

## Publications

### Why Ohio Businesses Should Continue Environmental Compliance Efforts Amid Federal Shifts

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David Edelstein, Kristen Watt and Jake Bartlett — attorneys in the Vorys environmental group — authored an article for the *Cincinnati Business Courier* titled "Why Ohio businesses should continue environmental compliance efforts amid federal shifts." The full text of the article is included below with permission from *Cincinnati Business Courier*.

### Why Ohio businesses should continue environmental compliance efforts amid federal shifts

During the first Trump administration, federal regulatory policies experienced significant changes under a policy of pro-industry deregulation. Those changes pale in comparison to what is currently being proposed and anticipated for the second administration.

Significant restructuring of federal agencies aimed at reducing spending appears to also be driven by a more refined policy of pro-industry deregulation. However, it is not clear if (or when) these actions will lead to noticeable changes impacting a business' day-to-day operations.

Should businesses respond to recent changes and assess significant reductions to their compliance programs? At least for environmental compliance, it is probably best to continue with the status quo.

The U.S. Environmental Protection Agency (U.S. EPA), like most federal agencies, has undergone sweeping changes. This includes significant staff cuts and reorganizations, threatened and realized budget cuts, the elimination of programs and a change in enforcement priorities and rulemaking focuses. These changes may make it seem tempting for companies to ease up on their environmental compliance efforts. However, there are several compelling reasons why businesses should not abandon their environmental compliance programs, even in the face of a shifting U.S. EPA landscape.

#### The EPA's role is not disappearing

Unlike the Department of Education, where President Trump has consistently stated a desire to fully eliminate the department, there does not appear to be any intention to eliminate EPA. The matter of fact is that everyone realizes the importance of environmental protection, lest we return to the days of a burning Cuyahoga River. While there are disagreements on the extent of EPA's role, it is important to understand that the EPA is not vanishing. Nor are the substantial federal statutes regulating the environment such as the Clean Air Act (CAA), Clean Water Act (CWA), and Resource Conservation and Recovery Act (RCRA).

Even if U.S. EPA enforcement softens, federal environmental statutes contain citizen suit provisions that allow for private parties (including environmental groups) to “step in the shoes” of the U.S. EPA and bring lawsuits against businesses to comply with environmental laws. These citizen suits are often much more costly than government enforcement and can seek significant more burdensome corrective actions and you may be obligated to pay the private parties’ attorney fees if they are successful.

### **State-level enforcement is independent and remains strong**

It is also critical to recognize that while the U.S. EPA's focus may be changing, state environmental agencies do not have to follow suit. Federal environmental laws have a unique structure and relationship with state environmental laws. Generally, federal legislation sets the bar for environmental rules. EPA is tasked with writing regulations and enforcing the statutes – but they also commonly authorize states to implement their own environmental programs. State programs must be as strict as the federal programs but also can be more restrictive. Most states have taken EPA up on the offer and currently oversee their own state versions of the CAA, CWA, RCRA and others. This is the case in Ohio where the Ohio Environmental Protection Agency (Ohio EPA) is the primary regulatory and enforcement authority for environmental compliance.

Ohio EPA has a long history of operating a robust regulatory program in the state. It was first authorized to issue National Pollutant Discharge Elimination System (NPDES) water permits under the CWA in 1974, regulate the base hazardous waste program under RCRA in 1989, and issue major Title V air permits under the CAA in 1994. It currently has an active and robust compliance and enforcement program that is generally not affected by federal changes. Ohio has yet to signal major agency shakeups like those happening at the federal level. Thus, businesses in Ohio will still face inspections, penalties, and potential lawsuits from Ohio EPA even if federal enforcement becomes more relaxed.

Ohio EPA is also more connected to local environmental issues and has a deeper interest in protecting local communities and ecosystems. Relying solely on reduced federal enforcement will leave businesses exposed to state-level enforcement.

### **Long-term considerations**

Corporate environmental responsibility is not just about avoiding fines or regulatory penalties; it is also about maintaining a strong reputation. Maintaining a strong compliance program can position companies as leaders in sustainability, which can translate into new business opportunities, improved relationships with regulators, and greater customer loyalty.

Putting aside considerations of consumers and investors, abandoning or reducing environmental compliance programs will harm a company's image vis-à-vis Ohio EPA and U.S. EPA in the future. We know

policies are cyclical and today's federal changes, even if they drip down to the state level, likely won't be around forever. It is important to maintain relationships with regulators whose tenure outlasts these policy shifts. In addition, the costs saved in the near term must be compared to the future costs (including operational impacts) of re-implementing compliance programs when the need arises in the future.

### Conclusion

While the federal administration change and changes within the U.S. EPA may create uncertainty, businesses should not abandon their environmental compliance programs. U.S. EPA's core regulatory functions remain in place, state agencies like Ohio EPA continue to be the frontline of compliance, and environmental laws are still enforceable by citizens and environmental groups.

Investing in robust compliance programs not only helps mitigate legal risks but also ensures long-term sustainability, protects a company's reputation, and positions it to navigate future regulatory changes effectively. Abandoning environmental compliance efforts now could result in costly setbacks, future legal consequences, and reputational damage. Maintaining strong environmental practices is almost always the better long-term choice for any business.