

EPA's Enforcement, Compliance Trends, & Initiatives

Speaker



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Roadmap

- **Enforcement**

 - Federal Enforcement Trends

 - State Enforcement Trends

 - Citizen Suit Trends

- **Trends and Initiatives**

 - EPA Enforcement Initiatives

 - Environmental Justice

 - Enhanced Injunctive Relief/NextGen

 - Supplemental Environmental Projects

 - Self-Disclosures

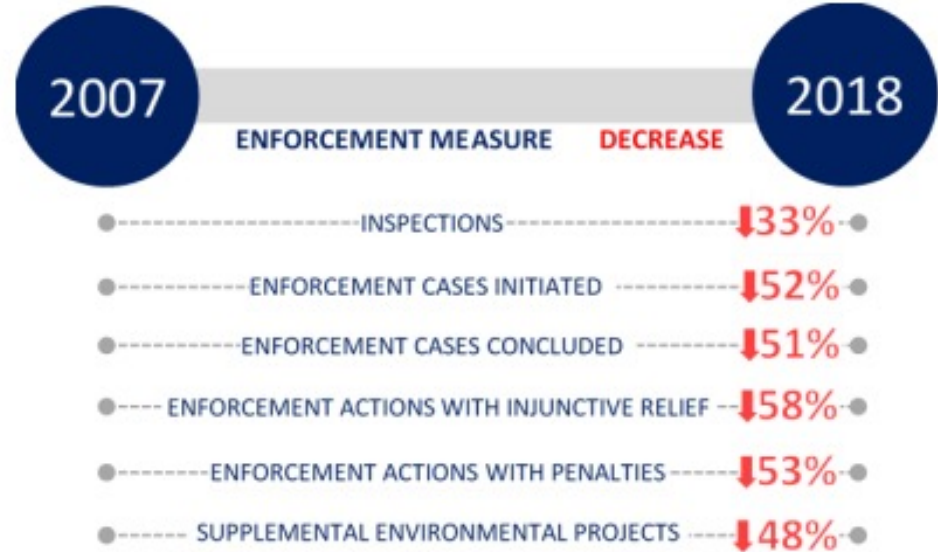
 - What's on the Horizon?




Enforcement



Enforcement: Federal Trends



EPA OIG Report (2020)

 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
THE INSPECTOR GENERAL

March 31, 2020

MEMORANDUM

SUBJECT: EPA's Compliance Monitoring Activities, Enforcement Actions, and Enforcement Results Generally Declined from Fiscal Years 2006 Through 2018
Report No. 20-P-0131

FROM: Sean W. O'Donnell *Sean W O'Donnell*

TO: Susan Parker Bodine, Assistant Administrator
Office of Enforcement and Compliance Assurance

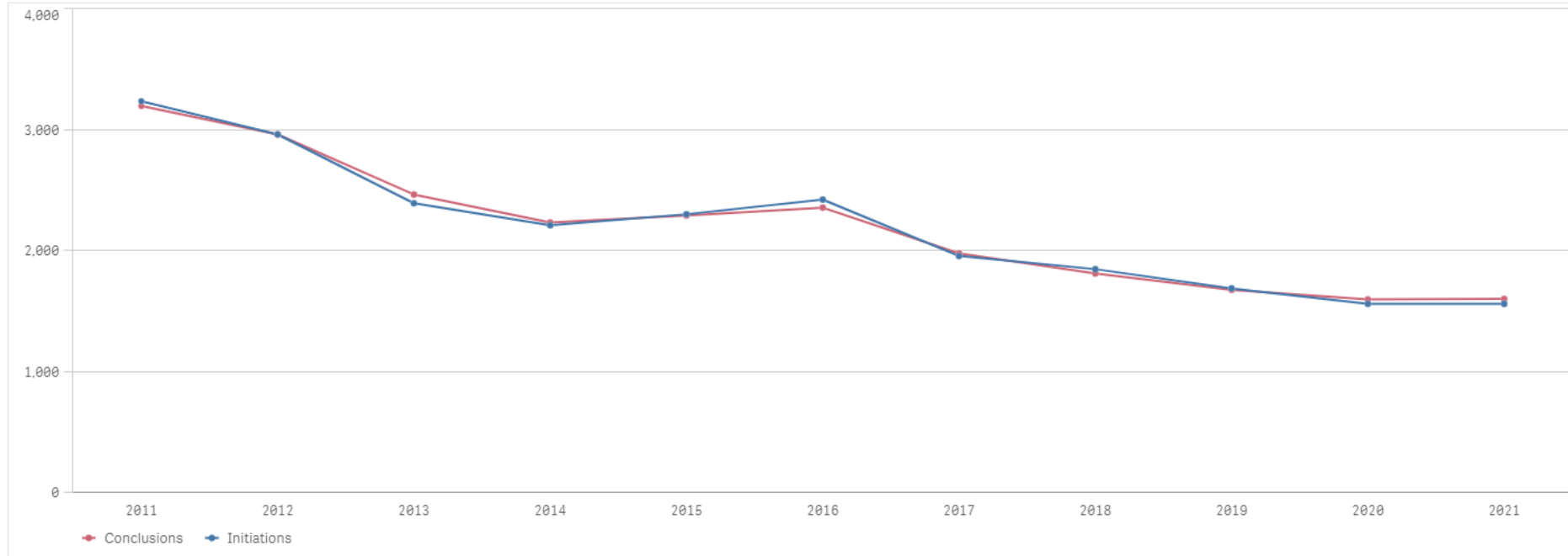
This is our report on the subject audit conducted by the Office of Inspector General of the U.S. Environmental Protection Agency. The project number for this audit was OA&E-FY19-0030. This report contains findings that describe the trends in national enforcement for fiscal years 2006 through 2018. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The Office of Enforcement and Compliance Assurance is responsible for the topic discussed in this report.

You are not required to respond to this report because this report contains no recommendations. However, if you submit a response, it will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

