

# EPA'S ENFORCEMENT PROGRAM: TAKING THE ENVIRONMENTAL COP OFF THE BEAT

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## HEARING BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTEENTH CONGRESS

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## **EPA'S ENFORCEMENT PROGRAM: TAKING THE ENVIRONMENTAL COP OFF THE BEAT**

**TUESDAY, FEBRUARY 26, 2019**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:31 a.m., in room 2322, Rayburn House Office Building, Hon. Diana DeGette (chair of the subcommittee) presiding.

Members present: Representatives DeGette, Kennedy, Ruiz, Kuster, Castor, Sarbanes, Tonko, Clarke, Peters, Pallone (ex officio), Guthrie (subcommittee ranking member), Burgess, McKinley, Griffith, Mullin, Duncan, and Walden (ex officio).

Also present: Representatives Barragán and Soto.

Staff present: Mohammad Aslami, Counsel; Kevin Barstow, Chief Oversight Counsel; Jeffrey C. Carroll, Staff Director; Chris Knauer, Oversight Staff Director; Brendan Larkin, Policy Coordinator; Jourdan Lewis, Policy Analyst; Perry Lusk, GAO Detailee; Jon Monger, Counsel; Elysa Montfort, Press Secretary; Kaitlyn Peel, Digital Director; Mel Peffers, Environment Fellow; Tim Robinson, Chief Counsel; Nikki Roy, Policy Coordinator; Andrew Souvall, Director of Communications, Outreach, and Member Services; C. J. Young, Press Secretary; Jen Barblan, Minority Chief Counsel, Oversight and Investigations; Mike Bloomquist, Minority Staff Director; Adam Buckalew, Minority Director of Coalitions and Deputy Chief Counsel, Health; Margaret Tucker Fogarty, Minority Staff Assistant; Brittany Havens, Minority Professional Staff Member, Oversight and Investigations; Peter Kielty, Minority General Counsel; Ryan Long, Minority Deputy Staff Director; Peter Spencer, Minority Senior Professional Staff Member, Environment and Climate Change; and Natalie Sohn, Minority Counsel, Oversight and Investigations.

### **OPENING STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO**

Ms. DEGETTE. The Subcommittee on Oversight and Investigations will now come to order.

Today, the subcommittee is holding a hearing entitled "EPA Enforcement: Taking the Environmental Cop Off the Beat." The purpose of today's hearing is to explore transit enforcement measures during the Trump administration and whether the EPA is ensuring consistent enforcement and an implementation of Federal environ-

mental regulations and laws, as well as resulting impacts on human health and the environment.

The Chair recognizes herself for the purpose of an opening statement.

For decades, this Oversight and Investigations Panel has worked to ensure that the Environmental Protection Agency is doing its job, including enforcement of our Nation's environmental laws. This work continues today.

It is important to remember that when we talk about enforcement what we are really talking about is protecting our environment and our health from polluters. We are talking about keeping our rivers and waterways clean and harmful pollutants out of the air that each and every one of us breathes. If the EPA isn't enforcing the laws that we already have on the books, then we all pay the price.

Unfortunately, the price that some of us pay is greater than others, as some of our Nation's bigger polluters are often located in or near minority and low-income communities. We have a responsibility to care for them, as we do every single person who calls America home. And ensuring the EPA is doing its job and holding polluters accountable is critical toward protecting their health and well-being.

Now, I understand that enforcing our environmental laws can often be a long and intensive process. I also understand that there is not one single measurement that can be used to accurately evaluate the Agency's overall efforts to enforce our laws in any given year. That said, there are some indicators that are more telling than others and, when combined with others, can help to paint a pretty clear picture of what is really going on.

The numbers you will hear today are from the EPA's own Office of Enforcement and Compliance Assurance and were included in a report released earlier this month detailing the Agency's 2018 enforcement and compliance activities. I am sure that the EPA will try to use these numbers today to paint a rather rosy interpretation of the enforcement efforts last year and probably they will talk about how proud they are of everything they did last year. But what I see when I look at this report is an Agency that simply is just sitting on its hands. I see an Agency that is giving polluters a free pass, and it is putting our health and our environment at risk.

When EPA enforcement activities go down, pollution goes up. That is just a fact. And the latest numbers from the EPA show its overall enforcement activities for 2018 were at historically low levels. For example, and again, this is according to the Agency's own numbers, in fiscal year 2018, the EPA assessed polluters a total of \$69 million in civil penalties — \$69 million. That is the lowest level of penalties assessed to polluters since the EPA created the Office of Enforcement over 20 years ago in 1994.

Now again, I understand that enforcement efforts can often take months or even years to complete and that some of that work done in one year may not be accurately reflected in the overall total for any given year but the numbers seem to indicate a disturbing trend. And while no one factor can tell the whole story, there are

some indicators that, when taken together, can help us paint a pretty clear picture of EPA's overall efforts to enforce our laws.

For example, the total number of facilities that the EPA inspected last year is the lowest since 1994. The total number of civil cases it initiated is the lowest since 1982. And the number of cases it referred to the Department of Justice, the lowest since 1976, my freshman year in college.

So, while I would like to sit here and believe that the EPA is serious about enforcing our Federal environmental laws, it is hard to ignore the facts and it is hard to ignore headline after headline which suggests the opposite. For example, Washington Post: "Under Trump, EPA Inspections Fall to a 10-Year Low." New York Times: "EPA Enforcement Drops Sharply in Trump's 2nd Year in Office." NBC News: "EPA Criminal Action Against Polluters Hits 30-Year Low under Trump." Christian Science Monitor: "Has the EPA Lost Its Teeth?"

So if the EPA isn't enforcing our environmental laws, who is? If the EPA isn't acting as the Nation's environmental watchdog that it was created to be, then it is just simply not acting in the best interest of the American taxpayers.

The question is why. Why is the EPA sitting on the sidelines?

Based on data provided by the Agency, the EPA has cut at least 17 percent of the personnel and that doesn't even include the personnel of the ten regional offices. We are also going to hear that the people who have remained at the EPA are facing even greater challenges when trying to perform their laws.

Congress can do something about this. We need to require compliance. That is why we are having this hearing and that is why we expect the EPA to do its job.

So, I am looking forward to the testimony today. I am looking forward to hearing from everybody.

[The prepared statement of Ms. DeGette follows:]

#### PREPARED STATEMENT OF HON. DIANA DEGETTE

For decades, this oversight and investigations panel has worked to ensure that the Environmental Protection Agency is doing its job—including enforcing our Nation's environmental laws.

That work continues today.

It's important to remember, that when we talk about enforcement, what we are really talking about is protecting our environment—and our health—from polluters.

We're talking about keeping our rivers and waterways clean; and harmful pollutants out of the air that each and every one of us breathes.

If the EPA isn't enforcing the laws that we already have on the books, then we all pay the price.

Unfortunately, the price some of us pay is greater than others—as some of our Nation's biggest polluters are often located in, or near, mostly minority and low-income communities.

We have a responsibility to care for them, as we do every single person who calls America home. And ensuring the EPA is doing its job, and holding polluters accountable, is critical toward protecting their health and well-being.

Now, I understand that enforcing our environmental laws can often be a long and intensive process. I also understand that there is not one single measurement that can be used to accurately evaluate the Agency's overall efforts to enforce our laws in a given year.

That said, there are some indicators that are more telling than others, and when combined with others can help to paint a pretty clear picture of what's really going.

The numbers you'll hear today are from the EPA's own Office of Enforcement and Compliance Assurance, and were included in a report it released earlier this month detailing the Agency's 2018 enforcement and compliance activities.

I'm sure the EPA will try to use these numbers today to paint a rather rosy interpretation of its enforcement efforts last year. And they'll probably go on and on about how proud they are of all that they did last year.

But what I see when I look at this report is an Agency that's sitting on its hands. I see an Agency that's giving polluters a free pass. And it's putting our health and environment at risk.

When EPA enforcement activities go down, pollution goes up—that's a fact. And the latest numbers from the EPA show its overall enforcement activities for 2018 were at a historically low levels.

For example—and, again, this is according to the Agency's own numbers—in fiscal year 2018 the EPA assessed polluters a total of \$69 million in civil penalties. \$69 million! That's the lowest total amount of penalties assessed to polluters since the EPA created the office of enforcement in 1994.

Again, I understand that enforcement efforts can often take months and even years to complete, and that some of the work done in one year may not be accurately reflected in the overall total for that given year. But these numbers seem to suggest a disturbing trend taking place at EPA.

And while no one figure can tell the whole story, there are some indicators that—when taken together—can help us paint a pretty clear picture of the EPA's overall efforts to enforce our laws.

For example, the total number of facilities that the EPA inspected last year is the lowest since 1994. The total number of civil cases it initiated is the lowest since 1982. And the number of cases it referred to the Department of Justice—the lowest since 1976.

So, while I'd like to sit here and believe that the EPA is serious about enforcing our Federal environmental laws, it's hard to ignore the facts. And it's hard to ignore headline after headline which suggest the opposite. For example:

\* *Washington Post* [quote]: "Under Trump, EPA inspections fall to a 10-year low."  
 \* *New York Times* [quote]: "EPA Enforcement Drops Sharply in Trump's 2nd Year in Office."

\* NBC News: [quote] "EPA criminal action against polluters hits 30-year low under Trump."

\* *Christian Science Monitor* [quote]: "Has the EPA Lost Its Teeth?"

If the EPA isn't enforcing our environmental laws, who is?

If the EPA isn't acting as the environmental watchdog that it was created to be, then it's not acting in the best interest of the American taxpayers who fund it.

The question is: why?

Why is the EPA suddenly sitting on the sidelines?

Based on data provided by the Agency, since President Trump took office, EPA has cut at least 17 percent of the personnel assigned to its main enforcement office. That doesn't include any of the personnel they have lost at any one of the EPA's 10 regional office, where much of the enforcement work really gets done.

We'll also hear today how those who remained at EPA are facing even greater challenges when trying to perform their jobs under this administration.

When President Trump announced his plans to cut the EPA by nearly 25 percent, he sent a pretty clear message to polluters and to the career staff at EPA where his priorities lied.

Had those proposed cuts been successful, EPA's budget would have been cut by nearly \$2.6 billion and its workforces would have reduced by more than 3,100 employees.

Thankfully, Congress was able to prevent those massive cuts from going into effect. But, by simply proposing them in the first place, this administration accomplished its goal of sending a pretty clear message.

Our committee has heard from Agency staff who have reported feeling pressure from EPA political appointees to go easy on industry. The EPA, under the Trump administration, has even instituted a new political review process before Agency staff can move forward with any enforcement actions against a polluter.

If that weren't enough, the EPA—under the Trump administration—has continued to delegate more and more of its enforcement authority to the States—which all have varying laws and different approaches to enforcing them.

Delegating enforcement of our Nation's environment laws to the States makes them moot. And to me, that's unacceptable.

The EPA's argument that its enforcement efforts should not be evaluated simply on the amount of fines it issues or actions it takes, but instead on how many pol-

luters it's able to bring into compliance, is a farce. Compliance without enforcement does not work.

And while encouraging polluters to comply with our environmental laws is certainly a valiant effort to undertake, turning a blind eye to some of the worst polluters in the process will not be tolerated.

If evidence and experience have shown us one thing it's that the worst polluters are also the most unlikely to voluntarily raise their hands and ask for help.

And while we are always glad to hear about the EPA's successes in allowing an industry to self-police itself, I am always skeptical when I hear of a government Agency allowing the foxes to guard the henhouse.

It has been widely reported that the Trump administration has appointed dozens of former industry lobbyists to high-ranking jobs within the administration. One of the things that troubles me most is how many of those appointees are at the EPA.

Just yesterday, in fact, The Washington Post reported that EPA political leaders may have interfered in several enforcement matters undertaken by the Agency—including some that involved former industry clients, which is a clear violation of ethics rules.

In the past 2 years, we have seen an Agency that's constantly trying to move the goal posts of what is allowable under the law.

We have seen leadership at the EPA attempt to roll back some of our most critical environmental safeguards—including weakening our protections against mercury, loosening our oversight of the oil and gas industry, and undoing the highly successful vehicle fuel-efficiency standards that have worked so well to help reduce our overall greenhouse gas emissions.

Congress has worked too hard, on behalf of the American people, to enact some of the rules and regulations that work to protect our environment and health. And this panel will not sit back and allow this administration to simply ignore those laws.

We expect the EPA to do its job.

We expect it to enforce every single rule and regulation we have the books.

And we expect it to vigorously protect the American people and our environment. Thank you.

Ms. DEGETTE. And at this point, I am now happy to recognize the ranking member for his opening statement.

**OPENING STATEMENT OF HON. BRETT GUTHRIE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY**

Mr. GUTHRIE. Thank you, Chair DeGette, for holding this important hearing today.

Congress has enacted several important laws to protect the environment and human health and the U.S. Environmental Protection Agency, EPA, is responsible for working within its State, Tribal, and Federal partners to help to put these laws into effect. The EPA must develop and enforce environmental regulations for laws such as the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, to name just a few.

I am encouraged by EPA's commitment to ensuring compliance with these important environmental laws and I want to thank the thousands of Federal and State workers who spent countless hours helping to achieve these goals.

Every few years there seems to be a major enforcement action resulting in a substantial amount of penalties and fines. For example, the 2013 enforcement numbers included a settlement with BP following the devastating 2010 Gulf of Mexico spill. Similarly, the 2017 enforcement numbers included the record Volkswagen Clean Air Act civil settlement. In this year, fiscal year 2019, the numbers will include the Fiat Chrysler settlement finalized just last month. In fact, the dollar amount for civil judicial administrative penalties in the fiscal year 2019 is on track to be one of the largest ever.

These enforcement actions are extremely important to help protect the environment, ensure compliance with Federal laws and regulations and are the type of enforcement action the Federal Government is best suited to pursue, rather than the States. But the large fine amounts in certain years does not mean the Agency and its partners are any less diligent about protecting the environment in any other years where these large settlements do not occur.

Therefore, while monitoring enforcement actions is an important tool to promote compliance with environmental laws and regulations, it is important that we don't lose sight of the most important goals, which are protecting the environment and protecting human health.

This administration has emphasized the need to focus on compliance and ensure that a broad range of compliance assurance tools are available for use by the Agency. We have a lot of questions today about what EPA is doing to promote compliance and how programs such as the self-disclosure violations policies can help achieve compliance.

I am looking forward to hearing more about how the EPA is working with States to promote State primacy and authorized programs. As we all know, the EPA works in collaboration with States and tribal organizations to conduct inspections and enforcement. In 2017, the EPA formed a workgroup with the Environmental Council of the States to develop principles and best practices for State and EPA collaboration on a number of issues such as inspections and enforcement.

The working group issued their final report in August 2018. I have heard that these initiatives are working and that States are beginning to feel like they have a seat at the table. The EPA also has worked—also works with other Federal agencies when enforcing some of the environmental laws. That is one reason I am glad we have the Honorable Ron Tenpas on the second panel. Mr. Tenpas previously served as an Assistant Attorney General for the Environment and Natural Resources Division of the U.S. Department of Justice and it will be helpful to hear how the Environment and Natural Resources Division at DOJ works with the EPA to ensure robust enforcement of our Nation's environmental laws.

I think we can all agree that the desired outcome of any compliance program is to prevent pollution and protect our environment for ourselves, our children, and our grandchildren. I am looking forward to hearing about EPA—about how the EPA is working to accomplish these goals. Considering the ebb and flows of enforcement fines and penalties within an administration, let alone between administrations, I hope we don't get ahead of ourselves today and imply that 1 year of slightly lower enforcement accomplishments signals that EPA is not doing its job or ensuring compliance with our Nation's environmental laws.

And I yield back.

[The prepared statement of Mr. Guthrie follows:]

#### PREPARED STATEMENT OF HON. BRETT GUTHRIE

Thank you, Chair DeGette, for holding this important hearing today.

Congress has enacted several important laws to protect the environment and human health and the U.S. Environmental Protection Agency (EPA) is responsible for working with its State, Tribal, and Federal partners to help to put these laws into effect. The EPA must develop and enforce environmental regulations for laws such as the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act, to name just a few. I am encouraged by the EPA's commitment to assuring compliance with these important environmental laws and I want to thank the thousands of Federal and State workers that have spent countless hours helping to achieve these goals.

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I also am looking forward to hearing more about how the EPA is working with the States to promote State primacy in authorized programs. As we all know, the EPA works in collaboration with States and Tribal organizations to conduct inspections and enforcement. In September 2017, the EPA formed a work group with the Environmental Council of the States to develop principles and best practices for State and EPA collaboration on a number of issues, such as inspections and enforcement. The working group issued their final report in August 2018. I've heard that these initiatives are working, and that States are beginning to feel like they have a seat at the table.

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Ms. DEGETTE. Thank you. The Chair will now recognize the chairman of the full committee, Mr. Pallone, for 5 minutes for the purposes of an opening statement.

**OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. PALLONE. Thank you, Madam Chair. Today the committee begins critical oversight of the Trump EPA's enforcement program,

something that the previous Republican majority ignored. Congress can pass all the legislation it wants to protect against air pollution, contaminated drinking water, and hazardous chemical risks but, ultimately, the EPA must implement and enforce those laws.

It is, therefore, impossible to assess EPA's effectiveness without looking at whether the Agency is enforcing the Federal environmental statutes that are already on the books and there is no doubt that the Trump EPA's enforcement records is abysmal, the worst in decades.

Over the past few weeks, news reports suggest that EPA is simply not maintaining the type of vigorous enforcement that is needed to protect our environment and communities from the worst polluters. For example, a report in the Christian Science Monitor found that the number of inspections conducted by the Agency in 2018 were the lowest since records began in 1994. It also reported that the number of civil cases initiated by the EPA was the lowest since 1982 and the number of judicial referral cases for 2018 was 110. That is less than half the average annual number of 239. There is no way to sugar-coat these numbers.

It appears that the Trump EPA is relying on industry to voluntarily come forward and disclose when they are not in compliance. Nobody here can really believe that the worst offenders of environmental laws would voluntarily come forward to disclose their violations. EPA must have a robust enforcement presence. The Agency needs to actively conduct investigations to determine whether violations are occurring. It needs to inspect facilities, start cases, and where appropriate, refer cases to the Department of Justice. And the EPA needs to issue penalties that not only make polluters pay when they break the law, but also force polluters to come into compliance so that they are no longer in violation.

And it takes a lot of people to do all of this difficult and resource-intensive work but, unfortunately, the number of staff in the Enforcement Office has continued to drop over the years. This is not surprising, considering President Trump promised to reduce the Agency on the campaign trail to, I quote, "little tidbits" and then attempted to fulfill that threat by proposing a nearly 23 percent budget cut last year.

Now Congress did not let President Trump's draconian proposal take effect, but industry heard loud and clear that this President was not prioritizing EPA's work. The Trump EPA was taking the cop off the beat.

This extreme budget proposal was essentially a message from the Trump administration to EPA employees that they should scale back their work, but without these employees, the EPA simply cannot do its job to make sure our communities are protected from illegal pollution.

So I just want to send a message to the dedicated career staff at EPA who are watching today and say a very public thank you. Thank you for continuing to protect human health and the environment through the hard work you do each and every day. It is not an easy task with an administration that simply does not share your mission.

So let there be no doubt that this committee will continue to hold the Trump administration accountable.

And let me say, Madam Chair, in closing, you know we talk a lot in this place about the Constitution and the separation of powers. Congress enacts the laws and provides the funding. The Executive is supposed to enforce the law. That is the separation of powers. It is—you know, you learned this in civics. And I just wish that the Trump administration would follow the Constitution. Don't try to enact the laws and decide where the money goes. Do your job. Enforce the law. That is what the Executive Branch is supposed to do. Somehow the Trump administration is simply turning that and the Constitution on its head. And it is very unfortunate, but I appreciate the fact, Madam Chair, that we are going to get to the bottom of this enforcement issue and point out the lack of enforcement of this administration.

I yield back.

[The prepared statement of Mr. Pallone follows:]

#### PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Today, the committee begins critical oversight of the Trump EPA's enforcement program, something that the previous Republican Majority ignored.

Congress can pass all of the legislation it wants to protect against air pollution, contaminated drinking water, and hazardous chemical risks, but ultimately, the EPA must implement and enforce those laws.

It is, therefore, impossible to assess EPA's effectiveness without looking at whether the Agency is enforcing the Federal environmental statutes that are already on the books. And there is no doubt that the Trump EPA's enforcement record is abysmal—the worst in decades.

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It appears that the Trump EPA is relying on industry to voluntarily come forward and disclose when they are not in compliance. Nobody here can really believe that the worst offenders of environmental laws would voluntarily come forward to disclose their violations. EPA must have a robust enforcement presence. The Agency needs to actively conduct investigations to determine whether violations are occurring. It needs to inspect facilities, start cases and, where appropriate, refer cases to the Department of Justice. And the EPA needs to issue penalties that not only make polluters pay when they break the law, but also force polluters to come into compliance so that they are no longer in violation.

It takes a lot of people to do all of this difficult and resource-intensive work, but unfortunately the number of staff in the enforcement office has continued to drop over the years.

This is not surprising considering President Trump promised to reduce the Agency on the campaign trail to, "little tidbits," and then attempted to fulfill that threat by proposing a nearly 25 percent budget cut last year.

Although Congress did not let President Trump's draconian proposal take effect, industry heard loud and clear that this President was not prioritizing EPA's work. The Trump EPA was taking the cop off the beat.

This extreme budget proposal was essentially a message from the Trump administration to EPA employees that they should scale back their work.

But without these employees, the EPA simply cannot do its job to make sure our communities are protected from illegal pollution.

In closing, I'd like to send a message to the dedicated career staff at EPA who are watching today and say a very public thank you. Thank you for continuing to protect human health and the environment through the hard work you do each and every day. It is not an easy task with an administration that simply does not share your mission.

Let there be no doubt that, this committee will continue to hold the Trump administration accountable.

Thank you, I yield back.

Ms. DEGETTE. The Chair now recognizes the ranking member of the full committee, Mr. Walden, for 5 minutes for purposes of an opening statement.

**OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON**

Mr. WALDEN. Well good morning, Chair DeGette, and thanks for holding this important hearing today.

One of the core missions of the EPA is one that I think we all agree with, for Americans to have clean air, clean land, and clean water. The EPA works toward this worthy goal through a variety of means, including partnerships with State and local governments, grants, the States, nonprofits, educational groups, and others developing and enforcing regulations, studying environmental issues, teaching people, particularly students, about the environment, and through enforcement and compliance.

The EPA's Office of Enforcement and Compliance Assurance recently released its fiscal year 2018 EPA enforcement and compliance annual results and concerns have been raised regarding a decline in the 2018 numbers. Well no one is disputing that some of the numbers from 2018 are lower than in past years. Compliance is hard to measure. And you can't simply measure compliance by the number of enforcement actions and the total amounts of fines generated by the EPA each year. You have to have a longer term look. Therefore, I would like to put some of these concerns into context.

First, there has been a steady decline in the number of Federal inspections and evaluations conducted by the EPA since 2012 and there has been a steady decline in the number of civil enforcement initiations and conclusions for the past decade. A decline in these figures is not unique to this administration.

In addition, the EPA's fiscal year 2018 results show the EPA's voluntary disclosure program continues to see an increase in the number of facilities that voluntarily disclose violations. Fiscal year 2018 saw a 47 percent increase in facilities self-disclosing violations over 2017, with 532 entities at over 1500 facilities voluntarily disclose violations pursuant to EPA's self-disclosure policies. The dramatic increase in self-reports is a good thing, demonstrating that business owners are trying to comply with the complex laws and regulations enforced by the EPA.

While there is a downward trend with some of these figures over the course of multiple administrations, some figures fluctuate drastically year to year. For example, the combined civil, judicial, and administrative penalties figure has fluctuated between \$69 million and \$252 million over the past 3 decades, not accounting for big spikes in years that contained big cases such as Volkswagen and BP.

While we are only midway through the fiscal year 2019, we already know the number for this year will be high. The EPA has already hit \$262 million in combined civil, judicial, and administrative penalties in this fiscal year, Madam Chair. This is due in part

to the resolution of the Fiat Chrysler case, which was settled just last month for more than \$200 million, including the civil penalties, recall, and mitigation programs.

In addition, the average length of time it takes between when a case is initially brought to the EPA and when it is settled can be 2 to 3 years, sometimes more. Solely focusing on a 2-year window to assess overall enforcement and compliance trends simply doesn't make sense.

And finally, I think it is critical to today's conversation to note the importance of EPA's partnership and cooperation with the States and regions when it comes to enforcement. Now while EPA plays a critical role in the process, the majority of inspections and investigations, as well as the day to day work, are conducted at the State level. Under the theory of cooperative federalism, the States are the ones monitoring most of the enforcement, with the EPA stepping in if there is a failure at the State level or if there is a big and complex case that requires additional resources or expertise.

There appears to be a lot of pressure for the EPA to step in and handle cases that aren't necessarily Federal cases but, as a society, we don't typically do that with other issues. For example, the local or State authorities would handle most drug-related offenses and a Federal entity, such as the FBI, would only step in if the case was a larger complex case or one that crossed State lines. So why should environmental enforcement compliance be in any different?

So in that vein, I am encouraged by the work that has been done by the Environmental Council of States and their cooperative federalism initiative to improve the working relationship between State environmental agencies and the EPA, including the Compliance Assurance Workgroup that has established—been established—to find ways to improve the Federal-State relationship in the context of compliance assurance.

So I think these are important partnerships that should be embraced and improved to ensure that we are working on environmental enforcement and compliance at all levels of government, Madam Chair, to work towards a common goal, a cleaner environment.

I want to thank our witnesses for being here today and I look forward to the conversation and hope we can have a holistic way to ensure and measure compliance.

With that, Madam Chair, I yield back.

[The prepared statement of Mr. Walden follows:]

#### PREPARED STATEMENT OF HON. GREG WALDEN

Thank you, Chair DeGette, for holding this important hearing today.

One of the core missions of the EPA is one that I think we all agree with—for Americans to have clean air, clean land, and clean water. The EPA works toward this worthy goal through a variety of means, including partnerships with State and local governments, grants to States, nonprofits, educational groups, and others, developing and enforcing regulations, studying environmental issues, teaching people—particularly students—about the environment, and through enforcement and compliance.

The EPA's Office of Enforcement and Compliance Assurance (OECA) recently released its Fiscal Year 2018 EPA Enforcement and Compliance Annual Results and concerns have been raised regarding a decline in the 2018 numbers. While no one is disputing that some of the numbers from FY 2018 are lower than in years past,

compliance is hard to measure, and you can't simply measure compliance by the number of enforcement actions and the total amount of fines generated by the EPA each year. Therefore, I'd like to put some of these concerns into context.

First, there has been a steady decline in the number of Federal inspections and evaluations conducted by the EPA since 2012 and there has been a steady decline in the number of civil enforcement initiations and conclusions for the past decade—the decline in these figures is not unique to this administration.

In addition, the EPA's FY 2018 results show that EPA's Voluntary Disclosure Program continues to see an increase in the number of facilities that voluntarily disclosed violations. FY 2018 saw a 47 percent increase in facilities self-disclosing violations over 2017, with 532 entities at over 1,500 facilities voluntarily disclosed violations pursuant to EPA's self-disclosure policies. The dramatic increase in these self-reports is a good thing, demonstrating that business owners are trying to comply with the complex laws and regulations enforced by the EPA.

While there is a downward trend with some of these figures over the course of multiple administrations, some figures fluctuate drastically year to year. For example, the combined civil judicial and administrative penalties figure has fluctuated between \$69 million and \$252 million over the past three decades, not accounting for big spikes in years that contained big cases such as Volkswagen, and BP.

While we are only midway through fiscal year 2019, we already know that the numbers for this year will be high—EPA has already hit \$262 million in combined civil judicial and administrative penalties this fiscal year. This is due in part to the resolution of the Fiat Chrysler case, which was settled just last month for more than \$200 million, including the civil penalties, recall, and mitigation programs.

In addition, the average length of time it takes between when a case is initially brought to EPA and when it is settled can be 2 to 3 years, sometimes more. Solely focusing on a 2-year window to assess overall enforcement and compliance trends simply doesn't make sense.

Finally, I think it's critical to today's conversation to note the importance of EPA's partnership and cooperation with the States and regions when it comes to enforcement. While EPA plays a critical role in the process, the majority of inspections and investigations, as well as the day-to-day work, are conducted at the State level. Under the theory of cooperative federalism, the States are the ones monitoring most of the enforcement, with the EPA stepping in if there is a failure at the State level or if there is a big and complex case that requires additional resources or expertise.

There appears to be a lot of pressure for the EPA to step in and handle cases that aren't necessarily Federal cases, but as a society we don't typically do that with other issues. For example, the local or State authorities would handle most drug related offenses, and a Federal entity, such as the FBI, would only step in if the case was a larger complex case or one that crossed State lines—so why should environmental enforcement and compliance be any different?

In that vein, I'm encouraged by work that has been done by the Environmental Council of the States (ECOS) and their Cooperative Federalism initiative to improve the working relationship between State environmental agencies and the EPA, including a Compliance Assurance Workgroup that was established to find ways to improve the State-Federal relationship in the context of compliance assurance. I think these are important partnerships that should be embraced and improved to ensure that we are working on environmental enforcement and compliance at all levels of government to work towards a common goal—a cleaner environment.

I want to thank the witnesses for being here today. I look forward to today's conversation and hope that we can look at holistic ways to ensure and measure compliance, and I yield back.

Ms. DEGETTE. Thank you so much, Mr. Walden.

I ask unanimous consent that the Members' written opening statements be made part of the record. Without objection, they will be entered into the record.

