CLEAN WATER ACT

2-85. Imminent and Substantial Endangerment

1. **AUTHORITY.** Pursuant to the Clean Water Act, including Section 311(e), and in accordance with Executive Order No. 12,777 (Oct. 18, 1991), as amended by Executive Order Nos. 13,286 (Feb. 28, 2003) and 13,638 (Mar. 15, 2013), to:

   a. Determine that there is an imminent and substantial threat to the public health or welfare of the United States because of an actual or threatened discharge of oil or hazardous substance into or upon the navigable waters of the United States from a vessel or an onshore or offshore facility.

   b. Provide notice, or cause notice to be provided to the affected state.

   c. Issue administrative orders or take other actions necessary to protect the public health and welfare.

2. **TO WHOM DELEGATED.** Director, Enforcement and Compliance Assurance Division.

3. **LIMITATIONS.**

   a. Any official exercising the authority in 1.c must obtain the advance concurrence of the regional counsel or designee on the legal sufficiency of the action. The RC may waive concurrence in writing.

   b. Any official exercising the authorities in 1.a and 1.c must consult with the assistant administrator for the Office of Enforcement and Compliance Assurance before exercising these authorities. The AA for OECA may waive consultation in writing.

   c. Before exercising the authority in 1.c, a corresponding determination that there is an "imminent and substantial threat to public health or welfare" under CWA section 311(e) must have been made under 1.a.

4. **REDELEGATION AUTHORITY.**

   a. These authorities may be redelegated to the section chief level, or equivalent, and no further.

   b. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.

5. **ADDITIONAL REFERENCES.**

   a. National Contingency Plan (40 C.F.R. Part 300).

   b. For referral of the corresponding civil judicial enforcement actions to the U.S. Department of Justice, see the Chapter 2 delegations entitled "Civil Judicial

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Enforcement and Administrative Penalty Collection Actions" and "Emergency Temporary Restraining Orders."

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Debra H. Thomas
Acting Regional Administrator

APR 2 9 2019

Date