



## OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

June 13, 2024

### MEMORANDUM

**SUBJECT:** New Definitions for Key Terms and Action Categories for EPA's Enforcement Program Tools

**FROM:** Rosemarie A. Kelley, Director **ROSEMARIE** Digitally signed by  
Office of Civil Enforcement **KELLEY** ROSEMARIE KELLEY  
Date: 2024.06.13  
13:09:05 -04'00'

Jacqueline Robles Werner, Director **JACQUELIN** Digitally signed by  
Office of Compliance **E WERNER** JACQUELINE WERNER  
Date: 2024.06.14  
09:32:15 -04'00'

Kathryn Pirrotta Caballero, Director **KATHRYN** Digitally signed by  
Federal Facilities Enforcement Office **CABALLERO** KATHRYN CABALLERO  
Date: 2024.06.14  
09:04:16 -04'00'

**TO:** Enforcement and Compliance Assurance Division Directors  
FFEO, OC, and OCE Directors and Deputies  
Regional Counsels and Deputies

#### I. Purpose

This document defines key terms and action categories used in EPA's enforcement program. The purpose of defining these terms and action categories is to promote national consistency and clarity in their use across civil enforcement programs. The definitions in this document are intended to supplement EPA's existing program-specific enforcement response policies ([ERPs](#)) and related documents as well as supersede any inconsistent definitions contained therein. Additionally, this document supersedes the *Guidance on EPA Definitions for Enforcement Response Tools* (Sept. 30, 2019) and the *New Definitions for Key Terms for EPA's Enforcement Program Tools* (Dec. 21, 2022).

EPA's program-specific ERPs and related documents provide recommendations on a range of possible enforcement responses to various types of pollution problems. Many of the ERPs specify certain enforcement program tools ("tools) as "formal" actions and, by default, other tools are "informal." Formal and informal action have not been consistently defined and applied across EPA's enforcement and compliance assurance programs which potentially creates confusion and inconsistent use of the tools within these action categories. Establishing definitions for action categories that apply across

EPA’s civil enforcement programs will not only assist in categorizing tools regardless of program, but also facilitate consistency, appropriate escalation, and reporting of tools.<sup>1</sup>

EPA enforcement staff should use the definitions in this document, in conjunction with the applicable ERP, to determine the appropriate response to a compliance problem. Enforcement staff may also need to modify current practices to ensure that informal, formal, or other actions align with the new definitions and eliminate any inconsistencies.

Please note that this document does not include reporting instructions for enforcement program tools. EPA enforcement staff and data stewards should continue to follow existing reporting instructions for all compliance and enforcement data. If it is determined that updated reporting instructions are necessary, they will be developed after this document is issued.

## II. Terminology

### A. Definitions for Key Terms

1. Finding of Violation: A key component of the definition of informal and formal actions. A finding of violation is:

- a) A written or otherwise documented determination<sup>2</sup>,
- b) Made based on evidence or information available to the regulatory agency,
- c) By regulatory agency personnel authorized to make the finding,
- d) That
  - (i) a law, regulation, order, decree, agreement, or other requirement enforceable by the regulatory agency has been violated, or
  - (ii) there is “reason to believe” that the circumstances described in Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 13(a) exist, or
  - (iii) the circumstances described in Clean Air Act (CAA) Sections 113(a)(5) or 167 exist.

2. Finding of Endangerment: A key component of the definition of formal action. A finding of endangerment is:

- a) A written or otherwise documented determination,
- b) Made based on evidence or information available to the regulatory agency,
- c) By regulatory agency personnel authorized to make the finding,

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<sup>1</sup> The term “tools” refers to *specific* tools within categories of key terms. For example, a formal action tool could be an Expedited Settlement Agreements (ESAs) or an Administrative Orders (AOs).

