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BLOG

EPA Releases Memo on Next Generation Compliance in Civil Enforcement Settlements

JANUARY 30, 2015

On January 7, 2015, EPA's Office of Enforcement and Compliance Assurance issued a memorandum to EPA enforcement personnel directing them to use next generation compliance tools in civil judicial and administrative enforcement settlements whenever appropriate. These tools include:

- Advanced monitoring of pollutants on a real-time basis using emerging technology, such as fence-line monitoring of air quality at the border of a facility
- Independent third party verification of compliance with settlement obligations, particularly where settlement agreements call for long-term injunctive relief
- Electronic reporting of data in a searchable format
- Public accountability through data transparency and accessibility

The memorandum recommends that these tools be incorporated into settlement agreements through injunctive relief, mitigation measures, and supplemental environmental projects. EPA believes "[i]ncluding these tools in settlements can enhance compliance with settlement provisions and environmental requirements" by facilitating review of compliance data by the settling party, EPA, and the public. The memorandum encourages enforcement personnel to "find innovative and effective ways" to implement these tools, for example by using them to "improve[e] compliance among [a settling party's] distributers, vendors, contractors, or suppliers." While we already have seen some use of some of these tools in different EPA regions, the regulated community can expect settlement negotiations to become more complex and costly.

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