I ask unanimous consent that Energy and Commerce members not on the Subcommittee on Oversight and Investigations be permitted to participate in today's hearing.

Without objection, so ordered.

I would now like to introduce our first panel witness for today's hearing. Our witness is Ms. Susan Bodine, who is the Assistant Administrator of the Office of Enforcement and Compliance Assurance of the U.S. Environmental Protection Agency.

Welcome, Ms. Bodine, and thank you for appearing in front of our committee. You are aware, I know, that the committee is holding an investigative hearing and when doing so has had the practice of taking testimony under oath. Do you have any objections to testifying under oath?

Ms. BODINE. I have no objection to that, and I am also aware that whether or not you are under oath, it is a crime to lie to Congress under Title 18.

Ms. DEGETTE. Thank you. Thank you very much.

And let the record reflect the witness has responded no.

The Chair also advises you that, under the rules of the House and the rules of the committee, you are entitled to be accompanied by counsel. Do you desire to be accompanied by counsel during your testimony today?

Ms. BODINE. No.

Ms. DEGETTE. OK, let the record reflect that the witness has responded no.

If you would, then, please rise and raise your right hand so you may be sworn in.

[Witness sworn.]

Ms. DEGETTE. And as you stated, Ms. Bodine, you are subject to the penalty set forth in Title 18, Section 1001 of the U.S. Code.

And with that now, the Chair will recognize Ms. Bodine for a 5-minute summary of their written statement. And in front of you—you can see it—there is a microphone and a series of lights. The light turns yellow when you have a minute left, and it turns red to indicate your time has come to an end. And with that, you are recognized. Thank you.

**STATEMENT OF SUSAN PARKER BODINE, ASSISTANT ADMINISTRATOR, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, ENVIRONMENTAL PROTECTION AGENCY**

Ms. BODINE. Thank you, Madam Chair, Ranking Member Guthrie, and members of the subcommittee. I am Susan Bodine. I am the Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance.

Now, you have my written testimony that gives an overview of our enforcement approach, our ongoing work to increase the efficiency and effectiveness of our enforcement and compliance assurance work, and the examples of the good work that EPA's enforcement staff that I am very proud to share with you. So I want to use my time as an opportunity to begin a dialogue about EPA's enforcement program.

Now, some are judging our work based on a narrow set of parameters and then drawing the conclusion that EPA is somehow soft on environmental violators, that EPA doesn't care about compliance with the law and I am here to tell you that that is absolutely not true. This narrative, which appeared in the press, since the beginning of this administration, discredits the tremendous work of EPA's Enforcement and Compliance Assurance staff. It makes their job more difficult. If a company doubts our resolve, it will take longer to reach a settlement and it could mean that we have to spend the time and the resources to litigate our claims.

I was confirmed as the Assistant Administrator in December of 2017. Beginning in March and throughout the spring of 2018, my headquarters staff and I held video teleconferences with the enforcement staff of each of the regions, and I followed those up with regional visits to each of the ten regions over the summer, and then we did another round of VTCs in the fall. Now these interactions are critical because about 1800 of the OECA FTE, the staff, are in the regions and that is where most of the enforcement and compliance assurance work takes place.

My message to the staff has been consistent on the VTCs, at all-hands meetings in the regions, and in email messages. And I want to read to you an excerpt from a message that I sent to all of the EPA enforcement staff in June of 2018. We are committed to the protection of human health in the environment by vigorously enforcing the law. There should be no slowdown in our efforts to correct noncompliance. You have my support and my thanks for those efforts. Our goal is to ensure compliance using all of our enforcement and compliance tools, including formal administrative and judicial enforcement, as well as more informal tools, where appropriate. We will not hesitate to deter serious noncompliance using tools up to and include criminal enforcement. We are working to more timely get a return to compliance and cooperative federalism means that we cooperate with States and we discuss how our combined resources can best address noncompliance. It does not mean that EPA stays out of authorized States.

Again, I sent that message to all the staff in June. You can see that I'm pushing back on this myth—these myths about our enforcement program. A strong enforcement program does not mean that we have to collect a particular dollar amount of penalties or take a particular number of formal actions.

When I had my confirmation hearing, Senator Inhofe asked me if I was going to impose a quota on enforcement actions and I assured him that I believe that enforcement is a critical tool but it's not an end to itself. I don't support enforcement quotas. I do support making sure that the OECA, the enforcement staff, are getting credit for their work whether or not they take a formal enforcement action, as long we're achieving compliance with the law.

Also at my confirmation hearing, Senator Whitehouse asked me if I would continue to report the categories of annual enforcement results that had been reported by the prior administration and I assured him that I would. However, I want everyone to understand that these measures do not adequately represent the progress and the results that we are achieving in EPA's Enforcement and Compliance Assurance Program.

For example, one of the cases that is cited in my written testimony, Harcros, in that case we addressed compliance with chemical safety regulations at 28 facilities in 18 States. That case counts in our end-of-year results as one case.

The staff are spending a lot of time building State capacity as well, for example, with joint inspections. And if we take a joint inspection in an offer as partnering with the State, it may be that we find violations and the State takes the formal enforcement action and not EPA. We call those State assists but we're getting compliance.

We're also developing new measure to capture those efforts because I want the staff to get credit for all the work they are doing.

And I'm sorry, Madam Chair, but the staff—I have to say this. The staff is not sitting on its hands. They are working very hard.

And so I'm sorry, I'm going to go a tiny bit over. My approach isn't identical to my predecessor's. I believe we should focus our enforcement efforts on solving environmental problems but not targeting specific industries, but I want to assure you that our enforcement and compliance assurance program continues to play a critical role in protecting human health and the environment.

And I'm happy to answer your questions.

[The prepared statement of Ms. Bodine follows:]

**Testimony of Susan Parker Bodine  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Before the House Committee on Energy and Commerce  
Subcommittee on Oversight and Investigations  
February 26, 2019**

Madam Chair, Ranking Member Guthrie, distinguished Members of the Subcommittee, I am Susan Bodine, Assistant Administrator of EPA's Office of Enforcement and Compliance Assurance. Thank you for the opportunity to testify on how EPA works with states, tribes, communities, and regulated entities to ensure compliance with our environmental laws.

Compliance with those laws is what allows our country to make further environmental progress and maintain the great progress we have already achieved.

EPA has many tools to achieve this outcome. These range from helping regulated entities understand their compliance obligations, helping facilities return to compliance through informal actions, building state capacity and supporting state actions to enforce the law, bringing federal civil administrative or judicial enforcement actions, all the way to putting people in jail for knowing and egregious violations that endanger public health or the environment.

As I am sure you are aware, the vast majority of enforcement and compliance assurance activities are carried out by states and tribes pursuant to EPA authorization or delegation. However, EPA retains its authority to ensure compliance with federal environmental laws and the agency will use that authority appropriately where states or tribes may lack the capability or

will to act, particularly where there is an unaddressed public health or significant environmental threat.

Under the Trump Administration, EPA's enforcement program is focused on achieving compliance with environmental laws using all tools available to achieve compliance. Our goal is to eliminate inefficient duplication with state programs, and to direct federal resources to help achieve the Agency's Strategic Plan Goals. These Strategic Plan Goals are focused on achieving the Agency's core mission of improving air quality, providing for clean and safe water, revitalizing land and preventing contamination, and ensuring the safety of chemicals in the marketplace.

EPA's enforcement and compliance assurance staff not only carry out formal enforcement actions that show up in our Enforcement and Compliance History Online (ECHO) database, but also do so much more, including informal actions and "state assists" that result in a return to compliance.

We look for opportunities to maximize the impact of our cases so that a single settlement returns multiple facilities into compliance. For example, in July 2017, EPA reached an agreement with Harsco Chemicals to settle claims that Harsco violated provisions of the Clean Air Act aimed at preventing accidental releases of chemicals. Under the agreement, Harsco will audit 28 of its facilities to identify and correct any potential violations of its Risk Management Program by adequately assessing hazards, undertaking measures to prevent accidents, and preparing to effectively address such accidents when they do occur. In this way, one settlement will address 28 facilities and will protect communities in 18 states.

We are adopting policies to achieve results as quickly and efficiently as possible. For example,

- o We are reinvigorating our self-audit program.
- o We are using comfort letters and bona fide prospective purchaser agreements under Superfund to encourage the redevelopment of contaminated sites.
- o We are working on changes to our online reporting system to automatically notify Clean Water Act permit holders if they miss a report or have an exceedance.
- o We have issued new guidance to encourage inspectors to flag potential problems during inspections so that they can be corrected as soon as possible.
- o We have established a goal of completing most of our inspection reports and sharing them with the facility more rapidly – within 70 days of the date of inspection – again so that facilities can be made aware of potential compliance problems more quickly and address them.
- o We are using data analytics to target our inspections, allowing more efficient use of our inspection resources.
- o We are expanding the use of Expedited Settlement Agreements to correct less complex categories of noncompliance quickly, using a template agreement, freeing up our enforcement resources to focus on more significant noncompliance.

These efficiencies allow us to focus on cases that will have a major environmental or human health impact, support the integrity of our environmental regulatory programs, create a deterrent effect, or promote cleanups. Major accomplishments in FY 2018 include:

- o Reducing ozone forming VOC emissions by more than 700 tons per year from MarkWest pipeline facilities in Pennsylvania and Ohio, by using a new technology that the company will

also make available to other pipeline companies at no cost to further reduce emissions.

(settlement reached April 2018).

- o Securing an agreement with Amazon to protect the public from the hazards posed by unregistered and misbranded pesticide products. After finding that Amazon was selling unregistered pesticides, EPA stopped the sale of those illegal pesticides, ordered the payment of more than \$1M, and secured Amazon's commitment to closely monitor and remove illegal pesticides from its website. In addition, Amazon will develop an online training course on pesticide regulations and policies. Successful completion of the training will be mandatory for all entities planning to sell pesticides on Amazon.com. (settlement reached Feb. 2018).

- o Securing the assistance of Joanna and Chip Gaines from the TV show "Fixer Upper" to spread the word during an episode of their program about how to comply with EPA's Lead Renovation, Repair and Painting Rule, as part of a broader settlement of claims that they failed to use lead safe practices when renovating homes on their television show. (settlement reached June 2018).

- o Requiring NGL Crude Logistics to retire renewable fuel credits and pay a penalty to resolve allegations that they separated and sold Renewable Identification Numbers (RINs) from millions of gallons of biodiesel and then reprocessed the same biodiesel to illegally create and sell another 36 million RINs – undermining the integrity of the RFS program (settlement reached Sept 2018).

- o Securing a guilty plea from the operators of U.S. Technology Corporation for illegally transporting nine million pounds of hazardous waste from Mississippi to an unpermitted facility in Missouri (plea June 2018).

- o Securing the cleanup of over 4,000 residential properties in St. Francois County, Missouri, at the Big River Mine Tailings Superfund Site, by Doe Run Resources. (settlement reached Apr. 2018).
- o Reinvigorating our criminal enforcement program, increasing rather than decreasing the number of new cases opened for the first time since 2011.

We also have had significant case resolutions in this first quarter of FY 2019.

- o On January 10, 2019, EPA and the State of California announced a settlement with Fiat Chrysler Automobiles to address allegations that they violated the Clean Air Act by cheating emissions tests and failing to disclose unlawful “defeat devices.” Fiat Chrysler agreed to pay a civil penalty of \$305 million and implement a recall program to repair more than 100,000 noncompliant diesel vehicles sold or leased in the United States.
- o On November 1, 2018, the EPA, Oklahoma, Pennsylvania, and West Virginia settled with MPLX LP and 11 of its subsidiaries to address equipment and storage tank leaks at 20 natural gas processing plants across the U.S., reducing VOC emissions by more than 1,500 tons per year.
- o On October 31, 2018, EPA and Louisiana resolved a case against a racehorse training center for discharging horse manure, urine, and biological materials from its facility into the Vermillion River.
- o On October 29, 2018, we settled a case against Aux Sable Liquid Products to strengthen air pollution controls and reduce air pollution at its natural gas processing facility, located southwest of Chicago. The facility is located within the Chicago Non-Attainment Area for

ground-level ozone, which includes the greater Chicago area and the northwest Indiana counties of Lake and Porter.

o On October 24, 2018, we reached a nationwide settlement with Chevron USA that requires process safety improvements at all of its domestic refineries to prevent accidental chemical releases.

Looking forward, we are currently taking public comment on where we should focus EPA's enforcement and compliance resources through the National Compliance Initiatives in FY2020-2023. In a February 8, 2019, Federal Register notice (EPA-HQ-OECA-2018-0843), we suggested two new National Compliance Initiatives: drinking water and reducing children's exposure to lead.

These are just a few of the many ways that EPA's amazing enforcement and compliance assurance staff are helping protect our air, water, and land. All the accomplishments I have just described are due to their hard work, often over the course of several years.

Thank you for the opportunity to testify. I would be happy to answer any questions.

## ATTACHMENT 1

## KEY OECA PROGRAM CHANGES:

1. **Moved to a model of shared governance with states.**
  - Issued an *Interim Guidance on Enhancing Regional-State Planning* to set consistent expectations for joint planning, work sharing, and enhanced communication.
  - Developed a new measure to encourage and track EPA “assists” to state-lead actions on enforcement/compliance.
2. **Carried out a *Transition from National Enforcement Initiatives to National Compliance Initiatives***
  - Aligned priorities with the Agency strategic plan and to focus on environmental problems, not specific industry sectors.
  - Federal Register notice seeking public input on new National Compliance Initiatives was published on February 8, 2019 and may be found here.
3. **Are notifying facilities of inspection results in a more timely fashion to increase certainty and speed of correction of violations.**
  - Issued *Interim Policy on Inspection Report Timeliness and Standardization*, which directs inspectors to flag compliance concerns with the facility at the time of inspection.
  - Under a new measure, EPA will prepare most inspection reports and provide them to facilities within 70 days of an inspection.
4. **Reemphasized the use of self-audits and self-disclosure to achieve compliance.**
  - Shared draft *New Owner Clean Air Act Audit Program for Oil and Natural Gas Exploration and Production Facilities* with stakeholders for input.
  - Region 8 signed a memorandum of agreement with Wyoming Department of Environmental Quality to encourage use of Wyoming self-audit law. Press Release: <https://www.epa.gov/wy/epa-self-audit-agreement-state-wyoming>
5. **Identified best practices for enforcement-related information requests.**
  - On November 21, 2018, EPA issued *Best Practices for Compliance and Enforcement-Related Information Requests*, recommending best practices in lieu of a headquarters review of information requests. The best practices include:
    - Not requesting information EPA already has on hand.
    - Tailoring the request to what information that may reasonably be needed.
    - Making sure the tone is appropriate, particularly for small entities.
    - Making sure the request and process for responding is clear.
    - Providing a reasonable amount of time to respond.
6. **Realigning the Regions to support National Programs.**
  - EPA is creating an Enforcement Division in each Region that will better integrate regional enforcement resources and make it easier for OECA to work with the Regions on enforcement and compliance assurance actions.

**ATTACHMENT 2**

**KEY FY 2018 ENFORCEMENT PROGRAM RESULTS:**

In FY 2018, EPA enforcement actions this past year resulted in:

- Commitments to treat, minimize, or properly dispose of over an estimated 540 million pounds of waste.
- Commitments to reduce, treat, or eliminate 268 million pounds of pollution (air, toxics, and water).
- Prevention of the illegal importation of approximately 2,200 vehicles and engines that do not comply with EPA emissions standards.
- Reduction of exposure to lead through 140 federal enforcement actions against renovation contractors, landlords, property managers, realtors, and others.
- Investment of nearly \$4 billion in actions and equipment that achieve compliance with the law and control pollution.
- A total of 73 years of incarceration for individual criminal defendants.
- Cleanups and redevelopment at over 150 sites through use of Superfund enforcement tools.
- Self-disclosure and a certified return to compliance for 1,561 facilities participating in EPA's self-audit programs.

More information on EPA's Annual Enforcement Results for FY 2018 may be found [here](#).

Ms. DEGETTE. Thank you. It is now time for Members to ask questions. And the Chair recognizes herself for 5 minutes.

Ms. Bodine, thank you for your testimony. And I appreciate that you sent a memo to your staff saying that we are going to robustly enforce the laws, but I want to ask you about some of these statistics, and most of them are about statistics.

And I know the EPA staff are working hard.

Ms. BODINE. Thank you.

Ms. DEGETTE. But I also know that their numbers have been depleted, and I think we have got some questions about that today.

But and I also know that you are upset about some of this press but the press that I am looking at is talking about some of the numbers of the EPA and that is what I want to talk to you about this morning.

Now injunctive relief represents the estimated cost of actions taken by a defendant to come into compliance with the law so they are no longer in violation. Is that generally correct?

Ms. BODINE. Yes, that is correct.

Ms. DEGETTE. Now the EPA recently announced that in fiscal year 2018, adjusted for inflation, the estimated dollar value of the injunctive relief was \$3.95 billion. Is that correct?

Ms. BODINE. Yes, I believe that is correct.

Ms. DEGETTE. OK. Now, I looked at a report that was done by the Christian Science Monitor, I mentioned this in my opening statement, which says that the average annual cost of injunctive relief is \$7.74 billion and the EPA's fiscal year 2018 figure was the lowest it had been in 15 years. Are you aware of this report, Ms. Bodine?

Ms. BODINE. I read the Christian Science Monitor—

Ms. DEGETTE. OK, so you are aware of it.

Ms. BODINE. I read the article.

Ms. DEGETTE. OK.

Ms. BODINE. But the—may I?

Ms. DEGETTE. Well, OK, so you know the report.

Ms. BODINE. Yes.

Ms. DEGETTE. Now, I also understand the inspections, which are key to EPA's enforcement efforts, are the lowest they have been in a decade. Is that correct?

Ms. BODINE. I believe so, yes.

Ms. DEGETTE. Yes, OK, the inspections are the lowest.

So moving on, another measurement of enforcement activity is civil penalties, which are monetary assessments paid by a regulated entity because of a violation. Is that generally a good description of the monetary penalties?

Ms. BODINE. I wouldn't say that it was a good measure of enforcement results and I believe they go up and down.

Ms. DEGETTE. OK but here is what I asked you: Monetary assessments are paid by a regulated entity because of a violation.

Ms. BODINE. Yes, that is correct.

Ms. DEGETTE. OK. Now, EPA's Enforcement and Compliance annual results for fiscal year 2018 indicate that the EPA obtained \$69.47 million in administrative and civil judicial penalties. Is that correct?

Ms. BODINE. I believe that is right.

Ms. DEGETTE. And according to a February 8th Washington Post report, the \$69 million in civil penalties represents the lowest in nearly a quarter-century. Is that factually accurate?

Ms. BODINE. I believe that it is.

Ms. DEGETTE. OK. Now in your testimony, you say the State of California and the EPA secured a civil—and I think Mr. Walden mentioned this, too, secured a civil penalty of \$305 million for Clean Air Act violations against Fiat Chrysler. Is that right?

Ms. BODINE. Yes.

Ms. DEGETTE. Now that case was initiated during the Obama administration. Is that correct?

Ms. BODINE. There was a notice of violation, I believe it was, in January of 2017.

Ms. DEGETTE. But it was initiated under the Obama administration.

Ms. BODINE. So a notice of violation is not formal enforcement action.

Ms. DEGETTE. OK. Now, so I didn't ask you about a formal enforcement action.

Ms. BODINE. Well—

Ms. DEGETTE. The investigation was initiated during the Obama administration.

Ms. BODINE. The investigation was, yes.

Ms. DEGETTE. Thank you.

Now, while I appreciate the EPA has brought the important case to a resolution, I continue to be worried that the 2019 numbers will reflect—I wonder if they will reflect civil penalties against a large variety of polluters, in other words, that we won't just have one penalty in this year.

So let me ask you the Christian Science Monitor reports that for fiscal year 2018 the number of civil cases initiated by the Agency was the lowest since 1982. Is that correct?

Ms. BODINE. I have no reason to believe it isn't. So I am not going—

Ms. DEGETTE. OK. And also, the number of cases referred to the Department of Justice were the lowest since 1976. Is that correct?

Ms. BODINE. I don't have that number.

Ms. DEGETTE. OK. Now do you have any reason to doubt that number or do you just not know it?

Ms. BODINE. I would have to—I could respond for the record. I would—

Ms. DEGETTE. That would be great.

Ms. BODINE. Yes.

Ms. DEGETTE. So it is just that you don't know the number.

Ms. BODINE. Right.

Ms. DEGETTE. OK. Now last year, the Trump administration proposed cutting the EPA's budget by almost 25 percent. Congress didn't go along with that but I wondered about—wondering about what message this sends to the employees.

Is it true that your office has lost nearly 17 percent of its workforce?

Ms. BODINE. No, that is not true.

Ms. DEGETTE. It is not? What is the status of the workforce at this point?

Ms. BODINE. So I am talking about the headquarters staff, the OECA staff, our ceiling is in 2018 and hopefully in 2019 as well is 649. We currently have 607 people onboard. I think about nine or more are coming onboard in March.

Ms. DEGETTE. OK.

Ms. BODINE. I have authorized hiring to bring it up to the ceiling.

Ms. DEGETTE. OK. I am sure some others will follow-up. And my time has expired but I really want to thank you for answering my questions.

Ms. BODINE. Sure.

Ms. DEGETTE. The Chair now recognizes the ranking member.

Mr. GUTHRIE. Thank you, Madam Chair, for the recognition. Thank you for being here, Ms. Bodine.

Each year, OECA reports 12 different metrics to provide a high level of overview of the Agency's enforcement and compliance results for that year, including estimated environmental benefits, criminal and civil enforcement accomplishments, and Superfund accomplishments. In your opinion, can we look at just one of these metrics to determine the strength of EPA's enforcement and compliance program for any given year?

Ms. BODINE. No. These results, which I certainly assured Senator Whitehouse I would continue to report, do not accurately reflect the great work that the staff is doing.

Mr. GUTHRIE. So what are some of the limitations of the metrics that EPA reports on each year to demonstrate EPA's enforcement and compliance annual results? What are the shortcomings of the—

Ms. BODINE. So what we report in our formal database are only formal actions and so it doesn't reflect the work that we have done cooperating with States. For example, when we go out and we do joint inspections, and we do that often because we are trying to help build State capacity, it doesn't reflect some of the work that we have done even in sophisticated States and cities.

For example, in Pittsburgh, we did the assessment of the drinking water program. We are collaborating right now with the State of New Jersey looking at I think it is Newark and their pipes, their lead pipes. We do a lot of work that is not captured in these formal annual results.

Mr. GUTHRIE. OK. So turning to combined civil, judicial, and administrative penalties figure, last year's number came in at \$69 million, according to the fiscal year 2018 results. What is the current number for fiscal year 2019, understanding that we are only midway through the year?

Ms. BODINE. I know you quoted it, or maybe Ranking Member Walden quoted it. I don't have the exact number. I do know that our Fiat Chrysler case, which we lodged, it has not even entered. We had, you know, with California over \$305 million. We have been collecting other penalties but, yes, that number is going to be much higher in 2019.

And may I also say that if you look at it, again, as trends, out of the past 11 years, 8 of the past 11 years the annual penalties were less than \$250 million in 8 of the 11 years. So you can't look

at averages when you are looking at—and suggest that that represents a trend.

We did have 3 years of penalties over a billion and so, again, that makes the averages completely invalid from a statistical standpoint.

Mr. GUTHRIE. OK. So if you look at the over \$300 million that you quoted, that is including California's enforcement is what you were saying there?

Ms. BODINE. Yes.

Mr. GUTHRIE. So we already know that this year will be at least the fourth highest year for combined civil, judicial, and administrative penalties dating back to 1989.

So in addition to formal enforcement actions, EPA engages in, you mentioned, other activities to promote compliance, such as State assists.

Ms. BODINE. Right.

Mr. GUTHRIE. Can you describe some of the activities that EPA does to promote compliance with the environmental laws regulations that are not accounted for in these annual metrics?

Ms. BODINE. Sure. So one of the things that we are trying to do is encourage companies to get back into compliance quickly. So we revised our inspector guidance so that the inspectors would actually point out to the facilities what the problems were so they could fix them right away. We are also trying to—we have also told the staff that they need to get the inspection reports back to the facilities so they can fix their noncompliance and try and do that within 70 days. We are continuing to have our compliance assurance centers up and running.

And we also have electronic tools that can help. For example, we have in the Clean Water Act area for the permit holders, they have to report electronically. And we can set up our electronic system, and we have, to automatically give them a notice if they have failed to submit a report and we are also developing a new tool where they can automatically get a notice if their discharge is above the permitted level.

So we are building all these tools in to try and get compliance back more effectively, more efficiently, and more quickly.

Mr. GUTHRIE. OK, thank you. The fiscal year 2018 enforcement and compliance results recently released by EPA show that the number of environmental crime cases opened and the number of civil enforcement cases initiations have been gradually declining over the past 10 years. Can you explain why there has been a gradual decline in the number of civil and criminal cases opened each year?

Ms. BODINE. So I don't have a good explanation for that. I do know that we opened—that there had been a decline in the new cases that we opened on the criminal side over 11 years and that we are now increasing. They are now increasing that again, which is wonderful.

Mr. GUTHRIE. Is it just better compliance by people in the industries?

Ms. BODINE. It is very hard to measure compliance. And so we don't have a good measure of compliance.

But it is true that we are doing a much better job in targeting noncompliance so that goes to the inspection issue. So we don't need to take a lot of inspections to find—we can figure out where to expect noncompliance and target accordingly.

Mr. GUTHRIE. OK, thank you. My time has expired. I appreciate your answers.

I yield back.

Ms. DEGETTE. The Chair now recognizes the full committee chairman, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Madam Chair, and I wanted to follow-up on kind of where you left off.

Ms. Bodine, on the campaign trail, President Trump said he wanted to dramatically cut the EPA and leave only, I quote, "little tidbits" left. Last year, the Trump administration's budget proposal seemed to try to make good on that threat by proposing a nearly 25 percent cut to the Agency. Now of course, Congress didn't go along with that, but that is what he threatened or that is what he suggested.

And then in September, we had a Washington Post story that noted that, during the first 18 months of the Trump administration, nearly 1,600 workers left the EPA, while only 400 were hired. And of course just a few weeks ago, your staff informed our committee that your office has lost in excess of 130 enforcement staff since January of 2017.

Now, I know you have said that you authorized to bring it back but how are you going to go about that? I mean do you intend to replace the roughly 130 staff? And you know what is your timetable? How are you going to do that?

I guess I am kind of wondering if it is really going to happen. So tell us how it is going to happen and when.

Ms. BODINE. So I can only hire up to the FTE ceiling that Congress has provided. And that, again, I believe we have the 2018 bill where we had a ceiling of the 649 I believe—

Mr. PALLONE. Well, let me just interrupt you because of lack of time.

I know you have said you intend to do this. What I would like to know is what the timetable is to actually accomplish the goal of reaching this authorized amount.

Ms. BODINE. So our personnel processes are working as quickly as possible. When I say I authorized, that means the human resources process is underway. That is what that means.

Mr. PALLONE. And how long is it going to take? What is your timetable?

Ms. BODINE. Can I get back to you on that? Because we are trying. As an Agency, we are trying to speed up that timetable, and so let me—may I get back to you on that for the record about what our—

Mr. PALLONE. Yes, but give me like a timetable when this is going to happen.

Ms. BODINE. Well, the one I am most familiar with is actually bringing on the criminal investigators, which takes a very long time because of background checks.

Mr. PALLONE. With the Chair's permission, you can provide this in writing.

Ms. BODINE. OK.

Mr. PALLONE. We would like some details.

Ms. BODINE. OK.

Mr. PALLONE. Now I also wanted to talk about the EPA's regional enforcement workforce because, of course, you have ten regional offices across the country and you know a substantial amount of the enforcement work occurs at that regional level. How many regional enforcement staff have left the Agency since January of 2017 and how many have been hired?

Ms. BODINE. I don't have that number. I would have to provide it for the record.

Mr. PALLONE. All right.

Ms. BODINE. I do know the regions are hiring in the enforcement space as well.

Mr. PALLONE. Well this is just as important, right?

Ms. BODINE. Right.

Mr. PALLONE. If you could get back to us—

Ms. BODINE. Yes.

Mr. PALLONE [continuing]. I guess with the permission of the Chair and tell us how many you have lost, how many you have hired, and if you intend to make up that difference by replacing them, you know, what the timetable is for that as well.

Ms. BODINE. Within the congressionally authorized FTE ceiling.

Mr. PALLONE. OK. Now, the other thing I wanted to ask you is I made a statement during my opening. I said that it appears that the Trump EPA is relying on industry to voluntarily come forward and disclose when they are not in compliance. What is your response to that? Would you agree that you do have an effort to have them voluntarily come forward and how do you go about that?

Ms. BODINE. So EPA's had a self-audit policy in place since 2000. In 2008, we expanded that with a new owner audit policy and we are now develop—we have developed another oil and gas new owner policy that is more tailored to that industry. It was based on a 2016 matter that was done in the previous administration with a new owner of oil and gas business.

Mr. PALLONE. Why should I believe that the worst offenders would voluntarily come forward? How is that? I mean you know human nature is such that bad actors don't voluntarily say they are bad. So how is that going to work? How does that work?

Ms. BODINE. So I would not suggest that the audit policy is appropriate for the worst offenders. And I would also completely agree that you can't rely on self-disclosure alone, that you need an enforcement program to create the incentive.

Mr. PALLONE. But how is this of any value? I mean you are sort of saying it has been in place for years. Does it work? Do people voluntarily come forward?

Ms. BODINE. Yes, the entities voluntarily come forward, self-disclose, and then certify that they have returned to compliance.

Mr. PALLONE. What is their incentive to do that?

