

Navigating uncertainty

How to anticipate and minimize risk in a shifting US environmental regulatory landscape



The current U.S. administration has drastically shaken up the priorities of the Environmental Protection Agency, reconsidering many long-standing environmental protections, shifting away from considering Environmental Justice and the Social Cost of Carbon, and pivoting towards supporting fossil fuel and critical mineral exploration. This policy alert brings you up to speed with EPA's new agenda, how this will affect EPA's enforcement priorities, and what companies can do to navigate the higher levels of uncertainty about compliance and reputational risks.

What does the EPA's new deregulatory agenda look like?

On February 4th, EPA Administrator Lee Zeldin announced EPA's Powering the Great American Comeback Initiative "to achieve the agency's mission while energizing the greatness of the American economy", and consisting of pillars the new administration says will foster economic growth. The first pillar emphasizes the agency's commitment to ensuring "clean air, land, and water for every American," which translates into a refocus on historically 'traditional air pollution' compliance, wastewater/storm water permitting compliance, and solid/hazardous waste compliance requirements. The remaining pillars focus on:



Restoring American Energy Dominance
(US energy independence)



Permitting Reform, Cooperative Federalism, and Cross-Agency Partnership
(promote US-based investment)



Make the U.S. the Artificial Intelligence Capital of the World (data center & related facility investment powered by American-made energy)



Protecting and Bringing Back American Auto [Sector] jobs (investment in domestic manufacturing)

Administrator Zeldin also announced on March 12th that the EPA is initiating 31 specific actions representing the "largest deregulatory effort in U.S. history" to fulfill the Trump Administration's promise to "unleash American energy, lower the cost of living, revitalize the auto industry, restore the rule of law, and give power back to the states." These actions include:

- The formal reconsideration process for multiple Clean Air Act (CAA) and Clean Water Act (CWA) regulations impacting the power (utility), oil & gas, chemical, metal ore processing, iron and steel manufacturing, rubber tire manufacturing, coke manufacturing, commercial sterilization, and automotive sectors
- Reconsideration of the EPA's 2009 Endangerment Finding and all prior regulations and actions that rely on the finding, the 'Social Cost of Carbon' calculation in federal permitting and regulatory decisions, and the Greenhouse Gas Reporting Program (GHGRP) overall
- (Re)finalizing the definition of "waters of the United States" related to CWA permits
- Resolving the backlog of State/Tribal Implementation Plans (SIPs/TIPs) under the CAA
- Reconstitution of the Clean Air Scientific Advisory Committee (CASAC) and the Science Advisory Board (SAB) following dismissal of members in early 2025

- Prioritization of the coal ash program to expedite state permit reviews and update coal ash regulations (Legacy Coal Combustion Residuals (CCR) Surface Impoundments and CCR Management Units rule)
- Termination of the Environmental Justice (EJ) and Diversity, Equity, and Inclusion (DEI) arms of the EPA
- Redirection of enforcement resources to better focus on EPA's 'core mission' and 'Powering the Great American Comeback'

Public criticism of the EPA's extensive deregulatory agenda focuses on concerns that it prioritizes short-term economic gains at the expense of long-term environmental compliance, sustainability and public health, and compromises the integrity of science-based decision-making. Combined with the proposed 55 percent cut to the EPA's operating budget, which puts the EPA at funding levels lower than its inception in the early 1970s (when adjusted for inflation), and questions on the Agency's

Included in the EPA's 31 planned deregulatory focus areas was "redirecting enforcement resources to EPA's core mission."

capacity to carry out its core functions within the expanded scope of environmental challenges today, the deregulatory agenda has come under serious public and legal scrutiny.

While the EPA's approach to compliance and policy has changed markedly since the new administration took office, and its operational capacity is in question, it's also critical to look at what is not changing and how other entities – from states to non-governmental organizations (NGOs) – are responding with their own expanded enforcement and litigation efforts to address a perceived decrease in federal EPA oversight.



How is the EPA shifting its environmental enforcement priorities?

