



Environmental Protection Network

Resetting the Course of EPA

Strengthening Environmental Enforcement and Compliance



This paper is part of the [Resetting the Course of EPA](#) project by the [Environmental Protection Network \(EPN\)](#), a bipartisan network of more than 500 former EPA career employees and political appointees across the country who served under multiple Democratic and Republican administrations.

Resetting the Course of EPA outlines specific and actionable steps that EPA leadership can take to reset the course of the agency to address the most significant and pervasive threats to public health and our environment. As there is no single roadmap, EPN looks forward to collaborating with others to advance the dialogue around the future of EPA and set ideas into motion that will better protect the health and wellbeing of everyone.

Additional Resetting the Course of EPA documents are available here:

<https://www.environmentalprotectionnetwork.org/reset>

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Summary

Vigorous, effective, timely, and fair enforcement of environmental laws is essential to public health and the protection of the environment. Environmental enforcement protects communities across the country and is a visible demonstration of EPA’s commitment to the rule of law. Widespread environmental compliance cannot be achieved without well-structured regulations, effective monitoring, and a commitment to innovation. Federal environmental laws envision a dynamic and shared responsibility between EPA and states. Strong enforcement programs at all levels will protect the environment and advance environmental justice.

Recommendations

1. **Restore confidence in vigorous enforcement and the rule of law.**
 - a) Immediately assert support for vigorous civil and criminal enforcement as essential to the mission of the agency and environmental justice.
 - b) Undo policies at EPA and the Department of Justice (DOJ) that have restricted EPA’s ability to exercise its compliance and enforcement authorities.
 - c) Publicly commit to shielding enforcement from political interference.
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2. **Modernize enforcement and compliance through innovative technologies and strategies.**
 - a) Use updated pollution monitoring and information collection as part of compliance monitoring.
 - b) Pursue innovative monitoring and control as part of enforcement cases and settlements.
 - c) Establish an agency-wide commitment to innovative regulations that drive better compliance.
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3. **Reset the relationship with states.**
 - a) Achieve the appropriate federal/state balance in environmental protection by acknowledging EPA’s independent authority to actively enforce the nation’s environmental laws, while respecting the state role and supporting states in meeting their enforcement obligations under federal and state laws.
 - b) Be clear that “creative tension” between EPA and the states is a part of cooperative federalism.
 - c) Usher in a new era for compliance and enforcement with EPA and states working together based on data and technology-driven oversight of pollution sources and sites of contamination.
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4. **Invest the necessary resources to get the job done.**
 - a) Seek an increase in EPA and state funding necessary to conduct enforcement and compliance monitoring.
 - b) Include significant investment in innovation, which is central to the mission.
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Recommendation #1: Restore confidence in vigorous enforcement and the rule of law.

IMMEDIATE ACTIONS

- ❖ Make a strong and clear public commitment at EPA and DOJ to the importance of effective enforcement for clean air, water, and land; to ensure fairness to complying companies; and as a means to address both climate change and environmental justice.
- ❖ Publicly reconfirm EPA’s and DOJ’s commitment to prohibiting political interference with enforcement.
- ❖ Announce that EPA and DOJ will each conduct a thorough review of policies, guidance, and delegations (to program offices and regions) to identify changes necessary to allow effective enforcement, innovation, and a strengthened federal/state relationship.
- ❖ Identify significant pending cases/briefs/resolutions with immediate deadlines (including any pending Supreme Court cases) to ensure that appropriate positions are being taken.

EARLY ACTIONS, INCLUDING THE FIRST 100 DAYS

- ❖ As a first step in the broader review referenced above, suspend or revise any memos, policies, guidance, or delegations at EPA or DOJ that interfere with strong enforcement or prevent or constrain EPA’s ability to collect compliance data and information on pollution sources and contaminated sites and require immediate attention, including:
 - ◆ [Best Practices for Compliance and Enforcement-Related Information Requests](#), November 21, 2018;
 - ◆ [New Source Review Preconstruction Permitting Requirements: Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability](#), December 7, 2017; and
 - ◆ [Transition from National Enforcement Initiatives to National Compliance Initiatives](#), August 21, 2018.
- ❖ Look for opportunities to file important enforcement cases that underscore EPA’s public commitment to vigorous enforcement of the law.
- ❖ Establish a working group to explore additional means for effectively explaining the importance of enforcement to the public; consider including state and tribal representatives.

