2-85 Imminent and Substantial Endangerment (1200 TN 350 2-85)

1. **AUTHORITY.** Pursuant to the Clean Water Act (CWA), 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; and

    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 (ECAD); Chief, Water Branch, ECAD; and Director, Superfund and Emergency Management Division (SEMD).

3. **LIMITATIONS.**

    a. The delegatees must obtain the advance concurrence of the Regional Counsel (RC) on the legal sufficiency of the action before exercising the authority in 1.c. The RC may waive concurrence in writing.

    b. The delegatees must consult with the Assistant Administrator for the Office of Enforcement and Compliance Assurance (AA/OECA) before exercising the authorities in 1.a. and 1.c. The AA/OECA may waive consultation in writing.

    c. Before exercising the authority in Section 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 Section 1.a.

4. **REDELEGATION AUTHORITY.**

    a. These authorities may be redelegated to the branch chief level, 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.

    c. These authorities may not be redelegated without formal amendment.

2-85 Imminent and Substantial Endangerment (continued)

5. REFERENCES.

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

b. For referral of the corresponding civil judicial enforcement actions to the Department of Justice, see the Chapter 2 delegations entitled "Civil Judicial Enforcement and Administrative Penalty Collections Actions" and "Emergency TROs".

6. SUPERSESSION. Delegations Manual, CWA, Regional Delegation 2-85, Administrative Orders Under Section 311 (e) of the Clean Water Act 1200 TN III-192 (January 18, 2017).

Date APR 1 5 2019

Cosmo Servidio
Regional Administrator