Ms. BODINE. Well, may I give you an example?

Mr. PALLONE. Sure.

Ms. BODINE. So we absolutely do need to still keep inspecting and keep enforcement to create the very incentive. And if you vol-

untarily disclose and you don't come in to compliance or you don't have full compliance, then there is no shield to enforcement.

We had a situation where a company they self-disclosed under a State audit program. They didn't catch all their violations. And we came in after and did an administrative enforcement action for the violations they did not self-disclose. There was no shield from that State self-disclosure.

I mean they didn't know they were out of compliance but it didn't matter. We came back for the ones they did not self-disclose. But we came in, followed on, and did take an enforcement action for the actions that they didn't disclose.

Mr. PALLONE. I don't see how that is helpful but whatever.

Thank you, Madam Chair.

Ms. DEGETTE. The Chair recognizes the ranking member of the full committee, Mr. Walden.

Mr. WALDEN. Thank you very much, Madam Chair. And to our witness, thank you for being here today and the work you and your team do around the country day in and day out to protect American consumers.

Just for the record, I know in my testimony I said in fiscal year 2018 we saw a 47 percent increase in facility self-disclosing violations over 2017—

Ms. BODINE. Yes.

Mr. WALDEN [continuing]. 532 entities at 1,500 facilities.

So to follow-up on what Mr. Pallone said, from your perspective, why do companies come forward?

Ms. BODINE. They come forward because if they self-disclose before we find it, so we haven't done the inspection, we haven't taken an action—

Mr. WALDEN. Right.

Ms. BODINE [continuing]. Then they will get relief on penalties.

Mr. WALDEN. OK.

Ms. BODINE. So we won't—

Mr. WALDEN. So it is a carrot-and-stick approach.

Ms. BODINE. Absolutely.

Mr. WALDEN. And then if you do come in and find things they haven't disclosed, you have still got the stick—

Ms. BODINE. Absolutely.

Mr. WALDEN [continuing]. And you are using it.

Ms. BODINE. Yes.

Mr. WALDEN. Is that accurate?

Ms. BODINE. That is accurate.

Mr. WALDEN. OK, well that makes sense. And I know it seems to me, I may be off, but I think in the workforce or workplace safety, too, like OSHA rules, in Oregon we had something similar to that, where you could kind of disclose. Bring them in, they would do a review, and then you could comply and kind of not be in penalty because most employers want to do the right thing.

Ms. BODINE. Yes, I will have to take your word for that.

Mr. WALDEN. Yes. No, I understand. And there are some that don't and those are the ones we want you to go after.

I think we can all agree the ultimate goal is to safeguard human health and protect the environment and compliance of EPA's environmental laws is necessary to achieve that.

So what is OECA doing under your leadership to meet these goals and what changes, if any, have you made to EPA's enforcement or compliance priorities in order to do this?

Ms. BODINE. Thank you for that question.

So we are looking at our priorities because, as everyone I think here recognizes, the vast majority of the enforcement and inspections happen in the States. And we have very highly skilled staff and we have very good technical resources. So we want to be able to target our resources where we will have the most impact.

So we have looked at what we call the National Compliance Initiatives and looked at where should we be focusing our resources. And right now, that is out for public comment. We had a Federal Register notice asking for the public to comment on where our priorities should be. And what that notice says is that we want to make sure that we are focusing on problems, the environmental problems. So whether it is trying to decrease the number of water segments that don't meet water quality standards, whether it is trying to decrease the number of nonattainment areas in Clean Air Act, as well as trying to focus on vulnerable populations around the country.

And so we have initiatives already. For example, for air toxics, we have initiatives like glaring that gets at issues like the EFCs. We are talking. We are asking the public and States whether we should expand our initiatives to include a lead—children's exposure to lead initiative and we are asking about starting a drinking water initiative so we can work with States.

And again, what we want to do is focus on these environmental problems.

Mr. WALDEN. All right. And then I have certainly seen a change in the last couple of years when it came to the Superfund site cleanup, especially in the Portland Harbor Superfund case.

Ms. BODINE. Yes.

Mr. WALDEN. It has been dragging on for years, and years, and years. And this administration stepped in and said, "Why don't we get about moving forward and actually cleaning it up"? And this is in Portland, not a known Trump red territory. And they were ecstatic that this administration, this EPA was ready to help clear out the regulatory hurdles, or whatever was there that was unnecessary, and move forward.

Can you talk a little bit about how you help encourage contaminated site redevelopment and some of these issues?

Ms. BODINE. Yes. On Portland, yes, I think everybody is in agreement that that needs to move forward. We need to get that cleanup moving.

Mr. WALDEN. Right.

Ms. BODINE. And on redevelopment, yes, we recognize that contaminated properties blight a community and that there are opportunities to bring back the community with redevelopment. And so we are using our enforcement tools to help that and that includes entering into agreements with what we call bona fide prospective purchasers, people who aren't liable. So we can give them comfort, we can give them protection, if they are going to come in and do a redevelopment.

And we have had some great examples of that around the country. There was one out in Region 5 where McLouth Steel, they are coming in, it has been a blight on the community for years. And they are going to come in and tear down buildings that have been decrepit, again, to get rid of an eyesore and allow for redevelopment.

So the shift is that we are willing to enter into these agreements.

Mr. WALDEN. All right. I know this committee did great work in the last Congress approving a modernization of the Brownfields Law, bipartisan, I think it was unanimous out of Energy and Commerce and signed by President Trump. And so we want to be your partner in helping clean up these sites at all levels.

Ms. BODINE. Yes, the BUILD Act. Thank you very much for that.

Mr. WALDEN. Thank you and I yield back.

Ms. DEGETTE. Thank you. The Chair now recognizes the gentleman from California, Mr. Ruiz, for 5 minutes.

Mr. RUIZ. Thank you. Welcome, Ms. Bodine.

I would like to better understand what EPA is doing to make sure changes in the enforcement program do not disproportionately harm low-income communities and communities of color. History shows us time and time again that Federal action and leadership are necessary to prevent environmental injustice.

Ms. Bodine, would you agree that EPA needs to ensure equitable treatment and impact for communities of color and low-income communities when the Agency enforces Federal environmental laws and policies?

Ms. BODINE. Yes, absolutely.

Mr. RUIZ. Last year, EPA's own scientists released a report in the American Journal of Public Health, April 2018, confirming what many underserved, rural, and minority communities already knew, that low-income and people of color are disproportionately affected by air pollution. These findings joined an extensive body of research, which have found that both polluters and pollution are disproportionately located in low-income and minority communities.

Would you agree that these findings make it all the more important to the health and safety of these communities that EPA effectively enforce against those polluters who break the law and illegally pollute?

Ms. BODINE. So I absolutely agree with the statement. I haven't read the article but I agree with the statement you just made.

Mr. RUIZ. Thank you.

Ms. Bodine, on our second panel, we will hear from both Dr. Nelson and Mr. Schaeffer, who both raise important issues about the critical need for robust EPA enforcement in protecting minority and poor-resource communities who are often disproportionately close to polluting facilities. For those communities that live in close proximity to industrial sites that pose health risks, can you assure them that you will use all of EPA's enforcement tools to protect them?

Ms. BODINE. We have made it a priority to address air toxics, which—and in talking about our National Compliance Initiatives, focusing on vulnerable populations.

We also have as one of our priorities compliance with chemical safety regulations. And again, often you can have chemicals being used in—near——

Mr. RUIZ. What do you define as vulnerable populations?

Ms. BODINE. So there are both low-income and minority communities I believe with research——

Mr. RUIZ. Because of the environmental injustices.

Ms. BODINE [continuing]. And cumulative effects and location.

Mr. RUIZ. OK. And due to resource, legal, or political constraints, some States may lack the will or ability to provide strong environmental protection.

So can you please explain to me what extra enforcement measures EPA takes to ensure such communities are adequately protected if a State is not up to the task?

Ms. BODINE. So in the guidance that we have set out to the regions interacting with States, we have been very clear that if it is an authorized program, we are going to look to the States to take action but if the State doesn't have the capability or the will to take action and we know there is a violation, then we absolutely should be stepping in to make sure we are getting compliance.

Mr. RUIZ. Oftentimes, communities that are resource-poor that lack social capital do not have the capacity, the knowhow, or wherewithal to file complaints and to seek the EPA's assistance in mitigating or preventing some potential environmental injustice. What does the EPA do to provide those technical assistance to those low-income, rural, or minority communities?

Ms. BODINE. So my program doesn't have technical assistance grants. The Superfund program does but we don't have those kind of community grants but——

Mr. RUIZ. So currently, there is no—so Superfunds do.

Ms. BODINE. Right.

Mr. RUIZ. If they want to apply for a Superfund——

Ms. BODINE. And there are environmental justice grants that are run by the Environmental Justice Program. But so we don't have enforcement grants to communities of the type that you are describing.

Mr. RUIZ. So——

Ms. BODINE. But we do have our initiatives——

Mr. RUIZ. So oftentimes it is the communities that inform you of those violations.

Ms. BODINE. Yes and we definitely pay very close attention. We have a tips and complaint line and we follow-up.

Mr. RUIZ. So there should be probably some outreach to them and capacity training.

It is a tragedy and true injustice that in America today the quality of your air and water and the potential exposure to hazardous and toxic substances is determined to a significant extent by your income, your ZIP code, and your race. So EPA can and should be doing more to protect disenfranchised communities. Would you agree?

Ms. BODINE. I would agree. And I would agree that that is why we should be focusing on environmental problems when we say what should be our priorities, where should we direct the Federal resources.

Mr. RUIZ. Thank you.

Ms. DEGETTE. The Chair now recognizes the gentleman from West Virginia, Mr. McKinley.

Mr. MCKINLEY. Thank you, Madam Chairman.

Interesting tone to this discussion so far and it just—I hope for the audience and those listening in that this is obviously this is some of the first steps of the election campaign of 2020.

I was interested in the metrics that were being used as a measure of success of what your Agency has done, and it seems to be if someone wants to say that you are successful if you have more inspections and more fines. That seems to be the only measure that in this room is being used to find out whether you are successful, regardless of the outcome of what is happening. And I was looking for some analogies, thinking some analogies as I sat here listening to this line of rationale. And I think, even though it is not yours under the EPA but under maybe OSHA, is the number of coal mines that have been shut down all across America. As a result of the fact that there aren't coal mines, there aren't inspections. If we were to use that metric, it would mean that maybe OSHA is not doing its job because they are not doing as many inspections as they have done in previous years, or there aren't fines. Well, there aren't coal mines.

And the same thing is appropriate for our coal-fired generating plants. We have had some 300 coal-fired generating plants shut down over the last 10 years. Therefore, you are going to have fewer inspections. You are going to have fewer fines as a result of that.

But that is what people seem to be, on the other side of the aisle are saying that is the way we should be measuring this is is how many fines and inspections. But at the same time, we talk about voluntary compliance. And look what has happened. We didn't sign the Kyoto treaty. We didn't do the Paris Accord. We have withdrawn from that. But yet, their emissions have dropped.

We looked at the SOx and NOx gases that you all were very much active in pursuing through the EPA. The SOx gases have dropped, since 1990, 92 percent; NOx gases, 84 percent down. Just in the last 10 years, the CO2 emissions have dropped by 20-some percent. That is not—maybe it doesn't have as many fines and inspections but the result is we are accomplishing a cleaner environment doing it this way.

So having said all that and looking at compliance, voluntary compliance and self-auditing, you mention in your report, your written report, that you had talked about MarkWest providing—they are using some innovative technology—

Ms. BODINE. Right.

Mr. MCKINLEY [continuing]. To reduce their methane emissions and other volatile organic compounds. And they are sharing that information with other people, other institutions because we know methane is far worse than CO2 in what it does to the atmosphere.

So can you elaborate a little bit about how we might improve on that or the role that technology might play in this?

Ms. BODINE. Yes, some of what you are getting to, Congressman, is kind of the force amplifier of some of our settlements. And MarkWest is a great example because they have gas pipelines. You have a pigging operation. They didn't know that they had releases

but they did and they developed new technology. And as part of their settlement, they have made it available to everyone in the industry with no license, cost whatsoever. So not only do we get the reductions from that company but also from other companies.

Another example, Amazon, they were selling unregistered pesticides on their Web site in violation of FIFRA. And as part of that settlement, they agreed to do training. They agreed to do a lot of monitoring certification. And so not only is Amazon in compliance but it is a supply chain issue. Everyone in their supply chain would be in compliance.

So again, you can't capture that but it is a force multiplier of some of the work we do.

Mr. MCKINLEY. So let me just close in the 30-some seconds I have left.

Do you think it is more effective to look at the outcome, the results that we have had CO<sub>2</sub> drop, SO<sub>x</sub> and NO<sub>x</sub> gases drop, or do you think the measure should be what they are talking about is the number of fines and the number of inspections? Which is the more effective metric?

Ms. BODINE. Certainly the outcome.

Mr. MCKINLEY. Thank you. I yield back.

Ms. DEGETTE. The Chair now recognizes the gentlelady from New Hampshire, Ms. Castor—Ms. Kuster for 5 minutes. We have Castor and Kuster.

Ms. Kuster, 5 minutes.

Ms. KUSTER. Thank you very much and thank you for being with us.

I just want to take exception to my colleague, Mr. McKinley, suggesting that this is politically motivated. The health and wellbeing of my constituents is not politically motivated and I think we can find common ground.

But in New Hampshire, we have been dealing with the Saint-Gobain site in Litchfield that is in my district, which was pollution by a PFAS, the per-and polyfluorinated compounds. And fortunately, we have had a settlement but we had to spend millions of dollars to connect \$2.4 million, as well \$900,000 in loans, and \$600,000 in grants to connect these households to safe drinking water because their wells were contaminated. It is not political. The wells didn't distinguish between the Rs and Ds. These are my constituents and I am trying to keep them safe.

And my question for you, I have been disappointed by the EPA's PFAS Action Plan that was published last week because it doesn't seem to actually include much action. For instance, while EPA officials said that they intend to move forward to maximum containment levels for two PFAS chemicals, there was no commitment in the plan to initiating this regulatory process. And that means other communities are going to be left to rely on health advisories that may or may not keep my colleagues' constituents safe.

What can your office do to help communities that are being poisoned by PFAS in the air, water, and soil? And I know you are putting a great deal of reliance on voluntary disclosure but what makes you think that companies are going to voluntarily take on this responsibility, when in fact that was not the case for us? They had to be caught in the act through testing and through local com-

munity efforts before the company came to the table to negotiate a settlement.

Ms. BODINE. Thank you. First on the PFAS action plan that the Administrator announced, maybe it was a little over a week ago, he very clearly makes a commitment to initiate the regulatory process and establish—

Ms. KUSTER. And what is the time line for that?

Ms. BODINE. That I don't know but I would have to take that back because that is not my program.

Ms. KUSTER. Because there is urgency to this. This PFAS is showing up in water, groundwater all across this country.

Ms. BODINE. And can you tell me the name again of the site that you are talking about? Because I am familiar with the Air Force base but I am not—

Ms. KUSTER. It is Litchfield, New Hampshire, Saint-Gobain's.

Ms. BODINE. Oh, OK.

Ms. KUSTER. They used to make Teflon and pans, and it has gone into the water.

Ms. BODINE. OK.

Ms. KUSTER. And we have hundreds of families. They were on bottled water for a long period of time.

Ms. BODINE. Right.

Ms. KUSTER. And now, to the expense of millions of dollars, we have had to connect them to safe drinking water.

Ms. BODINE. So one of the things that actually my office is involved in is developing a map, GIS map, where we would identify on the map all of the locations where we might expect PFAS contamination to be. Because remember when they did the unregulated contaminant monitoring for PFAS, it ended in—that was part of the 2015 round of monitoring, they found it above the health advisory in 1.3 percent of the public water systems and found it at any detection level in about 4 percent. But that doesn't capture communities with under 10,000 hookups.

So we want the map so you can go and look has there been a firefighting center there, is there an industry where they have been using the PFAS. So again, for the very purpose that you have talked about, which is targeting so people can go then and do the testing.

Ms. KUSTER. Well let me ask you, is there any enforceable requirement to report a PFAS release? They know, the companies that use this technology, use these chemicals know. I mean they are well aware of the plume right under their facilities and their sites. In the end, Saint-Gobain's did come to the table and we were able to negotiate.

But why don't you rely on them? Why do you do this whole—

Ms. BODINE. So—

Ms. KUSTER [continuing]. Mapping and not just have a requirement, an enforceable requirement that the company has to come forward?

Ms. BODINE. That is another action that is in the PFAS action plan, which is to add PFO and PFAS—and again, this is another office that would do this. It is a regulatory action—but add it to the toxics release inventory, which then would mandate the reporting of release.

Ms. KUSTER. And what is the time line for that?

Ms. BODINE. Again, I would have to answer for the record because it is not my office.

Ms. KUSTER. Well I just want to put on the record the urgency of families that are being exposed. And I want to thank the Moms Clean Air Action for being with us today and for families all across this country who care about their children and the quality. These are families that are drinking the water and it is not just Flint, Michigan. It is my district. It is every district across this country. And I urge you to bring some urgency to this.

And with that, I yield back.

Ms. DEGETTE. The Chair now recognizes the gentleman from Virginia, Mr. Griffith, for 5 minutes.

Mr. GRIFFITH. Thank you very much, Madam Chair.

After reading through some of the testimony, I believe that we may hear some claims this morning in our next panel about the New Source Review Program. And I have been through this with the committee before but there are lots of stories like the ones out of my district where people are not pursuing improvements because they are afraid of tripping over the New Source Review Program and then having to spend a whole lot more money, so they don't do anything. And that has caused a lot of, I think, a lot of upgrades not to be done and some of which would have improved the environment.

Now I know the Americans are paying more than necessary because of this and others things to improve air quality due to the overlapping air programs. About 13 programs overlap with the NSR, New Source Review, and I have legislation to fix all that but it is not likely to come up in the next couple of years, even though I think it is great, common sense reforms that will benefit the environment.

Ms. Bodine, would you like to speak to the NSR Program, because you all are doing some things administratively similar to what my bill would do, and tell us what you are doing on that and how that relates to other programs that you all are working on?

Ms. BODINE. So thank you, Congressman. The NSR Program is run out of the Air Office. And so they would establish the policies and the regulations. We obviously enforce.

But I do want to mention that for a number of years there has been a National Compliance Initiative that deals with New Source Review. Under that as a result and today, and I think that has already been mentioned perhaps by Congressman McKinley that sulfur dioxide is down 90 percent in the power sector. Nitrogen oxide is down by 85 percent in the power sector since 1997. And so when we look at where we should be focusing and where we have the opportunity to help communities and to help noncompliance, we are looking at other areas.

And I would like to mention the fact that we are doing a lot of work on mobile sources now, and obviously that was the VW case, it was the Fiat Chrysler case but we also are dealing with it in terms of defeat devices and the aftermarket and the catalytic converters. I know that we got a letter from Congressman Guthrie, Congressman McKinley, and two of your colleagues about the cata-

lytic converters and we are changing our tampering policy. We expect to roll that out pretty shortly.

And the estimate that I have been given is that the State of California expects that by changing our policy and encouraging better performing catalytic converters, we can get rid of 85,000 tons per year of NOx nationwide, again, which is going to help with ozone nonattainment. It is NOx. It could help with the deposition of nitrogen.

Mr. GRIFFITH. That wouldn't necessarily show up in these stats that have been thrown around this morning because——

Ms. BODINE. It would not.

Mr. GRIFFITH [continuing]. You are dealing with sometimes individuals who are doing things they are not supposed to be doing as opposed to companies.

Ms. BODINE. Yes, you are right. Changing our tampering policy will not show and to get these kinds of reductions will not show up in our results.

Mr. GRIFFITH. And you have been working with the States a lot to make sure that they do because the States do a lot of the enforcement. Isn't that correct?

Ms. BODINE. Yes, that is true.

Mr. GRIFFITH. And isn't your goal to move this to the States? Can you give us some idea of how you have been doing things with the States and what inefficient duplications you have seen with the State programs?

Ms. BODINE. So a couple of the Members here mentioned the ECOS Working Group. So we did hear at the very beginning when——

Mr. GRIFFITH. For the folks back home, that would be the Environmental Council of States.

Ms. BODINE. Thank you. Thank you. I apologize for that.

Mr. GRIFFITH. That is all right.

Ms. BODINE [continuing]. Who represent the State commissioners and they were complaining that EPA would show up in their State without even telling them, taking either inspection or enforcement action without even telling them, even at a facility that the State perhaps had just inspected.

And so what we have said to the regions is look, you need to be working in partnership with States. You need to do work planning together. Everyone has finite resources. You need to divide up the universe. We absolutely need a compliance assurance presence. We need inspections. But we should be working collaboratively so that if the State is doing it, we don't need to be doing it because that would be wasteful.

Mr. GRIFFITH. Right.

Ms. BODINE. If the State needs to get training and capacity building, then we should be going out with them and providing that training.

Mr. GRIFFITH. And you all are obviously monitoring what the States are doing so that you can make sure that somebody is covering it. Isn't that correct, yes or no? I am running out of time. Yes or no?

Ms. BODINE. Yes.

Mr. GRIFFITH. All right. And since you have been there, have you all intervened in any States where they aren't doing what they are supposed to do and haven't done the inspections properly or something?

Ms. BODINE. So we have two examples where we—well, we have leaned heavily on States to take action and they have. So yes, we do have examples of that.

Mr. GRIFFITH. All right.

Ms. BODINE. But then at the end of the day, the State finally did take the action and we didn't have to. And all that work doesn't show up in our results either.

Mr. GRIFFITH. In your data, OK.

I yield back.

Ms. DEGETTE. The gentleman yields back.

The Chair now recognizes the gentlelady from Florida, Ms. Castor, for 5 minutes.

Ms. CASTOR. Thank you very much.

Ms. Bodine, I would like to spend the next few minutes talking to you about EPA civil case initiation. Civil enforcement at the EPA is a tool that you use to hold polluters accountable for violating Federal environmental laws and to deter future bad actors. Where EPA identifies a significant violation and determines that Federal enforcement is appropriate, the Agency may start an enforcement case. Is that generally correct?

Ms. BODINE. Yes.

Ms. CASTOR. OK. Ms. Bodine, EPA's fiscal year 2018 enforcement and compliance numbers, according to your own numbers, indicate that the civil case initiations last year were at their lowest point in a decade, just over 1800.

To add to that, a watchdog group recently reported that civil enforcement case initiations last year were lower than any year going back to 1982. That would mean civil case initiations may be at the lowest level in 36 years.

What is your explanation for that that we are at the—EPA is at its lowest level of civil case initiations in 36 years?

Ms. BODINE. So Congresswoman Castor, as I had pointed out earlier, that is a narrow slice of the work that we do. It is Federal formal enforcement case initiations. And so it doesn't capture the work that we are doing with States, where we may develop a case and they may take it over. It doesn't capture the facilities that are getting back into compliance after self-disclosing.

So it is important and I would absolutely agree that we need to maintain enforcement presence but I would not say that the number of cases is reflective of that. And—

Ms. CASTOR. Now your predecessor did not agree. Cynthia Giles, who preceded you as head of EPA's Enforcement Office, was very recently quoted in a press report saying EPA is trying to convince media and the public that EPA is still doing its job on enforcement, despite all the reports showing that isn't the case.

So I think it is fairly clear EPA is not doing the job that it should. And so, taking your predecessor's point, as it relates to case initiations, how can you claim that the EPA is in fact going after polluters, given the decline? You said it is a narrow piece but, wow, 36 years, a 10-year decline that took a hit as the Trump adminis-

tration came into the Executive Branch. I am having a hard time seeing how you claim otherwise.

Ms. BODINE. So I am sorry that you feel that way. I know that the staff are working very hard in developing cases, and bringing cases, and that we are trying to target our resources where we have—

Ms. CASTOR. Here is why it is important because lax enforcement sends the wrong message to industry and polluters. And I have a very hard time understanding how the public and the regulated community are supposed to have confidence in EPA when you are not enforcing America's bedrock environmental laws, when they see that an Agency has initiated the lowest amount of cases in what appears to be three decades.

And did I understand your answer? Did you testify in a previous answer that we have a low—EPA is initiating a fewer number of enforcement cases because there are fewer bad actors?

Ms. BODINE. I didn't say that.

Ms. CASTOR. OK.

Chairwoman DeGette, I am very concerned about this. They are not going to be able to deter bad actors. These are extraordinarily low numbers. It really appears to me that the Trump administration and the EPA, which is supposed to be the guardian of the public health, is elevating polluter profits over the public health. This is at a time when they are also rolling back critically important environmental and public health protections.

What you do here by not enforcing the law is you further compound the problem and it is an abdication of your responsibilities.

Ms. DEGETTE. Will the gentlelady yield?

Ms. CASTOR. I yield.

Ms. DEGETTE. Ms. Bodine, so you had said to Ms. Castor that the number of enforcement actions filed at the Federal level is just a narrow slice. Do you know how many additional cases were filed at the State level, then, with EPA assistance? Did that number go up dramatically in the last 2 years?

Ms. BODINE. So we haven't started formally tracking State assists. We have asked the regions to track their State assists. So I have some data on that, which I can give to you for the record but it wasn't tracked before—

Ms. DEGETTE. So you don't—

Ms. BODINE [continuing]. What we are calling State assists.

Ms. DEGETTE. Right. So you don't really know if the number of State cases went up. You are just suspecting they might have.

Ms. BODINE. The States report some of their cases to us in our reporting system and we can provide you with that data. I don't have all of their data. The—

Ms. DEGETTE. OK, thank you very much.

Ms. BODINE. OK.

Ms. DEGETTE. And Ms. Castor, thank you for letting me use the rest of your time, which has expired.

I am now going to recognize Mr. Duncan from South Carolina for 5 minutes.

Mr. DUNCAN. Thank you, Madam Chair.

In my State, one of my communities has a four-lane highway running through it. It is not an interstate highway but they were

requesting an intersection, an interchange, off-ramps to create a new industrial area and the county was under a nonattainment order from the EPA. Very little industry in that county in Upstate South Carolina that has emissions issues. Very little. And very little traffic. It is not an interstate highway on this four-lane but yet they were denied the ability to put in that interchange.

And when we started looking at it, the EPA under the Obama administration had monitors in the county for air quality. And it was very apparent that the emissions or what was affecting this county was coming from not another county but another State, Tennessee primarily, westerly winds coming over the mountains, settling in Pickens County, South Carolina.

So there is an issue of where we put these monitors for a lot of different things, whether it is heat sensors or whether it is air quality sensors. Those are issues that may affect other Members' communities and I just wanted to raise awareness of that.

I want to jump to a particular type of case, those being the Clean Air Act nonattainment cases. The oil and gas new owner audit program has one interesting approach that the EPA is taking to reduce nonattainment. Can you tell us more about this program and other actions EPA has taken to reduce the Clean Air Act nonattainment?

Ms. BODINE. Yes, thank you. In the oil and gas sector, you can have leaks from tanks. There can be leaks from wells. The new owner self-disclosure program encourages a new owner of these facilities to do their own inspection, and discover their own violations, and then disclose them, come into compliance, and then they would have no penalties because they are the new owner. They weren't responsible for it. And we have seen a lot of companies come in under our new owner program because of that incentive. They are starting fresh. And it has been very valuable.

Again, for the oil and gas sector, it started from a settlement that was begun in 2016 but then recognized that that could be a model that could be used more broadly. And so it is a great opportunity to again get compliance and let the new owner start fresh.

Mr. DUNCAN. I would say that is a cost savings for the EPA and ultimately, the taxpayer.

Ms. BODINE. Yes.

Mr. DUNCAN. To follow up, there has been criticism on the reduction of the size of the OECA office. I have been supportive of this administration's effort to peel back some of the layers of bureaucracy that have embedded themselves in the Agency. When the EPA is inefficient, they are holding up capital. How does this new owner audit program capitalize on the resources of the EPA while still reducing nonattainment.

Ms. BODINE. Well if the new owner is coming in, then you are right, we don't have to expend our resources then going out and finding them. We don't have to expend our resources bringing a case against them. Again, it is far more efficient and gets compliance more quickly.

Mr. DUNCAN. And you can focus those resources on other areas that—

Ms. BODINE. On vulnerable populations, on chemical risk safety issues, our other National Compliance Initiatives.

Mr. DUNCAN. Yes, thanks for being here.

Madam Chair, I yield back.

Ms. DEGETTE. The gentleman yields back. The Chair now recognizes the gentleman from Maryland, Mr. Sarbanes.

Mr. SARBANES. Thank you, Madam Chair. Thank you, Ms. Bodine, for being here.

I just want to go back on an exchange you had a moment ago because you suggested—you seemed to suggest that the reduction in civil penalties and other things from an enforcement standpoint at the Federal level has maybe been replaced by States being more aggressive on that front. Did you say something to that effect?

Ms. BODINE. I said that we work—that most of the activities are taking place at the State level, and that has always been true—

Mr. SARBANES. Yes.

Ms. BODINE [continuing]. And that we are trying—we are working with States and States are more sophisticated, and we are building State capacity if they have lost folks and—

Mr. SARBANES. Are you aware that the State fines have also diminished over the last couple of years? When you look at the record, it shows that between '06 and 2016 the penalties at the State level were averaging about \$91 million a year, but in 2017 they were \$38 million, and in 2018 they were \$59 million. A lot of these State agencies are not resourced in a way that can make up for lack of enforcement at the Federal level. So it seems to be diminishing on both fronts.

Ms. BODINE. I think I will say what I have said in response to other questions but I don't believe penalties are a good measure of enforcement. Penalties are important for deterrence but that is not a measure of compliance. And you will see in the data that we have presented, because we go back 10 years, that penalties go up and down dramatically and, in fact, at the Federal level they were below \$250 million for 8 out of the last 10 years.

