

Implementation of White House Executive Orders Addressing Guidance: EPA forms Workgroups

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The White House recently issued two Executive Orders (“EOs”) focusing on the use of guidance by federal agencies in the context of informing enforcement actions and restricting the use and issuance of new guidance. (See previous post from Oct. 15 [here](#)).

The stated purpose in issuing the EOs was to curtail the pervasive practice of bureaucratic rulemaking that is neither subject to notice and comment nor readily discoverable or accessible by the regulated community.

The EOs have a direct impact on the day-to-day operations of the United States Environmental Agency (EPA) and the states as they implement federally delegated or authorized programs.

It’s no secret that the EPA is a prolific producer of guidance documents, some of which continue to exist in a perpetual draft status despite the fact that they have existed for years (see EPA’s 1990 New Source Review Workshop Manual, also known as the “Puzzle Book”). The agency has historically attempted to use - with mixed success - guidance to clarify regulatory and statutory provisions and to fill gaps regarding appropriate compliance and implementation requirements. By issuing the two recent EOs, the White House put federal agency heads on notice that they must address the issue of improperly using guidance to expand regulatory requirements beyond specific statutory authority.

On October 21, 2019, EPA Administrator Andrew Wheeler heeded the White House’s call, and announced that he would convene two workgroups to address the issues raised in the EOs. One workgroup will be chaired by the EPA Office of the Policy and the other by EPA’s Office of General Counsel and the Office of Enforcement and Compliance Assurance. In the memo, Administrator Wheeler directed EPA staff to continue business as usual until the workgroups develop their recommendations over the next coming weeks.

A copy of the October 21st memorandum can be downloaded [here](#).