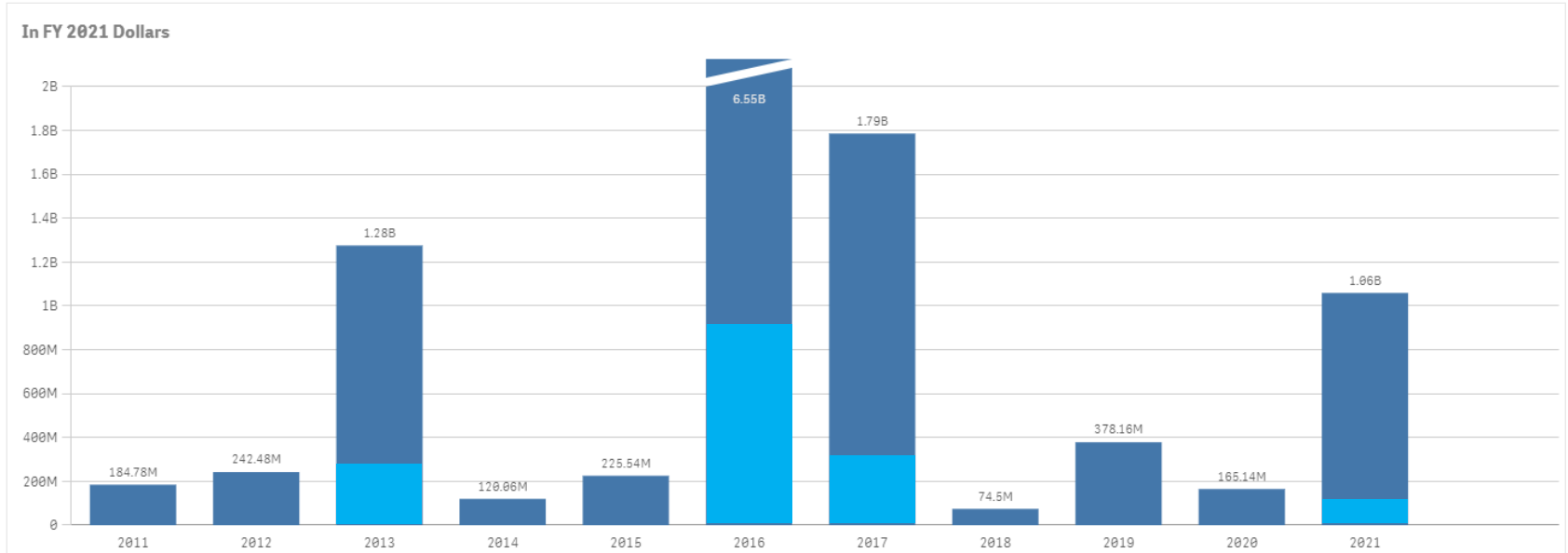
Total Civil Enforcement Case Initiations and Conclusions FY 2011 – FY 2021



Enforcement: Federal Trends

Administrative and Civil Judicial Penalties Assessed

FY 2011 – FY 2021



Civil Penalty Ranges In EPA Enforcement

Table 4: Number and value of concluded enforcement actions with penalties, by action size, FYs 2006–2018

FY	Concluded enforcement actions with penalties of more than \$1 million		Concluded enforcement actions with penalties of \$1 million or less	
	Total number	Total value (in millions, 2018 USD)	Total number	Total value (in millions, 2018 USD)
2006	15	\$76	4,692	\$68
2007	14	33	2,286	52
2008	19	84	2,123	63
2009	19	46	1,942	56
2010	23	60	1,871	65
2011	21	106	1,765	67
2012	22	160	1,806	67
2013	21	1,129	1,477	66
2014	17	53	1,393	59
2015	23	157	1,449	61
2016	26	6,079	1,403	56
2017	17	1,616	1,289	55
2018	9	\$22	1,080	\$48

Source: Source: OIG analysis of the EPA's annual enforcement data.

“Overall, from FYs 2007 through 2018, 88 percent of penalty dollars came from enforcement outcomes of \$10 million or more, despite those enforcement actions comprising just 0.1 percent of the number of actions concluded with penalties.”

- 2020 OIG Report.

Enforcement: Federal Trends

Let's Get Real: Federal Enforcement by the Numbers in 2021

CRIMINAL

- Environmental crime cases opened: 123
- Defendants charged: 105

CIVIL

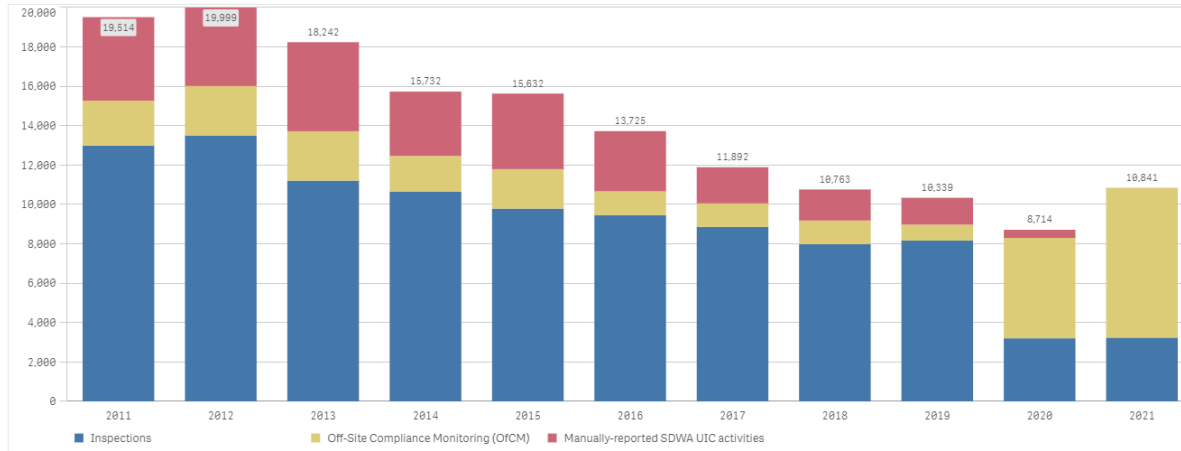
- Civil referrals by EPA to the Department of Justice: 98
- Civil judicial complaints filed with federal court: 88
- Civil judicial enforcement case conclusions: 114

ADMINISTRATIVE

- Final Administrative Penalty Orders: 890

Enforcement: Federal Trends

Federal Compliance Monitoring Activities Conducted by EPA FY 2011 – FY 2021



- During FY 2020 and FY 2021, the COVID-19 public health emergency severely constrained EPA's ability to perform on-site inspections in the field. In response, EPA emphasized off-site compliance monitoring activities (OfCM), which are activities EPA performs, but not in-person at a facility, to determine a facility's compliance.
- In FY 2021, EPA increased the number of off-site compliance monitoring activities by over 49% percent as compared to FY 2020.
- Inspections performed by EPA represent a fraction of the total number of inspections conducted across the programs. Most inspections in many programs are performed by states. For information on inspections reported by states see [ECHO's "EPA/State Dashboards"](#).
- EPA continued to focus on the highest priority work, as evidenced by the fact that 20% of FY 2021 inspections address National Compliance Initiatives.

1. An inspection is a compliance monitoring activity performed on-site at a regulated facility; OfCM activities are not performed on-site. Manually-reported SDWA UIC activities can include both on or off-site activities. Therefore, those UIC activities are listed separately. EPA stopped collecting these data separately in FY 2021.
 2. Prior to FY 2020, OECA used a different methodology for deciding which off-site compliance monitoring activities would be reported in its Annual Results and did not collect data on all off-site compliance monitoring activities conducted. The totals for FY 2019 and earlier years reflect the prior methodology. Use caution when comparing FY 2020 and FY 2021 results to prior years.

