



## ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

December 19, 2024

### MEMORANDUM

**SUBJECT:** Increasing Case Urgency to Address 21st Century Environmental Challenges

**FROM:** David M. Uhlmann

A handwritten signature in blue ink, appearing to read "D. Uhlmann", is written over the name "David M. Uhlmann".

**TO:** Regional Counsel and Deputies  
Regional ECAD Directors and Deputies  
Regional SEMD Directors and Deputies  
OECA Office Directors and Deputies  
OCEFT Special Agents in Charge and Assistant Special Agents in Charge

EPA's enforcement and compliance assurance program addresses the most significant public health and environmental challenges facing communities in the United States, which requires EPA to act with the urgency demanded by those challenges. The public should not wait years for EPA to address harmful pollution or to hold polluters accountable. The need for urgency is particularly great in overburdened and marginalized communities that, for too long, have seen pollution problems addressed slowly or not at all.

A fair and robust enforcement and compliance assurance program likewise demands prompt action by EPA to identify violations and seek appropriate civil, criminal, and administrative enforcement. Fairness requires an enforcement process that efficiently addresses violations so that regulated entities do not face years of uncertainty and legal risk, and law-abiding entities are not at a competitive disadvantage for protracted periods of time. A robust enforcement process necessitates swift action to protect the public from harmful pollution and prompt efforts to hold polluters accountable that reflect the seriousness of the underlying violations.<sup>1</sup>

Too many environmental enforcement matters are not filed or resolved until several years after violations occur, with defendants often waiving the applicable statute of limitations multiple times, which allows still more time to pass. The difficulty of uncovering violations and the complexity of

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<sup>1</sup> These concepts also apply to potentially responsible parties and their liabilities at Superfund sites. The timelines for concluding Superfund cases are typically longer due to the multiple stages of response work and liability structure for Superfund cleanups. Nonetheless, heightened urgency remains fundamentally important to all enforcement programs.

determining appropriate relief—along with resource constraints that have limited the enforcement program for more than a decade—may explain why some cases take so long to conclude. Those challenges may not resonate with the communities harmed, however, and EPA can do more to ensure that enforcement occurs on a timeline that is meaningful to the public. Although timelines may differ between civil, federal facilities, Superfund, and criminal cases, all enforcement programs must embrace heightened case urgency.

In recent years, EPA has taken steps to accelerate case development and resolution. Practice-area specific memoranda, guidance documents, and other tools capture decades of best practices and initiatives designed to speed up cases. This memorandum seeks to build on those efforts to establish greater urgency as a core value across EPA’s enforcement and compliance assurance program, both to reflect the gravity of the environmental threats facing communities across the United States and to encourage a paradigm shift in the timelines that govern enforcement matters. Although there always will be cases that require longer periods of time to address, those matters should be the exception not the rule.

## **I. The Need to Increase Case Urgency**

Over the past fifty years, EPA has made significant progress addressing the pollution that catalyzed the modern environmental movement and led Congress to enact foundational environmental laws in the 1970s and 1980s. In that time, the national enforcement and compliance assurance program has supported EPA’s mission of protecting human health and the environment by safeguarding communities affected by pollution, providing regulated entities compliance assistance, holding polluters accountable, and upholding the rule of law. EPA’s enforcement program has secured hundreds of billions of dollars in work to cleanup, restore, and protect the environment; obtained billions more in fines, restitution, and other pecuniary relief; and reduced billions of pounds of pollution.<sup>2</sup>

While decades of progress have brought cleaner air and safer water to communities across America, the environmental challenges facing the United States have continued to evolve. Today, EPA faces 21st century environmental challenges that exceed the scope and severity of the pollution-based problems that gave rise to our environmental laws. These challenges are widespread, highly threatening, and present novel issues for our enforcement program. EPA is committed to making a difference wherever harmful pollution occurs: in rural communities, small towns, and large cities. EPA’s enforcement program strives to ensure that everyone living in the United States can breathe clean air and drink safe water, regardless of their zip code.