<sup>2</sup> This definition includes a determination of violation (finding of violation) made by a computer programmed to generate such a determination, provided it is: (1) pursuant to instructions by an authorized EPA official who has previously determined that a specified type of act or omission constitutes a violation and (2) in response to the receipt of information from the regulated entity or other source that such an act or omission has occurred. For example, EPA’s Integrated Compliance Information System - National Pollutant Discharge Elimination System (ICIS-NPDES) automatically determines and records when a monitoring result self-reported on an individual NPDES permittee’s electronic discharge monitoring report (DMR) exceeds an applicable permit limit. Not all exceedances result in an EPA “finding of violation.”

d) That there exists a condition, act, omission, or circumstance in response to which the regulatory agency may seek relief from an entity pursuant to the following authorities: Toxic Substances Control Act (TSCA) Section 7(a), 15 USC Section 2606(a); FIFRA Section 13(b)(3), 42 USC Section 136k(b)(3); Clean Water Act (CWA) Section 504, 33 USC Section 1364; CWA Section 311(c), (e)<sup>3</sup>, 33 USC Section 1321(e); Safe Drinking Water Act (SDWA) Section 1431(a), 42 USC Section 300i(a); Resource Conservation and Recovery Act (RCRA) Section 3008(h), 42 USC Section 6928(h); RCRA Section 3013(a) – (c), 42 USC Section 6934(a) – (c); RCRA Section 7003(a), 42 USC Section 6973(a); CAA Section 303, 42 USC Section 7603; RCRA Section 9003(h), 42 USC Section 6991b(h); and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 106(a), 42 USC Section 9606(a).

## B. Definitions for Action Categories

There are many tools available to EPA enforcement and compliance assurance programs. Some tools are used to notify regulated entities<sup>4</sup> regarding potential violations (e.g., Warning Letter, Notice of Non-Compliance). Others are used to advise regulated entities of an impending enforcement action and invite settlement (e.g., Notice of Violation, Show Cause Letter, Pre-Filing Notice Letter, and Notice of Intent to File an Administrative Complaint). Others are the actual enforcement action (e.g., Administrative Penalty Order, Administrative Compliance Order).

As noted above, categorizing tools will facilitate consistency and the appropriate use and reporting of tools, by enabling the accurate placement of each tool into one of three categories (see attachment): 1) informal action; 2) formal action; and 3) other action.

1. Informal Action: Typically used to address less serious violations<sup>5</sup>, an informal action must meet all the following criteria:

a) Is issued by the regulatory agency in writing (paper or electronic)<sup>6</sup> to the regulated entity,

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<sup>3</sup> This section of the CWA uses the term “threat” in lieu of “endangerment.”

<sup>4</sup> For purposes of this document, “regulated entity” includes any entity that may be subject to an action by EPA.

<sup>5</sup> The spectrum of less serious to more serious or significant violations may vary across programs and is generally defined in the specific ERPs, where they exist.

<sup>6</sup> This may include situations where the potential finding of violation is first communicated orally to the regulated entity and then subsequently documented in a follow-up written communication (e.g., warning letter). This document does not include any recommendations about when a regulatory agency should verbally notify a regulated entity of a potential finding of violation or a finding of violation, however, it does exclude from EPA’s definition of “informal action” notification of any type of violation that is only communicated orally. Clear, written communication is important to facilitate a regulated entity’s return to compliance and to enable the regulatory agency to report the entity’s compliance status and document its compliance history.

- b) Is issued as a result of a “potential finding of violation”, or a finding of violation<sup>7</sup>, or a self-disclosure<sup>8</sup>
- c) Contains a description of the legal and factual basis for the possible action and states with reasonable specificity the nature of the potential finding of violation or finding of violation<sup>9</sup>,
- d) Includes either:
  - (i) For self-disclosures only, where there is a potential finding of violation, an acknowledgement that the discloser has certified that the violation has been corrected (i.e., Acknowledgement Letter), or
  - (ii) For non-self-disclosures:
    - a) A statement that the regulated entity should take whatever action(s) is necessary to correct the potential finding of violation or finding of violation,
    - b) A recommended reasonable timeframe for completing and/or reporting, as appropriate, either any necessary actions to correct the potential finding of violation or finding of violation expressed in specific terms (e.g., within 45 days of receipt of this action or prior to the next permit reporting deadline), or a demonstration by the recipient that there is no such violation; and
    - c) A statement describing the steps the regulatory agency “may” take or “is prepared to” take with respect to the potential finding of violation or finding of violation<sup>10</sup>,
- (e) Is not independently enforceable,<sup>11</sup>
- (f) Is not an action established by law or regulation by which the regulatory agency may itself impose or seek through a court or other tribunal,<sup>12</sup> a sanction (e.g., a penalty) or injunctive relief for the identified violation, obtain compliance, or abate the endangerment, or resolve liability.

