

Client Alert

July 2013

EPA Commits to Current Enforcement Priorities

The Environmental Protection Agency (EPA) recently announced that it will extend its current set of six National Enforcement Initiatives through fiscal years 2014–2016. EPA's current list of top priorities includes reducing air emissions from major industrial and utility sources, reducing contamination from mineral processing operations and ensuring that energy extraction activity complies with environmental regulations.

EPA will augment these existing initiatives with its Next Generation Compliance program, which emphasizes advanced emissions monitoring technology, electronic compliance reporting and public access to compliance data. EPA decided to employ Next Generation Compliance despite concerns that it may override state regulations and impose new burdens on regulated industries.

EPA's six National Enforcement Initiatives for fiscal years 2014–2016 are as follows:

- 1. Reducing Air Emissions from Coal-Fired Utility and Major Industrial Sources.** The New Source Review and Prevention of Significant Deterioration requirements of the Clean Air Act require certain large industrial facilities to install state-of-the-art air pollution controls when they build new facilities or make "major modifications" to existing facilities. EPA's enforcement branch contends that many existing facilities have failed to install pollution controls despite making such major modifications. In its recent announcement, the agency committed to continue its policy of bringing enforcement actions against alleged violators, including coal-fired power plants and cement, glass and acid manufacturing facilities.
- 2. Reducing Hazardous Air Emissions.** EPA regulations adopted under the Clean Air Act impose certain emission control requirements, known as Maximum Achievable Control Technology, on a broad range of hazardous air pollutants (HAP) emitted by many industrial and commercial facilities. The EPA will continue to target three areas of noncompliance that it claims will reduce HAP emissions: (1) leak detection and repair; (2) volume of waste gas to flares and improvement in flare combustion efficiency; and (3) excess emissions at startup, shutdown and malfunction.
- 3. Ensuring Environmental Compliance of Energy Extraction Activities.** EPA recognizes the importance of developing domestic sources of energy, but wants to ensure that natural gas production techniques are compatible with regulatory protections for air and water resources. EPA will continue to exercise its authority under the Clean Air Act, Clean Water Act and Safe Drinking Water Act to regulate the development of natural gas resources.
- 4. Reducing Pollution from Mineral Processing Operations.** EPA seeks to achieve maximum compliance with environmental regulations applicable to mineral processing materials management. The agency will continue to conduct nationwide enforcement actions against phosphoric acid production plants and other mineral processing facilities under the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act and the Emergency Planning and Community Right-to-Know Act.
- 5. Preventing Animal Waste From Contaminating Water Surface and Groundwater.** Concentrated animal feeding operations (CAFOs) generate significant volumes of animal waste, which, if improperly managed, can impair surface water quality and contaminate groundwater resources. The EPA will continue to focus Clean Water Act enforcement efforts on large and medium CAFOs that discharge waste to the waters of the United States without a National Pollutant Discharge Elimination System permit.

- 6. Preventing Discharges of Raw Sewage and Contaminated Stormwater.** EPA continues to be concerned with the potential water quality impacts when heavy rainfall exceeds the flow capacity of pipes and water treatment facilities. The agency will continue to work with municipalities to promote effective integrated planning solutions to wastewater and stormwater management as part of its permitting and enforcement initiative.

Businesses in the targeted industrial sectors should be aware of EPA's enforcement priorities. These investigations typically begin with a request for information or a request to inspect a facility. For further information on what to do if your company is targeted by EPA, please contact one of the lawyers listed in the margin.