Mr. SARBANES. Well, it seems many, if not all, of the indicators which we have at our disposal to judge whether enforcement is happening at the levels it should or not seem to be going in the wrong direction, whether you look at the State efforts or you look at the Federal efforts. To me that would suggest that the Federal Government needs to step up even more and occupy this space in an aggressive and responsible way.

But let me talk to you about injunctive relief because that is an important tool that you have as part of your enforcement kit of measures that you can undertake. And this is a way that the EPA can insist on industry players and others coming into compliance.

So we understand from your staff briefing recently that EPA enforcement actions resulted in almost \$4 billion, \$3.95 billion in compliance costs in fiscal year 2018. Does that sound about right to you?

Ms. BODINE. Yes, I am reading it off the chart right here.

Mr. SARBANES. OK, you have got it right there.

All right. And according to a January 24th Washington Post article, the compliance costs for the 2 decades before the Trump administration roughly averaged \$7.8 billion per year, which is nearly double the amount that the EPA obtained in fiscal year 2018. Are those numbers correct, as far as you know?

Ms. BODINE. I don't believe that you can average these numbers. I mean, you have the chart also. You can see that you have very, very high——

Mr. SARBANES. But in any event, they were significantly higher.

And then in a recent article, I just wanted to note in The Christian Science Monitor, your predecessor, Cynthia Giles, was quoted as saying, "Injunctive relief tells you whether the EPA is taking on the tough, very hard, big pollution cases" and "This data shows the Trump EPA is not doing that."

Now, I get that the compliance injunctive relief numbers can vary from year to year, but these are pretty low numbers, some of the lowest we have seen in a long time. Is Ms. Giles wrong when she says injunctive relief is a good indicator to evaluate whether an administration is going after the worst polluters, in your view?

Ms. BODINE. I think that former Assistant Administrator Giles knows very well that, when you are talking about these really big cases, it takes a lot of years to develop and complete those cases. So if I——

Mr. SARBANES. Well let me grab onto that because I am going to run out of time, that idea of taking a long time.

Ms. BODINE. Right.

Mr. SARBANES. Because that \$3.95 billion figure for 2018 apparently, according to the Christian Science Monitor article, 40 percent of that total almost is from cases that were settled by the EPA under President Obama. So even that low number, that \$3.95 billion low number, if you look at it in terms of what has actually been undertaken in this administration, it is much lower still because 40 percent of that is coming from the prior administration.

Are you aware of those numbers? Can you tell me what the number is that comes from the previous administration?

Ms. BODINE. So in our results, we count the injunctive relief in the year that the court enters it. And as well, you are not going to see numbers from cases that we initiated that would be big. Small cases, yes, but large cases, because it takes a long time, so you are going to see that later. So we are——

Mr. SARBANES. I get it. There is a timing issue. There is a snapshot issue.

Ms. BODINE. Yes.

Mr. SARBANES. There is a range issue——

Ms. BODINE. Yes, absolutely.

Mr. SARBANES [continuing]. And so forth. But in any event, I think there is plenty of evidence here that the mission you have of fair and effective enforcement of environmental laws, particularly using, as I was discussing here in the injunctive relief, is not being fulfilled based on the numbers that we are seeing.

With that, I would yield back my time because I am over. Thank you.

Ms. DEGETTE. The Chair now recognizes the gentlelady from New York, Ms. Clarke, for 5 minutes.

Ms. CLARKE. I thank our chairwoman and ranking member for hosting this hearing today.

Ms. Bodine, I want to talk about budget because the fiscal year 2019 budget request called for nearly a 25 percent cut to the EPA.

And to put that in perspective, if those cuts were enacted, they would push the EPA's budget to its lowest level since 1991.

I would point out that compliance and enforcement activities are not spared from these proposed cuts. How would these proposals, if they were enacted, have impacted enforcement activities?

Ms. BODINE. I don't know. We would be using the resources that Congress gives us as effectively and as efficiently as we can. And we would be focusing on the largest cases.

We do still take a lot of very small cases. A large percentage of these cases, conclusions that have been discussed today, are still very small cases. And so we would focus on the most important cases and we would focus on making sure that we were providing assistance and training to States.

Ms. CLARKE. So we have been talking about sort of the decline in what we can recognize as enforcement activity. Are you saying that there would be no correlation in bringing action between a reduction in your budget and the fact that you are at a 30-year low in that enforcement?

Ms. BODINE. So what I said was that we would be further focused on the most important actions. I didn't say it would have no impact. But in terms of if we were not going to be taking an action, it would definitely be only in situations where there wasn't an immediate public health or environmental threat, situations where we knew the State was already dealing with the issue.

So again, we would be very strategic.

Ms. CLARKE. So Ms. Bodine, even though Congress prevented those cuts from being enacted, I am deeply concerned that certain damage was done. I am concerned that those proposed cuts sent a signal to regulated communities and EPA employees that the administration doesn't take its responsibility to enforce environmental laws seriously.

Are you concerned that the previously proposed budget cuts to EPA sends a message to polluters and EPA staff that the Agency doesn't take environmental enforcement seriously?

Ms. BODINE. As I mentioned in my opening statement, I have gone around to the regions, I have talked to my staff to make sure that they know that we do very much value the work that we do and that enforcement is incredibly important.

Ms. CLARKE. So I want to shift gears just a tad bit. Two-thirds—I am from New York—of New Yorkers regularly breathe in unhealthy air due to smog. That is why New York State and City has actually sued the EPA last month regarding its failure to enforce the Clean Air Act.

The quote, "good neighbor," end quote, provision of the Act requires the EPA to police air pollution in States not living up to Federal standards so it doesn't blow downwind to States like mine. This lawsuits results from the EPA's decision to reverse its prior finding that ozone pollution should be subject to this provision.

Why did the EPA take this action, which harms the health of New Yorkers?

Ms. BODINE. So, congresswoman, I don't actually have any background information on that. That would be a regulation that would come out of the Air Office.

Ms. CLARKE. OK and so you wouldn't be looking into a lawsuit that has implications around enforcement and regulation.

Ms. BODINE. Our General Counsel's Office would be managing that lawsuit. My office would not have anything to do with it.

Ms. CLARKE. Very well. Well then let me share just this one last question, since I have a short amount of time.

Will next year's budget propose similar draconian reductions for EPA like last year's proposal?

Ms. BODINE. I don't know.

Ms. CLARKE. You don't know. Will you be advocating for a more robust budget?

Ms. BODINE. So I believe the President's budget is going to come out in March, next month.

Ms. CLARKE. Absolutely.

Ms. BODINE. So the—

Ms. CLARKE. Well, if the past precedent is prologue, what are your feelings about that, given what has all been revealed here today?

Ms. BODINE. I support the President's budget.

Ms. CLARKE. Oh, very well.

I yield back, Madam Chair.

Ms. DEGETTE. The Chair now recognizes the gentleman from New York, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Chairwoman DeGette, for hosting this hearing and welcome, Administrator Bodine.

Ms. BODINE. Thank you.

Mr. TONKO. Civil penalties are an important enforcement tool at EPA. Civil penalties are monetary assessments paid by a regulated entity because of a violation or noncompliance. They are designed to recover the financial benefit a company has obtained by breaking the law and impose added cost to deter firms from breaking the law again in the future.

So Administrator Bodine, would you agree that civil penalties are an important enforcement tool for EPA?

Ms. BODINE. Yes. Yes, I do.

Mr. TONKO. And according to EPA's annual enforcement report for fiscal year 2018, EPA obtained just \$69.4 million in Federal administrative and civil judicial penalties.

A recently released report cited by The Washington Post states that this is the lowest amount of civil penalties recovered since the Office of Enforcement and Compliance Assurance was established back in 1994. Even excluding the huge BP penalty, The Washington Post reports, and I quote, the Trump administration's civil monetary penalties "last year represented a roughly 55 percent drop from the annual average." In fact, according to a February 8th Washington Post report, the \$69 million in civil penalties leveled by EPA "represents the lowest in nearly a quarter-century."

So Administrator Bodine, is that accurate?

Ms. BODINE. I can look at the—I know what our results say. I don't have the data that you have. But I also would note that penalties go up and down and that—

Mr. TONKO. OK but could you get back to us if it is accurate?

Ms. BODINE. Certainly.

Mr. TONKO. Thank you.

In the roughly 25-year history of the Office of Enforcement and Compliance Assurance, has the amount of civil penalties leveled by EPA ever been this low?

Ms. BODINE. In the 11 years of data I have in front of me, no, but I don't have it back further.

Mr. TONKO. OK, thank you.

And Ms. Bodine, some have suggested that annual total penalties can be strongly influenced by the presence of one or two large cases. To illustrate this point, your staff provided to the committee analysis which shows annual results for civil penalties after removing two large cases, that being BP and VW.

In your testimony, you had mentioned that for 2019, the State of California and EPA secured a civil penalty of some \$305 million. So my question, Administrator Bodine: What is the amount of civil penalties for fiscal year 2019 to date, if you exclude the large Fiat Chrysler penalty?

I have this chart that was provided by your Agency that shows this huge spike with the Fiat Chrysler penalty. This has been adjusted for BP and VW. So I have heard all the talk about spikes, and peaks, and valleys. I have heard about the averaging throughout the years. But in a 30-year span, if you take this out, what is the amount of civil penalties for fiscal year 2019 to date?

Ms. BODINE. I am going to have to provide that for the record.

Mr. TONKO. Yes, that is very important information, because that spike looks like the whole picture for 2019.

Again, Ms. Bodine, on the second panel, Eric Schaeffer, who spent 12 years at the EPA as the Director of the Agency's Office of Civil Enforcement, will testify that EPA's enforcement results for 2018 fiscal year were historically low. His testimony indicates, and I quote, "the number of inspections and investigations, civil cases either referred to the Justice Department for prosecution or concluded with a consent decree, criminal cases opened, and defendants charged with environmental crimes fell to their lowest levels since at least 2001.

"Looked at another way, inspections and investigations in the last year were 40 percent below their average level during the last two administrations. EPA referred 123 cases to the Justice Department in 2018, compared to an average of 211 per year under President Obama, and 304 under President Bush."

Ms. Bodine, that certainly seems like a decrease in enforcement activities. How do you respond to that?

Ms. BODINE. You can't look at average when you are talking about enforcement. We don't set quotas. We don't say we are going to ask the staff to reach an average number of penalties, and you know you have get \$500 million in penalties a year, and that you have to go out and increase penalties to reach that number. We don't say you have to reach an average number of cases. And again, we want them to be very judicious and strategic and put the resources where it matters.

We do, however, try and set targets for inspections because we absolutely agree that we need to be out there. We need to be inspecting for compliance. We need to have the enforcement presence out there.

Mr. TONKO. I am just concerned that EPA has taken the environmental cop off the beat and will go on polluting without fear of repercussions.

So with that, I thank you for your time.

Ms. BODINE. Thank you.

Mr. TONKO. I yield back.

Ms. DEGETTE. The Chair now recognizes the gentleman from Oklahoma, Mr. Mullin, for 5 minutes.

Mr. MULLIN. Thank you, Madam Chairwoman.

I ask unanimous consent to include a letter from Senator Unruh regarding the EPA enforcement into the record.

Ms. DEGETTE. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. MULLIN. Thank you.

Ma'am, thank you so much for being here. And I have got to tell you, coming from a business owner that owns an environmental company, it is refreshing to have an EPA now that is willing to work with us. We have DEQ, Department of Environmental Quality inside Oklahoma that obviously partners with the EPA. And underneath the last administration, it felt like every time the EPA showed up at a job site or a place of business, they were there just to look at ways to write fines. They were not there trying to work with the industry, trying to improve it. And in fact, if you even questioned it, you typically got a supervisor that came back with more penalties. And so it was to the point where you couldn't work with the Agency anymore.

So the idea that you are bringing it back to working with industry, I, personally, appreciate it and I can tell you industries appreciate it, too.

It has always been in my mindset that the government is supposed to create an environment for the economy to thrive, to allow the industry to work with best practices. And I feel like that that is coming back around to the EPA. So thank you so much.

I have got a couple of questions here. My understanding is that OECA is trying to use the right tools to focus on major, even criminal compliance issues. Is that correct?

Ms. BODINE. Yes, that is correct.

Mr. MULLIN. So if that is accurate, then would you attribute the new efficiencies to the uptick in criminal enforcement cases open in fiscal year 2018?

Ms. BODINE. I am not sure if it is an efficiency issue but we have certainly been very, very supportive of the criminal program. I am happy to see the number of cases that they have opened for investigation as well now.

Mr. MULLIN. What type of compliance issues do you think you are dealing with right now?

Ms. BODINE. Across the country?

Mr. MULLIN. Just for the most. Just give me maybe the top three.

Ms. BODINE. So we are concerned about, for example, the number of Clean Water Act permit holders that are in significant non-compliance with their permits. And so we are trying to work with States to get that number down.

We are also concerned about drinking water and we are talking about developing a New National Compliance Initiative on drinking water because I think everyone around the country is concerned that we have noncompliance.

You know we have cases underway but we also know that there are small systems out there that need help.

Mr. MULLIN. Are you having issues with discharge permits for like maybe municipalities?

Ms. BODINE. So they are a big part of the universe that is in non-compliance with their permits that we track. And again, a lot municipalities that had both combined sewer overflows and sanitary sewer overflows, a lot of those are already under either an administrative order, a consent decree, or a permit to get them back into compliance.

Mr. MULLIN. Does that have to do with their treatment centers that are maybe outdated and they can't afford to put in new ones?

Ms. BODINE. That can very much be the case. And when we deal with those issues, then we look at the time frame over which they would need to come back.

Mr. MULLIN. Let's say when they built it, they were compliant and then new standards have increased, which made them out of compliance, or is it because they have equipment that is down?

Ms. BODINE. It is both.

Mr. MULLIN. It is both.

Do you have enough Federal agents to enforce your criminal investigations?

Ms. BODINE. So I have authorized the hiring to take us up to 164 agents. We don't have that number onboard right now. Again, it takes about 6 months to bring on an agent.

Mr. MULLIN. How many are you behind?

Ms. BODINE. I think right now we have about 147—

Mr. MULLIN. One hundred and forty-seven.

Mr. BURGESS [continuing]. But we have a number of hires in the works. They have to go through a lot. They carry guns. They have to go through a lot of background checks.

Mr. MULLIN. So what is the time frame to be able to get them up to speed and have them—

Ms. BODINE. Can I answer for the record? It takes a long time. It is not getting them up to speed. It is getting them onboarded. It is getting them hired.

Mr. MULLIN. Now, what is—

Ms. BODINE. But, again, I authorized that back in June or July, and so we are working hard to get those folks on.

Mr. MULLIN. So what is the total number of vacancies you have?

Ms. BODINE. Well, I believe—again, I have some people coming on in March.

Mr. MULLIN. OK.

Ms. BODINE. They were supposed to come on in January, but they didn't because we were shut down. But they are coming on in March, and so I think today it is about 147. We are trying to get it up to 164, but I don't know how many are coming in within the next few weeks.

Mr. MULLIN. Real quick, one last question: Why do the EPA agents need to be carrying guns?

Ms. BODINE. So they go out and they serve search warrants, and sometimes people resent the fact that they are in fact searching their facility. And we have had——

Mr. MULLIN. So it is for protection purposes.

Ms. BODINE. Absolutely. We have had——

Mr. MULLIN. It is not enforcement, it is protection.

Ms. BODINE. It is protection. We have had situations.

Mr. MULLIN. Right, well that was what I was hearing.

Ms. BODINE. That is exactly what it is.

Mr. MULLIN. It is not for enforcement purposes.

Ms. BODINE. No.

Mr. MULLIN. It is for self-protection.

Ms. BODINE. It is absolutely for personal protection, yes.

Mr. MULLIN. OK, thank you so much. I appreciate it.

Ms. BODINE. Yes.

Mr. MULLIN. I yield back.

Ms. DEGETTE. The Chair now recognizes the gentleman from California, Mr. Peters, for 5 minutes.

Mr. PETERS. Thank you, Madam Chair, and thank you, Ms. Bodine, for being here with us.

My first job after graduating college was working as an economist for the ToSCA section of the Office of Toxic Substances under ToSCA. And that drove me from being an economist to going to law school.

And then as a lawyer, one of the first things I did was work on Superfund as an environmental lawyer after it was reauthorized in the mid-1980s. And I want to talk about that program for a few moments.

The Superfund program is a critical public health program that has made an enormous difference in cleaning up dangerous contaminated sites across the country and there are a lot of effective tools and private enforcement but public enforcement, EPA enforcement staff still has a lot of responsibility for identifying responsible parties and ensuring that the appropriate people pay to get the cleanups done.

In 2018, Superfund enforcement generated the lowest level of private party cleanup commitments in 10 years. Is that your understanding?

Ms. BODINE. I will take your word for it. I don't have my Superfund slide in front of me but I can pull it out.

Mr. PETERS. OK. And also, I understand that the volume of contaminated soil and water to be cleaned up also dropped significantly in that time period. Is that also your understanding?

Ms. BODINE. So I do know that the volume of hazardous waste—well, the volume of contaminated soil and water in 2018, I need my chart. I know that it was higher than it was in 2015, higher than it was in 2016. I believe it was less than 2017, however.

Mr. PETERS. OK. I am thinking over the last 10 years. That is my understanding.

In any event, I don't think the need for cleanup has dissipated. The number of National Priorities List sites, NPL sites has remained consistent for years and the pace of cleanups has slowed markedly. Is it fair to attribute that to lesser enforcement? What do you attribute that to?

Ms. BODINE. So I am not sure. I know that this administration we have been very focused on increasing the pace of cleanups in the Superfund program and that is by focusing management attention, making sure that we don't have logjams and that if private parties aren't stepping up, that we bring them to the table through the threat of enforcement.

Mr. PETERS. I guess the bottom line is that the number of NPL sites has not been reduced. Isn't that our goal to get these things cleaned up and off the list?

Ms. BODINE. It is and, in fact, under this administration, we have had more deletions. I believe it was I think 22 sites were deleted from the NPL this past year, which is more than probably any—I would have to get the exact number but it is certainly a huge increase over prior years.

Mr. PETERS. What would be great is if I can ask you to follow-up, if you don't have these things in front of you.

Ms. BODINE. Absolutely. Sure.

Mr. PETERS. Sometimes it is a little bit of a surprise. I would love to get those numbers from you on the cleanups.

Ms. BODINE. Sure.

Mr. PETERS. The threat of enforcement carries particular weight in Superfund because the Agency has the authority to seek treble damages for cleanup costs from responsible parties. How often have you used the treble damage authority during your tenure, Ms. Bodine?

Ms. BODINE. So these are 106 actions. I know that we have threatened them and then the private parties have come to the parties to the table in some cases that I have been briefed on. But I wouldn't know every instance and so I will have to get back because that would happen out in the region. So I will have to get back to you for the record on the number of 106 orders we have issued.

Mr. PETERS. Would you be able to share which cases those were with us?

Ms. BODINE. I believe those would be public.

Mr. PETERS. I would like to compare your threats to the results, if that is OK with you.

Ms. BODINE. Let me take that back. I believe those are public. If we actually issued the order, then that would—I believe those are public.

Mr. PETERS. All right, thank you.

I yield back.

Ms. DEGETTE. The gentleman yields back.

Ms. Bodine, this concludes your testimony but I did want to raise a couple things with you.

Number one, several of the Members today asked you to supplement your answers.

Ms. BODINE. Yes.

Ms. DEGETTE. And we expect that in a timely fashion. I am sure you can do that. When do you think you can get that information to us?

Ms. BODINE. That I don't know, but I understand completely the need to be responsive.

Ms. DEGETTE. Thirty days, do you think? Well, we are going to hope for 30 days.

Ms. BODINE. OK.

Ms. DEGETTE. One of the reasons I ask is the majority has sent your office five letters requesting information and documents since the beginning of this Congress. And as a rule, we ask for 2 weeks. We know you can't always get that in the 2 weeks, but we haven't gotten any of the information. So I would ask you to go back to your office and see if you can get responses to those five letters as well. Is that OK?

Ms. BODINE. Yes.

Ms. DEGETTE. Thanks.

Just one last question, and then I will ask Mr. Guthrie if he has any last questions.

In your response to Mr. Mullin, you said that you have a goal of increasing your number of criminal investigators to 164.

Ms. BODINE. Yes.

Ms. DEGETTE. How many investigators is the EPA required to have under the law?

Ms. BODINE. There isn't a—

Ms. DEGETTE. There is no requirement.

Ms. BODINE. There is no requirement.

Ms. DEGETTE. OK, my staff says it is 200. So that is not accurate?

Ms. BODINE. The, I believe, Pollution Prosecution Act of, what, 1990 said that by 1995 the number should be 200, and it was in 1995. But we don't have an ongoing obligation to maintain 200.

Ms. DEGETTE. Under that Act.

Ms. BODINE. Correct.

Ms. DEGETTE. That is your interpretation of that Act.

Ms. BODINE. Yes, that is correct.

Ms. DEGETTE. OK, thank you.

Mr. Guthrie, do you have any additional questions?

Mr. GUTHRIE. No, thank you. I just want to thank you for coming to testify before us today. And I think there were several questions asked for timely responses to the questions, and I think that is appropriate. And I appreciate you coming before us today. Thank you. I yield back.

Ms. DEGETTE. Thank you very much. With that you are dismissed, Ms. Bodine.

And I would now ask the second panel witnesses to please come to the table.

Thank you so much all for coming. I would now like to introduce our second panel of witnesses. OK, you guys are not sitting in the order on this, but I am going to introduce you in the order of this.

Bruce Buckheit, who is an analyst and consultant and the former director of the Air Enforcement Division of the Office of Enforcement and Compliance Assurance; Dr. Bakeyah Nelson—is that right, Dr. Nelson, “Bi-kay-uh”?—Executive Director of the Air Alliance Houston; Eric Schaeffer, the Executive Director of the Environmental Integrity Project; Dr. Chris Sellers, Professor of History and Director of Center for the Study of Inequality and Social Justice at Stony Brook University; Dr. Jay Shimshack, who is the Associate Professor of Public Policy and Economics, Frank Batten

School of Leadership and Public Policy at the University of Virginia; and the Honorable Ronald J. Tenpas, a partner at Vinson and Elkins, former Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice.

I want to thank all of you for appearing today and I am sure you are aware the committee is holding an investigative hearing and when we do so, we have a practice of taking testimony under oath.

Does anyone have an objection to taking your testimony under oath? Let the record reflect the witnesses responded no.

The Chair then advises you that under the rules of the House and the rules of the committee, you are entitled to be accompanied by counsel.

Does anyone here desire to be accompanied by counsel today? No. Let the record reflect the witnesses have responded no.

So if you would please rise and raise your right hand so you may be sworn in.

[Witnesses sworn.]

Ms. DEGETTE. You are now under oath and subject to the penalties set forth in Title 18 Section 1001 of the U.S. Code.

So now the Chair will recognize the witnesses for 5 minutes for a summary of their written statements.

In front of you is a microphone and a series of lights. The light will turn yellow when you have a minute left and red to indicate your time has expired.

And I am going to have you testify in the order in which you are sitting. So, Mr. Schaeffer, we will start with you, and thank you so much. You have got 5 minutes.

**STATEMENTS OF ERIC SCHAEFFER, EXECUTIVE DIRECTOR, ENVIRONMENTAL INTEGRITY PROJECT; CHRIS SELLERS, PH.D., PROFESSOR OF HISTORY AND DIRECTOR, CENTER FOR THE STUDY OF INEQUALITIES, SOCIAL JUSTICE, AND POLICY, STONY BROOK UNIVERSITY, ON BEHALF OF THE ENVIRONMENTAL DATA AND GOVERNANCE INITIATIVE; BRUCE C. BUCKHEIT, ANALYST AND CONSULTANT, FORMER DIRECTOR, AIR ENFORCEMENT DIVISION, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, ENVIRONMENTAL PROTECTION AGENCY; JAY P. SHIMSHACK, PH.D., ASSOCIATE PROFESSOR OF PUBLIC POLICY AND ECONOMICS, FRANK BATTEN SCHOOL OF LEADERSHIP AND PUBLIC POLICY, UNIVERSITY OF VIRGINIA; BAKEYAH S. NELSON, PH.D., EXECUTIVE DIRECTOR, AIR ALLIANCE HOUSTON; AND RONALD J. TENPAS, PARTNER, VINSON AND ELKINS, LLP, FORMER ASSISTANT ATTORNEY GENERAL, ENVIRONMENT AND NATURAL RESOURCES DIVISION, DEPARTMENT OF JUSTICE**

#### **STATEMENT OF ERIC SCHAEFFER**

Mr. SCHAEFFER. Thank you, Madam Chairman and Ranking Member Guthrie, for the opportunity to testify. I am Eric Schaeffer, Director of the Environmental Integrity Project, and I did spend time at the EPA as Director of the Civil Enforcement Program. And if I may, I would like to address some of the issues that came up in prior testimony and have my written statement be in the record.

Ms. DEGETTE. Without objection.

Mr. SCHAEFFER. Thank you.

So to take some of the points that were discussed, I just want to make clear that EPA's enforcement program does not just measure penalties and fines. It has always, at least for 25 years, measured enforcement outcomes. Those include the amount of pollution reduced through enforcement action and the amount of money spent on cleanup. And those measures are reported faithfully every year. They are also at historic lows in 2018. I believe the Chair made those points, but I just wanted to reinforce those outcome measures are also down.

Also, I think it is important just to get back to basics and understand that enforcement protects people where they live and work, protects their health and environment where they live and work. So when a community is exposed to a blast of lead or a cloud of carcinogens from let's say a petrochemical plant, you really can't answer the problem by saying you know don't worry, sulfur dioxide emissions are down nationwide. They really want something done about what is going on in their neighborhood. That is enforcement work and I think it is important to just keep that in front of us.

Next, EPA has had active programs to encourage voluntary compliance, including the disclosure and correction of violations for many, many years. They are important. They are necessary. They work in tandem with enforcement. It's not an either/or situation. And in fact, I think those voluntary efforts will start to shrink if enforcement starts to fall off.

Looking at this issue maybe more philosophically, if you are a large refinery, let's say, or a large power plant, you aren't supposed to wait until the government comes calling to start complying with the law. So that kind of voluntary compliance is not what we should be talking about. It should be giving people incentives to get ahead of the game and stay in compliance before the enforcement program finds you.

And when the program does find you, if you're looking at serious violations, and some of these cases involve thousands of violations over many years, you should pay a penalty and there should be no apology for that. And that penalty should sting. It should make you think twice about doing it again. That's fundamental. So I just want to say penalties do matter. They're not unimportant. And if you stop basically making people pay those penalties and fines, you won't get a lot of voluntary compliance.

It's good to hear that the Assistant Administrator appreciates the great work of the enforcement program and I believe Ms. Bodine means it. I can't help but say these are the same great people who the administration keeps trying to pink slip. So the attitude seems to be you do great work; we just need less of it. That seems to be the message from the administration. You just can't have it both ways.

You'll hear a lot about cooperative federalism being used to sell the idea of a retrieving EPA enforcement presence. That's a hand-off of EPA responsibilities to States that do not have the budgets and, in many cases, do not have the same authority EPA has to enforce the law.

You violate the Clean Air Act and EPA is coming at you, you can pay up to \$100,000 per day for each violation. That's under the statutes you wrote. In many States, \$10,000 is the maximum. You're just starting with fewer cards. You can't negotiate an outcome nearly as well as EPA can in that kind of lopsided situation.

I just want to close by referring Members to the charts at the back. There, I've tried to show a list of plants where the communities face exposure to toxic pollutants and other noxious chemicals and hazards. And those have been documented by EPA in inspections or through monitoring records. They have been sitting for years with no enforcement action. In some cases, thousands of violations at these plants.

So where's the beef? You know we want to focus on outcome. We should be asking what's going to happen with those cases.

Last but not least, EPA will never run out of work. I've given you examples of the tips and complaints called into the National Enforcement Response Center that involve blowing lead dust into the environment, burning hexavalent chromium, dumping pollutants into the air, land, water, sewers, and those need attention.

Thank you for your time.

[The prepared statement of Mr. Schaeffer follows:]



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### Written Testimony

Eric Schaeffer, Executive Director of Environmental Integrity Project  
Before the Oversight and Investigations Subcommittee of the  
U.S. House Committee on Energy and Commerce

"EPA's Enforcement Program: Taking the Environmental Cop Off the Beat"

February 26, 2019

Thank you, Mr. Chairman and Members of the Committee, for the opportunity to testify today. My name is Eric Schaeffer and I am the Director of the Environmental Integrity Project, a public interest group established in 2002 to advocate for more effective enforcement of environmental laws. I also spent twelve years at EPA and served as Director of the Agency's Office of Civil Enforcement between 1997 and 2002.

EPA has a proud history of enforcing the Clean Air Act, the Clean Water Act and other laws that protect public health and our natural resources, in both Republican and Democratic Administrations. That tradition is in danger today for several reasons. Thanks to relentless budget cuts, the Agency's enforcement staff of investigators, engineers and attorneys has shrunk nearly 16% over the last six years (Attachment A). While Congress thankfully rejected the even deeper cuts President Trump proposed, funding levels over the last two years have not been enough to stop the slow erosion of the workforce.

The dedicated professionals who remain at their post face headwinds that make it harder to do their jobs. They work for a President who promised on the campaign trail to reduce EPA to little tidbits. EPA's political leaders spend most of their time weakening environmental rules and also relaxing monitoring requirements, making it even harder to know whether industries are complying with their air and water pollution limits. And new policies aim to reduce the federal enforcement presence on the pretense that that state agencies, facing their own budget cuts along with legal constraints on their power to enforce, can pick up the slack. These rollbacks will leave violators unpunished and too many communities exposed to higher risks from toxins like lead, or carcinogens like benzene.

