

## Aligning With EPA's 'Compliance First' Enforcement Policy

By **Stacey Geis** and **Shennie Patel** (January 15, 2026, 2:24 PM EST)

The U.S. Environmental Protection Agency's Office of Enforcement and Compliance Assurance, or OECA, issued a significant policy memorandum on Dec. 5, shifting its enforcement approach toward a "compliance first" orientation.<sup>[1]</sup>

This change emphasizes achieving compliance quickly and efficiently in a manner that relies less on formal enforcement, lengthy negotiations or expansive legal theories.

While the agency highlights this initiative as a way to streamline processes, foster cooperation and encourage greater compliance, critics have expressed concerns about whether reduced formal enforcement might affect public health and the environment.

Proponents state these changes could enhance collaboration and lead to faster corrective actions. Here, we cover the policy and its potential implications for industry — including risks, benefits and recommended guidance.

These include maintaining up-to-date compliance programs, implementing self-audits and "find-and-fix" noncompliance protocols, leaning more into open communication with regulators, and possible elevation and heightened attention to settlement processes and citizen suits — all to help industry navigate this new enforcement policy and achieve sustained regulatory compliance.



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### Key Features and Industry Implications

The new policy's stated purpose is to prioritize environmental compliance across all civil and administrative enforcement actions with the "most efficient, most economical, and swiftest means possible," while ensuring actions align with the "clearest, most defensible interpretations" of statutes and rules.<sup>[2]</sup>

The policy also requires alignment with agency priorities, including EPA Administrator Lee Zeldin's Powering the Great American Comeback initiative. This initiative's stated goals include ensuring clean air, land and water for all Americans, but also restoring American energy dominance, accomplishing permitting reform, bringing back American automotive jobs and making the U.S. the artificial intelligence leader of the world.<sup>[3]</sup>

To achieve these goals, the policy sets forth an operating framework that consists of six factors.<sup>[4]</sup> These

factors include directing staff to focus more on informal compliance tools the EPA routinely uses, such as technical assistance, proactive outreach and trainings, as opposed to formal action to achieve compliance, and encouraging industry to adopt find-and-fix solutions to noncompliance including self-audits and self-reporting.[5]

Another factor includes increased coordination with state partners to ensure coordinated efforts where needed, and deference when there is no clear federal interest.[6] Increased transparency is a factor that requires more open communication with regulated entities, and clear, unambiguous and nationally consistent findings of violation based on the best reading of laws and rules.[7]

Where a regulated entity finds material ambiguity in statutory interpretation, EPA staff will now elevate the issue to the national leadership level, as opposed to resolving it regionally.[8]

To promote fair and consistent approaches to identifying noncompliance across EPA programs and regions, the OECA will develop consolidated criteria for all media that "clearly define specific categories of violations for formal enforcement, informal enforcement, and field warnings" in one document. Until these criteria are developed, EPA case teams are to follow current practices, now informed by the principles and factors set forth in the policy.[9]

The compliance-first remedy framework touches on compliance requirements, including injunctive relief, when formal enforcement occurs. Settlements are now limited to remedies with a direct and "most defensible" legal basis.

Broader injunctive relief — including mitigation such as fenceline monitoring or third-party audits to ensure compliance, and other stipulated remedies focused on addressing future compliance or community harm — will now require high-level approval.[10]

Supplemental environmental projects, which are voluntary environmental or public health projects that entities subject to enforcement can propose as part of an administrative, civil or criminal settlement, will no longer be an available remedy until further guidance is issued.[11]

The intent is to resolve violations swiftly and with formal action only as needed, and to avoid uncertainty for regulated entities — with the goal of preventing contentious litigation or novel theories of liability against industry.

The policy adopts what it calls the LEAPS model for "reasoned decision-making," by having analysis of noncompliance consider the law, evidence, analysis, programmatic impacts and stakeholder impacts, with stakeholders including states and tribal entities. The policy states that the EPA will also apply this approach to limit citizen suit litigation.

Lastly, the policy applies generally to the EPA's civil programs, except for its Superfund program. There, EPA staff will continue their long-standing approach of early action. The policy notes that guidance may be forthcoming regarding the EPA's criminal program.

## **Primary Issues Raised by the Shift**

### ***Enforcement and Deterrence***

While the EPA has yet to release its annual enforcement and compliance assurance annual results report

for 2025, recent reporting and independent analysis show a decline in formal enforcement of environmental violations under the Trump administration.[12]

Critics, including former U.S. Department of Justice and EPA officials, argue that the policy undermines deterrence, weakens pollution control and leaves communities vulnerable.[13] While the EPA claims that efficient compliance is the central goal, some analysts see diminished accountability for violations and a risk of regulatory leniency.

The policy does not address how the compliance-first approach applies to the reported significant noncompliance found in specific industry sectors or with specific statutes. These instances of significant noncompliance are considered when determining the EPA's National Enforcement and Compliance Initiatives every four years.[14]

Accordingly, some critics have noted the increased public harm that could occur through a more carrot-based approach to compliance.

The policy's focus on companies voluntarily self-auditing and self-reporting noncompliance aligns with the DOJ's recent efforts in the criminal realm to encourage voluntary self-disclosure.

In 2025, the DOJ's Criminal Division updated its self-reporting policy so that companies that meet the definition of voluntary self-disclosure and have no aggravating factors will receive a guaranteed declination as opposed to a presumption.[15]

This also includes a 50%-75% reduction in fines, and no requirement of an independent compliance monitor if there is an effective compliance program. The updated policy only applies to the Criminal Division, and not the DOJ's Environmental Crimes Section, which has its own self-reporting policy.[16]

However, it is a sign of where the DOJ, and now possibly the EPA, are leaning when it comes to enforcement discretion.

