




ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

April 17, 2024

MEMORANDUM

SUBJECT: Strategic Civil-Criminal Enforcement Policy

FROM: David M. Uhlmann 

TO: Regional Counsels and Deputies
Enforcement and Compliance Assurance Division Directors and Deputies
OECA Office Directors and Deputies
OCEFT Special Agents in Charge and Assistant Special Agents in Charge

EPA's mission to protect public health and the environment depends upon fair and robust enforcement that holds polluters accountable, provides justice for communities scarred by pollution, and upholds the rule of law so that law-abiding companies are not at a competitive disadvantage with polluters.

Fairness demands that EPA pursue enforcement actions based solely on the law and the facts and its obligation to protect communities from unlawful pollution. EPA must exercise enforcement discretion reasonably when deciding whether a particular matter warrants criminal, civil, or administrative enforcement. Criminal enforcement should be reserved for the most egregious violations. Civil enforcement provides a powerful tool to seek justice for communities, including significant monetary penalties and court-ordered injunctive relief. Administrative enforcement enables EPA to respond rapidly to penalize violators and ensure compliance in cases that do not warrant judicial relief.

A strong partnership between EPA's civil and criminal enforcement offices—characterized by joint strategic planning, rigorous case screening, and regular communication—will enable EPA to realize the full benefits of the environmental laws and promote greater fairness in enforcement. National and regional initiatives will be most successful if they include both criminal and civil cases. Civil and criminal enforcement managers should review inspection reports and other information regarding alleged violations to determine the appropriate enforcement tools for each matter and revisit those choices as cases progress. Information sharing should be a two-way street to promote optimal enforcement.

In recent years, EPA has improved communication and coordination between its civil and criminal enforcement offices, which has led to better case screening and more consistent enforcement responses across regions. EPA also has increased the collaboration between offices so that the criminal enforcement program now participates in the development of national initiatives and regional strategic planning. Parallel proceedings are managed more closely to prevent enforcement delays.

As a result, EPA's enforcement program has grown beyond a bifurcated approach, where its civil and criminal enforcement programs were only loosely connected, toward a focus on how EPA's civil and criminal enforcement programs can collaborate best, along with the Department of Justice, to promote compliance, deter violations, and protect communities from harmful pollution. With an integrated enforcement program, defined by a dynamic and strategic partnership between the Agency's civil and criminal enforcement offices, EPA is better able to address 21st century environmental problems and deliver on the promise of our Nation's environmental laws.

This Strategic Civil-Criminal Enforcement Policy sets forth requirements to ensure that EPA's enforcement program maintains and strengthens the strategic partnership between civil and criminal enforcement. To promote collaborative strategic planning and ensure that EPA exercises its enforcement discretion fairly and consistently, this Policy requires the following measures:

- Increased collaboration between the civil and criminal enforcement programs on the development and implementation of EPA's national and regional priorities, including the National Enforcement and Compliance Initiatives (NECIs) and regional strategic plans;
- Enhanced case screening to promote fairness and consistency and robust discussion of what enforcement option should be utilized to address violations, including whether parallel proceedings should be initiated, and continued coordination throughout each enforcement action to ensure those initial case choices protect public health and the environment;
- Improved case management through enhanced tracking of case screening that promotes information sharing about violations and ensures ready access to compliance histories and case developments, while maintaining enforcement confidentiality; and
- Updated training programs to ensure effective partnership between civil and criminal enforcement offices that include the requirements of this Policy, factors to consider in deciding whether to pursue criminal, civil, or administrative enforcement, and best practices for managing information sharing and parallel proceedings to prevent case delays.

Each of these goals and practices—as well as the requirements intended to ensure their success—are described in greater detail below. The requirements set forth in this Policy balance the need for a strong partnership between the civil and criminal enforcement programs with the value of allowing flexibility and discretion to address specific national and regional priorities and resource issues.

