

**U.S. Environmental Protection Agency (EPA) Region 8
Colorado Department of Public Health and
Environment (CDPHE)**



**EPA-CDPHE Memorandum of Understanding
(MOU) on Advancing Environmental Justice
through Enforcement and Compliance
Assurance Efforts in Disproportionately
Impacted Communities
Final Workplan for Federal Fiscal Year 23
March 27, 2023**

Background

On March 8, 2022, U.S. EPA Region 8 (EPA) and Colorado Department of Public Health & Environment (CDPHE) entered into [a Memorandum of Understanding \(MOU\) on Advancing Environmental Justice through Enforcement and Compliance Assurance in Disproportionately Impacted Communities](#). The purpose of the MOU is to express our shared commitment to working collaboratively to advance environmental justice through enforcement and compliance assurance efforts in and affecting communities disproportionately impacted by pollution and/or historically marginalized, overburdened, and underserved communities. The MOU sets a strategic direction and formalizes a partnership between the state and federal agencies. Under this MOU, we focus on three areas: (1) strategic targeting of inspections, (2) coordinated enforcement and compliance assurance actions to address impacts on communities, and (3) enhanced community engagement.

After signing the MOU, in May 2022 the EPA and CDPHE held initial community engagement sessions involving community members and organizations located in [Pueblo](#) and the [Commerce City-North Denver](#) areas to seek feedback on development of this workplan. Community members shared concerns about environmental issues impacting their communities, and ideas for improving access to information and engagement with the agencies. The EPA and CDPHE incorporated community suggestions into this workplan and identified ways to improve how the EPA and CDPHE work with each other and with communities to identify and address environmental problems.

On September 23, 2022, the EPA and CDPHE released [a draft of this workplan](#) in both English and Spanish for public comment. The agencies also released a bilingual survey to seek feedback on the draft workplan. The public comment period lasted 60 days and ended on November 22, 2022. The agencies received 8 [public comments](#) and 68 survey responses. The agencies carefully reviewed each comment and incorporated the feedback received into this final workplan. [Detailed responses to each public comment are available](#).

EPA and CDPHE will implement this workplan for the duration of federal fiscal year 2023 (October 1, 2022 through September 30, 2023). The agencies will monitor progress on implementation during this time. The agencies will then release an annual report on accomplishments in implementing this FY23 workplan, and will update the workplan for use in future federal fiscal years.

Strategic Targeting of Inspections

Inspections are critical to uncovering violations of environmental laws and regulations. Inspections also allow CDPHE and EPA to establish a visible presence among regulated entities that operate in or affect disproportionately impacted communities, reminding regulated entities that CDPHE and EPA are actively monitoring for compliance. Targeting and analysis of data will enhance the agencies' ability to address community concerns.

Description of Actions
<p>Action 1: EPA and CDPHE will develop inspection baseline information by determining which facilities and sites are within disproportionately impacted, overburdened, or disadvantaged communities using Federal Fiscal Year (FY) 2022 data. The agencies will complete their baseline analyses for Federal FY22 by July 2023, although may complete them earlier.</p> <p>The agencies will make the baseline assessments public after they are completed. The agencies will share information about the percentage of inspections conducted by programs in disproportionately impacted, overburdened, or disadvantaged communities, but will not share locational information about specific facilities. Some programs within EPA and CDPHE have already begun to prioritize inspections in disproportionately impacted, overburdened, or disadvantaged communities in their Federal FY23 inspection plans. Both agencies will report out on the results of that prioritization as part of the public report on the FY22 inspection baseline.</p> <p>Both agencies will assess baseline data and assess how inspections could be increased above the baseline in disproportionately impacted communities as part of inspection planning for future years. Data about whether a facility is located in a disproportionately impacted, overburdened, or disadvantaged community will be considered alongside other factors currently used to develop annual inspection plans, including but not limited to tips and complaints, identified excess emissions, past violations, the frequency of violations, and the time since the last inspection. The details of inspection plans must be kept confidential to avoid sharing information about where inspections will occur with regulated entities that are subject to those inspections.</p>
<p>Action 2: When EPA or CDPHE receive complaints about potential enforcement or compliance issues in disproportionately impacted communities, the agencies will coordinate on tracking and analyzing complaint data. The agencies will prioritize responses to complaints about matters located in disproportionately impacted communities that are verifiable and identify violations of state or federal environmental laws. Complaints about matters that are not verifiable or that the agency does not have regulatory authority over will be a lower priority.</p> <p>Where appropriate, the agencies will use complaint data to help coordinate and prioritize areas for discretionary inspections and compliance assurance activities. Consistent with current practice, the agencies will begin the process of responding to a complaint by seeking more information or clarifying information necessary to identify potential evidence of specific deficiencies. Complainants providing concrete information such as addresses, pictures, and contact information enables the agencies to more effectively follow up to seek</p>

