



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: The Appropriate Use of Compliance Tools in Civil Enforcement Settlements

FROM: Susan Parker Bodine, Assistant Administrator

A handwritten signature in black ink, appearing to read "Susan Parker Bodine".

TO: Regional Counsels
Regional Enforcement Division Directors
Superfund Division Directors
Regional Enforcement Coordinators
OECA Office Directors
Office of Civil Enforcement Division Directors
Office of Site Remediation Enforcement Division Directors
Federal Facility Enforcement Office Staff Directors

The fair and effective enforcement of the nation's environmental laws is essential for restoring and preserving environmental quality, and for maintaining a credible deterrence to noncompliance. To this end, the resolution of environmental non-compliance through civil enforcement settlements typically includes elements of injunctive relief that are ordered or agreed to and that are designed to remedy the non-compliance and/or mitigate the harm of non-compliance. This memorandum discusses the appropriate use of certain compliance tools in civil enforcement settlements.

An earlier memorandum on this topic ("Use of Next Generation Compliance Tools in Civil Enforcement Settlements," Jan. 27, 2015) discussed the topic of injunctive relief in connection with the "innovative enforcement" element of the Next Generation Compliance initiative.¹ That document tended to suggest that "innovative enforcement" tools such as advanced monitoring and independent third-party verification of settlement obligations should routinely be included in Agency settlements.²

¹ The Next Generation Compliance initiative consisted of five components: more effective regulations and permits; advanced monitoring; electronic reporting; expanded transparency, and innovative enforcement. The October 2014 "Next Generation Compliance: Strategic Plan" was in effect from 2014- 2017 only. Some activities outside of "innovative enforcement" have become institutionalized, such as the use of infra-red cameras by inspectors or electronic submission of consent decree deliverables. OECA also will continue to work with other program offices to improve the effectiveness of regulations and permits, recognizing that requirements that have in the past been imposed on specific companies through enforcement actions may be more appropriate to apply through rulemaking.

² Specifically, the introductory section of the January 27, 2015, memorandum states that, with certain limited exceptions, "case teams are expected to consider these Next Gen compliance tools in *all cases*," and concludes by stating that such provisions "should be considered in *all* civil enforcement cases and incorporated in civil and administrative settlements whenever appropriate" (emphasis added).

That 2015 memorandum is withdrawn. Today's memorandum supersedes and replaces it to make clear that there is no default expectation that "innovative enforcement" provisions will routinely be sought as injunctive relief, where such activities are not required by the applicable statute or regulation. The determination to include these particular elements of injunctive relief (as with any other element of injunctive relief) is to be based on the particular facts and needs in a case.³

The EPA has many available tools to address environmental law violations and return facilities to compliance, including the installation and operation of equipment to control pollution, monitoring equipment, and other mechanisms or processes to establish compliance with applicable regulatory and statutory requirements. The EPA also has sought and obtained injunctive relief to address maintenance of compliance, including actions not specified in the applicable statute or regulation. Identification of the appropriate injunctive relief to use to resolve violations and whether to seek actions not specified in the applicable statute or regulation depends on the wise exercise of enforcement and prosecutorial discretion. This judgment is informed by the particular facts and circumstances of an individual case, the nature of the violations at issue, the history of noncompliance, and various other case-specific considerations.

Injunctive relief that is further removed from a regulatory requirement may still be appropriate to seek as mitigation for the harm caused by a violation. There also may be situations that involve repeat violations by the same entity. In such cases, the Office of Civil Enforcement or the Region should consider referring the matter for criminal enforcement, if applicable. If criminal enforcement is not applicable, then more directive injunctive relief may be appropriate.

Our experience has demonstrated that injunctive relief tools like those discussed in this document have proven useful in resolving noncompliance and as mitigation for harm caused by the violation. However, there should not be an expectation that any particular element of injunctive relief should routinely be included in all settlements. The extent to which any tool is appropriate and how it is included in a settlement will depend on the particular facts and circumstances of each case.

NOTE: This memorandum is intended for use by EPA personnel and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. This memorandum is not intended to supersede any statutory or regulatory requirements. Any inconsistencies between this memorandum and any statute or regulation should be resolved in favor of the statutory or regulatory requirement at issue.

³ This principle is well articulated in the January 10, 2013, Office of Civil Enforcement "Guidance on Streamlining Oversight in Civil Settlements," which counsels case teams to "take[] into account the wide variety of cases and individual nature of each case," and further cautions that none of the various elements of injunctive relief discussed in that memorandum "is mandatory for any given settlement, [and] each case team should seriously consider whether any are appropriate for a particular case."