This Policy supersedes the Civil-Criminal Enforcement Coordination Policy (Apr. 22, 2019), as well as those portions of the Regional Enforcement Management: Enhanced Regional Case Screening guidance document (Dec. 3, 1990) that pertain to integration of civil and criminal enforcement activities. As described below, this Policy does not alter or amend EPA's Parallel Proceedings Policy (Sept. 24, 2007).

This Policy is effective immediately and applies to all civil and criminal enforcement staff and all enforcement matters moving forward. The Policy 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 officers or employees, or any other person.

I. Collaboration Throughout the Strategic Planning Process

The civil and criminal enforcement programs must collaborate to develop and implement EPA's national and regional enforcement priorities. As discussed below, coordinated strategic planning should occur in the development of national initiatives and regional strategic plans. Strategic planning also should occur during regularly scheduled civil-criminal enforcement meetings (discussed in Section II) to address how current or future matters fit into larger goals and to identify matters that may be appropriate for consideration by a different enforcement approach or handling by a state partner.

The civil and criminal enforcement programs must work together to develop and successfully implement EPA's national priorities, such as NECIs,¹ the PFAS Roadmap,² and the Agency's Lead Action Plan.³ NECI Steering Committees must include representatives from the civil and criminal enforcement programs (and the cleanup and federal facilities enforcement programs, when applicable). Each national initiative must consider the role of civil and criminal enforcement in achieving its goals.

The civil and criminal enforcement programs also will meet early in the annual regional strategic planning process to determine regional priorities. Both programs should be included as part of overall strategies, goals, objectives, roles, and measurable outcomes. Planning should also include opportunities for appropriate training. Not every priority outlined in a regional strategic plan will require significant criminal enforcement resources. Regional strategic plans should, however, acknowledge the role of criminal enforcement in addressing specific regional threats or priorities.⁴

The civil and criminal enforcement programs should consult regarding strategic planning with the Department of Justice, as needed, as well as other federal, state, local, and tribal programs, including task forces or other forums that include representatives from federal, state, and local enforcement authorities.⁵ The civil and criminal enforcement programs should communicate with each other when coordinating with federal, state, local, or tribal partners, particularly for any task force activities.

Collaborative strategic planning in the Regions and at Headquarters will help identify and elevate the roles that the civil and criminal enforcement programs play in accomplishing the larger goals set out in NECIs and regional strategic enforcement and compliance assurance planning. Coordinated strategic planning also should lead to improved case selection, including identifying the enforcement approach that will best protect public health and the environment, as well as the steps needed to ensure the optimal use of existing resources for maximizing deterrence and promoting future compliance.

¹ See [National Enforcement and Compliance Initiatives](#).

² See [PFAS Strategic Road Map: EPA's Commitments to Action 2021-2024](#) (Oct. 2021).

³ See [EPA Strategy to Reduce Lead Exposures and Disparities in U.S. Communities](#) (Oct. 2022).

⁴ Beginning in FY25, the regional strategic plan templates should include a section on civil-criminal coordination and planning. The Office of Criminal Enforcement, Forensics and Training should incorporate the same into their annual planning processes.

⁵ See [Effective Partnerships Between EPA and States in Civil Enforcement and Compliance Assurance](#) (June 21, 2023) for details on joint planning with state partners.

II. Regular Consultation Throughout the Enforcement Process

Civil and criminal enforcement managers must meet regularly to ensure successful implementation of national and regional priorities, conduct initial case screening, and coordinate regarding ongoing matters with civil and criminal equities. Most regional and Headquarters offices already hold civil-criminal enforcement meetings at least monthly. This Policy formalizes that practice.

During civil-criminal enforcement meetings, each enforcement program shall discuss any new cases with civil and criminal enforcement equities and provide status updates and new developments for existing cases. In addition, these meetings will be a forum to discuss resources issues, strategic planning, NECl, updates on regional and national enforcement and compliance priorities (e.g., successes or obstacles to achieving measurable outcomes), community engagement,⁶ or other relevant topics. Additional topics for these meetings could include training needs, data analytics and trends, discussions on prioritized cases, and determination of next steps for a particular matter.

