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EPA Enforcement in Distress — and More Trouble Is Brewing

The White House has now quietly and ominously asked polluters to help identify new opportunities for deregulation.

In recent months the Trump administration has intensified its assault on federal environmental safeguards on several fronts. It has proposed drastic reductions in the scope of protections against [water](#) and [air pollution](#), lagged in the cleanup of [hazardous waste contamination](#), allowed the continued marketing of [toxic herbicides](#), narrowed the scope of needed [environmental impact reviews](#), [ignored and undermined](#) legitimate scientific studies and findings, and [dismantled government attempts](#) to mitigate and adapt to the climate crisis.

Every bit as disturbing, but much less discussed, is a discouraging deterioration in the rigor of EPA's once-effective enforcement program, which identifies and punishes polluters that skirt federal regulations.

The agency's [latest enforcement statistics](#) reflect a dramatic decline in injunctive relief — the amount of money EPA-enforcement activities compelled polluters to commit to spending to correct their

<https://therevelator.org/epa-enforcement-distress/>

environmental violations and maintain compliance with the law. That crucial metric fell to its lowest level in 15 years, from \$20.6 billion in 2017 to just \$3.95 billion in 2018.

Similarly, statistics released recently by the U.S. Department of Justice indicate that the number of environmental criminal cases referred by EPA in 2018 [declined to a shocking 20-year low](#). Though the agency's enforcement efforts did have some legitimate successes in 2018 — particularly with respect to the control of lead contamination in public housing — the overall decline in enforcement still stands out.

EPA's current enforcement strategy has emphasized the agency's role in providing technical assistance to state environmental-enforcement programs, purportedly as an effective substitute for assertive federal enforcement efforts. However, most states can't fill that federal role: Over the past decade numerous state environmental agencies have experienced major budget cuts. These cuts [forced the elimination of 4,400 state-agency staff positions](#), and many of those layoffs have had a markedly detrimental effect on state-level environmental enforcement.

On top of this, a good number of states simply lack the political will to pursue meaningful enforcement actions against polluters. Making things even worse, the EPA has completely dropped its traditional oversight of state enforcement programs — a policy change that appears to have bolstered the resolve of anti-safeguard states to eliminate every vestige of environmental enforcement.

Is the worst yet to come? Near the end of last month, the White House Office of Management and Budget (OMB) [announced an additional gift to polluters and pro-industry ideologues](#) when it issued a notice inviting the public "to identify additional reforms that will ensure adequate due process in regulatory enforcement." The plain premise of this request — which, like the enforcement decline, fell under the radar — is that administrative enforcement poses a threat to the constitutional rights of regulated parties and is thus in need of major reform.



Discarded pesticide cans in 1972. Photo: Gene Daniels/EPA

In the case of the EPA, certainly, this premise is entirely false. There is simply no legitimate reason to suspect that EPA enforcement practices and procedures deny due process to any party.

OMB's solicitation of comments is clearly designed to collect exaggerated regulatory "horror stories" from well-paid lawyers representing polluters and other scofflaws. Their claims may overstate the harm to their clients while omitting mention of relevant ameliorating factors.

Unfortunately it seems likely that President Trump's administration will use the one-sided "data" OMB collects from industry lawyers to further decimate enforcement at the EPA and other agencies and make it practically impossible to successfully pursue more than a tiny number of administrative enforcement actions.

To the extent that comes to pass, the EPA and its sister agencies will be deprived of a much-needed and valuable enforcement tool to redress environmental pollution and other wrongdoing — and in the process, American citizens' health, safety and well-being will suffer needless but very real damage.

The opinions expressed above are those of the author and do not necessarily reflect those of The Revelator, the Center for Biological Diversity or their employees.