OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

December 5, 2025

MEMORANDUM

SUBJECT:

Reinforcing a "Compliance First" Orientation for Compliance Assurance and Civil

Enforcement Activities

FROM:

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TO:

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

Purpose

This memorandum reinforces 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 mission of the enforcement program is to protect human health and the environment for all Americans by ensuring compliance with federal environmental laws. The primary focus for the Agency in all inspection, investigation, EPA enforcement, state/tribal enforcement coordination, and compliance assistance activities must be on achieving and ensuring timely compliance.

This policy reinforces prioritizing environmental compliance across all OECA civil judicial and administrative enforcement activities 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.1

While compliance first minciples are generally applicable to all programs, nothing in this memorandum changes the Jorgstanding approach to handling Superfund enlorcement with early action. See Enforcement First for Remedial Action at Superfund Sites (Sep. 20, 2002), and a phylogenetic first. Committee the local phylogenetic first is at the local phylogenetic first. Committee the local phylogenetic first is at the local phylogenetic first in the phylogenetic first in the phylogenetic first in the local phylogenetic first in the phylogenetic fi

N. Allgrament with Agency Priorities

Compliance assurance and enforcement activities must properly consider Executive Orders and guidance from the Administrator. Administrator Zeloin's agenda for the "Powering the Great American Comeback" Initiative (Initiative) is defined by five foundational pillars. OECA is key for delivering on the Initiative's promises of ensuring clean air, land, and water; enhancing cross-agency partnerships and reviving cooperative federalism; and restoring American energy dominance. Indeed OECA serves as the tip of the spear for fulfilling the agency's core missions: to protect human health and the environment for all Americans, while energizing economic growth. Environmental protection and economic prosperity are mutually reinforcing goals and not binary choices. Our shared objective, therefore, will always be compliance first, ensuring that compliance is achieved in the most efficient, most economical, and swiftest means possible, all under the clearest interpretation of our legal mandates. The nation's environmental statutes create a comprehensive system for restoring and maintaining environmental quality for the general welfare, benefit, and development of all Americans. By maintaining clear focus on achieving timely compliance in all our actions, we more closely adhere to the spirit and purpose of our environmental laws.

III. The Compliance First Operating Framework

Effective immediately, 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. OECA has always emphasized compliance, but at times there may have existed a posture of pursuing enforcement that included findings of violation or orders that exceeded statutory or regulatory requirements. Such a posture prolongs negotiations and delays actual compliance. Other actions may have been derived from investigations spanning lengthy periods of time, thus potentially allowing evidence to go stale or ongoing violations to continue during the pendency of an action. But enforcement must be tailored to achieve compliance quickly so that matters can be timely resolved, and we should utilize approaches that can achieve compliance faster. This policy reinforces that when confronting compliance issues, every employee should begin by asking how compliance can be achieved in the most efficient and quickest means possible. The following six factors outline the foundation for our compliance-first operating framework.

 Compliance Assistance Toolkit. Enforcement is an important tool for maintaining programmatic integrity, ensuring proper deterrence, and reducing pollution caused by noncompliance. However, it is not the only means of achieving compliance. The agency's

Lineray Line gency (Jan. 20, 2025); Exec. Order No. 14192, Unleathing Prosperity Through Deregulation (Jan. 31, 2025); Exec. Order No. 14215, Incurring Accounts of the All Appendies (Feb. 18, 2025); Exec. Order No. 14219, Ensuring Lawful Lineray Line and Implementation of the Presidences (Feb. 18, 2025); Exec. Order No. 14219, Ensuring Lawful Lineral Lineray Lineral Lineray (Feb. 19, 2025); Exec. Order No. 14241, Immediate Measures to Incurate American Militarial Broduction (Mar. 20, 2025); Exec. Order No. 14260, Protective American Energy from State Overreach (Apr. 8, 2025); Exec. Order No. 14261, Reinvigorations Americans Enauth (Lineral Continuous Lineral Lin

³ See Press Release, EPA, "Powering the Great American Comebach" Industry (Feb. 4, 2025).

enforcement program shall prioritize deployment of its compliance assistance tools—including providing proactive outreach, technical assistance, and training to the regulate community—to facilitate compliance and increase understanding. The enforcement program will also promote voluntary compliance through self-reporting and voluntary audits to encourage regulated entities to proactively identify and correct compliance concerns ("find and fix").