Senior leaders in the civil and criminal enforcement programs should determine the frequency and content of civil-criminal enforcement meetings within each Region. Factors to consider in deciding whether meetings should occur more often than monthly include the following:

- The volume of incoming matters (e.g., number of inspections, number of new criminal investigations, volume of state referrals, citizen complaints, or other leads);
- The current docket (e.g., docket volume, number of significant or complex investigations, number of parallel proceedings);
- Environmental media involved (e.g., a program may wish to have meetings with all enforcement units or specific media units); and
- External factors (e.g., environmental justice or community concerns, role of state and local enforcement authorities).

Each enforcement program should decide on the appropriate participants at civil-criminal enforcement meetings. At a minimum, there must be representatives from the regional civil enforcement program and criminal field office.⁷ Regions also must engage with the appropriate headquarters offices if matters involve a Nationally Significant Issue (NSI) under the NSI Policy,⁸ or nationally significant issues at an ongoing clean-up or cost recovery action,⁹ or when there is a federal facility involved.¹⁰

⁶ Coordination between civil and criminal enforcement programs is critical to effective community engagement. Staff should refer to [Community Engagement Tools and Resources for Civil Enforcement](#) for best practices for community engagement, including the importance of cross-program coordination, *before* engaging with a community.

⁷ This should include participants from the Enforcement and Compliance Assurance Division, the Office of Regional Counsel, including Regional Criminal Enforcement Counsels, and the Special Agent in Charge or Assistant Special Agent in Charge.

⁸ See the [Nationally Significant Issues Update](#) (Aug. 31, 2023) regarding the appropriate scope and level of Office of Civil Enforcement involvement in cases with nationally significant issues.

⁹ Relevant Regional Superfund and Emergency Management Divisions representatives should also be included in such instances.

¹⁰ See [Notification, Consultation, and Concurrence Procedures for Federal Facilities Enforcement and Compliance Matters](#) (Feb. 29, 2024) for additional information on the roles of the regions and the Federal Facilities Enforcement Office for federal facility enforcement and compliance issues.

Senior leaders in the civil and criminal enforcement programs are encouraged to adapt and incorporate current best practices, such as advance agenda preparation or separate meetings for complex matters, from the Best Practices for Docket Reviews.¹¹

Civil and criminal discussions also should occur whenever there is a matter that requires more immediate attention (e.g., an emergency action is needed during a criminal investigation or there is new evidence of ongoing criminal activity that arises during a civil investigation). While this Policy requires monthly civil-criminal enforcement meetings to ensure robust collaboration, civil and criminal enforcement staff are encouraged to communicate more frequently on an informal basis.

A. Initial Case Screening for Cases with Civil and Criminal Enforcement Equities

A principal purpose of monthly civil-criminal enforcement meetings is to ensure that the civil and criminal enforcement programs consult regarding about which cases will be investigated criminally, which will be referred to the Department of Justice for civil enforcement, and which will be handled as administrative matters. In addition, civil and criminal enforcement managers should discuss whether parallel proceedings are appropriate as well as the timeline for any follow-up discussions.

For civil matters, depending on the scale of the regional enforcement program, Regions may elect to screen all new matters with their criminal enforcement counterparts regardless of whether there are identified criminal enforcement equities, which at least one Region currently does. Regions with more expansive enforcement programs may prefer to determine first which types of matters should be screened with the criminal enforcement program given the volume of new matters received monthly.

For criminal matters, screening of all new criminal case openings must occur so that civil enforcement managers know when companies are under criminal investigation, and criminal enforcement managers know the compliance history of facilities under investigation and whether similar violations historically have been handled as civil or administrative matters at other facilities. In some instances, the degree of information sharing during initial screening when a new criminal case is opened may be limited due to criminal sensitive considerations, e.g., active undercover work, use of covert techniques, etc.