### ***Citizen Suits and Legal Risks***

One of the key features of the new policy is the introduction of a new strategy to reduce industry exposure to citizen suits. Citizen suits are a legal tool that allows individuals or groups to bring an enforcement action when federal or state authorities do not.

Many environmental statutes bar citizen lawsuits if an agency is diligently prosecuting alleged violations. Under the new policy, EPA staff are encouraged to preempt citizen suits by stepping in to "diligently prosecute" federal enforcement actions.

Recent court cases have exposed uncertainties in what qualifies as diligent prosecution, with differing judicial opinions complicating this defensive strategy. While the policy seeks to avoid the use of citizen suits, it remains to be seen how the EPA will navigate these ambiguities.

### ***Handling Ambiguities and State Coordination***

By requiring ambiguous cases to be elevated to headquarters, decision-making may be slowed down, due to limited resources at the national EPA level.

The emphasis on federal-state coordination to improve consistency has existed for years, but the focus on greater deference to state enforcement raises concerns about uneven enforcement across jurisdictions, given resource constraints and different enforcement priorities at the state level.

### ***Remedies and Settlements***

With tighter limits on available remedies, including mitigation and supplemental environmental projects, the flexibility long used in negotiating settlements is reduced.

This may accelerate resolution of straightforward cases, but restricts options in situations where more creative or community-focused remedies may better achieve a resolution that works for all parties.

### **Practical Guidance for Industry**

To align with the compliance-first policy — or with any policy changes in the future — regulated companies should:

- Maintain and update compliance programs to ensure ongoing alignment with evolving legal requirements. This could involve facility audits, risk assessments and other tools to demonstrate an effective compliance program.
- Implement the EPA's find-and-fix approach by proactively addressing, fixing and, if applicable and advisable, self-reporting noncompliance found in self-audits and risk assessments. Companies should implement clear, legal protocols to maintain protections, such as attorney-client privilege or environmental audit privilege, depending on the state.
- Communicate with the EPA and state regulators. The EPA is asking its staff to be more transparent and communicative. Proactive engagement will help establish strong relationships and demonstrate that the agency's new emphasis on "no surprises" from staff is a two-way street.
- Consider elevating materially ambiguous or novel findings to EPA leadership, after consulting with legal counsel to confirm this is a strategically sound approach.
- Review settlement terms closely to ensure all proposed remedies, including any third-party or mitigation projects, have necessary EPA approvals.
- Monitor developments regarding citizen suits and definitions of diligent prosecution to adjust litigation strategy as the legal landscape evolves.

### **Conclusion**

The EPA's compliance-first approach ushers in a new enforcement paradigm, offering benefits for proactive and forward-thinking companies to demonstrate their commitment to compliance.

This transition, however, may bring uncertainty, decreased enforcement and possible delays in resolutions as the EPA evaluates cases under the new system, thus encouraging states and third parties to play a more active role in enforcement gap-filling.

By staying ahead of legal developments and embracing a robust culture of compliance, organizations

can engage in more efficient and collaborative interactions with regulators in a rapidly changing landscape.

Addressing emerging risks and ambiguities will help companies navigate new challenges and embrace the opportunities of this new federal policy initiative.

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[1] Acting Assistant Administrator Craig Pritzlaff Memo: Reinforcing a "Compliance First" Orientation for Compliance Assurance and Civil Enforcement Activities,  
EPA, <https://www.epa.gov/system/files/documents/2025-12/reinforcing-a-compliance-first-orientation-for-compliance-assurance-and-civil-enforcement-activities.pdf>.

[2] Id. at 1.

[3] Id. at 2; see also EPA Administrator Lee Zeldin Announces EPA's "Powering the Great American Comeback" Initiative, EPA, <https://www.epa.gov/newsreleases/epa-administrator-lee-zeldin-announces-epas-powering-great-american-comeback>.

[4] Pritzlaff Memo at 2.

[5] Id. at 2-3.

[6] Id. at 3.

[7] Id. at 3-4.

[8] Id. at 4.

[9] Id. at 5.

[10] Id.

[11] Id. at 6; see also Is there a Role Anymore for Supplemental Environmental Projects in Environmental Enforcement Settlements?, Crowell & Moring LLP, <https://www.crowell.com/en/insights/client-alerts/is-there-a-role-anymore-for-supplemental-environmental-projects-in-environmental-enforcement-settlements>.

[12] How Trump officials have transformed the EPA to weaken enforcement, The Washington

Post, <https://www.washingtonpost.com/climate-environment/2025/11/07/epa-environment-enforcement-deregulation/>.

[13] Trump EPA preaches 'compliance first.' Does that mean enforcement last? E&E News by Politico, <https://www.eenews.net/articles/trump-epa-preaches-compliance-first-does-that-mean-enforcement-last/>.

[14] National Enforcement and Compliance Initiatives, EPA, <https://www.epa.gov/enforcement/national-enforcement-and-compliance-initiatives>.

[15] 2025 updates to 9-47.120 - Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy, DOJ, [https://www.justice.gov/d9/2025-05/revised\\_corporate\\_enforcement\\_policy\\_-2025.05.11\\_-final\\_with\\_flowchart\\_0.pdf](https://www.justice.gov/d9/2025-05/revised_corporate_enforcement_policy_-2025.05.11_-final_with_flowchart_0.pdf).

[16] ECS Voluntary Self Disclosure Policy 2023.