FIRST YEAR AND SUSTAINED ACTIONS

- ❖ File sufficient significant cases across all media and across the country, including, when reasonable, cases jointly with states, to make clear that environmental laws will be fully enforced.
- ❖ Complete the identification and revision by EPA, DOJ, and the White House of enforcement policies, guidance, orders, or EPA delegations (with program offices or regions) that restrict effective environmental enforcement, innovation, and strong federal/state relationships.

Recommendation #2: Modernize enforcement and compliance through innovative technologies and strategies.

IMMEDIATE ACTIONS

- ❖ Make strong public and internal commitments to embracing innovation in enforcement and compliance.

EARLY ACTIONS, INCLUDING THE FIRST 100 DAYS

- ❖ As a first step in the broader review referenced in Recommendation #1, suspend or revise any policies, guidance, or delegations at EPA or DOJ that interfere with innovation in compliance and enforcement and require immediate attention, including:
 - ◆ [The Appropriate Use of Compliance Tools in Civil Enforcement Settlements](#), April 3, 2018 (reinstate [Use of Next Generation Compliance Tools in Civil Enforcement Settlements](#), January 8, 2015);
 - ◆ DOJ legal opinions and memos discouraging [Supplemental Environmental Projects \(SEPs\)](#); and
 - ◆ DOJ memorandum [Limiting Use of Agency Guidance Documents in Affirmative Civil Enforcement Cases](#), January 25, 2018.

FIRST YEAR AND SUSTAINED ACTIONS

- ❖ Reinvigorate innovation in settlements: seek out opportunities to try new technologies and new approaches as part of mitigation and SEPs in settlements, especially strategies to cut climate-forcing emissions and adapt to climate impacts.
- ❖ Build technical and policy teams to explore and use advanced monitoring (ground, aerial, and satellite), data analytics (including predictive analytics), and experimental methods as part of compliance monitoring.
- ❖ Develop an agency-wide effort to build compliance into new (and, where appropriate, existing) rules using [Next Generation Compliance and Rule Effectiveness](#) strategies.
- ❖ Determine what is needed to upgrade existing data systems managed by the EPA Office of Enforcement and Compliance Assurance (OECA), like the [Integrated Compliance Information System \(ICIS\)](#) database, to increase capability, public usability, and transparency, and include those changes in the next budget cycle.
- ❖ Pursue strategic innovation in criminal enforcement and strengthen the connection between criminal and civil enforcement.
- ❖ Purchase advanced monitoring equipment for EPA and states and build national communities of practice around these technologies.
- ❖ Select innovation projects jointly with states to undertake together and pursue funding to implement them.
- ❖ Consider innovations, climate change concerns, and environmental justice as important factors in selecting and implementing the next cycle of enforcement initiatives (2023-2026).

Recommendation #3: Reset the relationship with states.

IMMEDIATE ACTIONS

- ❖ Issue internal and public statements that clearly articulate EPA’s federal enforcement responsibilities and obligations under law, and emphasize EPA’s commitment to an enforcement partnership with the states.

EARLY ACTIONS, INCLUDING THE FIRST 100 DAYS

- ❖ As a first step in the broader review referenced in Recommendation #1, suspend or revise any policies, guidance, or delegations at EPA or DOJ that interfere with achieving the appropriate federal/state balance, including:
 - ◆ [Enhancing Effective Partnerships Between EPA and the States in Civil Enforcement and Compliance Assurance Work](#), July 11, 2019. Replace this policy with a policy consistent with the priority of resetting the federal/state enforcement partnership.
- ❖ Host meetings with tribes, states, and state organizations (e.g., the Environmental Council of the States) to elicit comments on federal and state enforcement priorities and resource needs.
- ❖ Gather current best practices within EPA and states that utilize cutting-edge methods of data gathering and analysis as well as innovative monitoring and control. Assess these best practices, discuss them with states, and adopt the best of the best.
- ❖ Create learning opportunities for EPA and the states from highly innovative, data-driven government agencies and private industry to stimulate innovation and effective and efficient data management at EPA and in data shared between EPA and states.

