

Environmental Enforcement Update: What to Expect In the Second Trump Administration

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We anticipate President Trump's upcoming term will usher in significant shifts in U.S. environmental enforcement priorities and practices. This Alert provides a high-level analysis of changes in environmental enforcement we anticipate based on our experience.

Key Takeaways

- **Delay:** Changes will not occur immediately. New personnel at the U.S. Environmental Protection Agency (EPA) and U.S. Department of Justice (DOJ) will want to review pending enforcement matters, which may initially slow the tempo of those cases. If the new administration seeks to reorganize EPA's enforcement functions or to reassign employees from EPA's enforcement office to other parts of the agency, such changes would likely take more than a year and could further delay pending enforcement matters. Leadership will also be important, such as whether political appointees or career staff hold "acting" roles.
- **Strategic Opportunities in Existing Enforcement Actions:** Ongoing, filed enforcement cases will likely continue, but regulated entities subject to such actions should work with counsel to assess opportunities to change or modify their strategy and legal arguments in light of the new administration. While the new administration is unlikely to disturb most entered consent decrees, it may be open to revisiting certain settlements that have long compliance periods or injunctive relief that exceeds regulatory requirements.
- **Change in Priorities:** Expect the new administration to emphasize compliance over enforcement and significantly divert from Biden administration enforcement priorities relating to the oil and gas industry, climate change, and environmental justice. Traditional air, water, and waste enforcement matters involving traditional pollutants will continue, and EPA will likely prioritize Superfund cleanups and cost recovery.

- **State Deference:** “Cooperative federalism” was a staple of the first Trump administration, which favored more deference to state authority and a narrower interpretation of the scope of federal statutory authority. Expect EPA and DOJ within the new administration to renew this posture, such as stepping back from disputes over state implementation plans, seeking to accelerate permitting, and taking steps to reduce regulations on fossil fuel and industrial growth. At the same time, however, expect some states to seek to fill any perceived gaps left by reduced federal efforts with aggressive rulemaking and attorney general-led enforcement and litigation.
- **Fast and Straightforward Enforcement Cases:** The Trump administration is likely to prioritize rapid settlements with potentially more straightforward injunctive relief packages. Settlements will continue to include mitigation projects, although likely at a reduced frequency and with more narrow tailoring. Supplemental environmental projects, however, will be disfavored, if not prohibited outright in most instances.
- **Expect State and Citizen Enforcement to Be on the Rise:** Companies should prepare for more, and more aggressive, environmental NGO suits and heightened state-level enforcement in certain states. Citizen suits pose unique risks and require a different legal playbook than government enforcement, necessitating counsel who are skilled at managing such litigation. As one example, all Clean Water Act and Clean Air Act citizen suits are reviewed by DOJ’s Environment and Natural Resources Division (ENRD). Beveridge & Diamond has several former ENRD litigators with extensive familiarity with these citizen actions and the distinctive legal issues they present. We also regularly litigate citizen suits under the Resource Conservation & Recovery Act, Endangered Species Act, and other statutes.

Analysis of Key Aspects

1. Existing Cases. The Trump administration is unlikely to voluntarily dismiss any filed enforcement actions. The administration may, however, waive certain arguments or entertain new settlement proposals. In these instances, environmental organizations may seek intervention (if they have not done so already) in an attempt to gain a seat at the negotiation table and sway outcomes. Companies may also find that ongoing enforcement actions are delayed while President Trump’s agency teams and leadership get up to speed on existing enforcement efforts during and after the transition. It may take time for political appointees to be installed, during which time career staff would be “acting” in leadership positions. This slower tempo may be beneficial in certain cases. If a delay is not desirable, DOJ may be amenable to expediting the entry of consent decrees where the public comment period has ended.

In most instances, the Trump administration is unlikely to withdraw from existing consent decrees or associated injunctive relief, considering such relief has already been ordered by a court. That said, the Trump team may be open to reevaluating consent decrees with long-term injunctive relief, particularly where the relief extends beyond the four corners of the regulations. Indeed, Project 2025 calls for the Justice Department to perform a “thorough and holistic review of . . . all consent decrees and settlements currently in force” and to terminate “unnecessary and outdated” consent decrees, but some federal judges may be skeptical of efforts to reopen past consent decrees in this way.

2. New Cases. Due to the time required to change leadership, establish new priorities, and develop new cases, new enforcement matters manifesting an administration’s priorities typically do not materialize until 12-24 months into the administration’s term. Case initiations are likely to slow further due to President Trump’s announced deregulation efforts, cuts to EPA’s budget, and reduced staffing levels. During the first Trump administration, EPA also attempted to prioritize quick

resolutions with minimal disruptions to ongoing businesses. Accordingly, for the cases that EPA initiates, expect more frequent administrative settlements and fewer case referrals to DOJ for civil and criminal enforcement.