The new administration's shift in environmental enforcement policy is well demonstrated in its latest revisions to the [FY 2024-2027 National Enforcement and Compliance Initiatives](#) (NECIs), as detailed in its [March 12, 2025 memorandum](#), which removed EJ entirely from consideration and re-focused all compliance and enforcement resources linked to climate change. The administration's shifts to the NECIs can be summarized as:

- **Environmental Justice restrictions:** EPA enforcement can no longer consider race, income, or other EJ concerns unless expressly required by statute or regulation; tools like EJScreen are disabled; and all EJ-based guidance has been superseded.
- **Energy sector protection:** Enforcement actions must not disrupt any part of energy production or power generation unless there's an imminent health threat or a clear legal requirement; any significant enforcement must receive top-level EPA approval.
- **Shift in NECI priorities:** NECIs have been realigned—methane enforcement in oil and gas is deprioritized, hydrofluorocarbons (HFCs) enforcement focuses on illegal imports only, and coal ash enforcement now targets only imminent health threats and not broader EJ issues.
- **Air toxics targeting adjusted:** Enforcement will focus on the highest levels of hazardous air pollutants (HAPs) regardless of community EJ status, moving away from targeting historically overburdened communities.
- **Chemical risk oversight refocused:** Risk management inspections will prioritize high-risk facilities regardless of the specific chemicals used, and enforcement actions impacting energy operations require senior EPA approval.

So, what does the EPA's curtailment of certain aspects of its enforcement and compliance assurance work mean for companies navigating environmental compliance and risk? Early indications suggest that enforcement cases meeting the revised NECI criteria have continued at a steady pace, while those with a focus on EJ or climate will not proceed or will remove any components involving those two issues from the case or settlement. More specifically, EPA will continue to pursue "traditional enforcement" cases, but with an added emphasis on cooperative federalism - deference to states that can pursue their own resolutions.

With that said, it's important to note that today's EPA will continue to produce enforcement cases, and career leadership will continue its work to move investigations and settlements forward with its available resources and authorities. Career enforcement leaders understand that policies foundational to an administration can be applied to help them win internal support for their cases. In the last administration, climate and EJ were prioritized, so enforcement matters with those attributes got particular attention and resources. Therefore, if an enforcement officer builds a case with attributes that incorporate the current administration's priorities, the case is more likely to be looked on favorably and get the attention and resources it needs.

Will we see more expansive enforcement at the federal level?

Probably not.

Will EPA enforcement go away?

No, it won't.