Shackled by these budget cuts and political restraints, EPA's enforcement results for the 2018 fiscal year were historically low by almost every measure. The number of inspections and investigations, civil

cases either referred to the Justice Department for prosecution or concluded with a consent decree, criminal cases opened, and defendants charged with environmental crimes fell to their lowest levels since at least 2001. Looked at another way, inspections and investigations in the last year were 40% below their average level during the last two Administrations. EPA referred 123 cases to the Justice Department in 2018 compared to an average of 211 per year under President Obama, and 304 under President Bush.

Adjusted for inflation, violators will spend less to clean up their illegal pollution than any time since 2003, as the volume of pollutants removed or treated as a result of enforcement actions has also fallen sharply.

To be fair, we could see more enforcement actions and better outcomes this year. The Agency will apparently recover \$305 million from Fiat-Chrysler for installing faulty emission control devices on more than 100,000 of its vehicles, though compared to the earlier Volkswagen settlement the company will not have to spend as much (per vehicle) on environmental projects to offset the harm caused by its illegal pollution. But one or two big cases against corporate defendants will not compensate for a smaller EPA enforcement presence almost everywhere else.

You'll hear "cooperative federalism" used to justify these cutbacks, based on the assumption that states will fill the void left behind when EPA leaves the field. States are critical partners when it comes to environmental protection, which is why they are authorized to implement and enforce most federal environmental rules. But for good reason, Congress gave EPA the right to continue to enforce federal standards even after states have assumed the responsibility for implementation. And although not widely known, many state agencies do not have the same kind of power that EPA has to enforce these federal laws. For example:

- Because federal penalties established long ago are periodically indexed for inflation, EPA can ask courts to fine polluters nearly \$100,000 per day for each violation of the Clean Air Act that occurs after November of 2015. In contrast, the maximum state penalties for comparable violations are much lower, dropping to no more than \$10,000 per day in some jurisdictions. (Attachment B).
- Unlike the federal government, many states do not authorize criminal prosecution of those who intentionally or recklessly violate federal environmental rules. Creative state or local

prosecutors can sometimes charge the worst actors under statutes that prohibit fraud, but even then may lack staff trained to investigate environmental crimes. Notably, one of former EPA Administrator Scott Pruitt's first acts as Oklahoma's attorney general was to disband the environmental crimes unit established by his predecessor.

- Unlike EPA, some states do not have administrative law judges with the power to make decisions for certain environmental cases. That means if defendants refuse to settle, the agency must refer even relatively minor violations to the understaffed offices of their state's Attorneys General for prosecution in state court.

Most enforcement cases are eventually resolved through settlement that offer penalties well below the maximum limit in return for cooperation and investment in cleanup. But as any business in America knows, you need to have leverage in negotiations if you want to get a good outcome. In too many cases, states don't have the same enforcement leverage that EPA brings to the table.

Budget cuts have also eaten into state capacity, making it harder to recruit or retain the kind of expertise needed to sustain an enforcement action, especially where the defendants are large and well-lawyered corporations. Some of the most dangerous forms of pollution are invisible to the naked eye, and can only be seen with specialized equipment like infrared cameras or uncovered through painstaking analysis of sample results and plant records. Routine inspections aren't enough to find the biggest violations and you cannot just wait for them to show up, like the highway patrol car waiting behind a billboard for someone to speed by.

EPA's work more often involves carefully targeted investigations to find serious violations exposing the public to dangerous pollutants that might otherwise never be found. You can certainly find that focus in the best state programs, some of which have done ground-breaking environmental work for years. My point is simply that there aren't enough states with both the legal authority and capacity to replace the enforcement work done by EPA.

Most regulated sources make good faith attempts to comply with the rules, and we would be lost without those efforts. But voluntary compliance will never be enough to prevent the serious violations that result from backsliding, carelessness, or the temptation to cut corners to save money. You can get some idea of that by reviewing the federal National Response Center's online record of tips from citizens reporting companies blowing lead dust into the air, illegally burning hexavalent chromium,

methanol, and other hazardous substances, dumping toxic chemicals or coal ash in the backlot, down the drain, or into creeks and rivers. We've been able to match company names to the location of these incidents and will ask EPA to investigate these allegations. (Attachment C).

Without stronger enforcement programs at both the federal and state level, we leave law-abiding companies at the mercy of unscrupulous competitors and too many communities exposed to pollution that is illegal, noxious, and in some cases downright dangerous. To illustrate what's at stake, Attachment 4 provides examples of some of the violations that EPA investigators have uncovered at sites across the United States, with some background on the people who live nearby. The data comes from discharge monitoring reports, notices of violation, or inspection reports that date back 18 months to more than five years ago. The allegations concern illegal emissions of lead, hydrochloric acid, dioxin, carcinogens that are deadly in minute concentrations, and smog forming chemicals, and unpermitted wastewater discharges of bacteria, nitrogen, and toxic metals. To the best of our knowledge, EPA has yet to take final action to require those responsible to invest in clean up and pay penalties for violating the law.

Three of these cases were unearthed by teams from EPA's National Enforcement Investigations Center in Colorado, which has lost a quarter of its staff over the past few years. Their inspection reports are worth reading. For example, NEIC's 2016 investigation found thousands of violations at the Denka polymers plant in Louisiana's St. John the Baptist Parish, including airborne chloroprene concentrations above open wastewater drains that NEIC estimated were up to 800 times above the level considered safe by the Occupational Safety and Health Administration. Chloroprene is a likely carcinogen, and while airborne concentrations in the adjacent African American neighborhoods have declined, cancer risks are still well above levels that EPA considers acceptable.

Louisiana has responded with an administrative order that incorporates Denka's "voluntary" agreement to take some action to reduce the plant's chloroprene sources. Based on the detailed findings in the NEIC's inspection report, now more than three years old, this company needs to pay a big fine and its cleanup needs close supervision. Complying with our environmental laws isn't voluntary, and it isn't something you have to do only after the government has knocked on your door.

The people who live near some of these sites include neighborhoods that are predominately African American or Latino, and almost all of the sites are in communities where poverty levels are high. But whether black, brown, or white, the Americans exposed to so much illegal pollution do not have

powerful political connections or access to well-connected lobbyists or expensive law firms. In other words, they are the very people who most need the protection of federal laws to protect public health and keep our air and water clean. They have never heard of cooperative federalism and can't afford to wait for it. They need EPA's help today.

Thank for the opportunity to speak and I look forward to answering your questions.

Attachment

**Attachment A: EPA Enforcement Workforce from 2006 - 2018**

EPA Enforcement Workforce (Full Time Equivalent Employees)			
Year	Criminal Enforcement	Civil Enforcement / Compliance Monitoring	Combined
2006	271	1919	2189
2007	259	1909	2168
2008	255	1903	2158
2009	292	1899	2191
2010	284	1896	2180
2011	300	1928	2228
2012	294	1884	2179
2013	279	1771	2051
2014	267	1717	1984
2015	252	1636	1888
2016	248	1653	1901
2017	238	1641	1879
2018*	224	1618	1842

Note: EIP estimated FTEs based on the funding approved by Congress for FY 2018. For FY 2006 through 2017, FTEs came from the Justification of Appropriation Estimates for the Committee on Appropriations for each year for EPA.

### Attachment B: Maximum Civil Judicial Penalties for Violation of Federal Clean Air Act Requirements

Maximum Civil Judicial Penalty: For Violation of Federal Clean Air Act Requirements			
Entity	Penalty (per violation/day)	Citation	
EPA	\$ 99,681	84 Fed. Reg. 2059 (Feb. 6, 2019)	
VA	\$ 32,500	Va. Code § 10.1-1316	
AL	\$ 25,000	Alabama Code § 22-22A-5 (1)(b)(c)	
GA	\$ 25,000	O.C.G.A. § 12-9-23(a)	
IN	\$ 25,000	Indiana Code 13-30-4-1	
MD	\$ 25,000	MD Env. Code § 2-610 (2013)	
OH	\$ 25,000	Ohio Revised Code § 3706.06	
TX	\$ 25,000	TCFO Penalty Policy (April, 2014)	
ND	\$ 10,000	North Dakota Century Code § 23.1-06-14 (4)	
OK	\$ 10,000	27A OK Stat § 27A-2-5-117 (2014)	
PA	\$ 10,000	35 P.S. § 4009.1	

Note: Applies to violations by stationary sources. EPA penalty applies to violations that occurred after November 2, 2015 that were discovered after January 15, 2019. The \$10K penalty amount for Pennsylvania applies to violations within the first three years and increases to \$25K by five years.

### Attachment C: Complaints called in to the National Response Center (NRC) in 2018

Date	Nearest City	State	Description of Event
1/19/2018	Portland	OR	Caller reported a company buried hazardous materials for a while and it is seeping from the soil.
4/1/2018	St. Joseph	MO	Caller stated that the company has personnel blow lead dust with a blower into the environment as well as wash battery acid into a storm drain.
4/16/2018	Fairless Hills	PA	Caller reported the mixture of rain water and a pile of coal is being pumped into the Delaware River. This is an ongoing event.
4/17/2018	Oak Grove	MO	Caller is reporting the company is dumping concrete solvent, tar, and unknown oil into the creek behind the location and are dumping into the city sewer system. The company dumps the materials and oils into a large pit that leads directly into the city sewer system.
4/26/2018	Trenton	OH	Caller reported an unknown amount of swarf (a heavy metal) is being released onto the ground from a water jet machine. This has been ongoing for two years.
6/6/2018	St. Petersburg	FL	Caller is reporting that a company is dumping material (hexavalent chromium) into the street from a hose at the facility. Caller stated company is heating up the material so that it releases into the air to save money for disposal. Material spilled in the facility is being put into a hole inside the shop and there is a yellow powdery substance on the surrounding area. This is occurring on a daily basis.
6/11/2018	Logansport	IN	The local division was notified of a hazardous release at the cement plant. The initial reporting source stated that for over five months there has been a release of hazardous waste fuel leaking from secondary containment into the lower dike and contaminating groundwater. Also the liner underneath the containment at the bulk solid facility has a hole and when ground water comes through the floor, the waste fuels seeps into the groundwater.
6/12/2018	Midland	TX	Caller is reporting that a company is dumping chemicals in the soil behind the west and south yard locations.

Link to National Response Center webpage: <http://www.nrc.uscg.mil/>

### Attachment C: Complaints called in to the National Response Center (NRC) in 2018

Date	Nearest City	State	Description of Event
7/15/2018	Hazard	KY	Caller is reporting the recycling company at the incident location is intentionally dumping transmission fluid, motor oil, gasoline, and anti-freeze onto the ground and into Lotts Creek. Caller stated they are recycling vehicles and all the fluids are being dumped all over the property and in the water. Caller stated the ground is saturated in several areas and that the fish in the waterway have sores on them.
7/30/2018	Mulberry	FL	Caller stated that the suspected responsible party is dumping 5% fertilizer, GMAP, MAP (mono ammonium phosphate), pelletized sulphur, and DAP (diammonium phosphate) at the back of the property, which is then running into a storm drain.
8/10/2018	Pittsburg	OK	Caller is reporting the dumping of black water and chemicals from storage tanks that oil fields personnel use. The company dumps the chemicals onto the owners various properties.
8/24/2018	Livonia	MI	Caller reported trichloroethene (TCE), tetrachloroethene (PCE), 1-dichloroethene (DCE), cis-1,2-dichloroethene (CDE), trans-1,2-dichloroethene (TDCE), vinyl chloride (VC), 1,4-dioxane, Inapi, dnapi, are being released from a transmission plant into the soil, water, and air due to Ford Motor Company dumping.
9/5/2018	Beech Bottom	WV	Caller reports that this company is dumping fracking related materials onto the ground from a variety of sources and letting the material run into the Ohio River.
9/26/2018	Midland	TX	Caller reports the company has oil and chemicals on the ground at the facility and the ground is contaminated. There is a storage tank that is corroded and is releasing material onto the ground. Bins are filled with acid that are not being disposed of. Oil is leaking onto the ground when equipment is being worked on. Caller stated this has been ongoing for the past several years.

Link to National Response Center webpage: <http://www.nrc.uscg.mil/>

### Attachment C: Complaints called in to the National Response Center (NRC) in 2018

Date	Nearest City	State	Description of Event
10/18/2018	Perry	FL	Caller is reporting that a pulp and paper company has a system extracting methanol and hydrogen sulfide and attempting to burn it, but they are creating more methanol than they are permitted to burn. They are taking 55 gallon drums of methanol and hand pumping it into the boilers with out reporting and metering how much they are burning. They divert methanol to the waste water tank trying to delate the methanol and over flowing the waste water tank, making 6 employees sick enough to need to go to the emergency room. They reboil the waste water and the methanol and it evaporates into the plant. Methanol is also being sent to the waste water treatment plant. Employees are exposed to airborne methanol.
10/25/2018	Central City	KY	Caller is reporting an ash pond is being pumped out and improperly dumped. Kentucky Utley is dumping the ash pond water off of a haul road between power plant and the Bickett Farm to the east. Caller indicates that they were told not to dump by the farm owner and now they are dumping the contaminated water on haul roads and on the power plant property. Caller indicates that the ash pond water is contaminated with arsenic and other harmful materials.
11/17/2018	Allentown	PA	Caller reports that 100 x 55-gallon drums of isopropyl alcohol are being dumped down the drain at this facility. This is in opposition to the normal disposal procedures per the caller. Caller states that this happens weekly and started in January.
11/15/2018	Midland	TX	Caller reports the suspected responsible company is dumping an unknown blue-green chemical onto the ground and into a ditch for an unknown reason.
11/15/2018	Newark	DE	Caller reported an unknown amount of hydraulic oil, kerosene, gasoline, and diesel is being dumped into soil at a recycling facility. Caller stated this has been going on for 20 years.
12/15/2018	Society Hill	SC	Caller is reporting that there is a company that is dumping unknown chemicals and fly ash onto the ground and it impacts nearby creeks. Caller stated that the incident occurs often.

Link to National Response Center webpage: <https://www.nrc.uscg.mil/>

Attachment D: 10 Examples of EPA Cases Awaiting Final Enforcement Action

Owner / Operator	City	State	Violations	Date Violation Identified	Population within 1 mile	Minority	Children / Seniors	Poverty
Magnetics International*	Burns Harbor	IN	Failed to meet emission limits or pollution control standards for: HCl and chlorine	6/28/2016	2026	18%	9% / 9%	14%
American Iron Oxide*	Portage	IN	Failed to meet emission limits or pollution control standards for: HCl and chlorine	6/28/2016	262	9%	6% / 22%	26%
United Taconite**	Forbes	MN	Failed to meet emission limits or pollution control standards for: Particulates, NOx, SO <sub>2</sub> , and heavy metals	2/21/2014	405	5%	3% / 18%	23%
Gopher Resource	Eagan	MN	Failed to meet emission limits or pollution control standards for: Lead, dioxins, and furans	11/25/2015	3780	23%	7% / 6%	8.9%
Globe Metallurgical**	Waterford	OH	Failed to meet emission limits or pollution control standards for: Particulates Extended capacity of electric arc furnace, resulting in higher emissions of: Particulates, SO <sub>2</sub>	1/30/2015	1050	2%	5% / 15%	45%
Denka Performance Elastomer	LaPlace	LA	Failed to meet emission limits or pollution control standards for: chloroprene	3/17/2017	1579	97%	6% / 14%	69%
Magellan Midstream Partners	Galena Park	TX	During Hurricane Harvey, Magellan released gasoline into the surrounding waters and emitted VOCs into the surrounding air.	8/23/2017	7300	92%	9% / 11%	53%
Dow Chemical Company**	Pittsburg	CA	Storing millions of gallons of hazardous waste without a permit, which were eventually discharged into the local wastewater treatment plant.	4/8/2016	61875	76%	8% / 9%	40%
Phillips 66 Refinery	Los Angeles	CA	Failure to control both air and water emissions from hazardous waste tanks	1/23/2017	9067	81%	8% / 9%	48%
Keystone Protein	Fredericksburg	PA	Discharging excess nitrogen pollution	1/1/2016	1043	5%	6% / 15%	16%
Mountaire Farms	Selbyville	DE	Plants effluent had concentrations of enterococci bacteria, oil, grease, and waste solids in violation of permit limits	9/29/2015	2033	47%	8% / 16%	48%

Reflects noncompliance identified through notices of violation, inspection reports, or discharge monitoring reports. In some cases, violations began much earlier.

Demographic data were obtained from EPA Environmental Compliance History Online (ECHO) database.

\* Magnetics International and American Iron Oxide are separate facilities but the same case, as they received one NOV.

\*\*These facilities had populations under 100 within a 1-mile radius, so data from the 3-mile radius were used.

Ms. DEGETTE. Thank you.

Dr. Sellers, you are recognized for 5 minutes.

#### **STATEMENT OF CHRIS SELLERS**

Dr. SELLERS. Thank you for inviting me. My name is Chris Sellers and I'm a professor of environmental history and I'm director of the Center for the Study of Inequalities, Social Justice, and Policy at Stony Brook University. But I'm here today as a member of the Environmental Data and Governance Initiative, a network of more than 170 academics and other professionals and volunteers. We've been monitoring change the U.S. EPA since the beginning of the Trump administration.

I head up an EDGI research team interviewing recently retired and current EPA employees. Our early findings have been published in major scholarly outlets like the American Journal of Public Health. Over the last year, I have joined with EDGI colleagues Leif Fredrickson, and Marianne Sullivan, and others, to study this most critical function of the Agency, which we learned to be threatened, enforcement.

We have researched the EPA's own public data and records supplemented by internal documents provided by interviewees. All point with startling unanimity to the same conclusion: Over the past 2 years, EPA enforcement has declined significantly. The only question has been just how badly.

Well, fortunately, EPA has now released its fiscal year 2018 data and that's provided us and everyone else with clear answers. So with my testimony, I've included a 32-page compendium of charts and other analysis of this data, combining it with earlier publicly available EPA enforcement data. We have the links on our Web site, if you wish to follow them.

It shows a decline in enforcement that is dramatic and alarming with a speed and scale that have only a single rival in the Agency's half-century history and that's the early Reagan administration in the early '80s, when they actually broke up EPA's enforcement wing.

Most of the available measures of the Agency's performance are registering 10- or 15-year lows at the very least. To find a lower number of civil judicial referrals, we've talked about this a little bit, these are for the most egregious offenses to the Justice Department, you have to go back to 1976 and, as we said, total civil cases to 1982. People have already talked about that.

By almost any measures, EPA is doing worse. Other measures by which EPA assesses its own enforcement don't run as far back, yet the Trump years still vie with the lowest ever recorded civil cases concluded to 1994, civil fines levied lowest since 1987, and I can go on. EPA's been curbing its ability not just to punish but to find violators.

In 2017 inspections, these you know checking for compliance, those were the lowest in 25 years and then they fell still lower in 2017. Drops in inspections, which are the front end of the enforcement pipeline strongly suggest that the decline in EPA enforcement has not yet hit bottom. By almost any measure of its actions, EPA is backing off from its longstanding role as the Nation's top environmental cop.

What EPA employees have told us in the course of our interviewing project strongly confirms the picture suggested by EPA's enforcement numbers, Ms. Bodine's testimony aside.

Over the last 2 years, my team has conducted 100 confidential interviews with recently retired and current EPA staff, a quarter of whom work directly in enforcement. Of the last 24 interviews, including those in enforcement and out, all drawing on Trump administration experience, 75 percent of these mentioned problems with enforcement. It's widely known.

Their testimony offers a concrete and plausible account also of what has driven the drop. Environment enforcement staff have gotten a message that industry is in the driver's seat, that they are to bow to its request. We've heard stories about the staff exodus, about members of the regulated communities becoming emboldened. We've documented a widespread belief among EPA staff that, in practice, this so-called cooperative federalism is turning out to mean deregulation, plain and simple.

With rare uniformity, the evidence we found adds up to a convincing picture of a sad truth: EPA is extracting its own teeth. This is not just some bureaucratic reshuffle. Less enforcement will have real consequences for many Americans, especially those living nearest to these potential environmental threats.

In 2008 under George Bush, EPA enforcement actions protected eight million people's drinking water and last year, that was down to 500,000. So, a plummet of several-fold. That level of inaction—that nearly begs for another Flint.

Not only is the enforcement drop corroding the Federal commitment to protect health and the environment, it is weakening the ability of States to do so. Already, we believe, it has all but ensured significant deterioration of our Nation's public health and environment in the years ahead.

Thank you.

[The prepared statement of Dr. Sellers follows:]



February 22, 2019

Testimony Before the Oversight and Investigations Subcommittee  
Energy and Commerce Committee, House of Representatives  
February 26, 2019

My name is Chris Sellers and I am a professor of environmental history and politics and director of the Center for the Study of Inequalities, Social Justice, and Policy at Stony Brook University in New York. I am here today as member of the Environmental Data and Governance Initiative (EDGI) a network of more than 170 academics and other professionals and volunteers that has been monitoring change at the U.S. Environmental Protection Agency (EPA) since the beginning of the Trump administration. I head up an EDGI research team interviewing recently retired and current EPA employees, whose early findings have already been published in major scholarly outlets such as the *American Journal of Public Health*. Over the last year, I have joined with EDGI colleagues Leif Fredrickson and Marianne Sullivan to study a most critical function of this agency which we learned to be threatened--enforcement.

Our research into EPA's own public data and records, supplemented by internal documents and testimony provided by our interviewees, has all pointed to the same conclusion: over the past two years EPA enforcement has declined significantly. The only question has been-- just how badly has enforcement nosedived? Fortunately, EPA's release of its FY2018 data has provided us and everyone else with clear answers--the decline in enforcement is dramatic and alarming, and by important measures, has brought the agency's performance to historic lows.

I'm enclosing with my testimony a set of charts and other analysis of EPA's enforcement data. They confirm the most troubling trends we reported in our November 2018, report *A Sheep in the Closet*. To summarize some highlights: among the worst measures are those for what's called civil judicial referrals. When environmental violations are bad enough, EPA sends cases to the justice department to prosecute in the courts. In both 2017 and 18, the Trump EPA referred fewer of these most egregious cases to the DOJ than in any the past forty years of the agency's history. To find a lower number you have to go back to 1976, not long after the EPA's birth. The overall total of civil cases EPA initiated in 2018 is only a little better; it is still lower than any year since the first Reagan administration in the early 1980s, back when the enforcement wing of the agency was actually broken up. Other measures by which EPA assesses its own enforcement don't run as far back, yet 2017 and 2018 still vie with the lowest years ever recorded. In 2017, EPA brought its second-lowest number of civil cases to a close, and in 2018 its lowest, since 1994. Similarly with the civil fines levied: when you adjust for inflation, FY 2018's total was the lowest since 1987. Criminal cases opened and defendants charged are the lowest in twenty-five years, and I could go on. By almost any measure, EPA is backing off from its long-standing role as the nation's top environmental cop.

What's even more troubling is that the current EPA has been curbing its ability not just to punish but to find violators. Ever since the agency's founding, inspections have been the front end of the enforcement pipeline, providing unfiltered, firsthand information about whether or not facilities are violating our environmental laws. In 2017, EPA conducted its second-lowest number of inspections, and in 2018 the lowest, in the last 25 years. Drops in inspections over the past two years strongly suggest that the decline in EPA enforcement has not yet hit bottom, and that FY2019 will bring another round of historic lows.

What EPA employees have told us in the course of our interviewing project confirms the picture suggested by EPA's enforcement numbers. Of the hundred confidential interviews we've conducted with recently retired and current EPA staff, a quarter of these have been with eighteen people with direct experience in enforcement, both in headquarters and in several of the regions. Strikingly, not just those working in the enforcement division but many other interviewees spoke of problems with enforcement—only six of our 24 most recent interviews did not mention it. They report on the many pressures applied by the agency's political leadership that they see as contributing to the downturn, among other ways by explicitly urging EPA employees to go easier on industry. Administrator Pruitt, for example, when shepherding around trade association representatives, publicly chided some career staff for “not listening” to them. Reportedly, EPA's routine inspection initiatives as well as judicial referrals now have to be approved by political leadership before they can proceed. The Trump administration has proposed massive budget and staff cuts, which would harm enforcement efforts still further. The challenges faced by these wings of the agency have driven an exodus of staff, seventy-three of them from OECA alone. Taking institutional and expert knowledge with them, their unfilled posts have made enforcement still more difficult.

At the same time, interviewees report that under the Trump administration, more of the regulated community has become emboldened to challenge EPA enforcement and compliance efforts. We've heard stories about members of the regulated community threatening inspectors about reaching out to their bosses. An EPA housing inspector for lead paint, known to damage children's brains, found landlords turning more aggressive on phone calls, vocally complaining about EPA intrusiveness or just hanging up.

EPA staff also remain deeply skeptical of the “cooperative federalism,” touted by the political leadership as justifying less federal enforcement, though curiously not when defending its FY2018 enforcement data. In their view what it means on the ground is simply abandoning long-established ways EPA has backed up as well as overseen state environmental enforcement. For instance, state agencies have long relied on EPA for expertise in overseeing large, complex facilities like oil refineries and chemical plants and for expensive monitoring tools like infrared cameras. Moreover, with so many state environmental agencies reeling from state-level budget crises, and with the Trump administration proposing to slash hundreds of millions of cuts in state environmental funding, they wonder whether the current leadership really wants the states to take up the enforcement that EPA is progressively abandoning. EPA's effective retreat from its oversight and back-up role for state regulators is likely to make our nation's environmental protection increasingly unequal.

Despite all that is at stake, EPA's own publicity seek to whitewash the story its data tells. With such dismal tallies for its enforcement actions, it seeks to emphasize environmental benefits, while side-stepping comparisons with earlier years that make even these tallies look less rosy. At best, as with the millions of pounds of waste it has handled, the results for FY2017 and FY2018 are historically mediocre. But comparing its record of commitments to pollution

reduction with years back to 2002 yields a more troubling, if familiar pattern: EPA's totals for 2017 and 2018 were the lowest and third lowest in the last sixteen years. Agency publicity also ignores data showing benefits that have fallen off dramatically, such as the number of people protected by EPA enforcement of the Safe Drinking Water Act. In 2005, for instance, enforcement actions by the Bush EPA protected the drinking water of over eight million people, sixteen times more than in this past year under Trump.

All the evidence we've gathered about EPA enforcement from the agency's own data and employees adds up to a convincing picture of where it has been headed: downward. This is not just a bureaucratic re-shuffle; less enforcement will have real consequences for many Americans, especially those nearest to potential environmental threats. Dwindling enforcement of the SDWA could mean another Flint. Less enforcement under the Clean Air Act means that Americans may breathe less healthy air putting them at increased risk of respiratory illness and premature mortality. Less enforcement under our hazardous waste laws could mean more exposure to toxic substances such as arsenic or mercury in our communities.

We are confronted with a sad truth: EPA is extracting its own teeth. Thereby, it is corroding the federal commitment to protecting human health and the environment and weakening the ability of states to do the same. Unless it faces up to its growing inadequacies soon, the most vulnerable of Americans will pay the steepest price. Indeed, the declines already registering in enforcement, which show little sign of stopping, have all but ensured significant deterioration of our nation's public health and environment in the years ahead.

## Appendix



February 22, 2019

## EPA Enforcement Numbers in Fiscal Year 2018 in Historical Perspective

### General Method and Purpose

- This analysis compares FY 2018 enforcement metrics to long-term data on EPA enforcement, giving a better perspective on how the EPA's enforcement program under the current administration compares to previous administrations
- The data used in the comparison are the final, end-of-year enforcement numbers published by the EPA. The sources for this data are listed at the end of the report. They are all available online and are easily verifiable.
- This analysis carefully attends to changes in data collection over time, through methodological notes listed with each metric.
- The analysis takes a robust and comprehensive approach to evaluating FY 2018 (and 2017) to previous years. It looks at a variety of metrics. It compares FY 2018 to averages, medians and ranges from previous years.
- In order to more clearly compare the EPA's current practices to previous administrations, the analysis uses FY 2016 as the endpoint for averages, medians and ranges. In other words, these calculations exclude FY 2017 and 2018, better to compare these years with previous administrations. When ranking FY 2018 over against other years, however, we use 2018 as the endpoint.
- The starting point for date ranges is determined in many cases by when the EPA began collecting the data in question. In cases where a longer range of data was available, we mostly used 1989, the beginning of the George H. Bush administration, as the initial year. For civil case initiations, we went back to 1975, when civil enforcement

Environmental Data and Governance Initiative – EPA Enforcement in FY 2018

was emerging from its infancy, and for criminal data, we went back to 1984, when criminal enforcement was just acquiring its modern shape.

#### Key Findings

- **Taken as a whole**, the major enforcement metrics for FY 2018 – inspections, civil cases, criminal cases, defendants, sentencing, fines, compliance costs – are some of the lowest recorded in **decades**, which **indicates weak enforcement**. Nor do estimated environmental benefits suggest strong enforcement.
- Of the major enforcement indicators, **EPA's most positive result for FY 2018 is its total criminal fines**. However, this number stands out not because it is so historically high but because it is not exceptionally low. Compared to the past three decades, it is **below average and slightly above median**. It's about the ninth lowest in the past 23 years.
- **Other major enforcement measures are some of the lowest in decades, and in some cases the lowest on record.**
- Inspections are the lowest since 1994, as far back as the record goes. They are about half of the average and median for 1994 – 2016.
- Civil case initiations are the lowest since 1982. The most important civil case initiations, civil judicial referrals to DOJ, are the lowest since 1976.
- Civil case conclusions, measured since 1994, were the lowest on record in FY 2018. The total is about half the average and median for 1994 – 2016.
- Criminal cases opened and criminal defendants charged are the lowest in more than 25 years.
- Years sentenced for criminal cases are the fourth lowest since 1990, and 62% of the average from 1984 – 2016.
- Civil fines are at the lowest since 1987 – over 30 years. FY 2018 fines were just 17% of the average, and 47% of the median, for the years 1989 – 2016.
- Compliance costs (injunctive relief) were the lowest in 15 years. FY 2018 compliance costs were 51% of the average, and 63% of the median, of annual costs from 1994 – 2016.
- Measurements of environmental benefits also suggest a weak enforcement program. Pollution reduction is about a quarter of the average from 2002 to 2016 and 30% of the median for that period. The number of people protected by enforcement of the Safe Drinking Water Act is the third lowest since 2002 and just 9% of the average (22% of the median) number of people protected from 2002 – 2016.

