Reinforcing a Compliance First Orientation for Compliance Assurance in Civil Enforcement Activities: U.S. Environmental Protection Agency Memorandum



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The United States Environmental Protection Agency ("EPA") issued a December 5th memorandum titled:

Reinforcing a "Compliance First" Orientation for Compliance Assurance in Civil Enforcement Activities ("Memorandum").

The Memorandum was transmitted from Craig J. Pritzlaff, EPA acting Assistant Administrator to the following:

- OECA Office Directors and Deputies
- Regional Administrators and Deputy Regional Administrators
- Regional Counsel and Deputies
- Regional ECAD Directors and Deputies
- Regional SEMD Directors and Deputies

The Memorandum is stated to reinforce:

… a "compliance first" orientation as the guiding principle for the U.S. Environmental Protection Agency's (EPA) Office of Enforcement and Compliance Assurance (OECA) and all related civil enforcement and compliance programs within the regional offices (collectively, the enforcement program).

The policy is stated to reinforce prioritizing environmental compliance across all OECA civil judicial and administrative enforcement actions in the most efficient, most economical, and swiftest means possible, while ensuring that our actions align with the clearest, most defensible interpretations of our statutory and regulatory mandates.

The key components of the Memorandum are stated to include:

- Alignment with Agency Priorities (stating compliance assurance and enforcement activities must properly consider Executive Orders and guidance from the Administrator).
- The Compliance First Operating Framework (all personnel responsible for civil judicial and administrative enforcement and compliance assurance activities across the agency must prioritize ensuring compliance when addressing potential noncompliance with federal environmental laws).

- Compliance Assistance Toolkit (notes that enforcement is not the only means of achieving compliance and states that the enforcement program shall prioritize deployment of its compliance assistance tools referencing proactive outreach, technical assistance, and training to the regulated community to facilitate compliance and increase understanding and adding to promote voluntary compliance through self-reporting and voluntary audits to encourage regulated entities to proactively identify and correct compliance concerns).
- State Partner Coordination (OECA's enforcement efforts must be based on a clear federal interest, noting authorized states have primary jurisdiction over many programs and EPA activities must affirmatively demonstrate proper deference and support to state leads in most compliance and enforcement work).
- Open Communication (states that open communication and genuine collaboration between the agency, states, Tribes, and regulated entities is vital to compliance-first approach).
- Finding of Violation (states expansive regulatory interpretations in the compliance and enforcement context can create regulatory uncertainty, reduce transparency, undermine program integrity, and erode public confidence, stating that a finding of violation for noncompliance must be clear and unambiguous, well-tailored, and based on the "best reading" of the relevant statute and regulation).
- Compliance Requirements and Injunctive Relief (stating firm, consistent, and swift enforcement is an essential cornerstone of OECA's compliance assurance program and to the extent compliance assurance or informal enforcement is unable to achieve rapid compliance or is inapplicable, formal enforcement may be necessary).
- Reasoned Decision Making (states that decisions on noncompliance determinations and the appropriate means for achieving compliance must be based on rational, transparent, and logical decision making).
- Implementation and Applicability (the policy is effective immediately and applies to all civil enforcement staff and all ongoing and further enforcement and compliance assurance matters and must be immediately integrated in all operations, compliance assurance activities, and enforcement cases).

A copy of the Memorandum can be found here.