this clarification.

The agencies' standard practice is to respond to every complaint received and investigate complaints that fall within their respective jurisdictions. Different complaints will require very different amounts of time to respond to and/or resolve, depending on their complexity, whether they lead to enforcement action, and numerous other factors. The agencies strive to follow up with complainants with the result of the investigations. CDPHE and EPA will collaborate regarding coordinating responses to tips and complaints received from disproportionately impacted communities.

In public communications about complaints, CDPHE and EPA will avoid compromising the anonymity of the complainant through revealing any personal details. The agencies recognize that making complaint details public can lead to retaliation, which could deter future complaints about legitimate concerns.

Action 3: EPA and CDPHE will require annual training for enforcement and compliance staff on the use of environmental justice mapping and screening tools, such as Colorado EnviroScreen and EJScreen.

Both EPA and CDPHE will use the 80th percentile in EJScreen and Colorado EnviroScreen as a starting point to identify disproportionately impacted, overburdened, or disadvantaged communities for the purpose of establishing the baseline and prioritizing future inspections as discussed in Action 1, above. However, this may vary in some cases where there is other information available outside of CO EnviroScreen and EJScreen indicating that a community is disproportionately impacted, overburdened, or disadvantaged.

Coordinated Enforcement and Compliance Assurance to Address Impacts on Communities

CDPHE and EPA are committed to doing more to reduce burdens in disproportionately impacted communities by ensuring that enforcement cases incorporate remedies with tangible benefits for these communities. We will coordinate enforcement and compliance assurance efforts in disproportionately impacted communities to reduce pollution burdens and ultimately to improve public health outcomes.

Description of Actions
<p>Action 1: EPA and CDPHE enforcement and compliance staff are following up on compliance matters identified during the 5/19/2022 Pueblo and 5/25/2022 Commerce City-North Denver Community Engagement Sessions. Click this link to access recordings from the Commerce City-North Denver session and this link to access recordings from the Pueblo session.</p> <p>Because of the large number of varying matters that were raised by members of the public during the engagement sessions and the wide range of complexity that following through on investigating or addressing those concerns or topics, it is not possible to commit to provide updates about the agencies' response to these matters. However, the agencies will share high level updates about relevant topics during future community engagement events.</p>
<p>Action 2: EPA and CDPHE will encourage the use of Supplemental Environmental Projects (SEPs) in settlements of enforcement cases affecting disproportionately impacted communities.</p> <p>CDPHE and EPA will specifically work to proactively identify SEP opportunities by affirmatively soliciting community ideas for SEPs. Over the next year, CDPHE will coordinate a community engagement roadshow in disproportionately impacted communities across the state to raise awareness about the SEP idea library and how to submit funding opportunities.</p>
<p>Action 3: EPA and CDPHE will work towards ensuring that settlement agreements pertaining to facilities in disproportionately impacted communities are readily accessible to the public through user-friendly mechanisms. Both agencies already post final settlement agreements through their respective public electronic record systems.</p> <p>To make the information about these settlement agreements more accessible, the agencies will provide links to relevant settlement agreements on the new EJ in Enforcement webpage (discussed further below).</p> <p>To further ensure transparency, EPA and CDPHE will apply criteria to identify priority</p>

settlements to provide plain language explanations on the new EJ in Enforcement webpage. Criteria may include settlements that have potentially significant impacts for disproportionately impacted communities. Plain language explanations may take the form of a press release, fact sheet, or other materials, and may be translated based on the linguistic needs of the impacted community. The plain language explanation would not be intended to clarify, alter, or interpret the terms of the settlement itself.