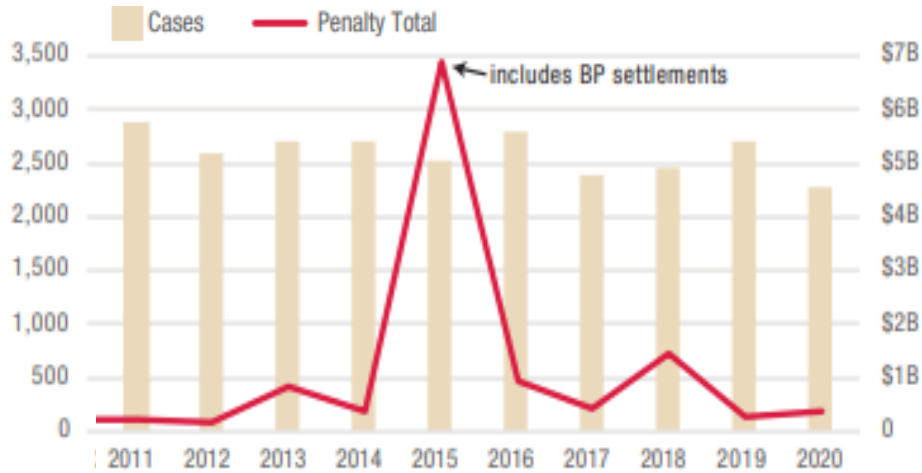
[Show Graph](#)
[Show Table](#)

[Export Data](#)

Enforcement: State Trends

- Over the past two decades, state regulatory agencies and attorneys general have brought more than **50,000 environmental enforcement actions** against private sector entities
- Enforcement has resulted in more than **\$20 billion** in fines, settlements, and other payments
- Note that some states have multiple agencies with enforcement authority. For example, California has at least five agencies – the California Air Resources Board, the Regional Water Boards, DTSC, Department of Pesticide Regulation, and CalRecycle – that have enforcement authority for environmental laws

Enforcement: State Trends

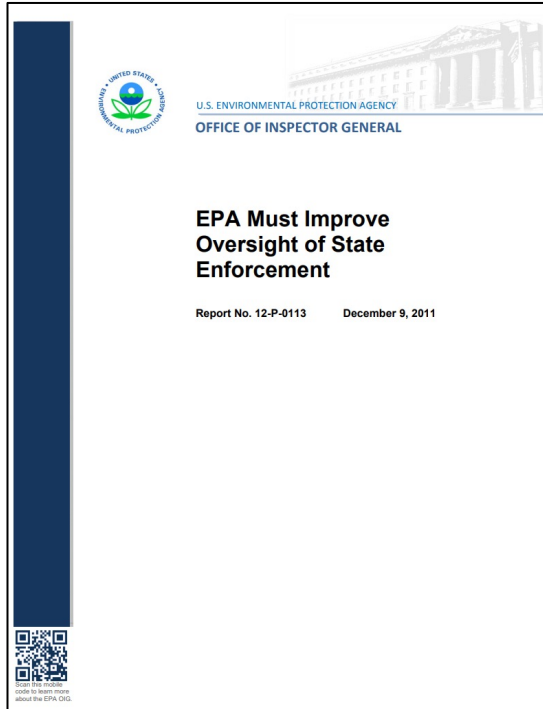


Year	Cases	Penalty Total
2011	2888	\$277,076,980
2012	2582	\$219,919,051
2013	2696	\$878,780,162
2014	2706	\$434,046,779
2015	2529	\$6,933,214,918
2016	2793	\$969,067,065
2017	2389	\$459,290,337
2018	2465	\$1,492,624,839
2019	2712	\$347,676,979
2020	2282	\$448,695,319

Penalty Totals by Year

Source: <https://goodjobsfirst.org/wp-content/uploads/docs/pdfs/otherregulators.pdf>

Enforcement: State Trends



- Enforcement can be inconsistent, particularly between states.

EPA's Office of Inspector General Report (2011) concluded:

- “[S]tate enforcement programs frequently do not meet national goals, and states do not always take necessary enforcement actions ...”
- “State enforcement programs are underperforming EPA data indicate that noncompliance is high and the level of enforcement is low.”

Enforcement: State Trends

- Four states – Arkansas, Kansas, Oklahoma, and Nevada – handled fewer than 100 disclosed environmental cases since 2000; while 19 states have handled 1,000 or more during the same period. Note, however, that data for enforcement in some of these cases is almost non-existent online and hard to track.
- The median number of cases per state since 2000 is 500, average jumps to 1,022 (largely due to a high volume of cases handed by Texas; without Texas in the data, the average is 853)
- The ten states with the most cases handled a total of 31,583 enforcement actions, which is 39 times the total of the ten states with the fewest.

Enforcement: State Trends

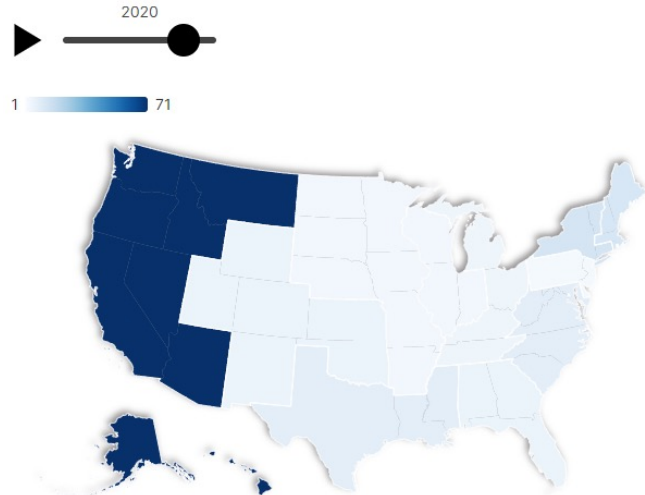
Rank	State	Cases	Penalty Total
1	Texas	9509	\$809,621,213
2	Pennsylvania	4294	\$343,258,501
3	California	3571	\$1,127,704,103
4	New Jersey	3002	\$992,964,687
5	Florida	2432	\$48,177,876
6	Kentucky	2091	\$47,974,667
7	Tennessee	1844	\$71,350,048
8	Indiana	1731	\$57,943,682
9	Colorado	1613	\$196,792,203
10	North Carolina	1496	\$959,207,753
11	Oregon	1477	\$39,697,609
12	South Carolina	1379	\$24,984,579
13	Massachusetts	1372	\$476,902,677

Rank	State	Cases	Penalty Total
14	Georgia	1346	\$23,704,492
15	Illinois	1279	\$150,716,130
16	Alabama	1226	\$52,921,660
17	Minnesota	1172	\$895,443,551
18	Ohio	1148	\$192,955,971
19	Virginia	1078	\$84,894,067
20	Louisiana	733	\$77,494,765
21	Washington	697	\$136,174,555
22	Connecticut	647	\$75,941,832
23	Arkansas	607	\$11,019,649
24	Maryland	586	\$65,712,408
25	New York	548	\$121,835,750
26	Rhode Island	500	\$26,059,007

Enforcement: Citizen Suit Trends

Environmental Citizen Suit Filings, By Circuit

This graphic includes all identifiable citizen suit claims made under five key federal environmental statutes from the past five years.



