five pilot communities for enhanced enforcement engagement. For each community, the agencies will identify an existing, community-led forum that focuses on environmental violations. This may be an Identifying Violations Affecting Neighborhoods (IVAN) Network or a different forum. USEPA and CalEPA will each identify a lead enforcement staff person who will attend monthly meetings. These individuals will be charged with following up on all community complaints, working across media (e.g., air, soil, water) and levels of government to seek solutions, and regularly communicating with the forum's participants regarding their progress and any challenges. The lead USEPA and CalEPA enforcement staff for each community will meet with each other to coordinate between each monthly meeting. *Target Pilot Communities: Los Angeles, Fresno County, Kern County, Coachella Valley, Hunters Point.*

Rapid Response Task Force

Sometimes USEPA or CalEPA receives a tip or complaint that is urgent or time sensitive. In these instances, coordination between USEPA and CalEPA is critical to ensure a prompt and appropriate

investigation and to eliminate the environmental threat. To ensure a fast, coordinated response, USEPA and CalEPA will employ a Rapid Response Task Force (RRTF). The five phases of a RRTF include:

Determining Need

A RRTF should be established when USEPA and CalEPA would benefit from a coordinated multi-agency enforcement and compliance assurance approach resulting from a pressing environmental need and/or community concerns.

Either the USEPA Region 9 ECAD Director or the CalEPA Deputy Secretary for Law Enforcement and General Counsel may request establishment of a RRTF. The RRTF will be established immediately upon consent from both organizations.



Standing Up a Rapid Response Task Force

Once it is determined that a RRTF is necessary, USEPA and CalEPA will each identify one lead each from each organization. The two RRTF **co-leads** will then identify enforcement program leads within their organizations, including within each relevant CalEPA board, department, and office. These individuals will become the core members of the task force.

The RRTF should also identify key stakeholders from:

- Responsible parties
- Other relevant regulatory agencies
- Impacted community groups
- Internal or external technical experts
- Press and communications experts
- Environmental justice and community engagement experts
- Emergency response coordinators

Depending on the response, the RRTF may invite non-regulators to participate regularly or as needed so that the forum can be used to directly connect investigators with key stakeholders. It is important that the core RRTF is also able to convene in private to discuss strategic direction among a smaller group of regulators.

The RRTF leads should prioritize initiating rapid communications and organizing a kickoff meeting with known stakeholders while continuing to build the task force with additional stakeholders over time.

Investigation and Enforcement

Within the RRTF, it will be critical to quickly determine roles, including agency and program leads primarily responsible for conducting an investigation, inspection, or information request. These investigations may be appropriately conducted jointly or delegated to one agency. If an inspection is being conducted, representatives from multiple agencies may participate.

Recurring meetings of the RRTF will be necessary to coordinate inspection efforts and then report out on findings. Depending on the nature of the potential or ongoing noncompliance, regular participation from the responsible party may be appropriate to quickly receive information and streamline communication between regulators and those working to resolve the noncompliance.

As the investigation develops, the RRTF may discuss which agencies and programs may be best suited to pursue an enforcement action, if appropriate, to compel compliance.

Joint Communications

An important element of the RRTF will be a joint communication strategy. Inquiries received by community members or government officials will be shared through the RRTF and directed to the appropriate agency. When possible, agencies may elect to put together joint responses or statements of progress.

As early as possible once the RRTF is established, USEPA and CalEPA should notify the public of the task force and identify lead contacts for receiving tips and inquiries, and subsequent developments as appropriate in the course of the investigation.

A central charge of the RRTF is open public communication. This not only includes publicly communicating updates, but regularly checking in with community representatives both virtually and on the ground and distributing information through appropriate venues, including websites and social media.

Reevaluation

Due to the dynamic nature of response work, the RRTF is an adaptive group that may convene frequently as investigations are underway, but quickly diminish as environmental compliance is achieved or an environmental threat is controlled. Closing out a RRTF may be appropriate if:

- Environmental compliance is achieved.
- Enforcement orders are established and a clear path to compliance has been determined.

