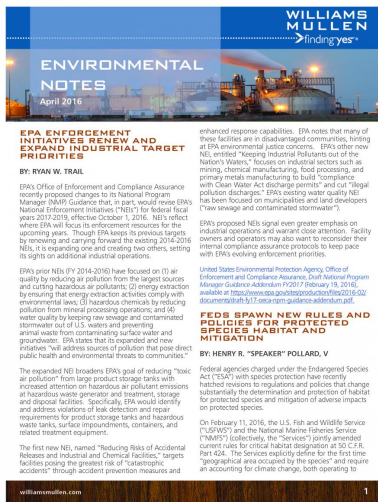




Environmental Notes - April 2016

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EPA ENFORCEMENT INITIATIVES: REVIEW AND EXPAND INDUSTRIAL TARGET PRIORITIES

BY RYAN W. TRAIL

EPA's Office of Enforcement and Compliance Assurance recently proposed changes to its National Program Manager (NPM) Guidance that, in part, would revise EPA's National Enforcement Initiatives ("NEI") for federal fiscal year 2017-2019, effective October 1, 2016. NEIs reflect where EPA will focus its enforcement resources for the upcoming year. Though EPA lays its previous targets out by reviewing and carrying forward the existing 2014-2016 NEIs, it is expanding and creating two others, setting its sights on additional industrial operations.

EPA's new NEIs (FY 2016-2016) have focused on (1) air quality by reducing air pollution from the largest sources and tackling hazardous air pollutants; (2) energy extraction by ensuring that energy extraction activities comply with environmental laws; (3) hazardous chemicals by reducing pollution from mineral processing operations; and (4) water quality by keeping new sewage and contaminated stormwater out of U.S. waters and preventing animal waste from contaminating surface water and groundwater. EPA states that its expanded and new initiatives "will address sources of pollution that pose direct public health and environmental threats to communities."

The expanded NEI broadens EPA's goal of reducing "toxic air pollution" from large product storage tanks with increased attention on hazardous air pollutant emissions at hazardous waste generation and treatment, storage, and disposal facilities. Specifically, EPA would identify and address violations of leak detection and repair requirements for product storage tanks and hazardous waste tanks, surface impoundments, containment, and related treatment equipment.

The first new NEI, named "Industry Risk of Accidental Releases and Industrial and Chemical Facilities," targets facilities posing the greatest risk of "catastrophic accidents" through accident prevention measures and

enhanced response capabilities. EPA notes that many of these facilities are in disadvantaged communities, living at EPA environmental justice concerns. EPA's other new NEI, entitled "Keeping Industrial Pollutants Out of the Nation's Waters," focuses on industrial sectors such as mining, chemical manufacturing, food processing, and primary metals manufacturing to build "compliance with Clean Water Act discharge permits" and cut "illegal pollution discharges." EPA's existing water quality NEI has been focused on municipalities and large developers of "raw sewage and contaminated stormwater."

EPA's proposed NEIs signal even greater emphasis on industrial operations and warrant close attention. Facility owners and operators may also want to reassess their internal compliance assurance protocols to keep pace with EPA's evolving enforcement priorities.

United States Environmental Protection Agency Office of Enforcement and Compliance Assurance, Draft National Program Manager Guidance, Ackenstem P027 February 19, 2016, available at <https://www.epa.gov/epaosopr/leg2016-02-19-draftnpegs/171761main-epa-guidance-ackstem.pdf>.

FEDS SPAWN NEW RULES AND POLICIES FOR PROTECTED SPECIES HABITAT AND MITIGATION

BY HENRY R. "SPEAKER" POLLARD, V

Federal agencies charged under the Endangered Species Act ("ESA") with species protection have recently published revisions to regulations and policies that change substantially the determination and protection of habitat for protected species and mitigation of adverse impacts on protected species.

On February 11, 2016, the U.S. Fish and Wildlife Service ("FWS") and the National Marine Fisheries Service ("NMFS") collectively, the "Services" jointly amended current rules for critical habitat designation at 50 C.F.R. Part 424. The Services explicitly define for the first time "biogeographical area occupied by the species" and require an accounting for climate change, both operating to

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