Source: [Bloomberg Law docket search](#) • Data are up to date as of March 23, 2021. **Bloomberg Law**

- Between 2017 and 2020: 566 citizen suits filed under five federal statutes
- Breakdown: Clean Water Act (414), Resource Conservation & Recovery Act (145), Clean Air Act (139), and the Safe Drinking Water Act (42)
- The most filing occurred in 2020: 146 suits
- The fewest in 2018: 75 suits

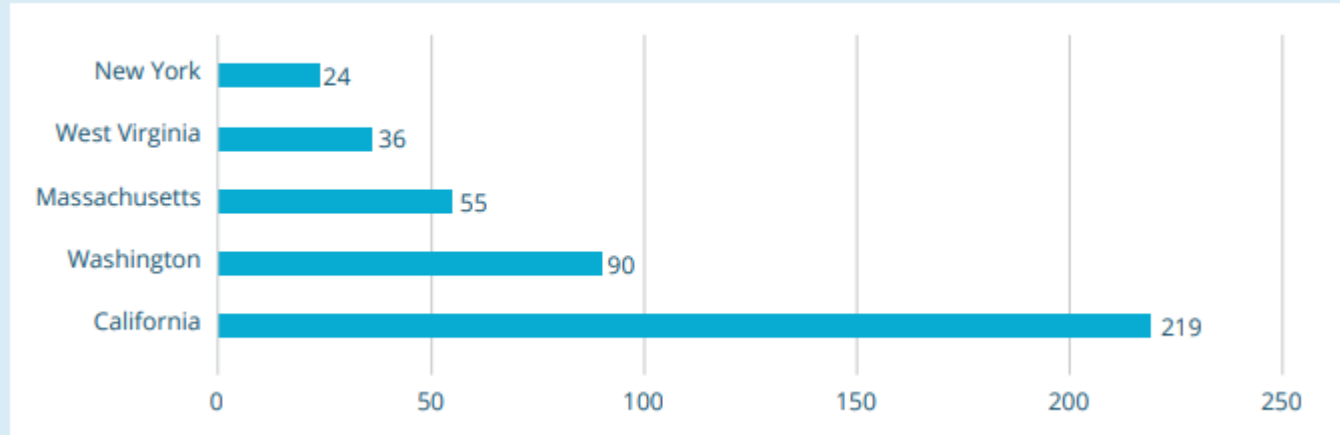
Enforcement: Citizen Suit Trends



Year	Number of RCRA 60-Day Notice Letters for California facilities	Number of CWA 60-Day Notice Letters for California facilities
2015	6	181
2016	30	108
2017	54	63
2018	18	44

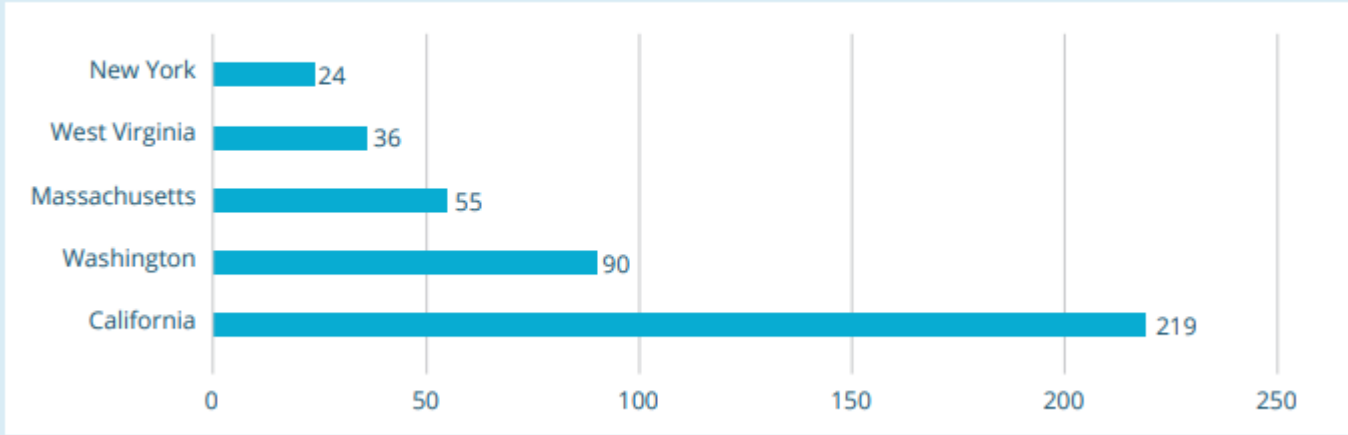
Enforcement: Citizen Suit Trends

Citizen Suits Alleging Clean Water Act Violations by State (2010 – 2016)



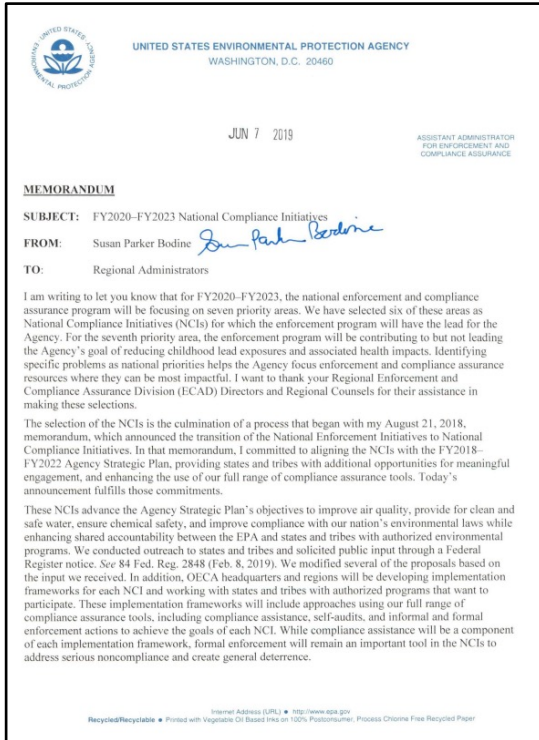
Enforcement: Citizen Suit Trends

Citizen Suits Alleging Clean Water Act Violations by State (2010 – 2016)



Compliance Trends and Initiatives

EPA Enforcement Initiatives



- National Compliance Initiatives f/k/a the “National Enforcement Initiatives”
- Issued in June 2019; will expire in September 2023
- Focuses EPA enforcement efforts and coordination with state and tribal programs
- Four overarching priorities: Improving Air Quality, Ensuring Clean and Safe Water, Reducing Risk from Hazardous Chemicals; also Lead Action Plan

National Compliance Initiative: Air Quality

Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants from Stationary Sources – Focuses on reducing emissions of volatile organic compounds (VOCs) and hazardous air pollutants (HAPs). For VOC emissions, the NCI will focus on significant sources of VOCs that have a substantial impact on air quality and (1) may adversely affect an area's attainment of National Ambient Air Quality Standards (NAAQS) or (2) may adversely affect vulnerable populations. For HAPs, this NCI will focus on sources that have a significant impact on air quality and health in communities.

Reducing Hazardous Air Emissions from Hazardous Waste Facilities – Focuses on compliance by hazardous waste Treatment Storage and Disposal Facilities and Large Quantity Generators.

Stopping Aftermarket Defeat Devices for Vehicles and Engines – Focuses on stopping the manufacture, sale, and installation of aftermarket defeat devices on vehicles and engines used on public roads as well as on nonroad vehicles and engines. Illegally-modified vehicles and engines contribute substantial excess pollution that harms public health and impedes attainment of air quality standards.

National Compliance Initiative: Clean/Safe Water

Reducing Significant Noncompliance with National Pollutant Discharge Elimination System

(NPDES) Permits – Focuses on increasing the percentage of all NPDES permittees in compliance with their permit. In 2018, EPA Region 9 emphasized enforcement would focus on food processing, as well as metal manufacturing, mining, and CAFOs.

Reducing Noncompliance with Drinking Water Standards at Community Water Systems (CWSs) –

Increase capacity in states, tribes and the EPA to address drinking water violations. The objective is to support the FY 2018–FY 2022 Agency Strategic Plan goal of reducing by 25% by the end of FY 2022 the number of CWSs that are out of compliance with health-based standards. In FY 2018, 7% of the nation's CWSs had at least one health-based violation.