FIRST YEAR AND SUSTAINED ACTIONS

- ❖ Identify the [National Enforcement Initiatives](#) for the next three to five years.
- ❖ In coordination with [E-Enterprise](#) and [Next Generation Compliance](#) initiatives, promote development at EPA and states of innovative data collection, information gathering and monitoring techniques and technologies, as well as public access to EPA’s data.
- ❖ Work with states to reduce reliance on “routine” inspections and adopt strategies that allow more timely and widespread compliance monitoring, like advanced data collection, source monitoring, and forensic analysis and investigation.
- ❖ Revise the EPA state grant program to allow states to use funding to, among other things: 1) improve the enforceability of state-developed permits; 2) prioritize the collection, analysis, and display of ambient and source-specific data; and 3) fund the development of cutting-edge monitoring methods and expertise.
- ❖ Provide training for states in advanced data collection and forensic analysis, cutting-edge area and source monitoring technology, data display, and permit enforceability and review. Start phasing this in during the first year and continue over the long term.

Recommendation #4: Invest the necessary resources to get the job done.

IMMEDIATE ACTIONS

- ❖ Seek an increase in EPA and state funding in the President's Budget for Fiscal Year (FY) 2022 (due February 2021):
 - ◆ Restore OECA full-time equivalents (FTE) and intramural budget baseline to at least FY2000 levels.
 - ◆ Add an additional 100 FTE for compliance innovation: 50 to OECA, 20 to the Office of Air and Radiation, and 10 each to the Office of Water, Office of Chemical Safety and Pollution Prevention, and Office of Land and Emergency Management.
 - ◆ Increase OECA core extramural to \$130 million to achieve the top priorities and make a down payment on innovation and support for state enforcement.

EARLY ACTIONS, INCLUDING THE FIRST 100 DAYS

- ❖ Identify existing FY2021 extramural funding gaps, and examine options for transferring extramural dollars from other places in the agency to OECA so that sufficient funding exists for the remainder of the budget year to support investigations and data systems.
 - ◆ Note: OECA has by far the smallest percentage of extramural of any big EPA program office, so when budgets are cut, the requirement to cover payroll first means OECA extramural is hard hit, threatening funding for enforcement cases and for necessary state and public-used databases, like ICIS and [Enforcement and Compliance History Online \(ECHO\)](#).

FIRST YEAR AND SUSTAINED ACTIONS

- ❖ Ensure that the FY2023 President's Budget meets OECA's needs for resources and FTE to do the work, including that it:
 - ◆ Provides funding to fill expertise gaps in HQ and regions, including expertise on industry sectors, advanced monitoring, data analytics, and other innovations.
 - ◆ Supports upgrades to existing essential data systems, like ICIS.
 - ◆ Invests in advanced compliance monitoring for EPA and states.
 - ◆ Builds innovation into compliance work through staff to bring Next Generation Compliance ideas into all major agency rulemaking, research, and data analytics.
 - ◆ Sufficiently funds [National Enforcement Investigations Center](#) to return to its central role in case support and innovation.
- ❖ Strengthen EPA funding of states, including discretionary funds to support state innovation, at the same time that OECA funding is increased.
- ❖ Work with other EPA programs to explore options to limit the state's ability to cut environmental programs when state budgets are not decreasing.
- ❖ Pursue a fix for the low extramural to payroll ratio that has plagued OECA; enforcement should not be dependent on post-budget enactment handouts from other EPA programs.

Participants in the EPN Workgroup

Strengthening Environmental Enforcement and Compliance

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