While each program must make independent decisions about which cases to pursue and ensure that civil and criminal enforcement authorities are used only for proper purposes,¹² case opening decisions will be made only after close consultation between civil and criminal enforcement managers. Civil and criminal enforcement managers also should confer with the Department of Justice, as needed. Intentional and consistent deliberation across the full enforcement program benefits all stakeholders.

¹¹ See [Best Practices for Docket Reviews](#) (Mar. 2022).

¹² At all times, civil and criminal enforcement offices must comply with legal and ethical obligations regarding information sharing and evidence gathering. For example, the criminal enforcement program may not use civil enforcement tools to gather evidence for a criminal case. *Abel v. U.S.*, 362 U.S. 217, 226 (1960). While the civil enforcement program can share most evidence it gathers with the criminal enforcement program, the criminal enforcement program is not able to disclose grand jury material in the absence of a court order, Federal Rule of Criminal Procedure 6(e), and cannot disclose case-specific sensitive information if doing so would compromise the integrity of the criminal investigation (e.g., covert operations). The criminal enforcement program may disclose evidence obtained independent of a grand jury proceeding or other circumstances where such disclosure is not prohibited or inappropriate. *See id.*

For initial screenings to be efficient and effective, each program must determine in advance which matters need to be screened by both programs. The civil enforcement program must be alert to civil cases that may include criminal conduct. For example, a civil matter yielding evidence of falsification of data, concealment of evidence, or other deceptive or misleading conduct warrants criminal review, as does chronic non-compliance or facilities with continued violations despite prior enforcement efforts.¹³

Similarly, the criminal enforcement program must be alert to situations when civil enforcement may be appropriate, particularly where actions or conditions may pose an imminent and substantial endangerment or other harm to public health or the environment that requires immediate relief. Other examples include situations where it appears that an injunction or administrative order to halt ongoing unlawful activity or take remedial action may be necessary or when an investigation establishes a violation of law, but there is insufficient evidence of criminal mental state.

B. Continued Coordination on Matters with Civil and Criminal Enforcement Equities

After initial case screening, civil and criminal enforcement offices must continue to coordinate throughout the life of any resulting enforcement action, regardless of whether there is a formal parallel proceeding. The goal is to have clear direction in the first year about how the action will be handled so that most judicial cases, to the extent circumstances allow, will be filed, charged, or concluded within two to three years—and within 12 to 18 months for administrative matters.

Where both enforcement programs open investigations and pursue possible enforcement of the same matter, both programs should follow the Parallel Proceedings Policy,¹⁴ including executing a parallel proceedings memo and abiding by its terms. Communication and coordination should be initiated at the staff and manager levels and should continue through resolution of parallel matters.

In addition to coordination on parallel proceedings, the civil and criminal enforcement programs must also communicate regarding issues that arise during criminal-only and civil-only matters that originated with the other program. Civil and criminal enforcement managers should, at a minimum:

- Discuss information obtained during criminal investigations that may indicate a need for injunctive relief or other remedial action, as well as updates on the current timelines or progress on the criminal investigation;
- Address any developments during civil investigations that uncover evidence of conduct that may warrant the opening of a criminal investigation; and
- Review shared goals and provide regular updates about the status of any parallel proceedings, including any requests from regulated entities to consider global settlements.

Managers should discuss each pending matter at least quarterly, either during monthly civil-criminal enforcement meetings or in case-specific meetings, to ensure that all matters are progressing toward conclusion in a timely fashion. Participants in discussions about pending matters should mirror considerations made for initial screenings, with the Department of Justice included when appropriate.

¹³ See Appendix A listing factors to help identify which matters must be screened by both programs. These factors also should be used by staff to determine when an immediate meeting with the criminal enforcement program is warranted.