While the rate of new case referrals and filings will likely decrease as compared to the Biden administration, companies must continue to meticulously implement their compliance programs. Even with slashed budgets, EPA will conduct inspections and enforce existing laws. Moreover, states (especially those under Democratic control) are likely to increase enforcement efforts. Environmental NGO citizen suit filings will also likely increase, just as they did during the first Trump administration. Finally, companies must remember that the statute of limitations for most federal environmental claims is five years. As such, any noncompliance that occurs during President Trump's second term could still be subject to an enforcement action under a new administration in later years.

3. New Trump Administration Enforcement Priorities. On the [campaign trail](#), President Trump often noted the importance of having clean water and clean air, but he also harshly criticized the compliance burdens on industry from environmental regulations. Accordingly, enforcement actions involving more traditional pollutants and familiar contexts (e.g., sewage overflows, drinking water contamination) will likely be the priority and the focus of public announcements. Notably, Project 2025 calls for EPA to prioritize compliance over enforcement and suggests that the goal of enforcement should be “to ensure compliance, not to achieve extrastatutory objectives.”

a. Shift Away From Biden Administration Clean Air Act Priorities. The Trump administration may pull back on [EPA's Benzene Enforcement Initiative](#), including [BWON and QQQ noncompliance](#), and climate-related enforcement initiatives (including enforcement of NSPS-related compliance at oil and gas storage facilities). These initiatives have already faced significant scrutiny from Republican law- and policy-makers and are likely to be the target of future policy changes. Additionally, the administration is likely to shift its enforcement focus away from the oil and gas industry. In due course, all of these changes will be reflected in revisions to EPA's published national enforcement priorities.

b. Narrower Clean Water Act Enforcement. New cases will likely reflect the administration's legal priorities. For example, EPA and DOJ are likely to exercise enforcement discretion and bring cases only where CWA jurisdiction is obvious (i.e., a clear surface water connection to a navigable water). The administration is unlikely to pursue indirect discharges under *County of Maui v. Hawaii Wildlife Fund*. Wetlands-related enforcement is likely to be a low priority.

c. CERCLA Clean Up & Cost Recovery Likely to Increase. CERCLA, or Superfund, cleanups were a major EPA priority under the first Trump administration. Expect this focus to continue in a second administration as such efforts are viewed as furthering redevelopment and providing economic stimulus. Accordingly, DOJ CERCLA cost recovery efforts are unlikely to be affected by the change in administrations—and may actually accelerate in some instances.

d. PFAS. The new administration will likely continue to pursue the PFAS strategy set in motion during the first Trump administration, but it is not likely to emphasize use of the enforcement program. Project 2025 calls for removing the hazardous substance designation for PFAS and PFOS. Therefore, it is likely that the administration will seek to revoke Biden's rule designating these PFAS as hazardous substances under CERCLA and will seek a stay of litigation pending revocation.

4. Federal-state coordination. Republican administrations—including Trump's first—consistently emphasize the importance of “cooperative federalism,” which calls for more deference to state

authority and a narrow interpretation of the scope of federal statutory authority. Unlike the Biden administration, expect a second Trump EPA and DOJ to tread lightly—and potentially decline to bring an enforcement action—if a state that has been delegated enforcement authority declines to participate as a joint partner in the enforcement action. The federal government, however, is likely to be involved where a state refers a matter to EPA for enforcement, or where the environmental issues at stake span multiple states.

5. Forms of Relief. During the first Trump administration, DOJ (and to a lesser extent, EPA) imposed new restrictions on the types of relief that the government would seek in judicial enforcement matters—as well as the settlement terms that the government would approve. In particular, the Trump DOJ is likely to reduce the usage of certain kinds of settlement tools:

a. Third Party Audits. During the Biden administration, the federal government has increasingly demanded that settling parties hire third party auditors to complete compliance evaluations as a condition of settlement. The scope of those audits varies from case to case, but they typically require a compliance analysis of the provisions that were allegedly violated and corrective action to address any deficiencies. The government has also increasingly required the disclosure of the audit reports to regulators. Under the Trump administration, however, expect fewer demands for third party audits and, where such demands are made, additional flexibility regarding the number and frequency of such audits. The Biden administration also sought other novel forms of relief, like advanced monitoring, which may be less in favor during the new administration.

b. Mitigation Projects. Mitigation is injunctive relief to remedy, reduce, or offset past harms caused by violations in the case. Mitigation is relief that the government believes a court could order as injunctive relief and that the government is prepared to pursue in litigation. Since it is part of the injunctive relief package, mitigation warrants no direct civil penalty reduction. Moreover, because such projects are aimed at offsetting past environmental harm, they typically require a nexus between the project and the harm caused by the violations to restore the status quo ante.