State and NGO scrutiny as a growing source of risk

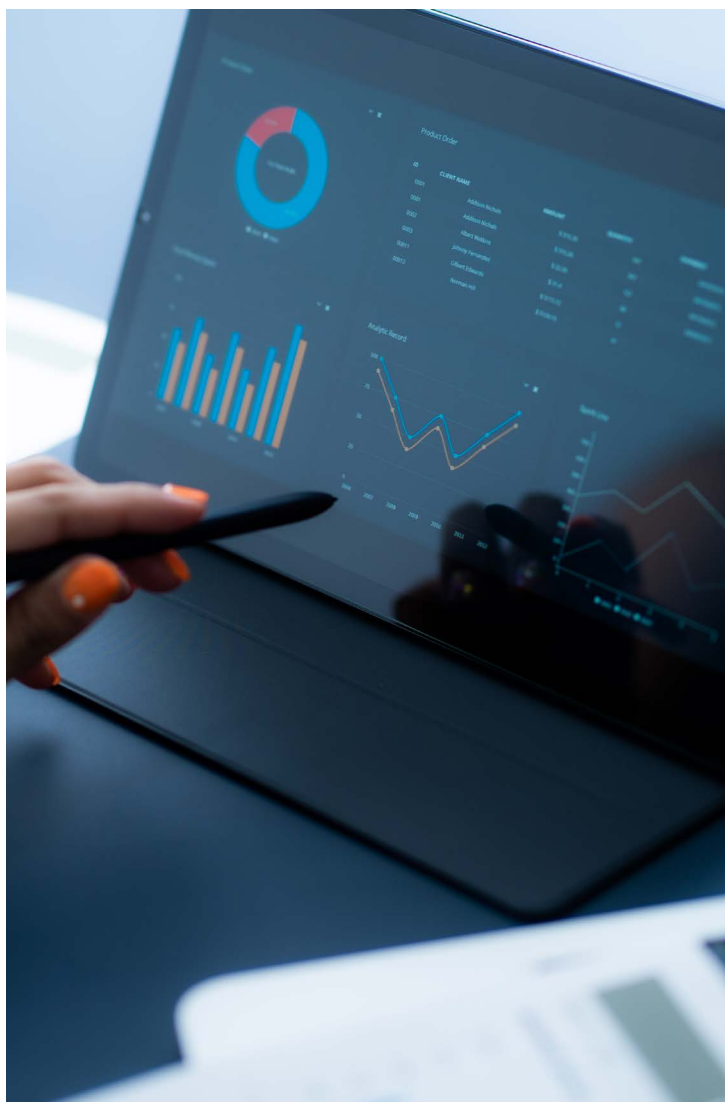
Today, NGOs, certain state regulatory bodies, and public expectations are the primary drivers of enforcement and litigation risk outside of the EPA. These risks have only grown since January, as all three segments perceive they have a greater role to play in holding companies accountable and are ramping up their own efforts to litigate and bring enforcement actions against alleged environmental noncompliance.

States conduct more than 90 percent of federally delegated program inspections, acting as the “boots on the ground” when it comes to inspecting and evaluating sites for compliance. The growing enforcement focus developing in certain states represents another recent consequential shift. Increasingly, companies must be cognizant of their risk exposure based on the different states and jurisdictions in which they operate .

States and NGOs are utilizing the public environmental data companies are required to submit under their various permitting and regulatory obligations to assess company compliance patterns. While states are utilizing this data to inform enforcement targeting, where viable, NGOs are increasingly using this public data to take on companies in citizen suits, permitting fights, and public messaging campaigns. Such scenarios illustrate the importance of environmental performance data and how critical benchmarking is to managing external risk. Given the increasingly public access to peer- and sector-wide environmental benchmarking data, companies are increasingly vulnerable to outside scrutiny, litigation, and potential brand damage, particularly if they are consumer-facing.

Will you see NGOs and certain states ramp up their efforts to litigate and bring enforcement actions against alleged environmental non-compliance?

Yes, and in some cases this will increase significantly, particularly at the NGO level.



Prioritizing risk mitigation efforts

Companies face different and less defined risks than they did six months ago. As a result, the jobs of EHS and sustainability executives have gotten harder, not easier, requiring a careful balance of compliance, credibility, reputation, and profitability as they navigate this ever-changing regulatory landscape.

There are steps, however, that leaders can take to identify and mitigate those risks:

1.

Prioritize traditional air, water, waste compliance programs:

Understand how your facilities perform in these conventional environmental enforcement areas. Are they in compliance with hazardous waste regulations? Are they meeting their National Pollutant Discharge Elimination System (NPDES) discharge and air permit emission limits?

Being able to compile, quality check, and translate environmental compliance data is critical for managing reputational and business continuity risks.

2.

Embrace benchmarking information:

Companies can benefit from knowing how they compare to their peers across various environmental performance categories. Regulators (and NGOs) always focus on lower-performing sites/ companies and are now consistently using company data to inform targeting decisions.

Persistent noncompliance is a trigger for enforcement and third-party scrutiny.

3.

Strategic proactive action:

Once a company understands its performance metrics, it must address and monitor its deficiencies – especially those that are repetitive or indicate lower performance within a sector.

Failing to address low-performance areas and/or facilities can be costly.

4.

Be attentive to emerging issues:

Monitor relevant state level regulatory movements, track evolving enforcement priorities at the state level, and reinforce core compliance programs with site and business unit teams. Be informed of NGO focus and activity in areas around your facilities.