When an RRTF is closed out, the RRTF co-leads will inform the USEPA Region 9 ECAD Director and CalEPA Deputy Secretary for Law Enforcement and General Counsel. The leads will solicit feedback on the response and share successes and lessons learned with leadership.

Action 2. Pilot a Rapid Response Task Force. In response to an acute incident, USEPA and CalEPA will initiate a pilot Rapid Response Task Force to quickly respond to community and environmental concerns.

Tools for Coordinated Enforcement Engagement

USEPA and CalEPA seek to maximize the ability of enforcement staff to solve environmental problems raised in community forums. To ensure effective enforcement engagement around compliance assurance, the agencies will develop several tools that will help to ensure responses to community concerns are coordinated, efficient, transparent, and effective. These tools will be used in the context of our sustained community engagement pilot program, RRTF, and in other enforcement efforts.

Supporting Staff Capacity and Communication

USEPA and CalEPA need to ensure enforcement staff are equipped to support and respond to community concerns. This includes an understanding of both how to best communicate with community members and how to navigate their own organizations to facilitate responsiveness.

When enforcement staff receive complaints, they must assess the problem to understand what governmental entity has authority to respond. This requires navigating across various USEPA programs, CalEPA's many boards, departments, and offices, and local enforcement partners. Even for experienced agency staff, navigating the enforcement bureaucracy can be complex.

To ensure problems are quickly directed to the governmental entity with authority to act, USEPA and CalEPA will jointly develop an organizational crosswalk that identifies key contacts within USEPA programs and CalEPA's boards and departments.

In addition to navigating their own organization, enforcement staff must also be able to clearly understand and communicate concerns and compliance efforts with community members and prioritize these functions as integral to their job responsibilities. Because this skillset requires specialized training to develop, USEPA will develop training on community engagement to staff whose responsibilities involve protecting and regularly interacting with community members.

In addition to prepared trainings, providing additional opportunities for community emersion to enforcement staff is critical to better understand local concerns. Enforcement staff will be encouraged to participate in community-led bus and foot tours geared towards environmental regulators.

Action 3. Provide Training and Resources to Enforcement Staff. USEPA, in coordination with CalEPA and its boards, departments, and offices, will host a community engagement training for enforcement staff. USEPA and CalEPA will partner on an organizational crosswalk that will identify key contacts within USEPA programs and CalEPA's boards, departments, and offices to help regulators more quickly navigate internally to respond to citizen concerns.

Joint Inspection Best Practices

To resolve complex environmental problems, it's important for agencies to perform joint inspections for multiple environmental regulations at potentially noncompliant facilities. Particularly in overburdened communities, such inspections should be responsive to community concerns and residents should be

apprised of the effort and its outcomes. The agencies may also consider leveraging lab support for environmental sampling.

USEPA and CalEPA see an opportunity to improve agency coordination during cross-agency inspections that involve multiple programs and regulations while also improving communication with impacted communities in the process. The agencies commit to working together to develop a framework that will help the agencies to more quickly and transparently engage in concurrent or parallel inspections that are responsive to community concerns.

Action 4. Develop a Joint Inspection Framework. Through the process of assessing the need for and potentially engaging in a joint, multi-media inspection of a facility of concern in an overburdened community, USEPA and CalEPA will create a framework that will help the agencies proceed more nimbly with such assessments and inspections in the future. *Target Pilot Community: Torrance*

Activity Log

Some facilities that create concerns for overburdened communities are inspected multiple times by multiple agencies over a short time horizon. The inspections are not always coordinated and can be difficult to track for both agency staff and members of the public. Yet coordinated enforcement and compliance assurance requires that each engaged agency knows what the other is doing, and communities should have insight into the agencies' activities and a wholistic understanding of the scrutiny a facility has received.

