

## EPA Proposing New Enforcement Priorities

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[Robert M. Stonestreet](#)

The federal Environmental Protection Agency published a federal register notice on January 4, 2010 soliciting comments on proposed national enforcement priorities for the years 2011 through 2013. According to the notice, "EPA selects these priorities every three years in order to focus federal resources on the most important environmental problems where noncompliance is a significant contributing factor." EPA has proposed nine new candidates for priority enforcement:

- Environmental Justice (addressing disproportional burden of pollution on "vulnerable populations" such as children, minorities, and economically poor areas)
- Marine Debris
- Resource Conservation and Recovery Act Enforcement
- Resource Conservation and Recovery Act Financial Assurance (bonding)
- Resource Extraction (focus on coal mining in Appalachia and oil and gas development nationwide)
- Pesticides at Day Care Facilities
- Surface Impoundments (focus on chemical, petroleum, and paper industries)
- Wetlands
- Worker Protection Standards

In addition to the proposed nine new priorities, EPA proposes to retain most of the existing priorities that will be in place through the end of 2010 including:

- Air Toxics
- New Source Review/Prevention of Significant Deterioration under the Clean Air Act
- Concentrated Animal Feeding Operations ("CAFO")
- Municipal Sewer
- Stormwater
- Mineral Processing

In late December, 2009, EPA's Assistant Administrator for Enforcement and Compliance, Cynthia Giles, participated in a round-table discussion of the proposed enforcement priorities with members of industry and environmental attorneys, including two Dinsmore & Shohl attorneys - Christopher B. Power and Robert M. Stonestreet. In addition to discussing the priorities mentioned above, Ms. Giles noted the potential for "resetting" the relationship between the states and EPA concerning enforcement of environmental laws. Under some environmental programs, such as the Clean Water Act, the states take the lead role in administering the program and enforcing its requirements with only limited EPA involvement. Potential changes could include shared accountability for enforcement actions and increased EPA oversight of state enforcement activity to ensure a "level playing field" between states. Other areas that will likely receive increased focus include efforts to improve transparency by making more information easily accessible the public, how to address greenhouse gases should they become regulated pollutants under the Clean Air Act, and "revitalizing" criminal prosecution efforts. On the public information front, EPA has developed an

interactive map on its website that plots the location of enforcement actions across the nation and allows users to obtain more information about each enforcement action. The map can be accessed [here](#).

EPA is also considering changes to how the benefits of enforcement actions are reported. Currently, benefits are reported in terms of the quantity of pollution reduced or money collected in penalties. EPA is evaluating new metrics to address the estimated health impacts of enforcement actions, such as number of potential cancer cases reduced.

More information on the proposed enforcement priorities can be found on EPA's [website](#). The deadline for comments on the proposed enforcement priorities is January 16, 2010. Comments may be submitted [here](#).