National Compliance Initiative: Accidental Release

Reducing Risks of Accidental Releases at Industrial and Chemical Facilities – Focuses on reducing risk to human health and the environment by decreasing the likelihood of chemical accidents. EPA has found that many regulated facilities are neither managing adequately the risks they pose nor ensuring the safety of their facilities to protect surrounding communities as required under Clean Air Act Section 112(r).

Environmental Justice

- **Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021)**

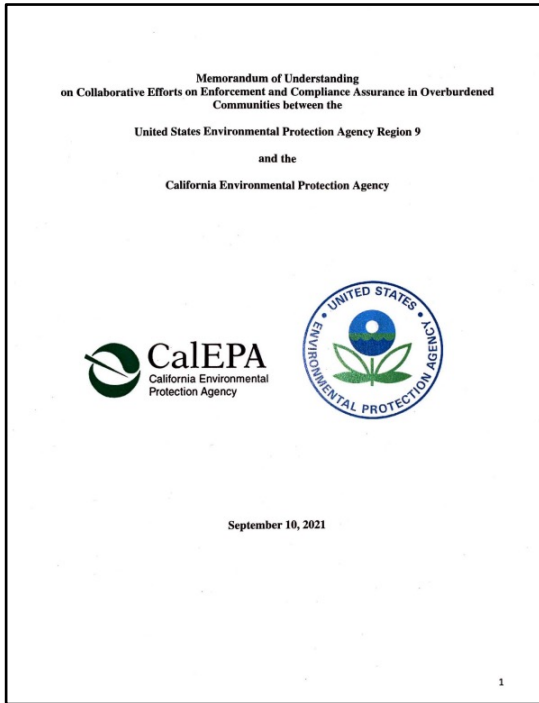
“It is therefore the policy of my Administration that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”

- **Administrator Regan’s message to EPA employees entitled “Our Commitment to Environmental Justice” (April 7, 2021)**

“While EPA has advanced environmental justice initiatives in the past, we have much more work to do. ... To this end, I am directing my leadership team ... to identify ways to ensure that the country’s environmental laws—and the policies implemented under them—deliver benefits to all individuals and communities.”

Environmental Justice

EJ Memorandum of Understanding between US EPA Region 9 and CalEPA (September 10, 2021)



- Increase joint inspections in overburdened communities
- Share and/or jointly develop metrics for determining pollution burdens and vulnerability
- Coordinate enforcement responses, including joint judicial enforcement actions in overburdened communities
- Expand engagement with overburdened communities to ensure that targeting of enforcement resources, and compliance-related activities, are fully informed by the knowledge and lived experience of these communities



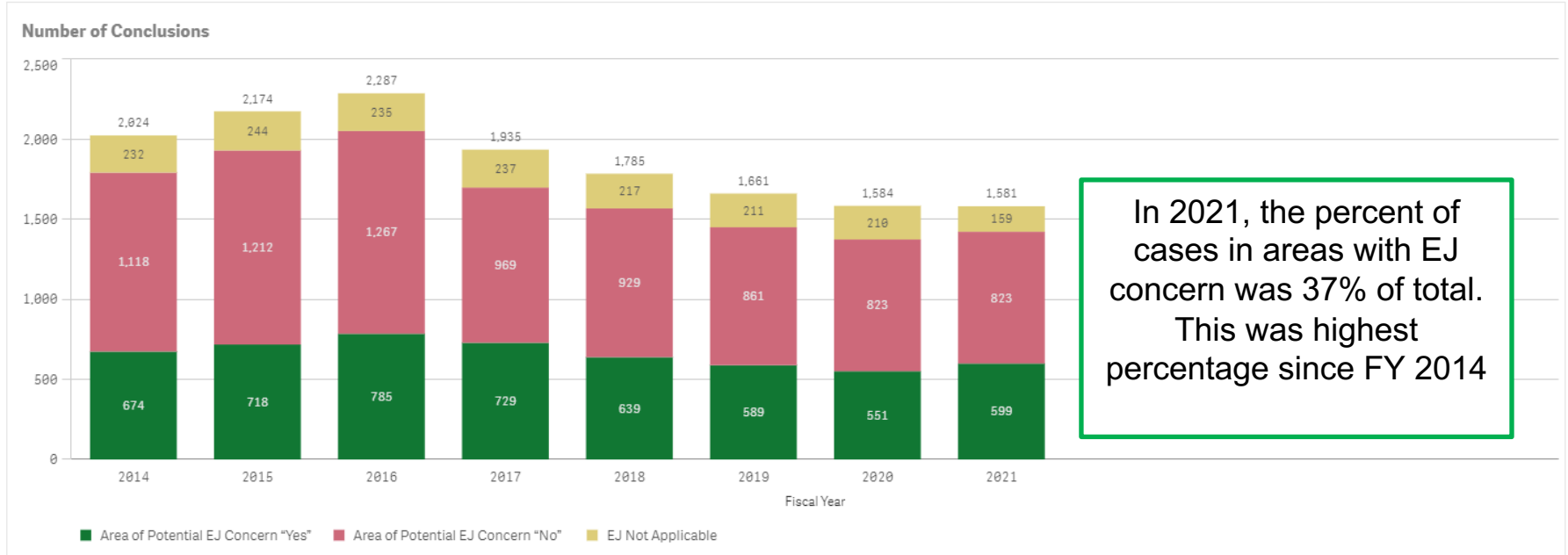
US DOJ has established an Office of Environmental Justice

May 5, 2022, Associate AG Gupta signed the Environmental Justice Enforcement Strategy with four core principles:

1. Prioritize cases that will reduce public health and environmental harms to overburdened and underserved communities;
2. Make strategic use of all available tools to address environmental justice concerns;
3. Meaningfully engage with impacted communities; and
4. Be transparent about environmental justice efforts, as well as the results of those efforts

Total Civil Enforcement Case Conclusions in Areas of Potential Environmental Justice Concern

