



EPA Releases Wide-Reaching Climate Enforcement and Compliance Strategy Memorandum

On September 28, 2023, the United States Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance (OECA) released a guidance memorandum entitled *EPA's Climate Enforcement and Compliance Strategy*.¹ EPA is directing all of its enforcement and compliance offices to address climate change in every matter within their jurisdiction, as appropriate. This action was taken in conjunction with: President Joe Biden's Executive Order 14008,² which directs all federal agencies to implement a "whole of government" approach to climate change; EPA's overarching goal of addressing climate change issues in its FY2022-2026 Strategic Plan;³ and EPA's inclusion of Mitigating Climate Change as one of its six recently finalized National Enforcement and Compliance Initiatives for FY2024-2027.⁴ To implement this new strategy, EPA's enforcement and compliance programs are directed to take action in three specific areas across all enforcement and compliance activities, including criminal, civil, federal facilities, and cleanup enforcement:

1. Prioritize Enforcement and Compliance Activities to Reduce Emissions of Greenhouse Gases

EPA plans to prioritize current enforcement initiatives that will reduce greenhouse gas emissions. The National Enforcement and Compliance Initiative of Mitigating Climate Change focuses on reducing methane and hydrofluorocarbons (HFCs) emissions. To reduce methane emissions, EPA is placing a greater emphasis on compliance with new source performance standards (NSPS) at oil and gas facilities and landfills. EPA plans to place a particular focus on oil and gas "super-emitter events", which are part of a new set of requirements in the soon to be finalized NSPS Part 60 Subparts OOOOb and OOOOc. EPA will also use its enforcement authority to ensure compliance with the American Innovation and Manufacturing Act, which phases out the production and consumption of HFCs.

Enforcement of any forthcoming climate rules will also be subject to this initiative. EPA will also prioritize enforcement actions that will reduce emissions of greenhouse gases by addressing violations related to carbon dioxide, nitrous oxide, and volatile organic compound emissions. Examples cited include gas flaring, storage tank emissions, wastewater treatment systems, incineration/combustion operations, Greenhouse Gas Reporting Rule compliance, and Renewable Fuel Standards compliance.

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¹ Memorandum from David M. Uhlman to OECA Office Directors and Deputies, et al., [EPA's Climate Enforcement and Compliance Strategy](#), Sept. 28, 2023.

² [Executive Order 14008](#), Tackling the Climate Crisis at Home and Abroad, Jan. 27, 2021.

³ [FY 2022-2026 EPA Strategic Plan](#) (Mar. 2022).

⁴ [OECA FY 2024 - 2027 National Enforcement and Compliance Initiatives](#), Aug. 17, 2023.

EPA is directing its enforcement staff to consider climate change in administrative, civil, and criminal case development process and settlements. Enforcement staff should consider clean renewable energy projects (like wind, solar, and vehicle electrification), green infrastructure cleanup responses, and climate mitigation remedies in case resolution, including the use of Supplemental Environmental Projects.

Key take-aways: The regulated community can expect an increased enforcement focus on alleged violations of laws and regulations aimed at reducing greenhouse gas emissions. In particular, the oil and gas industry can expect continued, and likely increased, enforcement of NSPS Part 60, Subparts OOOO and OOOOa, and, when finalized, Subparts OOOOb and OOOOc. Subparts OOOOb and OOOOc will allow for third parties to become certified to collect methane emissions data, report “super-emitter” events to EPA and the facility, and force action by the facility, making data gathering, and therefore enforcement efforts, easier for the agency.

2. Incorporate Climate Adaptation and Resilience Principles into All Enforcement and Compliance Activities

EPA’s enforcement and compliance program will incorporate climate resilience into case resolutions. Relevant climate risk will be raised in negotiations and, if appropriate, injunctive relief that promotes resilience to climate change will be included. Further guidance regarding these sustainability efforts is anticipated.

The agency will also target investigations at facilities at risk for climate-related impacts, considering, for example, the frequency with which the area experiences significant weather events. Settlements of violations under other environmental laws, including the Safe Drinking Water Act, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA), and Clean Water Act, may be used as opportunities to reduce risk of harm to the environmental or communities from climate impacts. Enforcement staff is directed to anticipate and prepare for future extreme weather events when developing injunctive relief in regulatory settlements under these laws.

Key take-aways: With this new directive, EPA may, especially in cleanup programs, seek injunctive relief aimed at accounting for potential future climate-related impacts that may not be directly tied to the alleged violation or the area to be remediated. Anticipating future health and climate conditions may make future remediation projects more costly and time-consuming.

3. Provide Technical Assistance and Build Climate Change Capacity Among EPA Staff and State and Local Partners

To promote this new strategy, OECA will provide technical assistance and training to EPA staff, as well as state and local partners, regarding the integration of climate change considerations into enforcement and compliance activities and infrastructure planning. EPA will promote the use of the Climate Resilience Evaluation and Awareness Tool for infrastructure planning and expand OECA’s Climate Adaptation Network.

Under the Clean Air Act § 112(r) Accidental Release Prevention and Risk Management Plan program, as well as under RCRA and CERCLA, agency staff will consider climate change risk in inspection targeting and civil and criminal case investigation. Staff will also work with the Office of Land and Emergency Management to identify vulnerable facilities and develop compliance assistance materials.

Key take-aways: Facilities located in coastal and other areas believed to be impacted by climate change should expect increased scrutiny by the agency, including inspections and information requests. Operators of drinking water and wastewater systems should also expect EPA and state and local agencies to focus on climate resiliency as part of compliance and enforcement activities.

For more information on this development and other climate change or EPA enforcement matters, please contact Gary E. Steinbauer at (412) 394-6590 or gsteinbauer@babstcalland.com, Gina F. Buchman at (202) 853-3483 or gbuchman@babstcalland.com, or any of our other [environmental attorneys](#).

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