### Inspections/Evaluations (Comparison and Graph)

**Definition:** Inspections and Evaluations are used to determine compliance and initiate enforcement actions.

**FY 2018:** 10,612

**Comparison:**

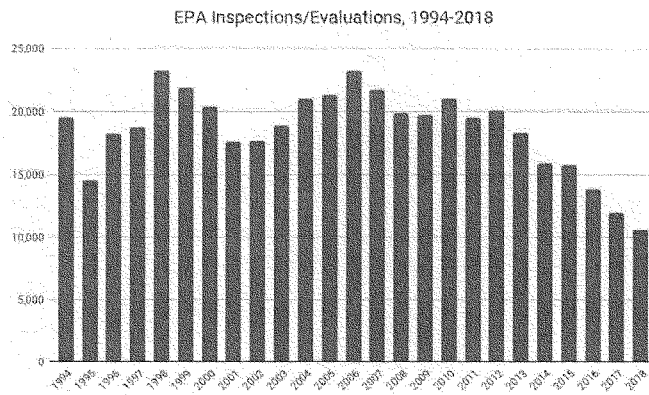
Average for FY 1994 – 2016 was 1,900. FY 2018 is 55% of that.

Median for FY 1994 – 2016 was 1,954. FY 2018 is 54% of that.

Range for FY 1994 – 2016 was 13,761 (min) to 23,231 (max). FY 2018 is out (below) that range.

Rank: FY 2018 ranks as the lowest year since 1994, or the lowest year on record.

**Methodological note:** 1994 appears to be the first year the EPA published total tabulations of inspections.



Environmental Data and Governance Initiative – EPA Enforcement in FY 2018

### Inspections/Evaluations (Table and Sources)

FY	Inspections/ Evaluations	Source
1994	19,542	National Enforcement Trends Report
1995	14,529	National Enforcement Trends Report
1996	18,211	National Enforcement Trends Report
1997	18,706	National Enforcement Trends Report
1998	23,191	National Enforcement Trends Report
1999	21,847	National Enforcement Trends Report
2000	20,337	National Enforcement Trends Report
2001	17,560	National Enforcement Trends Report
2002	17,668	National Enforcement Trends Report
2003	18,880	National Enforcement Trends Report
2004	21,091	National Enforcement Trends Report
2005	21,282	National Enforcement Trends Report
2006	23,231	National Enforcement Trends Report
2007	21,721	National Enforcement Trends Report
2008	19,883	National Enforcement Trends Report
2009	19,724	National Enforcement Trends Report
2010	21,012	National Enforcement Trends Report
2011	19,520	E&C Annual Report 2018
2012	20,077	E&C Annual Report 2018
2013	18,323	E&C Annual Report 2018
2014	15,832	E&C Annual Report 2018
2015	15,731	E&C Annual Report 2018
2016	13,761	E&C Annual Report 2018
2017	11,941	E&C Annual Report 2018
2018	10,612	E&C Annual Report 2018

Environmental Data and Governance Initiative – EPA Enforcement in FY 2018

### Voluntary Disclosure Programs (Comparison and Graph)

**Definition:** This program allows companies finding they are out of compliance to voluntarily disclose that to EPA and, if certain conditions are met, become eligible for reduced or completely waived penalties. EPA counts the number of entities (companies) and the number of facilities (many of which may belong to the same entity, as part of a large disclosure).

**FY 2018:**

- **Facilities:** 1,561. **Companies:** 565.

**Comparison:**

**Average** for FY 1997 – 2010, and 2014 – 2016

- **Facilities:** 1,122. FY 2018 is 139% of that. **Companies:** 433. FY 2018 is 130% of that.

**Median** for FY 1997 – 2010, and 2014 – 2016

- **Facilities:** 1,021. FY 2018 is 153% of that. **Companies:** 448. FY 2018 is 126% of that.

**Range** for FY 1997 – 2010, and 2014 – 2016

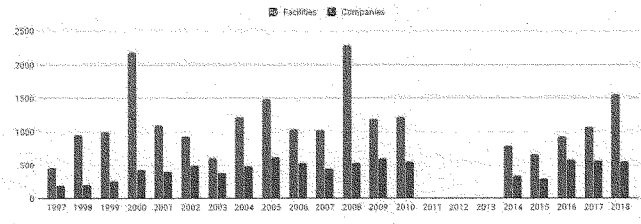
- **Facilities:** 457 (min) to 2,294 (max). FY 2018 is within, but at the upper end of that range.
- **Companies:** 185 (min) to 627 (max). FY 2018 is within, but at the upper end of that range.

**Rank:**

- **Facilities:** FY 2018 ranks as the third highest year for the years 1997 – 2010 and 2014 – 2018.
- **Companies:** FY 2018 ranks as the fifth highest year for the years 1997 – 2010 and 2014 – 2018.

**Methodological note:** We have not been able to find data for 2011 – 2013. Data on company disclosure include the eDisclosure program.

Voluntary Disclosures from Facilities and Companies to EPA, 1997-2010 and 2014-2018



Environmental Data and Governance Initiative – EPA Enforcement in FY 2018

### Voluntary Disclosure Programs (Table and Sources)

FY	Facilities	Companies	Sources
1997	457	185	National Enforcement Trends Report
1998	954	200	National Enforcement Trends Report
1999	930	280	National Enforcement Trends Report
2000	2,190	429	National Enforcement Trends Report
2001	1,095	397	National Enforcement Trends Report
2002	927	500	National Enforcement Trends Report
2003	614	379	National Enforcement Trends Report
2004	1,223	491	National Enforcement Trends Report
2005	1,487	627	National Enforcement Trends Report
2006	1,032	541	National Enforcement Trends Report
2007	1,021	448	National Enforcement Trends Report
2008	2,294	538	National Enforcement Trends Report
2009	1,187	606	National Enforcement Trends Report
2010	1,218	561	National Enforcement Trends Report
2011	No data	No data	
2012	No data	No data	
2013	No data	No data	
2014	784	332	E&C Annual Report 2018
2015	656	269	E&C Annual Report 2018
2016	931	585	E&C Annual Report 2018
2017	1,002	575	E&C Annual Report 2018
2018	1,561	565	E&C Annual Report 2018

Environmental Data and Governance Initiative – EPA Enforcement in FY 2018

### Civil Judicial Referrals to the DOJ (Comparison and Graph)

**Definition:** Lawsuits filed in court. Civil judicial cases are more serious, and less common, than administrative cases. EPA refers civil judicial cases to the DOJ. Referrals to DOJ are counted, along with administrative case initiations, in EPA's total civil case initiations.

**FY 2018:** 110

**Comparison:**

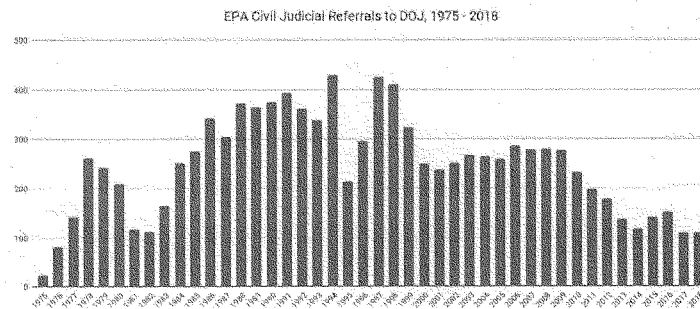
**Average** for FY 1975 – 2016 was 254. FY 2018 is 43% of that.

**Median** for FY 1975 – 2016 was 261. FY 2018 is 42% of that.

**Range** for FY 1975 – 2016 was 25 (min) to 430 (max).

**Rank:** FY 2018 ranks, along with FY 2017, as the lowest since 1976.

**Methodological note:** From 1991 to 2002, EPA gave "extra credits" to some civil case initiations (National Enforcement Trends Report, August 2011, E-2). Civil judicial referrals for 1999 to 2002 were adjusted in the NET Report to remove these extra credits. However, the extra credits remain for years 1991 to 1998. The average and median therefore will be slightly higher due to the inflation from extra credits for years 1991 to 1998. Nevertheless, this inflation does not change the fact that FY 2017 and FY 2018 civil judicial referral numbers are extremely low by historical standards.



Environmental Data and Governance Initiative – EPA Enforcement in FY 2018

## Civil Judicial Referrals to the DOJ (Table and Sources)

FY	Civil Judicial Referrals to DOJ	Source
1975	25	National Enforcement Trends Report
1976	82	National Enforcement Trends Report
1977	143	National Enforcement Trends Report
1978	262	National Enforcement Trends Report
1979	242	National Enforcement Trends Report
1980	210	National Enforcement Trends Report
1981	118	National Enforcement Trends Report
1982	112	National Enforcement Trends Report
1983	165	National Enforcement Trends Report
1984	251	National Enforcement Trends Report
1985	276	National Enforcement Trends Report
1986	342	National Enforcement Trends Report
1987	304	National Enforcement Trends Report
1988	372	National Enforcement Trends Report
1989	364	National Enforcement Trends Report
1990	375	National Enforcement Trends Report
1991	393	National Enforcement Trends Report
1992	361	National Enforcement Trends Report
1993	338	National Enforcement Trends Report
1994	430	National Enforcement Trends Report
1995	214	National Enforcement Trends Report
1996	295	National Enforcement Trends Report
1997	426	National Enforcement Trends Report
1998	411	National Enforcement Trends Report
1999	323	National Enforcement Trends Report
2000	250	National Enforcement Trends Report
2001	238	National Enforcement Trends Report
2002	252	National Enforcement Trends Report
2003	268	National Enforcement Trends Report
2004	265	National Enforcement Trends Report
2005	259	National Enforcement Trends Report
2006	286	National Enforcement Trends Report
2007	278	National Enforcement Trends Report
2008	280	National Enforcement Trends Report
2009	277	National Enforcement Trends Report
2010	233	National Enforcement Trends Report
2011	199	E&C Annual Report 2011
2012	179	E&C Annual Report 2012
2013	138	E&C Annual Report 2013
2014	118	E&C Annual Report 2014
2015	141	E&C Annual Report 2015
2016	152	E&C Annual Report 2016
2017	110	E&C Annual Report 2017
2018	110	E&C Annual Report 2018

Environmental Data and Governance Initiative – EPA Enforcement in FY 2018

### Civil Case Initiations (Comparison and Graph)

**Definition:** Civil case initiations are the total civil enforcement cases started. They include both administrative cases and civil judicial cases.

**FY 2018:** 1,838

**Comparison:**

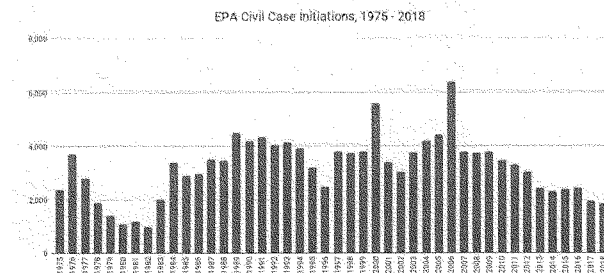
**Average** for FY 1975 – 2016 was 3,261. FY 2018 is 56% of that.

**Median** for FY 1975 – 2016 was 3,406. FY 2018 is 54% of that.

**Range** for FY 1975 – 2016 was 976 (min) to 6,371 (max).

**Rank:** FY 2018 ranks as the lowest year since 1982.

**Methodological notes:** 1) Civil case initiations are the sum of civil judicial referrals, administrative penalty order complaints (APOCs), and administrative compliance orders (ACOs). Before 1994, APOCs and ACOs were lumped together as "Administrative Actions." The sources listed in the table are for data for administrative. 2) From 1996 to 2003, EPA often counted RCRA "Field Citations" separate from APOCs. Field Citations have been added to APOCs in this period as necessary to make them consistent with post-2003 data. (National Enforcement Trends Report, E-6) 3) From 1991 to 2002, EPA gave "extra credits" to some civil case initiations (National Enforcement Trends Report, E-2). Civil judicial referrals for 1999 to 2002, and administrative cases for 2001 to 2002, were adjusted in the NET Report to remove these extra credits. However, the extra credits remain for the other years, slightly inflating the total civil case initiations for those years as well as the overall average and median. Nevertheless, this inflation does not change the fact that FY 2018 civil case initiations are extremely low by historical standards.



Environmental Data and Governance Initiative – EPA Enforcement in FY 2018

Civil Case Initiations (Table and Sources)

FY	Civil Initiations	Source
1975	2,377	E&C Annual Report 1999
1976	3,695	E&C Annual Report 1999
1977	2,787	E&C Annual Report 1999
1978	1,884	E&C Annual Report 1999
1979	1,427	E&C Annual Report 1999
1980	1,111	E&C Annual Report 1999
1981	1,225	E&C Annual Report 1999
1982	976	E&C Annual Report 1999
1983	2,013	E&C Annual Report 1999
1984	3,375	E&C Annual Report 1999
1985	2,883	E&C Annual Report 1999
1986	2,968	E&C Annual Report 1999
1987	3,498	E&C Annual Report 1999
1988	3,457	E&C Annual Report 1999
1989	4,500	E&C Annual Report 1999
1990	4,179	E&C Annual Report 1999
1991	4,318	E&C Annual Report 1999
1992	4,028	E&C Annual Report 1999
1993	4,146	E&C Annual Report 1999
1994	3,920	National Enforcement Trends Report
1995	3,183	National Enforcement Trends Report
1996	2,466	National Enforcement Trends Report

1997	3,797	National Enforcement Trends Report
1998	3,726	National Enforcement Trends Report
1999	3,804	National Enforcement Trends Report
2000	5,593	National Enforcement Trends Report
2001	3,374	National Enforcement Trends Report
2002	3,035	National Enforcement Trends Report
2003	3,738	National Enforcement Trends Report
2004	4,194	National Enforcement Trends Report
2005	4,424	National Enforcement Trends Report
2006	6,371	National Enforcement Trends Report
2007	3,762	National Enforcement Trends Report
2008	3,726	E&C Annual Report 2017
2009	3,779	E&C Annual Report 2017
2010	3,436	E&C Annual Report 2017
2011	3,283	E&C Annual Report 2017
2012	3,027	E&C Annual Report 2017
2013	2,418	E&C Annual Report 2017
2014	2,278	E&C Annual Report 2017
2015	2,378	E&C Annual Report 2017
2016	2,414	E&C Annual Report 2017
2017	1,938	E&C Annual Report 2017
2018	1,818	E&C Annual Report 2018

Environmental Data and Governance Initiative – EPA Enforcement in FY 2018

### Civil Case Conclusions (Comparison and Graph)

**Definition:** Civil case conclusions are civil enforcement cases that are brought to an end. They may conclude with an administrative order, or a court order, a settlement, or a consent decree.

**FY 2018:** 1,817

**Comparison:**

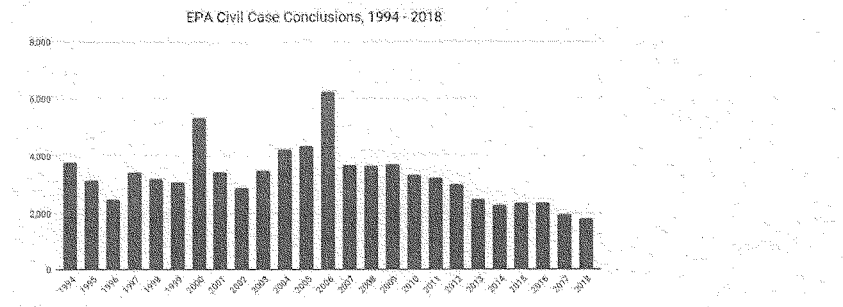
**Average** for FY 1994 – 2016 was 3,446. FY 2018 is 53% of that.

**Median** for FY 1994 – 2016 was 3,332. FY 2018 is 55% of that.

**Range** for FY 1994 – 2016 was 2,286 (min) to 6,235 (max). FY 2018 is out of (below) that range.

**Rank:** FY 2018 ranks as the lowest year since 1994, or the lowest year on record.

**Methodological notes:** 1) Civil case conclusions are the sum of civil judicial conclusions, final administrative penalty orders, and administrative compliance orders. Before 1994, EPA did not track civil judicial case conclusions. 2) From 1994 to 2002, EPA gave "extra credits" to Administrative Compliance Orders (National Enforcement Trends Report, E-4). ACOs for 2001 to 2002 were adjusted in the NET Report to remove these extra credits. However, the extra credits remain for the other years, slightly inflating the total civil case initiations for those years as well as the overall average and median. Nevertheless, this inflation does not change the fact that FY 2018 civil case initiations are extremely low by historical standards.



Environmental Data and Governance Initiative – EPA Enforcement in FY 2018

### Civil Case Conclusions (Table and Sources)

FY	Civil Conclusions	Source
1994	3,778	National Enforcement Trends Report
1995	3,157	National Enforcement Trends Report
1996	2,482	National Enforcement Trends Report
1997	3,442	National Enforcement Trends Report
1998	3,219	National Enforcement Trends Report
1999	3,089	National Enforcement Trends Report
2000	5,337	National Enforcement Trends Report
2001	3,431	National Enforcement Trends Report
2002	2,883	National Enforcement Trends Report
2003	3,484	National Enforcement Trends Report
2004	4,231	National Enforcement Trends Report
2005	4,366	National Enforcement Trends Report
2006	6,235	National Enforcement Trends Report
2007	3,683	E&C Annual Report 2017
2008	3,666	E&C Annual Report 2017
2009	3,705	E&C Annual Report 2017
2010	3,332	E&C Annual Report 2017
2011	3,241	E&C Annual Report 2017
2012	3,012	E&C Annual Report 2017
2013	2,489	E&C Annual Report 2017
2014	2,286	E&C Annual Report 2017
2015	2,361	E&C Annual Report 2017
2016	2,359	E&C Annual Report 2017
2017	1,964	E&C Annual Report 2017
2018	1,817	E&C Annual Report 2018

Environmental Data and Governance Initiative – EPA Enforcement in FY 2018

### **Criminal Cases Opened, Defendants Charged, Sentences (Comparison)**

#### **Definition:**

- "Cases opened" means cases started.
- "Defendants charged" means the number of individuals charged.
- "Sentences" means the total years of incarceration to which those convicted are sentenced.

#### **FY 2018:**

- Cases opened: 129
- Defendants charged: 105
- Sentences (years): 73

#### **Comparison:**

##### **Average for FY 1984 – 2016:**

- Cases opened (308; FY 2018 is 42% of that).
- Defendants charged (242; FY 2018 is 43% of that).
- Sentences (118; FY 2018 is 62% of that).

##### **Median for FY 1984 – 2016:**

- Cases opened (278; FY 2018 is 46% of that).
- Defendants charged (234; FY 2018 is 45% of that).
- Sentences (90; FY 2018 is 81% of that).

##### **Rank:**

- Cases opened in FY 2018 were the second lowest (after FY 2017) since 1992 (over 25 years).
- Defendants charged were the lowest since 1991 (over 25 years).
- Sentences were the fourth lowest since 1990.

Criminal Cases Opened, Defendants Charged, Sentences (Table and Sources)

FY	Cases Opened	Defendants Charged	Sentences (Years)	Source
1984	31	36	1	E&C Annual Report 1999
1985	40	40	7	E&C Annual Report 1999
1986	41	98	23	E&C Annual Report 1999
1987	41	66	38	E&C Annual Report 1999
1988	59	97	23	E&C Annual Report 1999
1989	60	95	27	E&C Annual Report 1999
1990	65	100	52	E&C Annual Report 1999
1991	83	104	80	E&C Annual Report 1999
1992	107	150	95	E&C Annual Report 1999
1993	140	161	74	E&C Annual Report 1999
1994	220	250	99	E&C Annual Report 1999
1995	256	245	74	E&C Annual Report 1999
1996	262	221	93	E&C Annual Report 1999
1997	278	327	196	E&C Annual Report 1999
1998	636	350	173	National Enforcement Trends Report
1999	471	324	208	National Enforcement Trends Report
2000	477	360	146	National Enforcement Trends Report
2001	482	372	212	National Enforcement Trends Report
2002	484	325	215	National Enforcement Trends Report
2003	471	247	146	National Enforcement Trends Report
2004	425	293	77	National Enforcement Trends Report
2005	372	320	186	National Enforcement Trends Report
2006	305	278	154	National Enforcement Trends Report
2007	340	248	64	National Enforcement Trends Report
2008	319	176	57	National Enforcement Trends Report
2009	387	200	76	National Enforcement Trends Report
2010	348	289	72	National Enforcement Trends Report
2011	371	258	90	E&C Annual Report 2017
2012	320	234	79	E&C Annual Report 2017
2013	297	287	155	E&C Annual Report 2017
2014	270	192	160	E&C Annual Report 2017
2015	213	193	130	E&C Annual Report 2017
2016	170	188	95	E&C Annual Report 2017
2017	115	139	153	E&C Annual Report 2017
2018	129	105	73	E&C Annual Report 2018

### Civil Fines (Comparison and Graph)

**Definition:** Penalties imposed as a result of civil judicial cases or administrative cases, in dollars.

**FY 2018:** \$69,474,000

**Comparison (using real 2018 dollars):**

**Average** for FY 1989 – 2016 was \$401,796,593. FY 2018 is 17% of that.

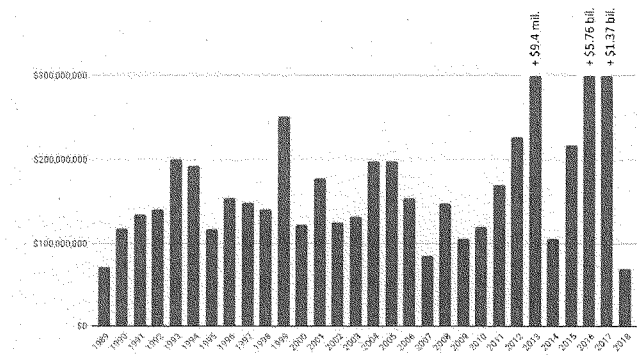
**Median** for FY 1989 – 2016 was \$148,227,984. FY 2018 is 47% of that.

**Range** for FY 1989 – 2016 was \$71,387,181 (min) to \$6,057,779,690 (max).

**Rank:** FY 2018 ranks as the lowest year since 1987 (over 30 years).

**Methodological notes:** These penalties sum up the fines from both civil judicial cases and administrative cases. Following EPA's FY 2018 report, we used the CPI to deflate prices and made 2018 the base year. CPI deflator table and source listed at the end of this document.

EPA Civil Fines (2018 Dollars), 1989 - 2018



Environmental Data and Governance Initiative – EPA Enforcement in FY 2018

## Civil Fines (Table and Sources)

FY	Civil (Nominal)	Civil (Real 2018 \$)	Source
1988	\$36,909,521	\$78,345,215	National Enforcement Trends Report
1989	\$35,251,946	\$71,387,181	National Enforcement Trends Report
1990	\$61,299,667	\$117,752,597	National Enforcement Trends Report
1991	\$73,104,128	\$134,779,429	National Enforcement Trends Report
1992	\$78,733,331	\$140,915,827	National Enforcement Trends Report
1993	\$115,133,414	\$200,074,783	National Enforcement Trends Report
1994	\$113,656,871	\$192,577,840	National Enforcement Trends Report
1995	\$70,859,328	\$116,753,762	National Enforcement Trends Report
1996	\$96,250,929	\$154,042,588	National Enforcement Trends Report
1997	\$95,145,101	\$148,857,326	National Enforcement Trends Report
1998	\$91,573,293	\$141,071,748	National Enforcement Trends Report
1999	\$166,721,578	\$251,290,248	National Enforcement Trends Report
2000	\$94,110,267	\$122,852,014	National Enforcement Trends Report
2001	\$125,465,421	\$177,895,231	National Enforcement Trends Report
2002	\$89,675,575	\$125,170,454	National Enforcement Trends Report

2003	\$96,534,431	\$131,878,163	National Enforcement Trends Report
2004	\$148,850,404	\$197,868,599	National Enforcement Trends Report
2005	\$153,937,047	\$197,924,578	National Enforcement Trends Report
2006	\$123,814,786	\$154,220,037	National Enforcement Trends Report
2007	\$70,467,492	\$85,341,516	National Enforcement Trends Report
2008	\$126,553,343	\$147,598,641	National Enforcement Trends Report
2009	\$90,105,246	\$105,464,596	National Enforcement Trends Report
2010	\$103,607,965	\$119,311,944	National Enforcement Trends Report
2011	\$152,271,601	\$169,585,929	E&C Annual Report 2011
2012	\$207,561,881	\$227,010,467	E&C Annual Report 2012
2013	\$1,148,000,000	\$1,237,442,258	E&C Annual Report 2013
2014	\$100,000,000	\$106,070,479	E&C Annual Report 2014
2015	\$205,000,000	\$217,186,679	E&C Annual Report 2015
2016	\$5,790,000,000	\$9,057,779,690	E&C Annual Report 2016
2017	\$1,832,000,000	\$1,671,861,227	E&C Annual Report 2017
2018	\$69,474,000	\$69,474,000	E&C Annual Report 2018

### Criminal Fines (Comparison and Graph)

**Definition:** Penalties imposed as a result of criminal cases, in dollars.

**FY 2018:** \$86,294,000

**Comparison (using real 2018 dollars):**

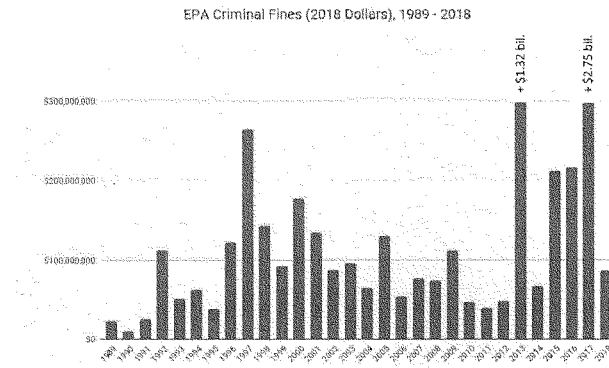
**Average** for FY 1989 – 2016 was \$150,018,465. FY 2018 is 58% of that.

**Median** for FY 1989 – 2016 was \$81,803,663. FY 2018 is 105% of that.

**Range** for FY 1989 – 2016 was \$10,592,446 (min) to \$1,616,867,061 (max).

**Rank:** FY 2018 ranks as the ninth lowest since 1995 (23 years) – in other words, it is close to the middle of the distribution.

**Methodological notes:** Following EPA's FY 2018 report, we used the CPI to deflate prices and made 2018 the base year. CPI deflator table and source listed at the end of this document.



**Criminal Fines (Table and Sources)**

FY	Criminal Fines (Nominal)	Criminal Fines (Real 2018 \$)	Source
1989	11,001,241	\$23,493,168	National Enforcement Trends Report
1990	5,513,318	\$10,592,446	National Enforcement Trends Report
1991	14,120,387	\$26,033,245	National Enforcement Trends Report
1992	62,895,400	\$112,569,317	National Enforcement Trends Report
1993	29,700,000	\$51,811,512	National Enforcement Trends Report
1994	36,812,000	\$62,373,498	National Enforcement Trends Report
1995	23,221,100	\$38,251,029	National Enforcement Trends Report
1996	76,660,900	\$122,690,176	National Enforcement Trends Report
1997	169,262,896	\$264,848,101	National Enforcement Trends Report
1998	92,800,711	\$142,962,627	National Enforcement Trends Report
1999	61,552,874	\$92,775,255	National Enforcement Trends Report
2000	121,974,488	\$177,866,712	National Enforcement Trends Report
2001	94,726,283	\$134,310,744	National Enforcement Trends Report
2002	62,252,318	\$86,892,878	National Enforcement Trends Report

2003	70,425,447	\$96,110,450	National Enforcement Trends Report
2004	46,437,466	\$64,398,522	National Enforcement Trends Report
2005	101,296,651	\$130,226,324	National Enforcement Trends Report
2006	43,159,168	\$53,757,784	National Enforcement Trends Report
2007	63,344,186	\$76,714,648	National Enforcement Trends Report
2008	63,416,697	\$73,962,632	National Enforcement Trends Report
2009	95,654,145	\$111,959,361	National Enforcement Trends Report
2010	40,609,607	\$46,764,852	National Enforcement Trends Report
2011	35,000,000	\$39,071,682	E&C Annual Report 2011
2012	44,000,000	\$48,122,809	E&C Annual Report 2012
2013	1,500,000,000	\$1,616,867,061	E&C Annual Report 2013
2014	63,000,000	\$66,824,399	E&C Annual Report 2014
2015	200,000,000	\$211,889,443	E&C Annual Report 2015
2016	207,000,000	\$216,573,471	E&C Annual Report 2016
2017	2,877,000,000	\$3,049,712,545	E&C Annual Report 2017
2018	86,294,000	\$86,294,000	E&C Annual Report 2018

**Compliance Costs (Comparison and Graph)**

**Definition:** Also known as injunctive relief. The estimated costs for a violator to come into compliance as a result of civil enforcement actions, in dollars.