FY 2014 – FY 2021

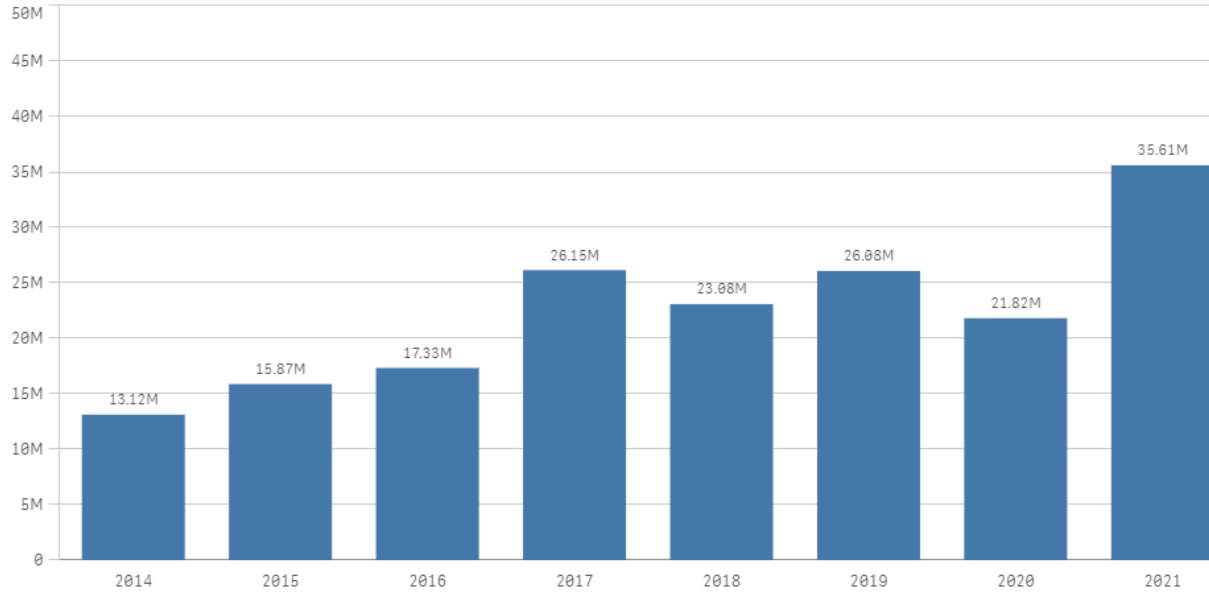


1. *Area of Potential EJ Concern "Yes"* = Cases which have at least one facility in an area of potential EJ concern. *Area of Potential EJ Concern "No"* = Cases where none of the facilities are in an area of potential EJ concern. *EJ Not Applicable* = The facilities at these cases are excluded from EJ reporting.

Administrative and Civil Judicial Penalties Assessed in Areas of Potential Environmental Justice Concern

FY 2014 – FY 2021

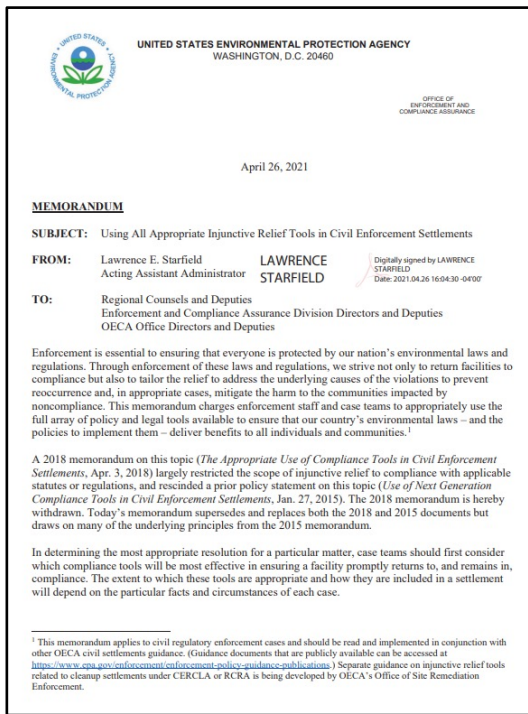
In FY 2021 Dollars



In 2021, penalties for facilities in areas of potential EJ concern totaled about 26% of all penalties (excluding two high outliers)

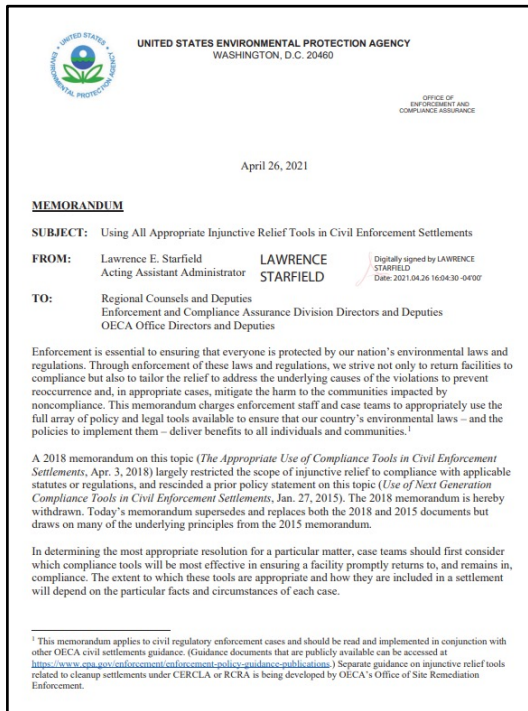
Enhanced Injunctive Relief/NextGen

Using All Appropriate Injunctive Relief Tools in Civil Enforcement Settlements (April 2021)



“ [EPA] enforcement staff and case teams [shall] appropriately use the full array of policy and legal tools available to ensure that our country's environmental laws – and the policies to implement them – deliver benefits to all individuals and communities.”

Enhanced Injunctive Relief/NextGen



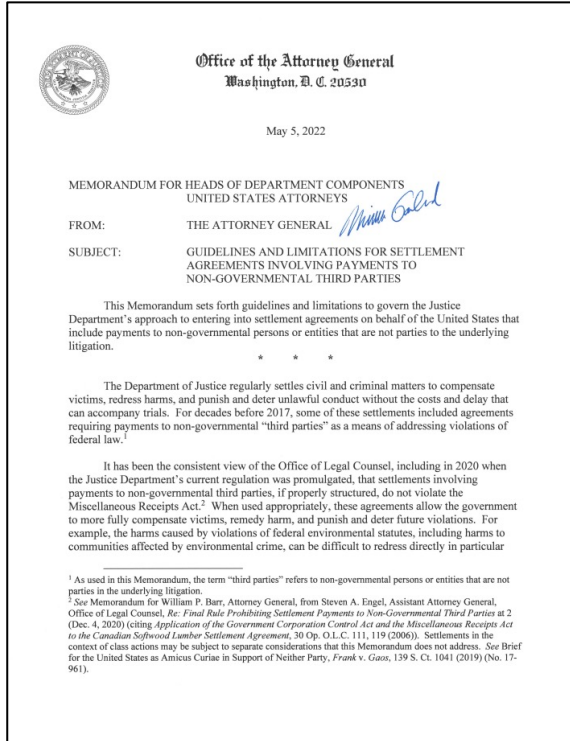
EPA Compliance Tools:

- Advance Monitoring
- Audits and Independent Third-Party Verification
- Electronic Reporting
- Increased Transparency of Compliance Data

Settlement Terms to “address past harm to communities caused by the noncompliance or otherwise benefit communities impacted by noncompliance”:

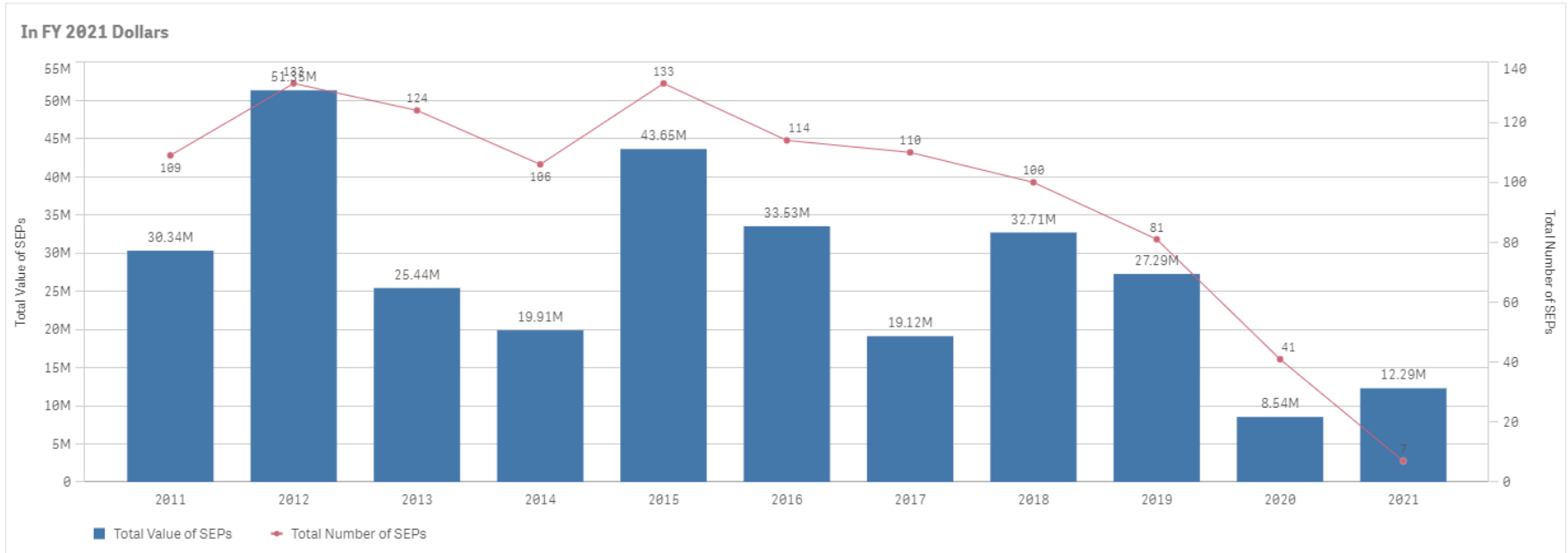
- Mitigation
- Supplemental Environmental Projects
- Stipulated Remedies

Supplemental Environmental Projects



- May 2022: Attorney General Garland memo issued and DOJ issues interim final rule revoking prohibition on SEPs. 87 Fed. Reg 27,936.
- Terms: (1) SEPs must have a strong connection to the underlying violation of federal law, be consistent with the underlying statute, reduce the underlying violation's detrimental effects, and reduce the likelihood of similar future violations; (2) the DOJ shall not propose the selection of any party or beneficiary of any projects; and (3) payments to non-governmental third parties must not be solely for public education or awareness projects, generalized research, or unrestricted cash donations.

Supplemental Environmental Projects (SEPs) FY 2011 – FY 2021



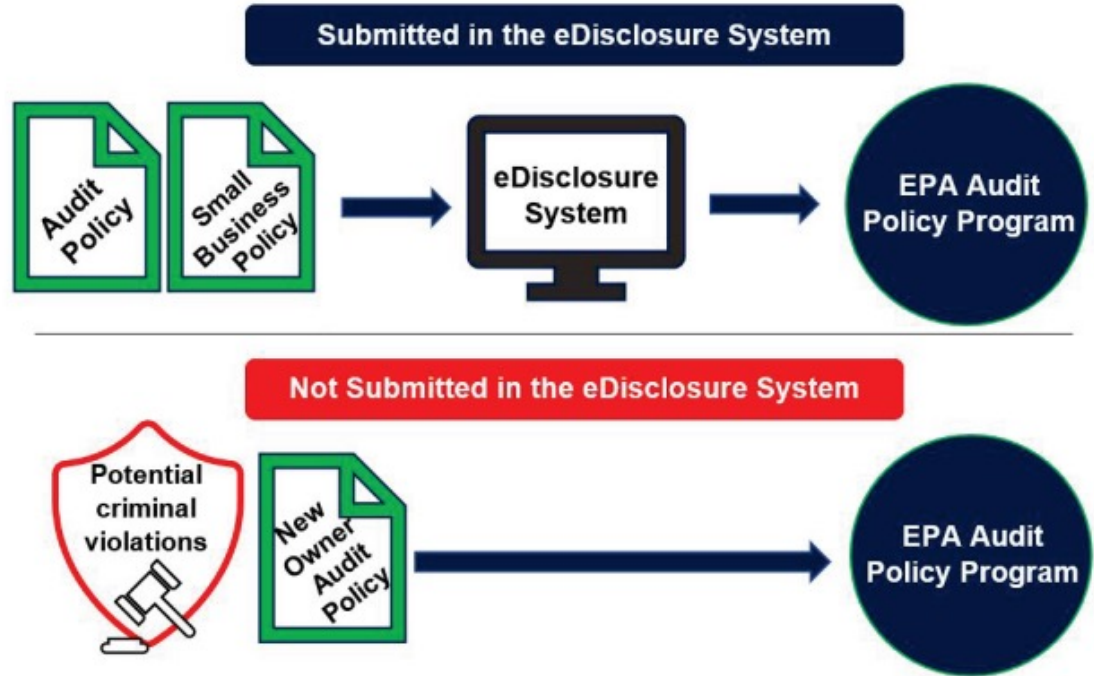
1. A single settlement can have multiple SEPs.
2. All prior FY dollar figures in the graph are adjusted to reflect the current value in FY 2021 dollars based on the monthly rate of inflation/deflation as determined by the U.S. Department of Labor Consumer Price Index for All Urban Consumers.

Self-Disclosure

1. Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (a/k/a the “**EPA Audit Policy**”). 65 Fed. Reg 19,618 (April 11, 2000).
2. Interim Approach to Applying the Audit Policy to New Owners (a/k/a **New Owner Audit Policy**) (August 1, 2008).
3. **Small Business Compliance Policy**. 65 Fed. Reg. 19,630 (April 11, 2000). Applicable to business with < 100 employees.
4. **EPCRA violation relief** via self-reporting to eDisclosure system.

Self-Disclosure

- In 2015, EPA created an automated system for receiving and processing certain self-disclosures



Self-Disclosure

- Between 1995 and 2000, more than 10,000 regulated entities have voluntarily self-disclosed violations at nearly 28,000 separate facilities under the audit policy
- More than half of the self-disclosed violations have been for EPCRA reporting violations
- More than 2,800 disclosures have been submitted to the EPA via the eDisclosure system between 2015 and 2021

Self-Disclosure: Audit Policy/eDisclosure

	Category 1	Category 2
Eligibility	<ul style="list-style-type: none"> EPCRA violations that meet all <i>Audit Policy</i> conditions. EPCRA violations that meet all <i>Small Business Compliance Policy</i> conditions. 	<ul style="list-style-type: none"> All non-EPCRA violations. EPCRA violations for which the regulated entity can only certify compliance with <i>Audit Policy</i> Conditions 2–9. EPCRA/CERCLA violations excluded from Category 1.
eDisclosure system response	<p>Notice of Determination: Violations are resolved with no assessment of civil penalties, conditioned on the accuracy and completeness of the regulated entities' disclosures.</p>	<p>Acknowledgement Letter: The EPA has received the disclosure and will make a determination as to eligibility for penalty mitigation if and when it considers taking enforcement action for environmental violations.</p>
EPA action	<p>The EPA will spot-check disclosures to ensure conformance with EPCRA, the <i>Audit Policy</i>, the <i>Small Business Compliance Policy</i>, and eDisclosure requirements.</p>	<p>The EPA will screen disclosures for significant concerns, such as criminal conduct and potential imminent hazards.</p>

Self-Disclosure: Audit Policy Req.

