



EPA Releases Strategic Civil-Criminal Enforcement Policy for Environmental Violations

On April 17, 2024, the U.S. Environmental Protection Agency (EPA) announced its new [Strategic Civil-Criminal Enforcement Policy](#), designed as a comprehensive strategy to align enforcement resources between the agency's traditional civil investigators in the Office of Enforcement and Compliance Assurance (OECA) with its criminal program in the Office of Criminal Enforcement, Forensics, and Training (OCEFT). The policy represents a dramatic shift in how most environmental enforcement investigations have been pursued historically by the EPA, often in silos, and frequently – at least anecdotally – depending on who gets the call first. The EPA intends for this policy to [“reinvigorate”](#) environmental enforcement.

Violations of federal environmental laws, such as the Clean Air Act and Clean Water Act, authorize the EPA to seek different types of [enforcement response mechanisms](#) commensurate with the underlying conduct, including administrative fines, civil penalties, and criminal sanctions. Indeed, mere negligence – in certain circumstances – may result in [criminal charges](#) under both the Clean Air Act and Clean Water Act, whereas most federal crimes in the U.S. require some measure of guilty intent, such as willfulness, knowing conduct, or recklessness. And while the EPA's civil and criminal investigators have always been expected to coordinate with one another to some extent, subject to limitations set forth by the EPA in its 2007 [OECA Parallel Proceedings Policy](#), the approach has been primarily bifurcated and binary, as opposed to a collaborative approach in which a company's status in an environmental investigation can fluidly transition back-and-forth between potential criminal, civil, and administrative penalties. In fact, the policy mandates consultation between respective agency investigators throughout the entire enforcement process, including consultation regarding the [National Enforcement and](#)

[Compliance Initiatives](#) (NECI) and EPA [regional office](#) priorities.

Initial Case Screening

As a starting point, the policy requires that EPA enforcement staff meet regularly (i.e., the policy hints at monthly) and identify which cases it will handle administratively within the agency, whether some enforcement matters will be referred to the Department of Justice for civil enforcement, or if matters will be investigated criminally. To that end, the policy makes clear that “[w]hile each program must make independent decisions about which cases to pursue and ensure that civil and criminal enforcement authorities are used only for proper purposes, case opening decisions will be made only after close consultation between civil and criminal enforcement managers.”

Continued Coordination and Timely Enforcement

Equally notable is the expectation of continued coordination throughout the duration of a matter in which enforcement approaches may ebb over time, as well as establishing expected timelines for resolution. As explained in the policy, “[c]ivil and criminal enforcement managers should review inspection reports and other information regarding alleged violations to determine the appropriate enforcement tools for each matter and revisit those choices as cases progress. Information sharing should be a two-way street to promote optimal enforcement.” For the regulated community, this has the potential to create unique opportunities to seek declination for criminal charges when meaningful civil enforcement will otherwise suffice; a proposition currently fraught with challenges in negotiations with criminal investigators when the likelihood of a significant parallel civil case is remote or not being pursued. As it pertains to timely enforcement, the policy states “The goal is to have clear direction in the first year about how the action will be handled so that most judicial cases, to the extent circumstances allow, will be filed, charged, or concluded within two to three years – and within 12 to 18 months for administrative matters.” If true, this presents a departure from current practice in which significant environmental enforcement matters may bump up against the five-year limitations period.

National Case Tracking System

The policy also describes how the EPA will establish a national case tracking system accessible to both civil and criminal investigators. Never before has the agency had a consolidated environmental enforcement database system for tracking cases to ensure consistency among the programs.

And, of course, the policy identifies additional coordination directives and training requirements in order to implement its goals.

Takeaways

While the policy dramatically redefines how the EPA intends to optimize its enforcement program, it does not substantively change – at least on its face – which cases the agency will pursue under each type of respective enforcement response, dating back to the [1994 Devaney Memo](#), reiterating: “Criminal enforcement should be reserved for the most egregious violations. Civil enforcement provides a powerful tool to seek justice for communities, including significant monetary penalties and court-ordered injunctive relief. Administrative enforcement enables the EPA to respond rapidly to penalize violators and ensure compliance in cases that do not warrant judicial relief.” As with all EPA policies and guidance, how the agency proceeds to implement the policy and whether it presents a demonstrable change concerning how the agency pursues and resolves environmental violations will ultimately take months or years to understand.

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