Biden-era mitigation projects have included equipment upgrades, diesel engine replacements, stream restoration and erosion control. Mitigation projects have been a major aspect of DOJ settlements in the Biden administration—with some cases requiring [multiple mitigation projects costing millions of dollars](#). High-level DOJ officials have repeatedly emphasized the importance of mitigating environmental harm. While settlements in the Trump era also occasionally included such projects, they tended to be smaller, less expensive, and more commonly occurred either on-site or at facilities under the same ownership as the offender. Notably, former ENRD Assistant Attorney General Jeff Clark issued a [memo](#) in his final days in office (which was quickly revoked by the Biden DOJ) seeking to impose additional restrictions on mitigation projects; specifically, he asserted that DOJ attorneys should consider both the costs of a project as well as their potential benefits, and he emphasized that civil penalties should be the primary type of relief in DOJ's environmental cases.

c. [Supplemental Environmental Projects \(SEPs\)](#). A SEP is a voluntary and environmentally beneficial project resulting from negotiation between the government and an alleged violator that would be unavailable outside the settlement context. [As explained in more detail in a separate alert](#), the first-term Trump DOJ issued a series of policy memos restricting the use of SEPs. Companies should expect re-restriction of SEPs involving payments to third parties, and, depending on new EPA and DOJ leadership, a broader prohibition may also be on the table. SEPs involving the reduction of emissions from diesel engines are currently statutorily authorized and are likely to remain viable unless Congress acts to change the law. New policy restrictions on federal SEPs, however, will not prevent states from seeking state-only SEPs in joint enforcement actions. Many states have their own

independent authorization for SEPs—and employ that authorization aggressively.

Companies that are currently engaged in negotiations with the federal government to resolve alleged noncompliance must carefully consider the strategic implications of timing. Settlements with SEPs should be finalized and lodged as soon as possible, and there are other instances where finalizing a settlement before the end of the Biden administration might be more cost effective. If negotiations are stalled, or the parties are still very far apart, companies must consider the risk that DOJ files a complaint prior to January 20, 2025.

6. Criminal Matters. We anticipate similar trends in environmental criminal prosecutions. For example, a footnote in Project 2025 suggests that DOJ's environmental criminal prosecutors should be moved out of ENRD into the Criminal Division. Even if that does not occur, resource constraints and changes in priorities are likely to lead to fewer criminal referrals, a similar trend during the previous Trump administration. We expect a shift in the focus of corporate investigations as well. The Biden administration adopted policies that promoted criminal prosecution of individual (not just business entities) and use of tools like monitors in criminal pleas as a strong deterrence to corporate malfeasance. Those policies are likely to be revised or revoked in the new administration. [EPA policies on criminal enforcement](#) may also be revised. The new administration is likely to be skeptical about some areas of environmental criminal enforcement in particular, such as domestic enforcement of endangered species laws.

7. Environmental Justice Considerations. Environmental justice communities are those that have been disproportionately affected by legacy pollution or climate change. Through various [executive orders](#) and agency action, President Biden made environmental justice (EJ) considerations a central tenet of his environmental policy—including enforcement decisions. This priority has manifested in numerous enforcement actions against industry located in EJ communities. President-elect Trump and others in his orbit have been vocally opposed to the EJ concept. Expect a new Trump administration to de-emphasize EJ considerations in enforcement decisions. The administration is likely to remain sensitive to community complaints (without using the EJ frame, and on an ad hoc basis). Companies would be wise to maintain positive relationships with their neighbors and respond to community concerns quickly and appropriately. Some States (like Colorado and New Jersey) also have environmental justice enforcement initiatives that will not be affected by the administration change.

8. Potential Reorganization of the EPA Enforcement Office. Project 2025 recommends disbanding EPA's Office of Enforcement and Compliance Assurance (OECA) and moving the enforcement functions into EPA's program offices. Any such reorganization would not eliminate enforcement but de-emphasize it, as it would be one of many activities competing for resources in the program division. This restructuring, if it occurs, is likely to take a significant amount of time, and in the interim, OECA would continue to pursue its agenda.

9. Nominations to Watch. It is often said that “personnel is policy.” Key positions that will shape enforcement in the coming administration include the Assistant Administrator for EPA's enforcement office; the Assistant Attorney General for DOJ's Environment and Natural Resources Division; the Solicitor of the Interior; and the general counsel of NOAA.

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