- 2. State Partner Coordination. Congress has established a framework of cooperative federalism for most federal environmental laws. As such, OECA's enforcement efforts must be based on a clear federal interest. Authorized states have primary jurisdiction over many programs, and our activities must affirmatively demonstrate proper deference and support to state leads in most compliance and enforcement work. OECA shall work cooperatively with co-regulators to ensure consistency in compliance determinations and in enforcement of federal environmental law. OECA shall provide technical assistance, training, and collaborative tools to strengthen co-regulator capacity, align performance standards to prioritize compliance, and foster information exchange.
- 3. Open Communication. Open communication and genuine collaboration between the agency, states, Tribes, and regulated entities is vital to our compliance-first approach. For those programs administered by EPA and that are not authorized or approved for delegation to states, regional and headquarters managers shall communicate with their state manager counterparts to, for example, avoid overscheduling compliance assurance activities at a site. Similarly, for other compliance and enforcement activities for which a clear federal interest requires federal action in a state with delegated authority, collaboration and communication with state program leadership must occur to avoid duplicative activities and unnecessary contradictions.

When interacting with regulated entities, inspectors and enforcement personnel must maintain open communication with regulated entities throughout the inspection and enforcement process. Personnel must communicate expectations clearly and in a timely manner, outline milestones and deliverables, and identify next steps after each milestone. Such an approach allows regulated entities to have a transparent view into the enforcement process and allows them full opportunity to take early, proactive steps to address findings. By operating in a "no surprises" framework; compliance can be accelerated by avoiding resource-intensive disputes over process and procedures.

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enforcement context can create regulatory interpretations in the compliance and enforcement context can create regulatory uncertainty, reduce transparency, undermit program integrity, and erote public confidence. A finding of violation for noncompliance must be clear and unambiguous, well-failured, and based on the "best reading" of the relevant statute and regulation. Well-failured and clear approaches to findings will make compliance quicker to achieve and reduce time and expense in litigating interpretations that seek to broaden statutory or regulatory requirements beyond plain meaning. In determining whether a finding of violation comports with the best reading, case teams should ensure proper consideration of canons of statutory construction, past practice, and current litigation related to the provision at issue underpinning the finding. The analysis must continue at all stages of case development, including during initial case evaluation, when additional evidence is gathered, and in discussions with counsel for regulated entities.

Where a regulated entity raises concerns about how EPA has applied a statute or regulation to its specific case, or if a material ambiguity is otherwise identified, such questions must be elevated immediately for further analysis. Inspectors and enforcement staff, including attorneys, are not responsible for resolving an ambiguity or concern, but only for identifying and elevating the issue when raised by a regulated entity or otherwise identified. The decision on how to proceed in enforcing these provisions must be made at a national level to ensure national consistency of federal law. In regional cases, the Regional Counsel should consult with the relevant Office of General Counsel (OGC) and OECA offices in making these determinations. Whenever any uncertainty remains, the issue should be raised to the OECA immediate office.

Finally, the regulated public must trust that identified noncompliance will be fairly and consistently approached across EPA programs and regions. To reduce ambiguity and promote consistency in the handling of air, water, and waste or chemical violations by EPA, OECA will work to develop and create consolidated criteria across all media that clearly define specific categories of violations for formal enforcement, informal enforcement, and field warnings (other action)⁹ in one document, in coordination with OGC. Related tools and existing program-specific enforcement response policies, ⁸ together with the best reading of each requirement, shall inform the basis for consolidating violation categories across all programs into a unitary guidance document for EPA to determine the appropriate level of enforcement for noncompilance identified by EPA during its inspections or investigations.

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Creation of this document will make enforcement practices across the agency more consistent, while improving transparency and accessibility for the public and regulated community. Until this document is developed, case teams should continue to follow curre practices, informed by the principles set out in this document.

5. <u>Compliance Requirements and Injunctive Relief</u>. Firm, consistent, and swift enforcement is an essential cornerstone of OECA's compliance assurance program. To the extent compliance assurance or informal enforcement is unable to achieve rapid compliance or is inapplicable, formal enforcement may be necessary. Throughout the formal enforcement process, achieving timely compliance in the most efficient, most economical, and swiftest means possible must be the primary focus of the negotiation and litigation strategy.

Injunctive provisions shall be based on the best, most defensible interpretation of the law. The preference is for relief that is well-tailored to address specific violations, achieves compliance quickly, and is based on clear legal remedies and requirements. Settlements and orders must reflect a clear nexus to the governing statute and implementing regulations, thereby avoiding expansive interpretations that could lead to unnecessary regulatory or litigation uncertainty or unwarranted burdens on responsible parties.