¹⁴ [Parallel Proceedings Policy](#) (Sept. 24, 2007).

At all times, whether there is a parallel proceeding memo in place or not, the goal of this Policy is to ensure that civil and criminal enforcement offices (i) make strategic choices regarding whether violations warrant criminal, civil, or administrative enforcement; (ii) make strategic choices regarding what relief to seek through criminal, civil, or administrative enforcement; (iii) move cases forward without unnecessary delays throughout the pendency of matters, including any parallel proceedings; and (iv) follow the Parallel Proceedings Policy whenever civil and criminal enforcement managers determine that a combination of criminal, civil, and administrative enforcement is appropriate.

For Regional actions where consensus cannot be reached between the civil and criminal enforcement programs regarding compliance with this Policy, issues should be promptly elevated to the relevant Regional Counsel, Enforcement and Compliance Assurance Director, and Special-Agent-in Charge for resolution. For Headquarters actions, any issues where consensus cannot be reached should be elevated to the Director of the Office of Civil Enforcement and the Director of the Office of Criminal Enforcement, Forensics, and Training. Matters on which consensus cannot be reached after elevation in the Region or at Headquarters should be promptly referred to the career Principal Deputy Assistant Administrator for Enforcement and Compliance Assurance for resolution.

III. Improved Case Management Through Enhanced Tracking and Information Sharing

Tracking and sharing case information through secured shared databases fosters effective case management and coordinated enforcement. In addition, tracking information from initial case screenings, including historical information about a company or facility, may inform decisions about how to approach future cases or matters.

Tracking should begin at the initial case screening and continue until the case is resolved. To ensure consistency regarding the information that is tracked, the following data should be collected:

- Name of the entity or individual
- Facility and facility ID (if applicable)
- Location of facility
- Relevant environmental statute(s)
- Alleged violations
- Compliance history
- Referring office
- Reason for referral
- Status updates
- Next steps
- Statute of limitations/tolling date

A national case tracking system will be developed as part of ongoing EPA data management modernization efforts. Until that process is completed, all civil and criminal enforcement offices shall utilize a tracking system that ensures non-criminally sensitive information can be entered by the civil and criminal enforcement programs in a manner that is secure and accessible to both programs. Regions or Headquarters offices can use existing tracking systems or create new ones (e.g., SharePoint documents) as they see fit. The goal is to use a tracking system that is not burdensome and still captures essential, non-criminally sensitive information for current and future use.

Civil and criminal enforcement offices should share information regarding what tracking systems have been successful, including mechanisms to ensure confidentiality. One acceptable option could be adding a criminal screening documentation component to existing regional case pipeline databases or tracking sites. Regions could also discuss the feasibility of sharing access to regional tracking systems to determine whether a company is currently or was previously under civil or criminal investigation.

At all times, Regions should be aware of existing and prior enforcement actions, both criminal and civil, since prior enforcement could impact their decision-making (e.g., a company on criminal probation or subject to a Consent Decree in one Region and is now committing violations in another Region).

IV. Training to Strengthen the Partnership between Criminal and Civil Enforcement Programs

Training shall be conducted to ensure that civil and criminal enforcement program managers and staff successfully implement this Policy. In addition to strengthening civil-criminal relationships, training will address the circumstances that warrant criminal versus civil responses; ensure proficiency in managing parallel proceedings, including training on criminal discovery rules; and promote heightened awareness about maintaining grand jury secrecy and the limitations on access to grand jury material.

Civil and criminal enforcement personnel involved in casework (e.g., civil inspectors, investigators, agents, enforcement specialists, potentially responsible parties search specialists, attorneys, scientists, and engineers) shall receive training as part of their onboarding process and regularly thereafter as part of ongoing training or continuing education programs provided by their offices.

