

# CIVIL/CRIMINAL COORDINATION

Internal deliberative pre-decisional - FOR USE BY 2024 PRESIDENT-ELECT TRANSITION TEAM MEMBERS ONLY

## ISSUE SUMMARY:

Coordination between EPA's civil and criminal enforcement programs is critical for the success of the Agency's overall enforcement effort and the protection of human health and the environment.

Civil-criminal coordination begins at the strategic level with consultation regarding the establishment of enforcement priorities. It continues in the form of information sharing on specific matters, which is necessary for each side to make independent and well-informed decisions regarding how to deploy resources against environmental threats and violators. The need for information sharing extends throughout the case development process, allowing the referral of matters from one program to the other, as appropriate. For example, criminal enforcement staff would refer a matter to civil upon learning of environmental contamination or potential hazards that might require remedial attention or after the Department of Justice declined to prosecute established violations. Civil enforcement staff would refer a matter to criminal upon encountering evidence that violations were the intended result of conscious decision-making by corporate executives or learning that a violator had provided false documents to EPA in an effort to avoid or minimize liability. Finally, civil-criminal coordination enables successful management and conclusion of parallel proceedings, when each side uses its authorities to investigate and perhaps pursue claims concerning a common set of facts or defendant.

Civil-criminal coordination and information-sharing is subject to both legal and practical constraints. Grand jury information, for example, cannot be shared with civil personnel absent a federal court order; covert criminal investigative activity cannot be shared (at least, not in real time) to preserve the integrity and effectiveness of the investigative effort. Such limitations, however, apply to a relatively small portion of the information and evidence that civil and criminal enforcement personnel continually collect and evaluate. Consequently, there is always both an opportunity and a need for civil and criminal enforcement personnel to communicate as cases are opened and developed. Training is critical in order to educate enforcement staff about how to conduct this proper and necessary communication in compliance with legal constraints or prohibitions.

On April 17, 2024, OECA's Assistant Administrator issued a [Strategic Civil-Criminal Enforcement Policy](#). That document expanded on past Agency civil-criminal coordination efforts and established requirements for enforcement personnel across four broad areas: strategic planning; information sharing throughout the enforcement process; case management through enhanced tracking of shared case information; and training.

## KEY POINTS:

- Effective civil-criminal coordination is essential to the success of EPA's enforcement mission.
- Training is necessary to educate enforcement personnel about the legal framework applicable to information sharing and other forms of coordination.
- When EPA enforcement staff understand and properly execute their responsibilities under the April 17, 2024, Strategic Civil-Criminal Enforcement Policy, the result is increased consistency and fairness in the Agency's use of

enforcement authorities, increased accountability for violators, and enhanced protection of human health and the environment.

#### UPCOMING MILESTONES:

The Policy requires training to strengthen the partnership between criminal and civil enforcement programs, an initial phase of which should be delivered by the end of the calendar year.

The Policy envisions the development and deployment of a national case tracking system, but the schedule has not been established.

#### KEY EXTERNAL STAKEHOLDERS:

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|-----------------------------------|--|---------------------------------|---------------------------------|--------------------------------|---|
| <input type="checkbox"/> Congress | <input type="checkbox"/> Industry          | <input type="checkbox"/> States | <input type="checkbox"/> Tribes | <input type="checkbox"/> Media | <input type="checkbox"/> Other Federal Agency |
| <input type="checkbox"/> NGO      | <input type="checkbox"/> Local Governments | <input type="checkbox"/> Public |                                 |                                |   |

#### MOVING FORWARD:

OECA will continue to monitor the implementation of the 2024 Strategic Civil-Criminal Enforcement Policy to ensure effective civil-criminal coordination.