Share and contextualize with EHS and legal teams any enforcement concerns. Empower them with tools to quickly identify performance gaps before regulators or outsiders do. Proactively drive alignment across EHS, sustainability, legal, and operations teams.

Compliance data is the key to how regulators, NGOs, and the public will view and assess a company's environmental performance

Putting compliance data and insights to work

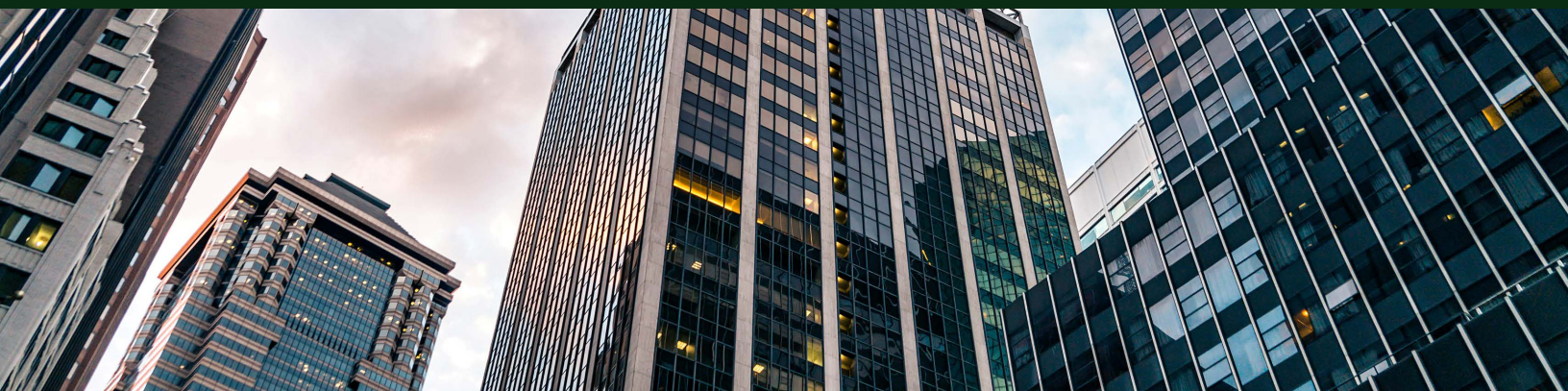
Companies collect and publicly report increasingly large volumes of environmental data, but compiling and analyzing that public data to identify externally driven business risks and applying gained insights for risk mitigation and process improvement is a complex endeavor. Analyses of the available public data can be varied and insightful, encompassing how a company's environmental operations compare internally facility-to-facility, and externally to their sector peers, through to identification of compliance triggers/trends that tend to generate regulator, NGO and public scrutiny, potentially leading to enforcement and legal exposure. By taking a structured look at site-level performance and peer benchmarking, and then applying the right diagnostics, EHS and sustainability teams can identify and effectively address these risks.

The following steps can help EHS and sustainability teams to re-frame and re-focus on risk :

- Assess compliance data and risk factors across core areas like air, water, and waste to identify recurring issues or patterns with a risk management mindset
- Benchmark site-level performance internally and against peer facilities to understand relative exposure and operational outliers
- Identify performance gaps across business lines to guide investigative efforts, oversight and resource planning
- Facilitate structured discussions at an enterprise level to clarify areas needing attention or support
- Develop an action plan to address priority risks, reduce noncompliance exposure, and track measurable improvements

CONCLUSION

As the EPA relaxes its scrutiny of corporate environmental performance, other actors, such as NGOs and state regulators, are intensifying their efforts. The result is that EHS performance data is becoming increasingly visible to outsiders and more important to stakeholders. Understanding your external environmental profile, built from your own public data through the application of credible data analytics and the lens of subject matter expertise, enables companies to proactively take the initiative to improve outcomes, mitigate business risks, and meet growing public expectations.



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