Injunctive relief outside clear regulatory or statutory requirements may be appropriate in limited, case-specific circumstances. Such relief often raises nationally significant issues and should be sought only with approval from the OECA Assistant Administrator. The April 26, 2021, EPA Memorandum, "Using All Appropriate Injunctive Relief Tools in Civil Enforcement Settlements," describes several expansive remedies. The 2021 memorandum is overly broad in its approach and therefore is rescinded. It discusses several "tools," including advanced monitoring, third party audits, independent third-party verification/monitoring, electronic reporting, and enhanced public reporting of compliance data. Imposing monitoring and reporting requirements that exceed regulatory parameters is generally not appropriate. When a specific case circumstance requires monitoring and reporting obligations, those requirements should remain within the clear boundaries of the law and directly tied to identified noncompliance at the site. Third-party audits, third-party verification, or third-party monitoring must be carefully considered, often raise nationally

Certain circumstances may demand an immediate formal enforcement response. For instance, violations that present an emergency coupled with significant harm to human health and the environment may require immediate civil administrative or judicial enforcement remedies to address an origining threat. Other serious blatam, or knowing and repetitive noncompliance suggesting at lack of internal institutional environmental portrols and complete disregard of tax may also present a situation mandading first and immediate unforcement. As alternate, industries or refusals to respond to reasonable agency requests for information or records necessary to determine compliance status, including barring inspector access to alternate in facilities, may access lately mediate civil abijunistrative of judicial enforcements access lately modeless could be a proposed to reasonable access lately mediate civil abijunistrative of judicial enforcements access lately inspector access to

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significant issues, and shall be subject to approval by the OECA Assistant Administrator to initiating negotiation on such remedy with a regulated entity. 10

Additionally, the 2021 memorandum discusses measures to "address past harm to communities caused by noncompliance or otherwise benefit communities impacted by noncompliance," such as mitigation, supplemental environmental projects (SEPs), and stipulated remedies. ¹¹ OECA's policies concerning SEPs and the use of mitigation and stipulated remedies have been controversial and subject to debate over the years. Until additional guidance is issued, any proposed settlement that could include mitigation (in cases that involved nationally significant issues), or a stipulated remedy should be brought to the OECA Assistant Administrator for approval prior to initiating negotiation on such remedies with a regulated entity. ¹² Until additional guidance on the use of SEPs in settlement agreements is issued, no settlement shall include a SEP.

6. Reasoned Decision Making. Decisions on noncompliance determinations and the appropriate means for achieving compliance must be based on rational, transparent, and logical decision making. Our decision making must be such that regulated entities and other stakeholders, through our open communication and reasoned processes, can easily understand and follow how we made our enforcement decision. Our analysis should apply the "LEAPS" factors: law, evidence, analysis, programmatic impact, and stakeholder impact. Decisions should consider the law to ensure our finding, determination, and proposed injunctive relief is within the most defensible, clearest interpretation of the agency's statutory and regulatory authority. Decisions must also be based on the best evidence to ensure noncompliance determinations are supported by clear, unequivocal facts. Careful. gnolysis of the available evidence must ensure that gold standard science 13 and facts support the determination. Actions must also consider programmatic impacts to ensure we are not causing mission creep and expanding regulatory requirements through overly broad inspections and enforcement. Agency programs include permitting, monitoring, inspection, and enforcement. Impacts to other divisions, groups, and functions within EPA must be considered. Finally, decisions must consider stakeholder impacts, including states and Tribal entities. For example, we must act swiftly to limit actions from third parties who, through citizen suit litigation, unfairly impact policy through abusive litigation tactics. Application of these "LEAPS" factors will help ensure sound and responsive decisions.

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IV. Implementation and Applicability

This policy is effective immediately and applies to all civil enforcement staff and all ongoing and future enforcement and compliance assurance matters. It shall be immediately integrated into all operations, compliance assurance activities, and enforcement cases.

This document is intended for internal management purposes only. It is not a regulation, does not change or substitute for any applicable regulation, and does not create or impose any legally binding obligations or rights on EPA or regulated entities. It is intended to improve the internal management of EPA and is not intended to, and does not create, any right or benefit, substantive or procedural, enforceable at law or in equity, against the agency, its offices or employees, or any other person.

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