Holland & Hart



Emily Schilling

Partner
801.799.5753
Salt Lake City
ecschilling@hollandhart.com



Sydney Sell

Associate
801.799.5899
Salt Lake City
sjsell@hollandhart.com



Alyssa Diel

Associate
801.799.5910
Salt Lake City
ajdiel@hollandhart.com

EPA Doubles Down on Enforcement to Address Climate Change

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In its latest move to address climate charge, the Environmental Protection Agency's (EPA) Office of Enforcement and Compliance Assurance (OECA) on September 28, 2023 issued a memorandum titled “EPA's Climate Enforcement and Compliance Strategy,” directing EPA to prioritize the mitigation of climate change throughout its enforcement and compliance programs. This new policy follows the Biden Administration's issuance of Executive Order 14008, which called on federal agencies to implement an all-hands-on-deck approach to tackling climate change. Regulated entities, particularly in the oil and gas sector, should be aware of the impacts this new policy may have on enforcement and compliance programs.

The memorandum establishes three new requirements for EPA's enforcement and compliance programs:

1. prioritize enforcement and compliance activities to mitigate climate change and reduce the emissions of GHGs;
2. include climate adaption and resilience in case conclusions whenever appropriate; and
3. provide technical assistance to achieve climate-related solutions and build climate change capacity among EPA staff and local and state partners.

As a result, regulated entities in certain industry sectors with high GHG emissions, such as the oil and gas sector, should expect more targeted inspections and enforcement actions by EPA. Notably, the memorandum announces that EPA will seek greater compliance of the new source performance standards under the Clean Air Act (CAA) at oil and gas facilities and will “prioritize enforcement actions to reduce emissions of other GHGs by addressing illegal activity related to carbon dioxide, nitrous oxide, and volatile organic compound (VOC) emissions.”

Relatedly, the memorandum directs EPA to consider the risk of natural disasters and climate change impacts when identifying facilities for inspections. The memorandum makes clear that EPA will be emphasizing consideration of climate change at all levels of enforcement, including administrative actions, civil referrals, consent decree approval requests, and referrals for criminal prosecution sent to the Department of Justice.

In response to the impacts of climate change and environmental justice concerns, the memorandum also directs EPA to consider climate resilience

across the board during enforcement actions and negotiation of administrative settlements. EPA will be considering climate resilience in case conclusions whenever appropriate, such as including requirements for specific cleanup techniques or infrastructure improvements to protect communities vulnerable to climate change. Facilities near “overburdened communities” should be aware that EPA may target these areas for increased inspections and may seek heightened requirements (including injunctive relief with tangible benefits for the community) to settle compliance violations.

Finally, the memorandum states that OECA will provide technical training to EPA staff as well as state and local partners to administer this new program.

EPA has doubled down on its plan to tackle climate change by prioritizing enforcement and compliance measures aimed at reducing emissions of greenhouse gases. The regulated community, especially GHG-emitting industries and operators in communities vulnerable to climate change, should keep this in mind when assessing compliance issues.



Aaron Tucker

Partner
303.295.8369
Denver, Santa Fe
abtucker@hollandhart.com

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