Action 5. Build an Activity Log. USEPA and CalEPA will select a facility in an overburdened community that has recently been inspected multiple times by multiple agencies and create an activity log detailing engagement from each participating entity. The activity log will include all non-confidential information about inspections and enforcement actions and will be updated regularly. The document will be made available to all relevant regulatory agencies and to the public. The document will serve as a model that can be replicated at other facilities. *Target Pilot Community: Los Angeles*

Partnering Protocols

For some matters in overburdened communities, one agency may be particularly well suited to lead a collaborative effort in which there is broad interest from both USEPA and CalEPA and its boards, departments, and offices. While both Federal and State regulations may apply to specific circumstance, sometimes it is more efficient and streamlined to identify a single investigator and compliance lead. In this circumstance, USEPA and CalEPA will communicate regularly, and the non-lead agency will be prepared to join the effort when a need or opportunity emerges.

Action 6. Create Partnering Protocols Pilot. USEPA and CalEPA, along with its boards, departments, and offices, will select an environmental matter in an overburdened community that will be led by one agency but that will be prioritized for enhanced communication. Upon the request of the lead agency or at its own discretion, the non-lead agency will join the enforcement effort. *Target Pilot Communities: West Oakland, Coachella Valley*

Enforcement Approach

As USEPA and CalEPA and its boards, departments, and offices enter into enforcement negotiations, it is imperative that the agencies seek appropriate corrective actions and penalties, where appropriate.

Correction action should account for community concerns while addressing statutory noncompliance. Where regulations allow, creative solutions should be evaluated to get at the most pressing environmental threats facing communities.

Penalties are another important tool that are used to deter future violations within the community and across the state. In some instances, penalties may be mitigated when a facility commits to implementation of a Supplemental Environmental Project (SEP). SEPs are voluntary agreements to undertake a project to improve, protect or reduce risks to public health or the environment. USEPA and CalEPA and its boards, departments, and offices will promote SEPs to enhance opportunities for enforcement actions to address local challenges.

Assessment and Evaluation

The 2023 Enforcement Action Plan will be the first under the new USEPA-CalEPA MOU. As such, the plan incorporates many pilots and trial efforts which will need to be evaluated for efficacy and future application. After a year of implementation, USEPA and CalEPA will compile a report summarizing work complete under the Action Plan, reflecting on successes and challenges in implementing the Plan, and develop recommendations for future EJ enforcement planning.

The assessment report will be shared with community members to garner feedback on USEPA and CalEPA's approach while generating additional suggestions for improved enforcement responsiveness.

While individual communities are proposed for partnership in these trial efforts, USEPA and CalEPA will continue to enforce state and federal environmental laws in communities throughout the state. Additionally, we intend to expand the joint efforts described in this Action Plan to additional California communities as these tools become further refined.

Action 7. Issue EJ Action Plan Assessment. After a year of implementation, USEPA and CalEPA will release an assessment of work complete, success and challenges under the Action Plan and solicit for feedback from community members.

Action Plan Summary

This action plan identifies seven actions towards progress under EPA and CalEPA's joint MOU:

Action 1. Establish Sustained Community Engagement Pilot Programs

- Sustained enforcement engagement in community-led forums with a commitment to following up on all community complaints, working across media (e.g., air, soil, water) and levels of government to seek solutions, and regularly communicating with the forum's participants regarding their progress and any challenges.

Action 2. Pilot a Rapid Response Task Force

- In response to an urgent environmental problem, initiate a pilot Rapid Response Task Force to quickly respond to community and address environmental concerns.

Action 3. Provide Training and Resources to Enforcement Staff.

- Train enforcement staff on community engagement.
- Participate in community-led tours.
- A mapping of enforcement programs with primary contacts within USEPA and across the many CalEPA boards, departments, and offices to generate transparency and encourage collaboration.

Action 4. Develop a Joint Inspection Framework

- Create a framework for potential joint multi-media inspections that focuses on enhanced agency coordination and communication with residents.

Action 5. Build an Activity Log

- Trial a consolidated log of inspection activity across agencies and programs at a facility with high public interest to keep community members updated on findings.

Action 6. Create Partnering Protocols

- Test a process where one agency engages in enhanced community outreach and relays to partner agency.

Action 7. Issue EJ Action Plan Assessment

- Issue an assessment of accomplishments, successes and challenges under the first year of Action Plan implementation.
- Share assessment with members of the public and solicit feedback on how to improve enforcement approach.