U.S. EPA Publishes "Watch List" of Environmental Violations

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The U.S. Environmental Protection Agency (EPA) has made public its internal list of serious alleged violations of environmental laws that have gone unaddressed without enforcement action. The Obama administration is releasing this list to the public as part of its commitment to transparency, and the release sheds light on an internal management tool that has been, until now, unavailable to the public. Hundreds of facilities appear on the three separate lists for alleged violations of the Clean Air Act, the Clean Water Act and the Resource Conservation and Recovery Act.

According to a 2008 EPA report, the watch list reflects "recidivist and chronically noncomplying facilities whose violations have not been formally addressed by either the state or EPA." A 2009 report by the EPA's inspector general states that the list tracks "facilities with serious or chronic violations of environmental laws but with no formal enforcement response." Environmental groups likely will scrutinize facilities on the list carefully as they consider potential citizen action suits and provide information for plaintiffs' attorneys pondering toxic tort suits.

To appear on the watch list, a serious violation of an environmental law must be alleged. In addition, a facility appears on the list if the alleged violation has not been subject to an enforcement action for 180 to 360 days. The public version of the watch list includes basic information about a facility, but it does not specify the particular violation that the EPA or a state or local agency has alleged because that information is considered to be enforcement-sensitive. Interested parties can, however, cross-reference a facility's identification number in the EPA's public enforcement database – called Enforcement and Compliance History Online (ECHO) for additional details about alleged violations. Because each of these statutes has a different emphasis, listed companies should contact legal counsel for advice on how to proceed.