A top priority for EPA, across administrations, has been ensuring a healthy environment across the United States. Unlawful pollution events can have sustained impacts on public health and economic productivity in affected communities. To make a real difference in communities that have suffered from decades of pollution, however, the enforcement program must deliver relief on timelines those communities find meaningful. Those timelines must be different—that is, more compressed—than the timelines upon which enforcement cases often have proceeded in the past. If the timelines do not provide timely and meaningful relief, communities will feel that EPA is once again leaving them behind.

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<sup>2</sup> [FedCenter, EPA at 50: Celebrating a Legacy of Enforcement and Compliance Achievements \(Nov. 13, 2020\).](#)

Delivering results for those communities is imperative to protect human health and the environment, mitigate negative economic impacts, and restore faith in government.

EPA's obligation to follow sound science requires the Agency to take action to address the most significant public health and environmental challenges facing the United States. EPA's commitment to evidence-based decision making compels action on emerging threats, especially those selected as National Enforcement and Compliance Initiatives. The significance of those environmental challenges requires the enforcement program to respond urgently, move cases quickly, and shift its approach to make urgency a greater priority, program wide.

## **II. Approaching Cases with Heightened Urgency**

EPA cannot make good on its commitment to protect vulnerable communities and address emerging public health and environmental threats without recognizing that 21st century environmental challenges do not fit into historical molds. To succeed, the enforcement program must reconceptualize case urgency, adjust its expectations for how long cases should take, and change how it approaches cases based on those adjusted expectations.

Urgency should be felt from the opening through the closing of a case. This urgency should begin with reducing the time between learning of violations and bringing a case. Enforcement offices should coordinate early and frequently to establish clear direction about how a matter will be handled. Earlier this year, EPA emphasized stronger coordination between its civil and criminal enforcement programs at least in part to meet the goal of greater case urgency.<sup>3</sup>

Early and frequent coordination with external partners also is essential. EPA enforcement managers should confer with the Justice Department as early as possible in the case development process on matters the Department may handle. In addition, the enforcement program must prevent cases from languishing and take action to conclude slowed or stalled cases. For example, to keep negotiations moving, case teams should have a clear sense of the value of each case, relief sought, bottom line, and settlement conditions as early as possible and revisit them throughout the settlement process. Heightened urgency throughout the life of a matter will ensure cases are moving on timelines that are more meaningful to impacted communities, promote faster return to compliance by the entities involved, and serve the public interest.

Increased urgency also has practical and optical benefits. Accelerating cases can mitigate the practical issues that make aged cases harder to resolve favorably, such as fading witness recollections and spoliation of evidence, and reduce the need to enter tolling agreements. Additionally, setting firm and aggressive case timelines demonstrates EPA's obligation to upholding the rule of law and ensures that polluters are held accountable in a timely manner.

EPA and the Justice Department set a new standard for working cases with greater urgency and delivering real-time results to communities in the handling of claims arising from the February 2023 Norfolk Southern train derailment in East Palestine, Ohio. The case team negotiated a resolution of

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<sup>3</sup> See [Strategic Civil-Criminal Enforcement Policy](#) at 6 (April 17, 2024) ("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.").

that complex, high-profile matter only 15 months after the derailment occurred, with over \$1 billion in penalties, injunctive relief, cleanup, and cost recovery. That effort will improve the safety of transporting hazardous materials by rail; help address the significant harm to the environment and the community in East Palestine; and remind rail companies, and other carriers and industries, that they will be held accountable promptly for similar incidents.

There will continue to be cases that take longer to conclude due to various factors or circumstances. Enforcement cases differ in their size, scope, and complexity, as well as their resource demands. Fair and robust enforcement of the environmental laws requires diligent efforts in all aspects of casework, which may dictate more extensive investigation in one case or lengthier settlement negotiations in another. The key to approaching matters with a heightened sense of urgency, however, is to uproot the categorical assumption that cases can take several years to resolve. In view of the 21st century environmental challenges facing communities across the United States, EPA's enforcement program must significantly reduce the timelines that historically have governed environmental enforcement matters.

