



Key Takeaways on Updated EPA Enforcement Priorities



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On the heels of its March 12 [major announcement](#) about 31 deregulatory actions, EPA also issued an important [Memorandum](#) honing the National Enforcement and Compliance Initiatives (NECI's) adopted under the Biden administration and providing guidance to EPA's civil and criminal enforcement staff on implementing existing NECIs. Authored by the acting Assistant Administrator for

Enforcement & Compliance Assurance (OECA), the guidance may provide some tea leaves worth considering during these early days of the Zeldin EPA.

Republican administrations tend to focus on nuts-and-bolts enforcement of regulations on the books, rather than rulemaking and technology-forcing and extra-regulatory enforcement efforts more typical of Democratic administrations. The March 12 Memorandum largely signals that back-to-basics approach, in keeping with Administrator Zeldin's First Pillar: Clean Air, Land and Water for Every American. Here are some key takeaways.

New Limitations on EPA Enforcement

- ♦ **Environmental Justice (EJ) concerns are dropped, but the cases themselves might not be.** Not surprisingly, the Memorandum directs EPA Regions to eliminate EJ as a consideration in pursuing all aspects of enforcement – information requests, case initiation, penalties, and enforcement orders. Race and socioeconomic concerns can no longer comprise enforcement criteria and the EJ Screen tool has been dismantled. But as enforcement cases begin to move forward, eliminating the underlying EJ component of a case might not necessarily make it go away. EJ concerns can be relatively easy to allege wherever heavy industry and waste management facilities are situated near residences, but (barring unusual circumstances) EPA may be unlikely to drop a case that has significant substantive environmental violations wherever they occurred. The Memorandum indicates a willingness to consider certain aspects of the idea of “vulnerable” or “overburdened” communities, but not qualitative cumulative pollution risks.
- ♦ **Enforcement of rules under reconsideration requires OECA leadership approval.** In a somewhat unheralded directive under the heading “Other Rules,” the Memorandum provides guidance on enforcement of the rules that are under reconsideration – which presumably alludes to 31 regulatory actions targeted for reconsideration but is broad enough to include any future additional rule EPA selects for reconsideration. For these rules, OECA leadership must approve of any enforcement or compliance assurance action regarding any rule under reconsideration. This

may be a sleeper component of the guidance. Given the number of rules under consideration, the approval process could slow or rescope scores of enforcement cases, for example, under EPA's Risk Management Program. The Memorandum does not address the mechanics of that internal approval process and may take time for EPA staff to develop. Even so, cases that fall outside this approval requirement may continue to progress. For example, the Benzene Waste Operations NESHAP, was not one of the rules listed to be under reconsideration.

- ♦ **"Unleashing American Energy" means enforcement cannot result in shutdowns, interrupt distribution, or be unduly burdensome.** Consistent with the Administration's broader energy policies, the Memorandum prohibits EPA enforcement from resulting in shutdown at any stage of energy production. Enforcement must prioritize violations that threaten human health and safety or that are related to accidents. Proposed orders and enforcement actions that would result in power disruptions, restrict energy capacity, or unduly burden production or generation, must be approved in advance by OECA political leadership (Assistant Administrator or their Delegee). Historically, EPA enforcement actions have rarely resulted in a full shutdown or directly interrupted energy supply, so the guidance may mainly serve to have an emphatic effect. By the same token, this policy caveat may open the door to broad catch-all objections from respondents to proposed penalties or compliance provisions that burden or result in de facto shutdown of all or part of an energy facility.

Revisions to Existing Enforcement Priorities

The Memorandum also provides guidance on implementing the current [six NECI's](#) the Biden administration EPA issued for 2024-27 (issued in August 2023, and [summarized here](#)) consistent with the President's Executive Orders. However, the guidance also indicates the OECA will review and revise the NECI's as appropriate to ensure alignment with the Administration's priorities. Administrator Zeldin has not yet spelled out what "Clean Air, Land and Water for Every American" means in terms of enforcement but undoubtedly will sometime soon.

Of the six existing NECI's, the Memo specifically hones four, leaving intact at least for now, those for PFAS and drinking water. The remainder suggest a return to "core" enforcement approaches without a selective focus on specific communities or chemicals.

- ♦ **Mitigating Climate Change.** The interim guidance eliminates the focus on methane emissions facilities from oil and gas facilities, redirects HFC enforcement to import and sale, and returns landfill enforcement to "core" enforcement.
- ♦ **Protecting Communities from Coal Ash Contamination.** The NECI no longer considers environmental justice and must focus on imminent threats to human health. Actions related to coal production that would impact power generation require pre-approval.
- ♦ **Reducing Air Toxics in Overburdened Communities.** Enforcement of HAPs means targeting the worst pollution wherever that exists – not on priority geographical areas designated under the Biden administration.
- ♦ **Chemical Accident Risk Reduction.** EPA should focus enforcement efforts on high-risk facilities regardless of regulated chemicals of the facilities – and not just on facilities handling hydrogen fluoride and anhydrous ammonia.

What to Make of All This If You Have a Pending Enforcement Case?

Well, for now, that depends. The Administration is listening and engaged. As discussed in a [recent B&D advisory](#), companies have an unprecedented opportunity to check the rulemaking-by-enforcement approach of the Biden administration and matters that fail to align with Executive Order 14219, "Ensuring Lawful Governance and Implementing the President's Department of Government Efficiency Deregulatory Initiative." (February 19, 2025) in particular. Framing responses to information requests, findings of violation, and enforcement discussions within the context of Executive Orders and the March 12 Memorandum should help confine enforcement matter scope and relief to actual regulatory violations rather than some of the evergreen and overreaching approaches seen under the Biden EPA.

By the same token, nothing Administrator Zeldin has suggested so far indicates that EPA will significantly dial back enforcement. In many respects, it could be easier to bring more "plain vanilla" single-site enforcement cases intended to drive compliance rather than large global facility cases built on novel and expansive regulatory interpretations or that seek headline-making penalties and unprecedented injunctive relief. The first Trump administration EPA took this approach.

But staffing will matter: how, where and who staffs the EPA enforcement branches will greatly affect the Agency's enforcement docket, regardless of policies or priorities. The ARRP (Agency RIF and Reorganization Plans) remain in the early stages of development and will not see full implementation until the end of the fiscal year (September 2025). Initial reporting on EPA's proposed staff reductions has not indicated there will be dramatic reductions in enforcement staff.

Fundamentally, compliance remains the first and best defense, both against EPA enforcement under any administration and [against citizen suits](#) allowed under nearly all federal environmental statutes. During a tumultuous sea change of transition, a compliance focus may be the best priority for any company.

Beveridge & Diamond has assembled a task force that is closely watching Trump administration-related developments across multiple environmental, energy, and natural resources subject areas. Nearly two-thirds of the firm's lawyers have prior U.S. state or federal government experience, and members of the Task Force include several former EPA and DOJ attorneys who served under both the initial Trump and Biden administrations. We recently issued several related client alerts, including analyses of [anticipated enforcement trends in the Trump administration](#), [a likely new wave of citizen group enforcement actions](#), and [an overview of regulatory, litigation and enforcement in the new administration](#). Please let us know how we can assist you in addressing the impacts from the change in administration and Congress.

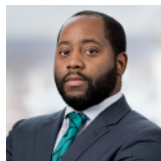


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