Action 4: CDPHE will continue providing compliance assistance support for local governments in disproportionately impacted communities when those local governments are regulated entities, and work to increase the compliance assistance resources that are available to local governments in disproportionately impacted communities over time.

Specifically, CDPHE's Water Quality Control Division (WQCD) provides routine compliance assistance to regulated local governments in the form of inspections, compliance advisories, and compliance assistance. Water quality grants and low interest loans may provide financial assistance to local governments. WQCD also provides disadvantaged community funding based on socioeconomic factors that are reviewed and scored to determine eligibility. If a community or government qualifies, a range of funding incentives may be available including planning grants, design and engineering grants, loan principal forgiveness, and reduced interest rates.

Enhanced Community Engagement

Engaging disproportionately impacted communities is a priority for CDPHE and EPA and is critical to ensuring that our enforcement and compliance assurance activities benefit those most harmed by environmental noncompliance. CDPHE and EPA commit to strengthening existing public communication channels and developing new ones to elicit and receive input from members of disproportionately impacted communities. We will work to integrate community input into our activities. CDPHE and EPA commit to providing greater access to compliance data like inspection reports, which can promote community members' ability to understand and manage risks and monitor compliance at local facilities.

Description of Actions
<p>Action 1: EPA and CDPHE will hold public meetings and conduct other outreach to discuss community concerns, obtain or identify information relevant to addressing those concerns, discuss civil enforcement actions and remedies, while maintaining enforcement confidentiality, and educate the community about civil enforcement generally.</p> <p>Although it is not possible to anticipate the specific cadence and exact number or frequency of community engagement sessions about specific enforcement actions, the agencies expect that at a minimum there will be a periodic cadence of these meetings. The timing of the sessions depends on the nature of ongoing enforcement and compliance matters in disproportionately impacted communities, the degree of public interest in those matters, and staff resources and availability. Types of actions that might prompt meetings include but are not limited to requests from a community member, the agency taking the enforcement action identifying that community engagement could be valuable because of potential public interest among members of disproportionately impacted communities, or the regulated entity subject to the enforcement action requesting or suggesting that public outreach could be valuable.</p>
<p>Action 2: EPA and CDPHE will expand the use of social media to share information with community members regarding enforcement activities, how to access inspection reports and other enforcement-related documents, and how to report complaints. The agencies will prioritize sharing information about the resolution of high priority enforcement actions and upcoming community engagement opportunities.</p> <p>EPA and CDPHE will solicit feedback from communities on preferred social media platforms to ensure that the platforms being used are those most commonly used by disproportionately impacted community members.</p>
<p>Action 3: EPA and CDPHE will collaborate on periodic staff trainings on best practices for community engagement, including best practices recommended by CDPHE's Environmental Justice Action Task Force.</p>
<p>Action 4: EPA and CDPHE will work towards ensuring that all inspection reports are readily accessible to the public through user-friendly mechanisms. Each agency will continue improving technology to make it easier for members of the public to locate inspection reports</p>

on web platforms, including the new EJ in Enforcement webpage. EPA and CDPHE will also translate inspection reports to languages other than English upon request.

Action 5: EPA and CDPHE will create a new, joint EJ in Enforcement webpage to serve as a single location for links and information about environmental justice in enforcement and compliance as part of the agencies' broader efforts to make enforcement information more accessible. Among other things, the webpage will include:

- Specific agency contacts for enforcement and compliance programs at both agencies;
- Links to inspection reports pertaining to facilities in disproportionately impacted communities;
- Links to settlement agreements pertaining to facilities in disproportionately impacted communities.
- Plain language summaries of relevant settlement agreements;
- Information about upcoming enforcement-related community engagement sessions;
- A link to training on EPA's Enforcement and Compliance History Online (ECHO) website, where EPA inspection reports and enforcement documents will be posted online; and
- Guides for locating enforcement documents in the agencies' respective databases.