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EPA PUBLISHES MEMORANDUM OF STRATEGIC CIVIL-CRIMINAL ENFORCEMENT POLICY

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On April 17, 2024, EPA’s Office of Enforcement and Compliance Assurances published a memorandum setting forth a new Strategic Civil-Criminal Enforcement Policy that is immediately effective. EPA is responsible for enforcing many of the federal laws related to environmental protection, including wetlands protection, water quality, public drinking water, and proper control and disposal of waste products and toxic substances, including PFAS.

This policy codifies the remarks that EPA’s enforcement chief made in February of this year at an environmental law conference where he said that EPA would increase coordination between the civil and criminal enforcement programs to provide consistency in the agency’s handling of cases related to violations of environmental laws. The memorandum also provides the agency’s timelines for resolving enforcement matters with the goal of having a clear direction within the first year on how the case will be handled and resolving the case within two to three years. Inconsistent communication and inconsistent exercise of enforcement discretion between the civil and criminal enforcement programs have sometimes made EPA’s enforcement process difficult and time consuming to navigate.

The memorandum endeavors to provide a framework for the fair and consistent exercise of the agency’s enforcement discretion by mandating increased collaboration between the civil and criminal enforcement offices for case screening, case management, and training programs for EPA staff. To accomplish this policy, the memorandum requires the following:

1. Regularly scheduled meetings programs between the civil and criminal enforcement offices to discuss implementation of the agency’s national regulatory programs and identification of regional priorities and encourage a collaborative, consistent approach to enforcement action.

2. Enhanced case screening through formal monthly meetings between the civil and criminal enforcement offices to discuss new cases and decide how each case will be handled, through criminal investigation, civil enforcement, or administrative proceeding. Cases may only be opened after consultation between the offices. These meetings will also include existing case updates to promote communication between the offices and support the strategic decisions needed to resolve each case in a timely manner.

3. Improved case management through the development and use of a national case tracking system to provide non-confidential information to the criminal and civil offices simultaneously. Until the new tracking system is developed the offices will use existing tracking systems or create new ones to share disclosable information. The new national case tracking system will be used to identify repeat offenders and make decisions about the use of enforcement options.

4. Updated training programs to teach program managers and staff when to use a civil versus criminal response to address noncompliance based on the circumstances of a particular case, skill development to manage parallel proceedings, training on criminal discovery rules, and increasing awareness of grand jury secrecy.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.

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