



EPA's FY 2020 Environmental Enforcement Report Tells Another Story

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In a year marked by financial and economic hardship for many businesses and individuals, the United States Environmental Protection Agency is reporting a successful year overall in its enforcement results for fiscal year 2020.

On January 13, 2021, EPA's Office of Enforcement and Compliance Assurance (OECA) published the Annual Enforcement results for FY2020 (the Report). The Report emphasizes multiple areas in which the Agency claims landmark improvements over previous years. These include:

- Commitments to reduce, treat, or eliminate over 426 million pounds of pollution, the most in a single year since 2015;
- Proper treatment, minimization, or disposal of 1.6 billion pounds of hazardous and non-hazardous waste, more than all but two of the past eight years;
- Clean up of 104 million cubic yards of contaminated soil and water, more than in FY 2019;
- Prevention of 18.2 million pounds of air pollutants by preventing, reducing, treating, or eliminating emissions from vehicle and engine air sources through resolution of 31 civil enforcement cases for tampering and aftermarket defeat devices—the most for any one year in the agency's history;
- 247 new criminal cases opened, 77 more than in FY 2019 and the most since 2014; and
- Superfund response and cash-out settlements of over \$636 million for cleanup work, \$65 million more than FY 2019, as well as \$178.4 million for EPA's costs.

Perhaps the most worrying aspect of the Report for regulated industry is the notable increase in criminal cases opened, especially when compared to relatively low \$160 million in total civil enforcement penalties. Some in the industry may interpret this as an Agency shift to criminal over civil enforcement for violations; however, that is not the case. The higher number of criminal cases is the result of the EPA's increased enforcement specifically related to violations of the Federal Insecticide, Fungicide, and Rodenticide Act during the pandemic, not an overall shift in enforcement policy.

When compared to the EPA enforcement during Obama's last year in office (FY2016), EPA during

Trump's last year was productive despite the challenges of the year; however, the policy differences are apparent. Obama's EPA claimed, *inter alia*: 324 million pounds of pollution reduced, treated or eliminated, less than Trump's EPA; 61.9 billion pounds of hazardous waste treated, minimized, or properly disposed of, to Trump's 1.6 billion; 191 million cubic yards of soil and contaminated water to be cleaned up to Trump's 104 million; and just over \$1 billion in commitments from responsible parties to clean up Superfund sites by Obama's EPA compared to over \$636 million for Superfund response and cash-out settlements for cleanup work. Importantly, Obama's EPA claimed \$6 billion in combined federal administrative, civil judicial penalties and criminal fines.

In his first days in office, President Biden signed a number of Executive Orders, which implicate EPA. Among these was the Executive Order: "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." The White House published a press release on January 20, 2021, with a list of agency actions that heads of the relevant agencies are to review in accordance with the Executive Order. EPA's list of agency actions for review included 48 actions for review—more than any other Agency. Increased action for EPA will likely mean heightened enforcement will come as well under President Biden.

EPA Enforcement Annual Results FY 2020, U.S. Environmental Protection Agency (January 2021)

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