2. Formal Action: Typically used to address more serious violations and may be independently enforceable, a formal action must meet all the following criteria:

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<sup>7</sup> Informal actions that include a finding of violation fulfill a statutory requirement to provide a person and the State with notice of the EPA’s findings of violation prior to issuing an order or commencing a civil action (see, CAA § 113(a), SDWA § 1414(a)(1)(A), or SDWA § 1423(a)(1)). Note, however, that SDWA § 1423(a)(2) does not require notice to the regulated entity and this provision is invoked more frequently than SDWA § 1423(a)(1). Similarly, CAA § 113(a)(3) does not require notice to the regulated entity.

<sup>8</sup> A “self-disclosure” includes any voluntary disclosure of a potential violation made via the eDisclosure system pursuant to the Audit Policy or the Small Business Compliance Policy or a voluntary disclosure of a potential violation made in writing to EPA pursuant to the New Owner Audit Policy.

<sup>9</sup> This description should cite to the statutory provisions or regulatory requirements that are the basis of the potential finding of violation or finding of violation and identify the source of factual information underlying EPA’s proposed finding, such as an on-site inspection, desk audit, or other source of information.

<sup>10</sup> The statement should not commit EPA to any specific follow-up action prior to EPA making a formal determination about a facility’s compliance, including assessing potential civil penalties, in case information provided by the regulated entity causes EPA to reconsider its position.

<sup>11</sup> An action is “independently enforceable” if a regulated entity’s failure to comply with the action is itself a violation (in addition to any underlying violation cited in the action), and may be the basis for additional, distinct sanctions, or injunctive relief.

<sup>12</sup> For the purposes of this document, the phrase “court or other tribunal” means a court, Regional Judicial Officer, Administrative Law judge, the Environmental Appeals Board or any similar body authorized by law or regulation to impose sanctions or injunctive relief sought by EPA.

- (a) Is issued by the regulatory agency in writing (paper or electronic) to the regulated entity,
- (b) Is issued as a result of a “finding of violation”, a “finding of endangerment”, or a self-disclosure,
- (c) Contains a description of the legal and factual basis for the action and states with reasonable specificity the nature of the finding of violation, and for self-disclosures only, where there is a finding of violation, includes notice that the discloser has certified that the violation has been corrected (e.g., electronic Notice of Determination),
- (d) Is an action established by law or regulation by which the regulatory agency may itself impose or seek through a court or other tribunal, a sanction (e.g., a penalty) or injunctive relief for the identified finding of violation, obtain compliance, or abate the endangerment, or use to resolve liability (e.g., FIFRA Notices of Warning, Federal Facility Compliance Agreement).

3. Other Action: Does not meet the definition of informal action or formal action and is generally used to respond to potential compliance deficiencies or conditions that may become, or ultimately are determined to be, violations or endangerments warranting informal or formal action to include:

- (a) Any verbal notification from EPA to a regulated entity (e.g., discussions during an inspection, a meeting, or a phone call) about potential compliance deficiencies; or
- (b) Any written notification about potential compliance deficiencies (e.g., email, letter, or inspection report) that does not meet all the criteria for an informal or formal action.

This document is effective immediately and applies to EPA actions only. This document is intended to improve the internal management of EPA and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the Agency, its officers or employees, or any other person. If you have any questions, please contact Lauren V. Kabler at [kabler.lauren@epa.gov](mailto:kabler.lauren@epa.gov).

Attachment

**ATTACHMENT**

<b>Action Criteria and Categories Table</b>			
<b>CRITERIA</b>	<b>FORMAL</b>	<b>INFORMAL</b>	<b>OTHER</b>
Verbal			X
In writing but <i>does not</i> meet all the criteria for either informal or formal			X
In writing and <i>does</i> meet all the criteria for either informal or formal	X	X	
May be issued in response to a finding of violation	X	X	
May be issued in response to a potential violation		X	
May be issued in response to a self- disclosure	X	X	
May be issued in response to an endangerment	X		
Contains legal or factual basis for the action and describes the finding of violation or potential finding of violation	X	X	
For non-self-disclosure, a statement that recipient should take action to correct the finding of violation or potential finding of violation; a timeframe for completing/ reporting the actions to correct or a demonstration by recipient that no violation exists; the steps the Agency may take		X	
May be independently enforceable	X		
Is an action by which the regulatory agency may impose/seek a sanction or injunctive relief for the finding of violation, obtain compliance/abate the endangerment or resolve liability	X		
For self-disclosure with a potential finding of violation, includes acknowledgement that discloser certified violation correction		X	
For self-disclosure with a finding of violation, includes notice that discloser certified violation correction	X		