The balance of this memorandum describes case urgency in the context of civil, federal facility, Superfund, and criminal enforcement work. We must redouble our efforts to implement existing best practices to resolve cases efficiently and establish new best practices that will drive cases forward. To establish case urgency as a core value, however, will require EPA to look beyond practice area-specific best practices and pursue a paradigm shift as a national enforcement program. This will allow the Agency to approach its cases with the urgency demanded by 21st century environmental challenges and the needs of communities scarred by pollution.

### **III. Case Urgency and Resolution Timelines Across Enforcement Programs**

#### **A. Civil Enforcement**

Timely and efficient enforcement contributes to effective enforcement. When EPA brings or refers cases within months—not years—after violations are identified, and moves cases with urgency, enforcement is more likely to convince defendants of the need to redress environmental harms expeditiously. The enforcement program best achieves deterrence when defendants assume the costs of environmental compliance soon after violations. In terms of case management, increased urgency means the focus on present cases is more acute, staffing is more consistent, and resources can be shifted more quickly to new cases. Most importantly, increased urgency means that EPA delivers results to communities faster.

The Office of Civil Enforcement continuously works to improve the pace of cases by identifying new and different ways to increase efficiencies. The goal is that most judicial cases, to the extent circumstances allow, will be filed or settled within two to three years—and within 12 to 18 months for administrative matters. National cases may take longer to resolve because of their complex nature and significant injunctive relief involved.

## **B. Federal Facilities Enforcement**

The federal government must comply with environmental laws and requirements in the same manner and to the same extent as the private sector. EPA strives for executive branch agencies and departments to “lead by example” as an environmental compliance model for the regulated community, especially at facilities the government owns or operates. Federal facilities include hundreds of military installations; ammunition plants and ordnance ranges; Bureau of Indian Affairs and National Park Service water systems; federal prisons; privatized military housing; treatment, storage, and disposal facilities for hazardous waste; and some of the largest and most contaminated Superfund cleanup sites across the country.

As federal facility enforcement cases often involve large facilities and complex situations that raise issues of national consistency, create precedent, and garner significant public attention, an effective process for regional notification and consultation with the Federal Facilities Enforcement Office (FFEO) is key to efficient and timely case resolution. Prompt notification and coordination can accelerate resolution of common questions or issues that can slow down federal facilities enforcement practitioners, such as national security concerns, fiscal matters, or settlement agreement terms that are not applicable to federal agencies. This practice ensures consistency with the same set of federal respondents who manage hundreds of federal facilities nationally. For Region-led cases, FFEO aims to provide the Regions with issue-specific expertise and support, with a focus on national consistency and case resolution, while also preserving autonomy for regional case resolution.

Most CERCLA Section 120 Federal Facility Agreements (FFAs) require that, within 30 days after an action triggers a dispute, the dispute is elevated to a “formal dispute.” Under the formal dispute procedures, most FFAs prescribe specific timelines for elevation of the dispute until dispute resolution, with the Administrator issuing a final decision, as needed. In 2020, FFEO updated procedures and timelines to ensure that FFA disputes are resolved in an expeditious and effective manner, creating three- and six-month check-ins with the Regions and the Office of Land and Emergency Management to more effectively elevate or resolve informal disputes. This outreach, which involves a discussion of the dispute, its progress, and a timeframe for further follow-up, is intended to assist in resolving FFA disputes more quickly. Common reasons that the Regions have reported to FFEO for dispute delays include protracted negotiations on complex matters and delay from a non-EPA party to the FFA.

## **C. Superfund Enforcement**

EPA’s Superfund program is responsible for cleaning up some of the Nation’s most contaminated land, water, sediment, and other media and responding to environmental emergencies, oil spills, and natural disasters. Enforcement plays an important role in achieving timely Superfund site cleanups, beginning at the initial investigation stages through remedial design/remedial action (RD/RA). Managed by the Office of Site Remediation Enforcement (OSRE), the Superfund enforcement program is committed to expeditiously reaching settlement agreements with potentially responsible parties (PRPs) to either perform or finance cleanup, which saves limited taxpayer dollars for cleanup at sites where no viable or liable PRPs remain.

