



## EPA Emphasizes its Criminal Enforcement Program

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This Alert Update supplements a [recent VNF alert](#) analyzing the Environmental Protection Agency's (EPA's) enforcement priorities for fiscal years (FY) 2024-2027. EPA recently announced that its criminal program helped to develop the Agency's national enforcement compliance initiatives and strongly suggested that it would look to pursue criminal cases under each initiative.

Previously announced National Enforcement and Compliance Initiatives (NECIs) for FY 2024-2027 include climate change, coal ash landfills and impoundments, a new focus on contaminants such as per- and polyfluoroalkyl substances (PFAS), and environmental justice initiatives. Current NECIs address aftermarket defeat devices for mobile sources, hazardous air pollutant (HAP) emissions, and compliance with the National Pollutant Discharge Elimination System (NPDES) permit program.

EPA's head of the Office of Enforcement and Compliance Assurance (OECA), David Uhlmann, stated the agency is "promoting far greater strategic coordination between our criminal and civil enforcement programs" when speaking to the American Legal Institute-Continuing Legal Education's (ALI-CLE) Environmental Law 2024 meeting on February 22, 2024.

Uhlmann highlighted that some prior cases handled civilly should have been potentially handled criminally, and that this may change moving forward. The practical implications for companies of the shift to a more active EPA criminal program may include significantly higher penalties and potential jail time for violations. Uhlmann also noted that "EPA will continue to reserve criminal enforcement for the most egregious violations." His comments suggest that "egregiousness" will be evaluated based on the adverse effects of the violation, particularly on disproportionately overburdened communities, and the degree of intent. Uhlmann also added that companies could avoid criminal prosecution if they are "honest with the government" and have "strong ethics, integrity, and sustainability programs."

The U.S. Justice Department's Environment and National Resources Division (ENRD) litigates both civil and criminal cases for EPA and closely coordinates on enforcement initiatives. The Assistant Attorney General of ENRD, Todd Kim, also spoke during the February 22 ALI-CLE panel, and focused some of his remarks on the enforcement of environmental laws in the online marketplace. He cautioned that "online companies, just like brick-and-mortar companies, would do well to take pains to ensure that they are complying with environmental laws in selling and distributing products," because EPA and the Department of Justice (DOJ) will enforce such laws in all market settings.

Both Uhlmann and Kim highlighted "21st century" challenges and opportunities, with NECIs addressing challenges and new opportunities such as data availability and analysis allowing EPA and DOJ to better enforce environmental laws and regulations in a targeted and effective manner. Some of the newest data and data analytics are being used to advance EPA's environmental justice priorities. "So again, companies would do well to

think about the ways we use data and to be talking with their neighbors to ensure that they're doing what they can to ensure that disproportionately overburdened communities are getting the help they need," Kim stated.

These EPA and DOJ statements clearly signal a potential increase in criminal environmental enforcement actions, creating additional risks for companies that run afoul of regulatory requirements. These corporate risks, which also may also be borne by executives and other employees, may be mitigated through the prompt detection and reporting of non-compliant conduct and through the development and maintenance of robust compliance programs. The ability to conduct prompt and thorough internal investigations and compliance audits should be a central part of an effective corporate compliance program.

### **For More Information**

Van Ness Feldman has extensive experience conducting internal investigations and compliance reviews. The Firm also closely monitors and advises clients on EPA priorities, rules, and actions and their implications for the energy and transportation sectors and other regulated industries. For additional information, please contact [Britt Fleming](#), [Mike Farber](#), [A.J. Singletary](#), [Paul Libus](#), or any member of the firm's Environmental Practice in Washington, D.C. at (202) 298-1800.

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