**FY 2018:** \$3,948,336,000

**Comparison (using real 2018 dollars):**

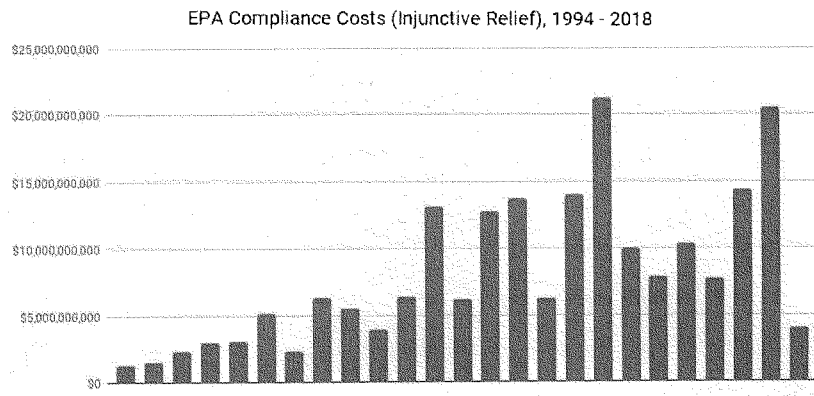
**Average** for FY 1994 – 2016 was \$7,735,031,245. FY 2018 is 51% of that.

**Median** for FY 1994 – 2016 was \$6,345,194,240. FY 2018 is 63% of that.

**Range** for FY 1994 – 2016 was \$1,253,840,621 (min) to \$21,210,341,470 (max).

**Rank:** FY 2018 was the lowest since 2003 (15 years), and the third lowest since 1999 (20 years).

**Methodological notes:** Following EPA's FY 2018 report, we used the CPI to deflate prices and made 2018 the base year. CPI deflator table and source listed at the end of this document.



## Compliance Costs (Table and Sources)

FY	Compliance (Nominal)	Compliance (Real 2018 \$)	Source	2006	\$4,928,926,719	\$6,140,570,975	National Enforcement Trends Report
1994	\$740,000,000	\$1,253,840,621	E&C Annual Report 1994	2007	\$10,548,091,429	\$12,774,544,446	National Enforcement Trends Report
1995	\$906,637,052	\$1,493,851,117	E&C Annual Report 1995	2008	\$11,719,063,597	\$13,667,895,490	National Enforcement Trends Report
1996	\$1,429,849,730	\$2,288,370,148	National Enforcement Trends Report	2009	\$5,320,414,755	\$6,227,333,224	National Enforcement Trends Report
1997	\$1,893,323,837	\$2,962,161,176	National Enforcement Trends Report	2010	\$12,121,647,725	\$13,658,939,884	National Enforcement Trends Report
1998	\$1,976,799,053	\$3,045,264,022	National Enforcement Trends Report	2011	\$19,000,000,000	\$21,210,341,470	E&C Annual Report 2011
1999	\$3,424,223,733	\$5,161,143,751	National Enforcement Trends Report	2012	\$9,135,543,769	\$9,991,545,889	E&C Annual Report 2012
2000	\$1,562,824,364	\$2,278,955,503	National Enforcement Trends Report	2013	\$7,300,000,000	\$7,898,753,032	E&C Annual Report 2013
2001	\$4,453,981,456	\$5,315,194,240	National Enforcement Trends Report	2014	\$9,738,000,000	\$10,329,142,868	E&C Annual Report 2014
2002	\$3,936,892,345	\$5,494,891,632	National Enforcement Trends Report	2015	\$7,300,000,000	\$7,733,964,652	E&C Annual Report 2015
2003	\$2,678,746,764	\$3,928,650,129	National Enforcement Trends Report	2016	\$13,700,000,000	\$14,333,606,520	E&C Annual Report 2016
2004	\$4,792,778,206	\$6,371,096,649	National Enforcement Trends Report	2017	\$20,000,000,000	\$20,488,495,431	E&C Annual Report 2017
2005	\$10,169,667,426	\$13,075,851,195	National Enforcement Trends Report	2018	\$3,948,336,000	\$3,948,336,000	E&C Annual Report 2018

### Estimated Pollution Reduction (Comparison and Graph)

**Definition:** Estimated benefits from enforcement actions in 2018. Commitments to reduce, treat, or eliminate pollution (air, toxics, and water).

**FY 2018:** 268 million pounds

#### Comparison:

##### **Average**

- FY 2002 – 2016 was 1,158 million pounds. FY 2018 is 23% of that.
- FY 2012 – 2016 was 969 million pounds. FY 2018 is 28% of that.

##### **Median**

- FY 2002 – 2016 was 890 million pounds. FY 2018 is 30%.
- FY 2012 – 2016 was 533 million pounds. FY 2018 is 50% of that.

##### **Range**

- FY 2002 – 2016 was 260 million pounds (min) to 3,931 million pounds (max).
- FY 2012 – 2016 was 324 million pounds (min) to 2,195 million pounds (max)

**Rank:** FY 2018 was the third lowest since 2002 (2017 was the lowest), and the second lowest since 2012 (2017 was the lowest).

**Methodological notes:** EPA began collecting data on pollution in the 1990s, but its current method for calculating pollution reduction extends back only to 2002 ("Fiscal Year 2012 EPA Enforcement & Compliance Annual Results," December 17, 2012, page 3). EPA's "Fiscal Year 2018 EPA Enforcement and Compliance Annual Results" document states that "Starting in FY 2012, EPA changed the way it stores environmental benefit information in the ICIS data system. Therefore, data are not comparable for years prior to FY 2012." However, this data problem has not been noted in any previous annual report. The FY 2017 report from OECA compares numbers back to 2008. As noted above, the report from FY 2012 does not state that a new method of storing data has been initiated, but that the method current in 2012 was consistent back to 2002. In this analysis, we have included analysis from 2002 – 2016 (in addition to 2012 – 2016), just as previous EPA reports have done. Note also that FY 2012 pollution reduction is listed as 751.56 million pounds in the FY 2018 report. However, every annual report before this has listed this year as having a pollution reduction of about 2,195 million pounds. We have corrected this apparent error in our data.

### Estimated Hazardous Waste Reduction (Comparison)

**Definition:** Estimated benefits from enforcement actions in 2018. Hazardous waste (and starting in 2016 non-hazardous waste) treated, minimized, or properly disposed.

**FY 2018:** 541 million pounds

**Comparison:**

**Average**

- FY 2008 – 2016 was 10,033 million pounds. FY 2018 is 5% of that.
- FY 2012 – 2016 was 13,532 million pounds. FY 2018 is 4% of that.

**Median**

- FY 2008 – 2016 was 3,563 million pounds. FY 2018 is 15% of that.
- FY 2012 – 2016 was 711 million pounds. FY 2018 is 76% of that.

**Range**

- FY 2008 – 2016 was 148 million pounds (min) to 61,900 million pounds (max).
- FY 2012 – 2016 was 148 million pounds (min) to 61,900 million pounds (max)

**Rank:** FY 2018 was the fourth lowest since both 2008 and since 2012. (2017 was the second lowest).

**Methodological notes:** EPA began collecting data on hazardous waste reduction in 2008. EPA's "Fiscal Year 2018 EPA Enforcement and Compliance Annual Results" document states that "Starting in FY 2012, EPA changed the way it stores environmental benefit information in the ICIS data system. Therefore, data are not comparable for years prior to FY 2012." However, this data problem has not been noted in any previous annual report. The FY 2017 report from OECA compares numbers back to 2008. The only specified change in data collection, noted in the FY 2018 report, is that, in 2016, EPA began including non-hazardous waste in its estimates. Thus, numbers for 2016 – 2018 may be inflated compared to previous years. In this analysis, we have included analysis from 2008 – 2016 (in addition to 2012 – 2016), just as previous EPA reports have done.

### Estimated Pollution & Hazardous Waste Reductions (Comparison)

**Definition:** See above.

**FY 2018:** 809 million pounds

**Comparison:**

**Average**

- FY 2008 – 2016 was 11,438 million pounds. FY 2018 is 7% of that.
- FY 2012 – 2016 was 14,501 million pounds. FY 2018 is 6% of that.

**Median**

- FY 2008 – 2016 was 5,395 million pounds. FY 2018 is 15% of that.
- FY 2012 – 2016 was 1,424 million pounds. FY 2018 is 57% of that.

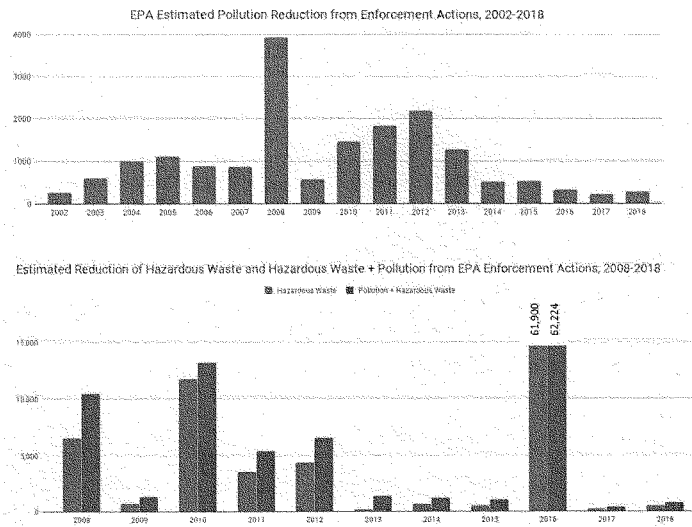
**Range**

- FY 2008 – 2016 was 1,068 million pounds (min) to 62,224 million pounds (max).
- FY 2012 – 2016 was 1,068 million pounds (min) to 62,224 million pounds (max).

**Rank:** FY 2018 was the second lowest (FY 2017 was the lowest) since 2008, or the second lowest on record.

**Methodological notes:** EPA has recently combined pollution and hazardous waste reduction numbers in reports, press releases, hearings and comments to the press. We have therefore also analyzed these numbers together. See above for methodological notes about these measures.

### Pollution & Hazardous Waste Reduction (Graphs)



Environmental Data and Governance Initiative – EPA Enforcement in FY 2018

### Estimated Pollution and Hazardous Waste Reduction (Tables and Sources)

FY	Pollution (Millions of Pounds)	Hazardous Waste (Millions of Pounds)	Pollution + Hazardous Waste (Millions of Pounds)	Sources
2002	260			E&C Annual Report 2003
2003	600			E&C Annual Report 2003
2004	1,000			E&C Annual Report 2008
2005	1,100			E&C Annual Report 2008
2006	890			E&C Annual Report 2008
2007	871			E&C Annual Report 2017
2008	3,931	6,542	10,473	E&C Annual Report 2017
2009	574	779	1,353	E&C Annual Report 2017
2010	1,466	11,751	13,217	E&C Annual Report 2017
2011	1,832	3,563	5,395	E&C Annual Report 2017
2012	2,195	4,368	6,563	E&C Annual Report 2017
2013	1,276	148	1,424	E&C Annual Report 2017
2014	515	711	1,226	E&C Annual Report 2017
2015	533	535	1,068	E&C Annual Report 2017
2016	324	61,900	62,224	E&C Annual Report 2017
2017	217	245	462	E&C Annual Report 2017
2018	256	541	809	E&C Annual Report 2018

Environmental Data and Governance Initiative – EPA Enforcement in FY 2018

### Clean-ups of Contaminated Soil & Water (Comparison)

**Definition:** These are the estimated benefits from enforcement actions taken in 2018. Volume of contaminated soil and water to be cleaned up.  
**FY 2018:** Soil: 27,496 cubic yards. Water: 217,088 cubic yards.

**Comparison:**

**Average**

- Soil: FY 2012 – 2016 was 55,000 cubic yards. FY 2018 is 50% of that.
- Water: FY 2012 – 2016 was 404,200 cubic yards. FY 2018 is 54% of that.

**Median**

- Soil: FY 2012 – 2016 was 37,000 cubic yards. FY 2018 is 74% of that.
- Water: FY 2012 – 2016 was 277,000 cubic yards. FY 2018 is 78% of that.

**Range**

- Soil: FY 2012 – 2016 was 15,000 cubic yards (min) to 140,000 cubic yards (max).
- Water: FY 2012 – 2016 was 29,000 cubic yards (min) to 855,000 cubic yards (max)

**Rank:** Both soil and water cleanup are in the middle of the distribution since 2012.

**Methodological notes:** EPA's "Fiscal Year 2018 EPA Enforcement and Compliance Annual Results" document states that "Starting in FY 2012, EPA changed the way it stores environmental benefit information in the ICIS data system. Therefore, data are not comparable for years prior to FY 2012." Previous reports have not claimed this problem, but in the interest of space we have confined our analysis to the 2012-2016 period, while including the full data back to 2004 in our table.

### Clean-ups of Contaminated Soil & Water (Table and Sources)

FY	Soil - Contaminated	Water - Contaminated	Sources
2004	3,400	9,500	National Enforcement Trends Report
2005	28,200	1,500,000	National Enforcement Trends Report
2006	15,000	1,300,000	National Enforcement Trends Report
2007	79,000	1,400,000	National Enforcement Trends Report
2008	100,000	255,000	National Enforcement Trends Report
2009	28,700	431,000	National Enforcement Trends Report
2010	9,000	107,000	National Enforcement Trends Report
2011	33,000	900,000	E&C Annual Report 2011
2012	140,000	277,000	E&C Annual Report 2017
2013	66,000	666,000	E&C Annual Report 2017
2014	15,000	655,000	E&C Annual Report 2017
2015	37,000	29,000	E&C Annual Report 2017
2016	17,000	174,000	E&C Annual Report 2017
2017	21,000	412,000	E&C Annual Report 2017
2018	27,496	217,088	E&C Annual Report 2018

### Drinking Water Protection by Population (Comparison)

**Definition:** These are the estimated benefits from enforcement actions taken in 2018. People protected by Safe Drinking Water Act Enforcement.

**FY 2018:** 505,000 people.

**Comparison:**

**Average**

- FY 2002 – 2016 was 5,716,000. FY 2018 is 9% of that of that.
- FY 2012 – 2016 was 8,627,000. FY 2018 is 6% of that.

**Median**

- FY 2002 – 2016 was 2,300,000. FY 2018 is 22% of that.
- FY 2012 – 2016 was 1,000,000. FY 2018 is 51% of that.

**Range**

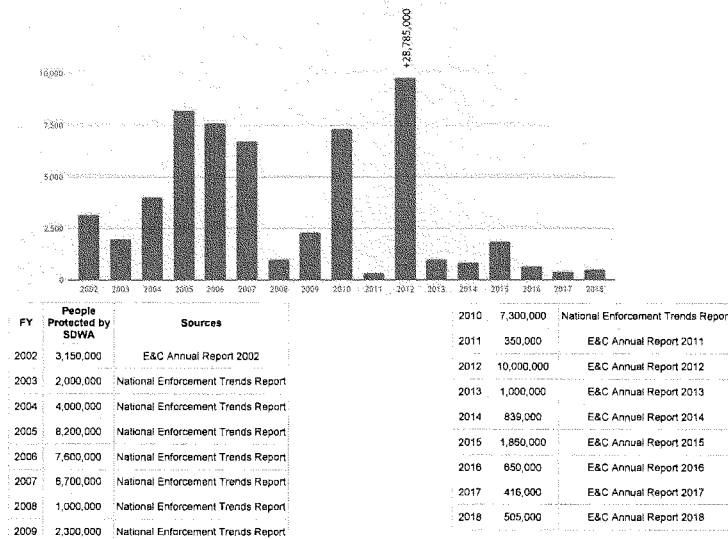
- FY 2002 – 2016 was 350,000 (min) to 38,785,000 (max).
- FY 2012 – 2016 was 650,000 (min) to 38,785,000 (max)

**Rank:** FY 2018 was the second lowest, after FY 2017, since 2012. It was the third lowest (FY 2017 the second lowest) since 2002.

**Methodological notes:** EPA began collecting data on drinking water protection in 2002. EPA's "Fiscal Year 2018 EPA Enforcement and Compliance Annual Results" document states that "Starting in FY 2012, EPA changed the way it stores environmental benefit information in the ICIS data system. Therefore, data are not comparable for years prior to FY 2012." However, this data problem has not been noted in any previous annual report. In this analysis, we have included analysis from 2008 – 2016 (in addition to 2012 – 2016).

### Drinking Water Protection by Population (Graph, Table and Sources)

People Protected by EPA's Safe Drinking Water Enforcement, 2002-2018



Environmental Data and Governance Initiative – EPA Enforcement in FY 2018

### Consumer Price Index (Table, Sources, Methods)

**Source:** Bureau of Labor Statistics, "Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month," available at: <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-201812.pdf>.

**Method:** Prices were deflated, then multiplied by the 2018 deflator to convert prices into 2018 terms.

Year	CPI Deflator	Year	CPI Deflator
1980	0.824	2000	1.712
1981	0.909	2001	1.771
1982	0.965	2002	1.799
1983	0.996	2003	1.84
1984	1.039	2004	1.889
1985	1.076	2005	1.953
1986	1.096	2006	2.016
1987	1.136	2007	2.07342
1988	1.183	2008	2.15308
1989	1.24	2009	2.14537
1990	1.307	2010	2.18056
1991	1.362	2011	2.24939
1992	1.403	2012	2.29594
1993	1.445	2013	2.32957
1994	1.482	2014	2.36736
1995	1.524	2015	2.37017
1996	1.569	2016	2.40007
1997	1.605	2017	2.4512
1998	1.63	2018	2.51107
1999	1.666		

## Sources

All reports authored by EPA's Office of Enforcement and Compliance Assurance (OECA).

All documents accessible on the web as of February 22, 2019.

Annual reports for enforcement and compliance are listed as "E&C Annual Report XXXX" in the tables above. The actual report titles vary from year to year, so these are also given below.

- "National Enforcement Trends (NETs) Report," (August 2011), available at <https://web.archive.org/web/20120619023221/http://www.epa.gov/compliance/resources/reports/nets/nets.pdf>.
- (This document contains long-term trends as well as metadata on EPA's data collection).
- E&C Annual Report 2018 ("Enforcement Annual Results for Fiscal Year 2018"), available at <https://www.epa.gov/enforcement/enforcement-annual-results-fiscal-year-2018>.
- E&C Annual Report 2017 ("Enforcement Annual Results for Fiscal Year 2017"), available at <https://www.epa.gov/enforcement/enforcement-annual-results-fiscal-year-2017>.
- E&C Annual Report 2016 ("Enforcement Annual Results for Fiscal Year 2016"), available at <https://archive.epa.gov/epa/enforcement/enforcement-annual-results-fiscal-year-2016.html>.
- E&C Annual Report 2015 ("Enforcement Annual Results for Fiscal Year (FY) 2015"), available at [https://archive.epa.gov/epa/sites/production/files/2017-01/documents/enforcement\\_annual\\_results\\_for\\_fiscal\\_year\\_fy\\_2015.pdf](https://archive.epa.gov/epa/sites/production/files/2017-01/documents/enforcement_annual_results_for_fiscal_year_fy_2015.pdf).
- E&C Annual Report 2014 ("Enforcement Annual Results for Fiscal Year (FY) 2014"), available at <https://archive.epa.gov/enforcement/annual-results/web/pdf/EnforcementAnnualResultsforFiscalYear2014EnforcementUSEPA.pdf>.
- E&C Annual Report 2013 ("Enforcement Annual Results for Fiscal Year (FY) 2013"), available at <https://archive.epa.gov/enforcement/annual-results/web/pdf/eoy2013.pdf>.
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Ms. DEGETTE. Thank you.

Mr. BUCKHEIT. Chair DeGette—

Ms. DEGETTE. Hang on. Mr. Buckheit—

Mr. BUCKHEIT. Yes.

Ms. DEGETTE [continuing]. For 5 minutes. Thank you.

#### **STATEMENT OF BRUCE C. BUCKHEIT**

Mr. BUCKHEIT. Thank you Chair DeGette, Ranking Member Guthrie, and Members for inviting me here today.

I have been involved in Clean Air Act enforcement issues in a variety of roles since 1984. I would like to focus my remarks this morning on the recent policy statements of the Enforcement Office and advise the committee of what I think that portrays.

Overall in my—and so I would ask that my written testimony be submitted for the record.

Ms. DEGETTE. Without objection, all the witnesses' testimony will be part of the record.

Mr. BUCKHEIT. Thank you.

Overall, the broad decline in the air enforcement metrics, in my view, is neither surprising nor accidental. This view is based on my years of experience in this area, including my personal interactions on many of these same air enforcement issues with Acting Administrator Wheeler and Assistant Administrator Wehrum in the 1998 to 2003 time frame. It is also based on recent Agency public statements, rulemaking proposals, and revised enforcement policies. Notably, these new enforcement policies are devoid of any measures to deter future violations of the Act.

The administration's push to exit the enforcement arena ignores the history of air pollution control. Prior to the 1970s, States were primarily responsible for air pollution control. Federal authority over air pollution was either entirely missing or merely advisory. Over time, however, it became clear that deferring to the States did not work and so Congress adopted the 1970 Clean Air Act to end the race to the bottom among States. The CAA provides that once EPA has provided 30 days' notice to a State, EPA may enforce as appropriate.

Enforcement policies that manage the Federal, State, and local roles have been developed over the years and worked well but this does not mean that EPA and State program managers must always agree. EPA has a job to do and many States do not have the political will to force their companies to retrofit with expensive pollution controls. This fact is documented by years of State enforcement records. There is no reason to believe that EPA's ceding near total enforcement authority to the States will alter the value that the different States place on environmental enforcement.

EPA has now declared mission accomplished and deprioritized new air enforcement in what's called large emitting sectors. It has also likely walked away from ongoing investigations commenced under the previous administrations.

While EPA says that it will complete the ongoing enforcement cases, that is to say matters that have already been referred to the Justice Department, it does not commit to complete the ongoing enforcement investigations in these sectors that were commenced under the Obama administration.

EPA justifies abandoning the utility sector because emissions have declined as a result of enforcement actions taken against some companies years ago and subsequent EPA regulations. However, the EPA investigations during my tenure, and more recent investigations in the last few years, each show substantial non-compliance within the sector and this is the single largest polluting sector, on a unit-by-unit basis, in the country. This is where the money is.

This sector also has a fairly substantial percentage of units that are not well controlled. My recollection is that about a quarter of the plants don't have full on SO<sub>2</sub> controls and half or more are not fully controlled for nitrogen oxides.

EPA says that it is done with the other sectors because it has, quote, "required controls or commenced investigations at" 90 percent or more of the facilities in those sectors. However, commencing an investigation is not the same thing as completing an enforcement action.

As it abandons the existing sectors, EPA does not identify any other large emitting industrial sectors to replace them. You heard earlier about targeting. Well there is no targeting in EPA's new plan. To say that you are going to target nonattainment areas provides no guidance at all. Where and how are you going to reduce emissions within the nonattainment areas?

Several months before I left EPA, senior management had advised me that on a forward-looking basis we would not be enforcing the rules as they were on the books but as EPA intended them to be and had proposed them to be under change regulations. We now see the administration again seeking to change the New Source Review rules and I strongly suspect that what enforcement decisions are being made are being made on the basis of what they would like the new rules to be.

Thank you.

[The prepared statement of Mr. Buckheit follows:]

## Written Testimony

Bruce C. Buckheit, former Director, Air Enforcement Division, U.S. Environmental Protection Agency Before the Oversight and Investigations Subcommittee of the U.S. House Committee on Energy and Commerce

“EPA’s Enforcement Program: Taking the Environmental Cop Off the Beat”

February 26, 2019

Chairman DeGette, Ranking Member Guthrie, and distinguished members of the Subcommittee, thank you very much for inviting me to participate in today’s hearing. My name is Bruce Buckheit. I served in the Federal government’s efforts to manage environment and safety issues starting in the Ford Administration and continuing into the Administration of President George W. Bush (Bush II). From 1984, when I filed my first action on behalf of EPA to enforce a New Source Review (NSR) violation, until my retirement in 2003 I was directly involved in the administration and enforcement of the Clean Air Act. During this period I served as a Senior Counsel in the Environmental Enforcement Section of the Department of Justice (DOJ), then as Deputy Director and then Director of the Air Enforcement Division at the Environmental Protection Agency. Upon my retirement I served for four years as a member of the Virginia Air Pollution Control Board, which oversees the rulemaking, permitting and enforcement activities of the Virginia Department of Environmental Quality. Since my federal retirement I have also provided research and consulting services to a variety of corporations, state and Federal agencies, tribes and non-governmental organizations, principally in the areas of energy and air pollution management. In recent years I have also addressed these issues in a number of foreign countries including Armenia, Australia, the European Union, India, Israel, Indonesia, the Philippines, Kosovo, Myanmar, and Viet Nam. I appear today on my own behalf and without compensation.

I understand that others on this panel will discuss the EPA enforcement data that demonstrates that there has been an historic decline in enforcement of our environmental statutes across the board. In my testimony today I hope to provide context to the objective enforcement data for the Clean Air Act in particular, “decode” some of the bureaucratic phrases in key policy documents and generally assist the Committee in its efforts to understand

the current effectiveness of clean air law enforcement and recent Federal air enforcement policies and programs.

Each of the different metrics for activities and outcomes for civil enforcement of the Clean Air Act reveals a different aspect of a mosaic that, overall, represents the overall program. My review of all of the relevant metrics shows that the air enforcement program has been substantially cut back from my time at EPA. Based on my personal interactions on these issues with Administrator Wheeler and Assistant Administrator Wehrum in the 1998-2003 timeframe, the more recent public statements of senior Administration officials, including the President, agency rulemaking proposals to roll back key Clean Air Act provisions and published Administration enforcement policies this decline is neither surprising nor accidental. Notably, these policies are devoid of any measures to deter future violations of the Clean Air Act. Until and unless the Administration fundamentally alters these policies the full measure of public health protection intended by the Clean Air Act under the Clean Air Act will not be provided.

#### CLEAN AIR ACT ENFORCEMENT AUTHORITIES PROVIDED BY CONGRESS

The Administration's push for a new "Federalism" to diminish or eliminate EPA's role in controlling air pollution and return air pollution control responsibility to states ignores the history of air pollution control that led to the adoption of the 1970 CAA in the first place. Precedent for regulating pollution under the common law and by regulation dates back to the 1600s. Modern air pollution regulation can fairly be traced to the California Air Pollution Control Act of 1947, and the Air Pollution Control Act of 1955. Federal authority under the latter statute was merely advisory to the States and contained no provisions to actively address air pollution. This approach was attempted for fifteen years before being declared a failure. To fix this and create some measure of an effective program Congress adopted the 1970 Clean Air Act (CAA). The CAA was intended (1) to end the "race to the bottom" among states competing for industrial development; (2) to improve air quality in unhealthy areas so as to meet minimum health based standards known as "NAAQS" and (3) to ensure that air quality in "clean" areas is not improperly degraded. While maintaining the role of the state in determining where to achieve emission reductions needed to achieve the NAAQS, Congress specifically assigned to EPA the obligation to set emission limits for the largest categories of

pollutants, including hazardous air pollutants, and to enforce any requirement issued by either EPA or the state. With respect to enforcement the CAA provides that

*“whenever the Administrator finds that any person has violated or is in violation of any requirement of any applicable plan or permit, the Administrator shall notify the person and the state in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice is issued, the Administrator may” [take administrative or judicial enforcement action].*

Thus, while EPA must forebear for a short period of time to permit the state to take appropriate enforcement action, once the state has had that opportunity that the agency should otherwise act as appropriate. EPA and State and local air pollution authorities have over the years worked out procedures to balance the needs and responsibilities of state and local authorities with EPA’s fundamental oversight and enforcement responsibilities. The current administration has adopted revisions to those earlier policies that will take us back toward those ineffective pre-1970 programs.

**EPA’s NEW POLICIES PROMOTE LESS EFFECTIVE REGULATION OF AIR POLLUTION:**

**1. EPA HAS DE-PRIORITIZED NEW CAA ENFORCEMENT ACTIONS IN LARGE EMITTING SECTORS**

In an attempt to maintain an enforcement “presence” in the very large numbers and types of facilities that emit significant air pollution with limited enforcement resources and thereby deter future violations, EPA-HQ has historically worked with the Regions and States to establish EPA regional and national enforcement priorities. Since the investigation and enforcement of these “nationally significant” cases can take several years, the agency’s practice has been to develop a multi-year plan for addressing targeted sectors. As carried over from the Obama Administration, priority sectors for EPA investment in CAA enforcement included NSR enforcement in the electric power, glass, cement, and acid manufacturing sectors. EPA now proposes to declare “mission accomplished” within these sectors.

*“The EPA has almost completed this [National Compliance Initiative] NCI, obtaining significant improvement in compliance and major reductions in air pollution. Work in FY 2019 will be focused on completing ongoing enforcement cases and monitoring compliance with existing enforcement settlements.”*

In support of this decision EPA cites to the emission reductions that resulted from enforcement

actions undertaken against operators of coal fired power plants 20 years ago while I was at EPA and reductions from subsequent EPA regulations. However, our investigations at the time revealed a 70 percent *noncompliance* rate in this sector and our enforcement efforts were shut down by the incoming Bush Administration before we had completed our work. This sector remains the largest emitting stationary source sector in the country, with many aging units that are poorly controlled. When it established this sector as a priority three years ago EPA asserted that it was aware of substantial additional noncompliance within the sector. See, <https://www.epa.gov/enforcement/air-enforcement>. Based on my own recent work and industry statements concerning upgrades and modifications at coal-fired power plants, I believe that this assessment is very likely correct. Statements by the President and the EPA Administrator document the Administration's strong pro-coal sentiments and so it is reasonable to ask whether it is these pro-coal policies, rather than the actual potential for future emission reductions, that are responsible for the decision to drop investigations in this sector. It would also be useful to understand when and by what means the Regions were instructed to stop investigating this sector.