OSRE aims to complete RD/RA negotiations at Superfund sites with identified PRPs within 485 days from the issuance of the record of decision, which outlines the remedy for cleanup.<sup>4</sup> This timeframe consists of 90 days to issue special notice letters (SNLs) (plus an additional 30-day extension for SNL issuance, if necessary), plus up to 365 days to enter into an RD/RA consent decree or RD-only administrative settlement or to issue a unilateral administrative order.

#### **D. Criminal Enforcement**

Pursuing criminal enforcement with urgency is critical to the success of EPA's enforcement program and the overall success of the agency in fulfilling its mission to protect human health and the environment. Led by the Office of Criminal Enforcement, Forensics, and Training (OCEFT), the criminal enforcement program wields the agency's strongest enforcement tools, designed to address the most serious environmental violations.

Criminal investigations and cases must proceed quickly and efficiently and conclude with outcomes commensurate with the seriousness of the unlawful conduct. Quicker criminal case resolutions mean more meaningful relief for victims—especially where the conduct impacts overburdened communities—and an increased deterrence message to actors who might break the law. In addition, case urgency benefits the civil enforcement program; where an investigation does not lead to criminal prosecution, quickly reaching that decision point allows civil enforcement counterparts to pursue an effective action of their own.

Case urgency includes the prioritization of staff, resources, and management focus and oversight based on factors including agency priorities, scope and scale of the culpable criminal conduct, victim impacts, community concerns, issues of first impression, types of conduct, and sophistication of the subject. Cases are evaluated at every stage to ensure each case is receiving the appropriate oversight and resources to move toward resolution quickly and efficiently.

Case urgency also includes early and regular coordination with civil enforcement counterparts to determine the optimal allocation of resources and the most appropriate enforcement response—criminal enforcement, civil enforcement, or both—and tools to utilize for each case. This coordination begins with initial case screening and continues throughout the case life cycle.

The recently issued Strategic Civil-Criminal Enforcement Policy provides a benchmark for case urgency efforts moving forward. The policy requires enhanced initial case screening and increased ongoing coordination with civil enforcement counterparts on all matters, with the goal of establishing “clear direction in the first year [of an action] 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.”<sup>5</sup> There always will be exceptions based on unique complexities or circumstances, but increased coordination will help with overall timelines.

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<sup>4</sup> The issuance of Special Notice Letters initiates the formal start of the RD/RA negotiation process. This triggers a moratorium of certain enforcement actions by EPA for 60 days after the receipt of the notice to encourage the PRPs to submit a good faith offer for the negotiations and provides an additional 60 days of moratorium for negotiations to continue if a good faith offer is received.

<sup>5</sup> [Strategic Civil-Criminal Enforcement Policy](#) at 6.

Ensuring appropriate case progression is a priority, whatever the timeline of a case may be. Supervisors in every Region have periodic check-ins with their staff. Further, cases are evaluated every 60 days to ensure they are progressing towards an expeditious and appropriate case resolution. The 60-day timeframe allows enough time for a supervisor to determine whether the current investigative activities are effectively moving towards a case outcome or if changes need to be made.

The regional supervisors should work closely with Regional Criminal Enforcement Counsel and the Justice Department to establish clearly defined investigative plans where necessary. It is essential to communicate early and frequently with prosecution teams to get their commitment and buy-in early in criminal cases.

#### **IV. Conclusion**

The seriousness of the environmental challenges impacting communities across the United States and the goal of fair and robust enforcement of the environmental laws demand that the enforcement program approaches its cases with heightened urgency. To do so requires the enforcement program to implement best practices for accelerating case resolutions and, more fundamentally, to change its expectations to significantly reduce case timelines.

With heightened urgency in how the enforcement program pursues its cases, EPA can deliver meaningful relief to vulnerable communities who too often have been left out and left behind, while also addressing the most significant environmental and public health challenges facing our Nation and the world. By approaching enforcement and compliance efforts with greater urgency, EPA can produce significant benefits to communities scarred by pollution, ensure that everyone living in the United States can breathe clean air and drink safe water, and promote a sustainable future for generations to come.

**APPENDIX**

***Privileged and Confidential | Attorney Work Product | Deliberative Process | FOIA Exempt***

**Best Practices and Tools for EPA Enforcement Personnel**

*[Reserved]*