

# October 9th White House Executive Orders: Administrative Enforcement/Agency Guidance Document



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The White House on October 9th issued two executive documents that are relevant to federal environmental enforcement:

- *Executive Order on Promoting the Rule of Law Through Transparency and Fairness and Civil Administrative Enforcement Adjudication (“EO Transparency”)*
- *Executive Order on Promoting the Rule of Law Through Improved Agency Guidance Documents (“EO Guidance”)*

The *EO Transparency* document includes a provision requiring that federal agencies upload guidance documents to their website. Further, such guidance documents must be placed on a single repository page that is publically accessible. Failure to do so means that the guidance document will be determined to be null and void if not posted within a required timeframe.

*EO Guidance* is focused on what it describes as “surprise enforcement actions.” Concern is expressed about enforcement actions derived from regulatory requirements based on guidance documents. This Executive Order may be particularly relevant to implementation of federal environmental programs.

Guidance documents are often used by the United States Environmental Protection Agency (“EPA”) and other federal agencies to clarify regulatory and statutory provisions. Federal and state agencies (including Arkansas) may use such policies or guidance to encourage compliance with environmental requirements.

Some of the regulated community, however, has expressed concern that EPA sometimes uses guidance documents improperly to expand regulatory requirements (beyond applicable statutory authority). This is deemed problematic since guidance documents are not typically subject to formal public notice and comments procedures. Nevertheless, guidance documents arguably serve an important role in the implementation of environmental programs in view of the complexity of the subject matter.

Note that an EPA Office addressed draft documents in issuing a policy in August titled:

*Office of Water Policy for Draft Documents*

A concern was put forth that draft guidance documents that are never issued in final or formally withdrawn can cause confusion for the regulators, the regulated community, and general public.

A copy of the two White House Executive Orders can be downloaded below:

[EO Transparency](#)

[EO Guidance](#)