



Sydney Sell

Associate
801.799.5899
Salt Lake City
sjsell@hollandhart.com



Emily Schilling

Partner
801.799.5753
Salt Lake City
ecschilling@hollandhart.com

EPA Formalizes Robust Civil and Criminal Enforcement Program Coordination

Insight — April 30, 2024

On April 17, 2024, EPA formalized a new policy requiring greater coordination between its criminal and civil enforcement programs. This change, which comes amidst a substantial jump in civil and criminal enforcement actions, formalizes a stronger relationship between EPA's civil and criminal enforcement offices to “promote compliance, deter violations, and protect communities from harmful pollution.”

The new policy, which became effective immediately, sets forth four requirements to promote collaboration between the two offices:

1. 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;
2. Enhanced case screening to promote fairness and consistency and robust discussion of which 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;
3. 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
4. Updated training programs to ensure effective partnership between civil and criminal enforcement offices that include the requirements of the 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.

Previously, EPA's civil and criminal enforcement offices operated as separate bodies only loosely connected. Although EPA has improved communication and coordination between the two offices, civil and criminal enforcement managers are now required to meet regularly to initially screen cases and determine which cases will be referred to the DOJ for civil enforcement, which will be pursued criminally, which will be handled as administrative matters, and whether parallel proceedings are appropriate. Managers will also meet regularly to coordinate and discuss ongoing matters until those matters are resolved. It is therefore possible that a civil matter may be escalated to a criminal matter, or a criminal

matter may be deescalated to a civil matter, even after initial case screening is completed. The policy also sets a goal of providing clear direction for a case within a year so most cases can be filed, charged, or concluded within two to three years (or 12-18 months for administrative matters).

Along those same lines, a national case tracking system and database will be developed to allow case information to be shared between the civil and criminal offices. Tracking will occur from the initial case screening stage through case resolution.

This increased coordination will have wide ranging implications on EPA's management of both new and existing environmental violations. Coupled with EPA's pledge to continue ramping up its enforcement efforts in 2024, this policy sets the stage for a more aggressive EPA enforcement program.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.