

ARTICLE

Environmental Protection Agency Issues New Civil and Criminal Environmental Enforcement Policy

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The Assistant Administrator for U.S. Environmental Protection Agency's (EPA) Office of Enforcement and Compliance Assurance (OECA) has issued a new Strategic Civil-Criminal Enforcement Policy (the Policy).¹ The Policy requires enhanced civil and criminal enforcement coordination, both on a case-by-case basis and through regular institutional measures. EPA is now requiring civil and criminal coordination during the entire lifespan of a case. The Policy became effective immediately on April 17, 2024.

BACKGROUND

Davis Uhlmann was confirmed as Assistant Administrator for OECA on July 20, 2023. Prior to a career in academia, Uhlmann was a federal prosecutor at the U.S. Department of Justice. His new Policy is directed to EPA's Regional Counsels and Deputies, OECA's Division Directors and Deputies, and Special Agents and Assistant Special Agents. The Policy calls for greater coordination in the following ways:

- Developing and implementing EPA's national and regional priorities, including the National Enforcement and Compliance Initiatives (NECIs) and regional strategic plans;
- On enhanced case screening, to include discussion between criminal and civil enforcement of what enforcement option should be utilized, including whether parallel proceedings are appropriate, to continue throughout each enforcement action;
- Improving case management through information sharing (such as compliance histories and case developments); and
- Updating training programs to promote the civil and criminal enforcement partnership, including to provide information on the requirements of the Policy, factors to consider in deciding whether to pursue criminal, civil, or administrative enforcement, and best practices for managing information sharing and parallel proceedings to prevent case delays.

The Policy mandates certain measures to achieve coordination in these areas:

NATIONAL AND REGIONAL PRIORITIES

The Policy reshapes EPA's NECI Steering Committees to confirm representation from both civil and criminal enforcement leaders when setting EPA priorities. EPA calls out certain initiatives, including its PFAS2 Roadmap and Lead Action Plan, as requiring implementation by both civil and criminal enforcement programs. On the regional level, the Policy requires civil and criminal collaboration early in the annual regional strategic planning process to determine goals, objectives, roles, and outcomes.

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