As part of any training, reference to DOJ's Parallel Proceedings Policy may be helpful as it specifies, for example, what criminal enforcement personnel can and cannot share with their civil enforcement counterparts.¹⁵ Below are specific areas where training is required under today's Policy:

- Best practices for collaboration between civil and criminal enforcement programs on strategic planning, including national initiatives and regional priorities;
- Procedures for compliance with this Policy, including how and when screenings occur in the relevant Region, tracking, resources, regional planning, and case selection;
- Factors that warrant civil enforcement program sharing information with their criminal enforcement program counterparts, including evidence of knowing or negligent conduct, as well as chronic violations;
- Factors that warrant the criminal enforcement program sharing information with their civil enforcement counterparts, such as imminent and substantial endangerment; ongoing discharge, emission, or release; or acts that may cause harm or risk of harm to human health and the environment; and
- Protection of programmatic integrity, including ensuring that criminal enforcement personnel cannot use civil enforcement tools to gather evidence for a criminal case and steps that criminal enforcement personnel must take to protect the secrecy of grand jury information.

¹⁵ See [U.S. Dep't of Justice, Memorandum, Coordination of Parallel Criminal, Civil, Regulatory, and Administrative Proceedings](#) (Jan. 30, 2012); see also [Justice Manual § 1-12.000, Coordination of Parallel Criminal, Civil, Regulatory, and Administrative Proceedings](#) (Nov. 2018).

A workgroup comprised of experienced civil and criminal enforcement staff in the civil and criminal enforcement programs will develop training materials that will cover topics necessary to ensure a robust civil-criminal partnership and implementation of the practices required in this Policy.

Attachment

cc: Regional Administrators
Deputy Regional Administrators
Superfund and Emergency Management Division Directors

Appendix A

Factors to Consider for Civil-Criminal Enforcement Screening and Engagement

1. How significant are the violation(s)?

- a. What is the harm/risk of harm? Or potential harm?
 - i. Environmental impacts/risk -- duration of violation, substances involved?
 - ii. Human health impacts/risk -- exposed individuals/population, toxicity, extent of actual harm or potential for harm?
- b. Is there a possibility of an imminent and substantial endangerment; ongoing discharge, emission, or release, or other acts, such as continued sale of unregistered pesticide, that may cause immediate harm to human health and the environment.
- c. Where no imminent and substantial endangerment, is the risk or threat of harm plain, such as improper storage of ignitable or reactive waste, an eroding lagoon, or falsification of drinking water data such that remedial measures and/or injunctive relief may be appropriate.
- d. Was there a requirement to report the violation that was ignored (e.g., CERCLA reporting)?
- e. Did the conduct involve either a violation of a permit or the failure to obtain a permit?

2. What type of culpability is involved?

- a. Is there evidence of willful, knowing, or negligent conduct; willful blindness or deliberate ignorance; or negligence that rises to a criminal level?
- b. Is there evidence of concealment of misconduct or falsification of required records, bypass or tampering with monitoring or control equipment?
- c. Are there other "red flags" that may suggest criminal conduct?
 - i. Conflicting stories
 - ii. Suspicious signatures and dating of forms
 - iii. Unsubstantiated data or no data
 - iv. Data too good to be true
 - v. Conflicting data (e.g., two sets of books)
 - vi. Suspect or demonstrably false claim(s) of ignorance about requirements
 - vii. Poor management/intentional decentralization to avoid knowledge

3. What is the compliance history for the alleged violator(s)?

- a. Prior EPA inspections, information requests, compliance orders, penalties, etc.?
- b. A history of repeated violations? NOVs? Past enforcement actions? Consent decrees or plea agreements at the facility or company or parent company?
- c. What has been the state(s) involvement?

4. How would you characterize the sophistication and company size of the alleged violator(s)?

- a. What is the evidence of management involvement?
- b. What is the economic benefit?

5. Does the matter involve a national or regional strategic priority?

- a. Part of a national enforcement and compliance initiative?
- b. Part of regional strategic priority?