The nine conditions listed in the *Audit Policy*:

1. Systematic discovery.
2. Voluntary discovery.
3. Prompt disclosure in writing to the EPA within 21 days of discovery or such shorter time as may be required by law.
4. Independent discovery and disclosure.
5. Correction and remediation within 60 calendar days, in most cases, from the date of discovery.
6. Prevention of recurrence of the violation.
7. Disclosure involving nonrepeat violations.
8. Disclosure of an eligible violation. Certain types of violations are ineligible, such as those that result in serious actual harm; that may present an imminent and substantial endangerment; and that violate the terms of an administrative order, judicial order, or consent agreement.
9. Cooperation with the EPA, such as providing information as necessary and requested by the EPA.

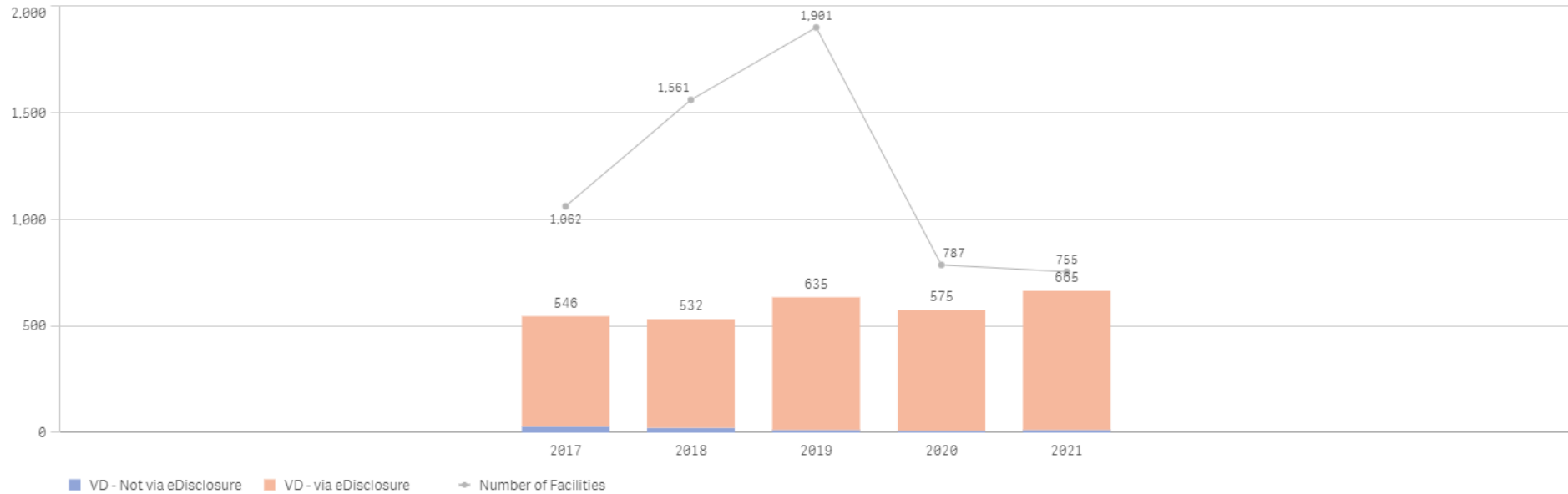


- Allows for significant civil penalty reductions: (i) 100% of gravity component if all conditions are met; (ii) 75% of gravity if all conditions met *except* systematic discovery

EPA Voluntary Disclosure Programs - Number of Disclosures/New Owner Audit Agreements and Facilities

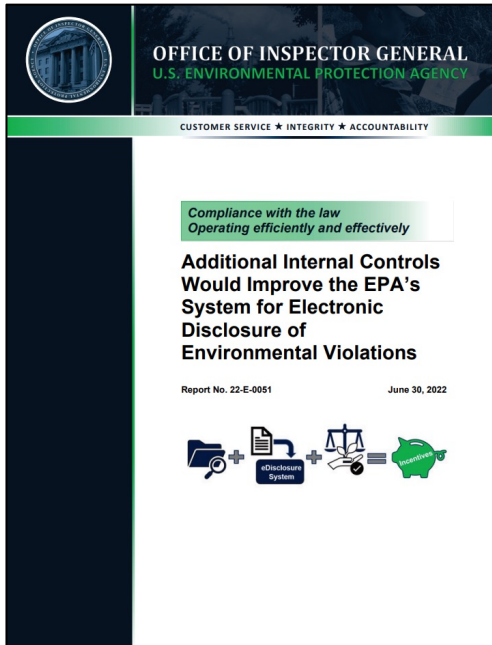
FY 2017 – FY 2021

Number of Disclosures/New Owner Audit Agreements and Facilities



1. VD stands for Voluntary Disclosure.

Self-Disclosure



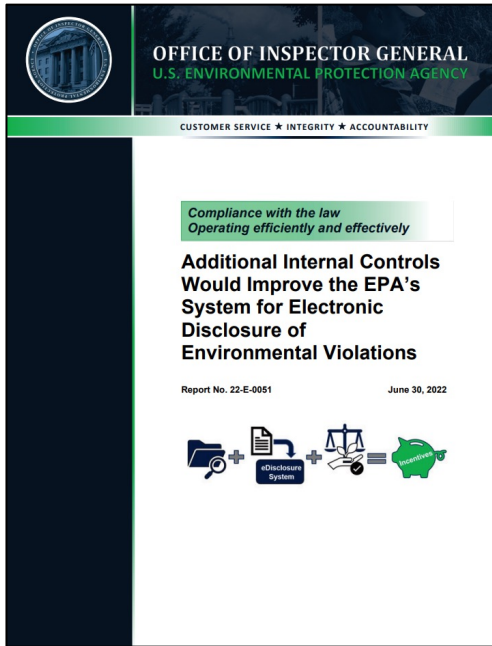
“The eDisclosure system does not have adequate internal controls in place to ensure that the EPA’s screening process is effective and that significant concerns, such as criminal conduct and potential imminent hazards, are identified and addressed by the Office of Enforcement and Compliance Assurance and the EPA regions.”

Self-Disclosure



- No formal, written EPA policy defining screening process for Category 2 violations
- No regular training at EPA on the system
- Half of the ten EPA regions **do not screen Category 2 disclosures**
- Only Regions 2, 5 and 8 have standard operating procedures for eDisclosure (but Region 5 said it did not have access to the eDisclosure system)

Self-Disclosure: OIG Recommendations



- Develop national guidance that includes a process for screening eDisclosure submissions for significant concerns
- Provide eDisclosure-specific training to EPA headquarters and regions
- Develop performance measures for the eDisclosure system, as well as a monitoring plan to track its effectiveness
- Assess eDisclosure system functionality to identify and implement improvements

What's On the Horizon?

- Increasing federal enforcement
- NPDES enforcement: 12.6% of facilities in significant non-compliance
- More difficulty terminating decrees
- More emphasis on mitigation and “NextGen” terms in federal settlements
- Broader CWA citizen suits and enforcement due to “functional equivalent” test in *County of Maui*
- More post-disclosure inspections and scrutiny for Category 2 eDisclosures
- Emergent chemicals (e.g., PFAS, Ethylene Oxide)
- Microplastics

Questions & Answers

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Thank you!