In discussing its decision to drop the glass, cement and acid manufacturing sectors EPA asserts that it has "has required controls **or commenced investigations** at 91 percent, 96 percent, and 90 percent of facilities in the glass, cement, and acid manufacturing sectors, respectively. However, "**commencing**" an investigation is not the same thing as **completing an enforcement action**. And so, these representations fail to support the agency's assertion that "this NCI no longer presents a significant opportunity to affect nonattainment areas or vulnerable populations nationwide." EPA may intend to complete those investigations, but based on the phrasing of EPA's announcement and past history, I rather doubt it. Indeed, it is possible that EPA is repeating the playbook that the Bush Administration employed when it shut down NSR investigations. At that time enforcement actions that had been referred to DOJ were allowed to proceed, but we at EPA were directed to cease ongoing NSR investigations at coal-fired power plants. A close reading of the recent NCI statement reveals that EPA states that it will complete the ongoing enforcement **cases**. It does not say that EPA will complete the ongoing enforcement **investigations**. In my world, a "case" is a matter that has been referred to DOJ and filed. For these reasons the Subcommittee should undertake to understand the status of investigations that were pending as of January, 2017, how many (if any) new investigations were commenced since that date, how many coal-fired units were under investigation at the

start of the Administration and how many still are under investigation. The Subcommittee should also obtain information about the activities and outcomes of the investigations in the other listed sectors.

*Importantly, while disinvesting in the four listed sectors, EPA does not identify any other “large emitting” industrial sectors to replace the dropped sectors for intensive investigation and enforcement (including NSR enforcement). Instead, the agency places all “large emitting sources” in the low priority “core program” category.* The decision to delete NSR investigations in the four listed sectors and not identify other major emitting sectors – such as industrial boilers or steel producers for NSR or other major investigations is exacerbated by other policies that set out EPA’s heightened deference to states. Under EPA’s new cooperative enforcement guidance, EPA is to defer to states, except in limited circumstances (and only then after the political managers at the state and EPA agree). One of those listed exceptions is if the matter involved a sector that is the subject of a national enforcement initiative. And so, where there are no a national enforcement initiative sectors, the options for EPA enforcement to take action are reduced.

Thus, the combined effect of de-prioritizing enforcement at the largest emitters and the agency’s Federalist policies can be read to mean that for the most part EPA is done with enforcing the class of violations that have over the years reduced stationary source emissions than any other set of violations. Here, it would be useful for EPA enforcement to explain what it means by these policies and document its plans (if any) to investigate and pursue NSR violations at major emitting facilities.

## **2. EPA FAILS TO EFFECTIVELY DIRECT RESOURCES TO THE MOST SIGNIFICANT PROBLEMS**

As I discuss below, the resources available for Clean Air Act enforcement are far, far smaller than those necessary to properly police the very large number of diverse sources that pollute our airsheds. To manage this EPA and state and local agencies have worked out procedures that provide for what is known as the “enforcement pyramid.” The precise relationship varies with the level of resources and political will available in the state or local jurisdiction, but as a broad generalization, state and local responsibilities can be described as “the cop on the beat”, who maintain a presence within the regulated community and address

most routine enforcement matters. These matters are usually resolved administratively and only rarely involve actions filed in state court. EPA Regional enforcement staff provide oversight of state programs and are directly involved in a number of local inspections and enforcement matters. These matters typically involve larger sources such as steel mills or refineries, but also matters that the agency deems to be national priorities. So, perhaps a reasonable analogy for the roles of EPA Regional personnel is to staff at a police precinct headquarters and Assistants in U.S. Attorney Offices located throughout the country. The role of OECA technical staff might be likened to that of the FBI, while HQ attorneys serve a role similar to the technical sections at DOJ, such as the Environmental Enforcement Section. Having said that, the best legal and technical talent concerning a particular sector or issue may be found in Regional or State/local offices and so, a team from these different entities may be formed to investigate and pursue a particular manner of national interest.

EPA targeting begins with state, local and agency staff simply paying attention to trends within industries that might suggest areas that need attention. These might include new regulations or news reports of industries that might be increasing emissions. Today, such trends might include whether coal-fired power plants are complying with the recent MATS rules and whether, because of their age, they are once again undergoing life extension programs that unlawfully increase annual emissions. Other potential trends include recent public reports that major oil companies are increasing refining capacity in the Gulf because of increased “fracked” wet petrochemical production and reports that domestic steel producers have ramped up production as a result of increased tariffs on imported steel. In these areas initial targeting through publicly available information, or reports from state and local inspectors, would ordinarily be followed by more intensive inspections and document requests under section 114 of the Clean Air Act.

Additionally, the health issues associated with facilities that employ ethylene oxide to sterilize various products suggests that the agency may want to evaluate whether enforcement under section 112 or 303 of the Clean Air Act is appropriate at the dozens of such facilities located around the country. Here, where the issue may well be associated with so called “upsets” and “fugitive emissions” as well as stack emissions, the agency enforcement response

may include the installation of fence-line emission monitors to determine the risk to the public posed by facility operations. EPA solicits comment as to whether it should enforce regulations that limit leaks of pollutants at facilities such as refineries and chemical plants. These violations can be significant in some parts of the country and are relatively inexpensive to remedy as they ordinarily involve increased attention to the operation and maintenance of the facility rather than large capital expenditures. However, EPA reveals no attempt at objective analysis of potential priorities in large emitting sectors or targeting data supporting its suggestions for future consideration. In any event, it should not be a question of “either/or” as the agency has the resources to continue to enforce NSR violations in key sectors even as it considers leak detection and repair violations.

**3. QUESTIONS ABOUT WHETHER EPA IS ENFORCING THE LAW AS WRITTEN BY THE CONGRESS AND INTERPRETED BY THE COURTS**

Around the time I left the agency, senior EPA management had instructed me to advise the Regions that forward-looking enforcement of the NSR provisions would not continue under the regulations as they were written and interpreted by the Courts. Under the guise of enforcement discretion, the EPA would only go forward with enforcement of the regulations as the Bush II Administration preferred those regulations to be. The Administration pursued major weakening of the rules but was mostly unsuccessful. Nonetheless it only pursued enforcement actions if those actions would also have been violations of the proposed rules. The current Assistant Administrator for Air and Radiation was at the agency at that time and was likely involved in the decisions about what law to enforce.

Now, with several of the same actors in place, the current Administration is again seeking to essentially gut the effectiveness of the rules as they apply to coal-fired power plants. Administrator Pruitt has also published a memorandum (the DTW Memorandum of Dec 7, 2017) announcing that the agency will not investigate or pursue violations where a source asserts that it is in compliance, irrespective of whether the underlying analysis is credible. This policy essentially puts the electric power sector on the “honor system”, notwithstanding the fact that it is a crime to submit a false Federal permit document. Accordingly there is reason to ask whether the agency will pursue NSR violations under the law as written, and whether the

DTE memo is agency policy. The agency has not explained the status of the investigations conducted under the NCI respecting coal-fired power plants and whether (a) it is using projections of annual emission increases as the legal test and (b) whether it looks behind the source's projection to determine if it is accurate.

#### **4. METRICS FOR EVALUATING THE PERFORMANCE OF THE ENFORCEMENT PROGRAM**

As discussed above, there are many different metrics to track activities and outcomes within the CAA enforcement program and at this time, overall performance is not acceptable. However, it is a fairly simple matter for EPA-HQ to push Regional staff and state to generate enforcement statistics that look better but do not represent a real commitment to enforce the Act. In the past, such efforts have included the use of limited "drive by" inspections in lieu of detailed investigations. To examine whether there is a real willingness of senior EPA management to address the most significant violations, I recommend that the Subcommittee continue to track the following metrics.

- 1) The emission reductions achieved by the enforcement actions. Where this information is not available, the value of injunctive relief in judicial matters and administrative compliance orders can serve as a surrogate since the injunctive relief in these matters is ordinarily the installation of pollution controls.
- 2) The number of investigations that involve a significant investment of agency resources in complex matters. One surrogate for this metric could be the number of investigations that involved issuance of one or more information requests under section 114 of the Act or equivalent state authority.
- 3) The number and nature of referrals from EPA to DOJ for civil enforcement, including all referrals for NSR violations. Criminal enforcement is an entirely separate program. Criminal charges often are filed against small businesses for matters such as unlawful removal of asbestos containing materials (and such charges should be filed), but not against major corporations or the officers thereof, for filing false NSR permit applications or similar matters as these issues are considered too complex to put before a jury.
- 4) The number and nature of medium to large matters addressed. Statistics relating to

individual mega-cases, such as the VW matter, are certainly important, but can mask a broader failure of the program.

- 5) The number and nature of specific enforcement initiatives where EPA-HQ is encouraging and endorsing investigations in specific sectors; broad statements such as “improve air quality in non-attainment areas” are meaningless.

#### **5. WARNING SIGNS OF POTENTIAL POLITICAL CONSIDERATIONS IN ENFORCEMENT MATTERS**

Scattered throughout EPA’s policy documents are several other items that raise concerns about political appointees improperly influencing law enforcement. These include:

- 1) Review of inspection targets, referrals and enforcement actions and disagreements with state officials by Regional Administrators or other political appointees. While additional review and co-ordination of politically sensitive matters is not unusual, the recent policy documents seem to expand and unduly emphasize this matter. Unless clarified, staff will “get it” and not send even minimally controversial matters to political appointees who will be assumed to be supportive of anti-enforcement policies.
- 2) Direct involvement of the air office in deciding and announcing enforcement policies. Matters, such as the “once in always in” policy, the DTE memo issues and the recent Sterigenics issue are enforcement matters properly decided by the Assistant Administrator for Enforcement, not the Assistant Administrator for Air and Radiation.

#### **6. “ENHANCED” COMPLIANCE ASSISTANCE WILL NOT LEAD TO FEWER VIOLATIONS OF THE CAA.**

EPA Enforcement, through a HQ office that is separate from the Air Enforcement Division and the Regions, has always provided substantial resources for compliance assistance to regulated entities that may have a question as to whether a particular regulation applies and what options are available for compliance. If, during the course of an inspection, an error is found and the company is willing to promptly correct the matter; that is ordinarily the end of the issue as the regulatory agencies do not have the resources or interest in pursuing such issues as enforcement matters. Enforcement occurs when the source either repeatedly fails to correct the problem or refuses to address it. In this context one has to wonder what EPA’s new “compliance assistance” approach is and how it believes its new approach will increase compliance broadly within the regulated community

States have always had the authority to regulate emissions -both before and after passage of the Clean Air Act. They can inspect, investigate and sue if necessary. Under the CAA EPA must provide the state notice and an opportunity to take action before filing an enforcement action. In our earlier enforcement initiative, we actively sought state participation in our cases, with mixed results. Some states and air quality management districts have shown a willingness and a capacity to enforce these laws. For these states, "enhanced" compliance assistance is not needed and will not improve outcomes. A larger number of states do not have the political will to force their companies to install expensive pollution controls. These views are not mere opinions, but are documented by the history of state air enforcement over the past 29 years. It is a simple matter to go back and look at the number of times that a state has filed a standalone enforcement action seeking millions of dollars of injunctive relief against a domestic manufacturer or utility. I have in the past, and for most states, it's a null set. EPA has offered no facts to support its adopted enforcement policies and there is no reason to believe that EPA withdrawing from the field will alter the value that the different states place on environmental enforcement.

#### **BACKGROUND INFORMATION:**

##### **1. WHAT IS NSR ENFORCEMENT?**

The 1977 CAA Amendments established a program, known as New Source Review (NSR), under which new and modified major sources would be required to install the "Best Available Control Technology" (BACT). The test for whether a unit is "modified" is whether it has undergone a modification that increases its annual emissions of a regulated pollutant (e.g., SO<sub>2</sub>, NO<sub>x</sub>, PM) by more than a specific amount. Certain sectors within industry have objected strongly to this requirement, but the law has remained on the books, unchanged, since 1977. These companies have continued throughout the years to lobby for changes to the rules that implement the statute and pressed the agencies and the states not to enforce the rules. But enforcing these rule as Congress intended is fair to investors and operators of new sources that put on these controls and far more effective in reducing emissions than other types of enforcement actions. If an enforcement action is brought against a facility that violates a permit limit by 10 percent for 10 percent of its operating hours, correcting that violation will

reduce the source's annual emissions by one percent. But if a NSR action is brought against a modified facility that has failed to put on controls, the resulting injunctive relief can reduce the facility's annual emissions by 90-99 percent depending on the pollutant. NSR enforcement is a very important tool to maintain air quality in clean areas and reduce pollution levels in non-attainment areas. However, determining that a particular modification at a complex facility increased annual emissions beyond what the facility was capable of emitting prior to the change can be a complex technical matter and for political reasons many states have failed to ever bring an enforcement action under these provisions. Accordingly, retaining EPA presence in this area is critical.

## **2. SIZE OF THE REGULATED UNIVERSE**

The American economy is large and diverse and so, there is a very broad spectrum of sources of air pollution. There are approximate 15,000 so called "major sources," hundreds of thousands of smaller factories and other stationary sources and literally millions of cars, trucks, buses, off road construction equipment. To address each of these diverse categories in a manner that tailors the regulation to the characteristics of the category Congress has directed the agency to provide for specific regulations that are appropriate for that category. And so, the Clean Air Act itself is 300 pages of Federal legislative text. Federal implementing regulations are more than 10 linear feet of fine print. In addition, each the approximately 75 state and local air pollution agency develops its own set of federally enforceable regulations. Each these Federal, State and local regulations will be accompanied by agency administrative interpretations and Federal and State judicial decisions that also interpret the regulations.

## **3. AVAILABLE RESOURCES.**

The available resources are wholly inadequate to monitor this important sector of American life. While there are somewhat larger resources available for the overall program, including "compliance assistance" and "permitting" staff, the actual number of enforcement professional FTE<sup>1</sup> is quite limited. Based on my recollection and an informal survey I conducted of recent state and federal retirees over the past few days, I would estimate that there are approximately

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<sup>1</sup> Full time equivalent – a staffer that devotes half time to enforcement would be counted as 0.5 FTE.

20 FTE for attorneys at DOJ Environmental Enforcement Section available for Clean Air Act enforcement plus a handful of attorneys in three U.S. Attorney's offices. In the Air Enforcement Division we may have had 30-40 FTE of professional staffing, half of which were in the Mobile Source Enforcement Division – which had sole responsibility for cars, trucks, buses and other mobile sources. I estimate that regional professional enforcement staffing levels were in the range of 500-1000 FTE, including support from Regional Counsel's offices. State enforcement resources vary by the size of the state and the degree to which state policies support environmental regulation. Many states have fewer than 20 FTE available for inspections and no agency enforcement attorneys. Further, in many states co-ordination between state environment agencies and the State Attorney General's office may be limited. State judicial enforcement actions against in-state stationary sources seeking substantial injunctive relief and penalties are extremely rare in most states.

Mr. SCHAEFFER. Thank you very much, Mr. Buckheit.  
Dr. Shimshack, you are now recognized for 5 minutes.

**STATEMENT OF JAY P. SHIMSHACK**

Dr. SHIMSHACK. Chair DeGette, Ranking Member Guthrie, distinguished members of the committee, thank you for the opportunity to testify. My name is Jay Shimshack. I'm an associate professor of public policy and economics at the University of Virginia's Frank Batten School of Leadership and Public Policy.

I've been conducting research on environmental enforcement and compliance for nearly 20 years now. Recently, I've devoted considerable efforts to synthesizing the relevant state of knowledge in the literature and my testimony today emphasizes two themes.

First, the evidence indicates that traditional monitoring and enforcement actions get results. And second, the evidence indicates that further devolution of environmental oversight from Federal and regional offices to State or local agencies may have important consequences for human health and the natural environment.

Before proceeding, it's worth noting what I mean by the evidence. A large and growing multi-disciplinary literature assesses environmental compliance by rigorously analyzing data. The methods are diverse. The evidence spans air, water, waste, oil, and other pollution.

So some details on effectiveness: My work and that of many others shows that environmental inspections and fines enhance compliance and reduce pollution. Inspections and fines reduce immediate harm, as evaluations and requirements of administrative or judicial actions generate pollution reductions.

Second, inspections and fines improve future environmental performance at the evaluated or sanctioned facility.

Third, inspections and fines spill over to improve environmental performance at other facilities located under the same jurisdiction as the sanctioned facility via regulator reputation effect.

And fourth, inspections and fines can induce facilities to go beyond compliance and reduce pollution below their permitted levels.

The literature on the effectiveness of alternative approaches to promoting compliance, like enforcement actions without penalties, voluntary programs, cooperative arrangements, information disclosure and compliance assistance is much smaller and the results are considerably more mixed.

My read of this literature is that environmental compliance tools beyond traditional inspections and fines can be effective when used as complements to traditional regulatory approaches but not as substitutes to traditional approaches.

Some details on devolution: As has been stated at several points today, the majority of environmental permitting, inspection, and sanction activities are currently delegated to State and local authorities. Scholars have long-noted advantages and disadvantages of this system. One advantage is that State and local agencies may have better information on local conditions and preferences so activities can be more carefully tailored to local circumstances. On the other hand, the literature shows that decentralized oversight has disadvantages as well. The evidence suggests that devolved oversight can cause States to perceive a need to compete with one

another to attract new business with lax environmental enforcement.

Decentralized enforcement can fail to adequately address pollution impacts crossing State borders or attributable to large firm operating in many States simultaneously. Decentralization can heighten incentives for local regulators to pursue the interest of the regulated community, rather than the interest of the general public.

My own recent work also illustrates another peril of devolution. Colleagues and I show that enforcement in a highly devolved system can lead to unintended enforcement spillovers across borders. Increases in enforcement pressure in one State provide incentives for competitors in other States to increase production and pollution. We show that this happens under the U.S. Clean Water Act. Pollution reductions from more enforcement in one State can be offset by increased pollution by competitors in other States.

Results suggest that enforcement oversight may require more rigorous regional and national coordination than is currently available.

Some implications: The evidence suggests that all else equal, reductions in EPA monitoring and enforcement actions will sacrifice benefits for environmental quality, human health, property values, and other endpoints.

In principle, reductions in EPA monitoring and enforcement could be offset by countervailing increases in State and local environmental monitoring and enforcement activity. As a matter of practice, further devolution of oversight comes with risks for environmental quality, human health, and property values.

Chair DeGette, distinguished Members, this concludes my remarks. I hope these comments provide a perspective from academic research on the important matters at hand.

Thank you.

[The prepared statement of Dr. Shimshack follows:]

**Written Testimony prepared for the House Committee on Energy and Commerce  
February 26, 2019**

**Jay P. Shimshack\***

Associate Professor of Public Policy and Economics, University of Virginia

Chairperson DeGette, ranking member Guthrie, distinguished members of the Committee, thank you for the opportunity to testify. My name is Jay Shimshack, and I am an Associate Professor of Public Policy and Economics at the University of Virginia's Frank Batten School of Leadership and Public Policy. I have been conducting research on environmental enforcement and compliance for 20 years. Recently, I have devoted considerable effort to synthesizing the relevant state of knowledge.

Environmental enforcement and compliance require significant resources, both public and private, but the benefits at stake are large. Pollution reductions spurred by enforceable regulations provide benefits for human health, property values, recreation, and other endpoints. Monetized estimates of the total benefits from the major rules overseen by the U.S. Environmental Protection Agency total hundreds of billions of dollars per year [1].

My testimony emphasizes two themes. First, the evidence indicates that traditional environmental monitoring and enforcement actions get results. Second, the evidence indicates that further devolution of environmental enforcement oversight from federal to state or local agencies may have important consequences for human health and the natural environment.

Before proceeding, it's worth noting what I mean by "the evidence." A large and growing multidisciplinary literature assesses environmental compliance by rigorously analyzing data. The methods are diverse. Many studies use quantitative deterrence and compliance measurement, where analysts apply regression techniques or modern quasi-experimental methods to large administrative datasets. Other approaches include qualitative methods like surveys, interviews, and case studies; laboratory evidence on environmental decision-making; and randomized controlled trials in the field. The evidence spans air, water, waste, oil, and other pollution. One stipulation is that the literature disproportionately addresses larger polluting facilities.

**The effectiveness of monitoring and enforcement actions**

My work, and that of many others, shows that environmental inspections and fines enhance compliance and reduce pollution [2].

- Inspections and fines reduce immediate environmental harm, as inspections and requirements of compliance orders or judicial resolutions generate direct pollution reductions.
- Inspections and fines generate specific deterrence effects, meaning that interventions improve future environmental performance at the evaluated or sanctioned facility.

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- Inspections and fines generate general deterrence effects, meaning that interventions spillover to improve future environmental performance at other facilities in the same jurisdiction.
- Inspections and fines can generate beyond compliance effects, meaning that interventions induce facilities to reduce pollution below levels strictly necessary for compliance.

The literature on the effectiveness of alternative approaches to ensuring compliance – like voluntary programs, cooperative arrangements, information disclosure, and compliance assistance – is much smaller and the results are more mixed. My read of this literature is that compliance tools beyond inspections and enforcement can be effective when used as complements to traditional regulatory approaches, but not when used as substitutes to traditional approaches.

#### **The devolution of enforcement responsibility**

The majority of environmental permitting, inspection, and sanction activities are delegated to state and local authorities. Scholars have long noted advantages and disadvantages of this system [3]. One advantage of largely devolved oversight is that state and local agencies may have better information on local conditions and preferences, so monitoring and enforcement activities can be more carefully tailored to local circumstances. On the other hand, the literature shows that decentralized oversight also has disadvantages. Devolved oversight can spur a “race to the bottom,” where states or localities perceive a need to compete to attract new businesses with lax environmental oversight. Decentralized enforcement can fail to adequately address pollution impacts crossing state borders or attributable to large firms operating in many states at once. Decentralization can heighten incentives for “regulatory capture,” where local regulators may pursue the interests of the regulated community rather than the general public.

My own recent work, with Mary Evans and Scott Gilpatric, illustrates another peril of devolution [4]. We show that environmental enforcement in a decentralized system can lead to negative enforcement spillovers, which we deem “enforcement leakage.” Increases in enforcement pressure in one state provide incentives for competitors in other states to increase production and pollution. We show that this happens under the Clean Water Act. The idea is akin to squeezing a balloon – some of the pollution reductions achieved by more enforcement pressure in one place are offset by increased pollution by competitors in other places. Results suggest that enforcement oversight may require more rigorous regional or national coordination.

#### **Implications**

The empirical evidence indicates that environmental inspections and fines get results. All else equal, reductions in EPA monitoring and enforcement will sacrifice benefits for environmental quality, human health, and property values.

In principle, reductions in EPA monitoring and enforcement could be offset by countervailing increases in state and local environmental monitoring and enforcement activity. In practice, further devolution of oversight comes with significant risks for environmental quality, human health, and property values.

Moreover, without substantial additional resources, it is not clear that state authorities have the capacity for greater oversight [5]. Variation in monitoring and enforcement intensity across states is currently pronounced. Federal EPA actions are often different from state actions; federal enforcement cases often emphasize complex issues like transboundary pollution, large multi-state firms, entities operating outside of the regulatory system, deliberate intent, or egregious environmental damage. Centralized oversight offers economies of scale for gathering compliance information. Finally, for decades, states and local agencies have been asked to do more with less, as resources have not kept up with the growing size and complexity of the regulated universe.

Chairperson DeGette, distinguished members of the Committee, this concludes my prepared remarks. I hope these comments provide a perspective from academic research on the important matters at hand. Thank you again for the opportunity to testify.

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[1] See, e.g., Office of Information and Regulatory Affairs, Office of Management and Budget, “2017 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act,” 2017.

[2] For reviews of the literature, see, e.g., Shimshack, J. P. (2014). The economics of environmental monitoring and enforcement. *Annu. Rev. Resour. Econ.*, 6(1), 339-360; Gray, W. B., & Shimshack, J. P. (2011). The effectiveness of environmental monitoring and enforcement: A review of the empirical evidence. *Review of Environmental Econ & Policy*, 5(1), 3-24. Alm, J., & Shimshack, J. (2014). Environmental enforcement and compliance: Lessons from pollution, safety, and tax settings. *Foundations and Trends® in Microeconomics*, 10(4), 209-274.

[3] See, e.g., Oates, W. E. (2002). A Reconsideration of Environmental Federalism. In *Recent Advances in Environmental Economics*; and Konisky, D. M. (2007). Regulatory competition and environmental enforcement: Is there a race to the bottom? *Amer. J Political Science*, 51(4), 853-872. More generally, see Stigler GJ. 1971. The theory of economic regulation. *Bell J. Econ.* 2:3–21; Peltzman S. 1976. Toward a more general theory of regulation. *J. Law Econ* 19:211–24; Fredriksson, P. G., & Millimet, D. L. (2002). Strategic interaction and the determination of environmental policy across US states. *J Urban Economics*, 51(1), 101-122; and Levinson, A. (2003). Environmental regulatory competition: A status report and some new evidence. *National Tax Journal*, 91-106.

[4] Evans, M. F., Gilpatric, S. M., & Shimshack, J. (2019). Enforcement spillovers: Lessons from strategic interactions in regulation and product markets. *Journal of Law and Economics*, forthcoming. Also available at SSRN: <https://ssrn.com/abstract=2664765>.

[5] For institutional discussions of environmental enforcement, see Mintz, J. A. (2012). *Enforcement at the EPA: High stakes and hard choices*. University of Texas Press; and Shimshack, J. P. (2014). The economics of environmental monitoring and enforcement. *Annu. Rev. Resour. Econ.*, 6(1), 339-360.

Ms. DEGETTE. Thank you, Doctor.  
Dr. Nelson, you are recognized for 5 minutes.

**STATEMENT OF BAKEYAH S. NELSON**

Dr. NELSON. Thank you, Chair DeGette, Ranking Member Guthrie, and members of the Oversight and Investigations Subcommittee for the opportunity to testify here today about EPA's enforcement record and the implications for the eight-county Houston region.

I am the Executive Director of Air Alliance Houston, a local non-profit organization that works to improve air quality and public health through research, education, and advocacy.

Illegal releases of air pollution are all too common in Texas. Industry says these releases are unavoidable, yet they also know the U.S. Environmental Protection Agency and Texas Commission for Environmental Quality will not hold them accountable. This leaves people across Houston and Texas almost defenseless against harmful air pollution.

More than 400 petrochemical facilities, including two of the four largest U.S. oil refineries reside in Harris County. Emissions events in Texas have been found to lead to the premature deaths of at least 16 people and \$148 million in health-related costs per year. TCEQ, however, fails to penalize violators 97 percent of the time, according to an analysis by Environment Texas. This general unwillingness to enforce the law has essentially given industry a pass to poison.

The Valero Houston Refinery, for example, released significant amounts of hydrogen cyanide into the air in 2016, despite not having a permit to do so. The consequence? There has been none to date. Neither EPA nor TCEQ has taken enforcement action. This is extremely concerning because the Valero refinery is located beside Houston's Manchester community, where 97 percent of the residents are people of color, 37 percent live in poverty, and 90 percent live within one mile of an industrial facility that is subject to the EPA's Risk Management Program. Many homes are within yards of the refinery, which has self-reported more than 200 unauthorized releases of toxic air pollutants since January 2003.

High exposures to hydrogen cyanide can be extremely harmful to people's health and can result in death within minutes, while exposure at lower concentrations can cause eye irritation, headache, confusion, nausea, among other health effects.

Hurricane Harvey serves as a cautionary tale about the vulnerability of millions of Americans who live near chemical plants. It also revealed how ill-equipped the State of Texas and the EPA are to handle disasters. During Harvey, over eight million pounds of pollution escaped into the air because of inadequate preparation for the storm by industry, EPA, and TCEQ.

The biggest emissions release occurred in Galena Park, a predominately Latin and low-wealth community along the Houston Ship Channel. Two storage tanks at the Magellan Terminal released more than 11,000 barrels of gasoline. The company did not report the incident until 11 days after the spill occurred, according to the Houston Chronicle.

Life-long Galena Park resident, Juan Flores, who works as a community organizer for Air Alliance Houston, said he and his neighbors smelled the strong odor of petroleum for several days after Harvey. People complained about the extreme stench, burning eyes, and more. They closed doors and windows but many still could not escape the odor, yet EPA and TCEQ have taken no enforcement action against Magellan.

Galena Park is just one of many examples of how communities suffered public health impacts from the storm and of the inaction by EPA and TCEQ. During and in the immediate weeks after the storm, several organizations collected information and surveyed residents about the public health impacts. Many reported worsening health conditions yet, EPA and TCEQ are not holding the polluters accountable and have not yet required action to prevent similar problems in the future.

Texas needs robust oversight from EPA because the State also limits the ability of local agencies to pursue enforcement actions against industrial polluters. Significant challenges exist to local enforcement of the Texas Clean Air Act. Specifically, one of the challenges to local enforcement of the Texas Clean Air Act is that, in some types of cases, the city must notify the TCEQ of a violation and give the State agency the first opportunity to determine whether to pursue an enforcement action. However, as previously noted, TCEQ fails to penalize violators 97 percent of the time.

Enforcement action is particularly critical for communities of color and low wealth, as hazardous facilities are disproportionately concentrated in these neighborhoods, compromising the health and safety of people with some of the greatest health challenges and the fewest resources to address these issues.

The overwhelming majority of incidents that occurred during Harvey took place in or near environmental justice communities. Years ago, EPA had recognized the need to make preventing chemical disasters a National Enforcement Initiative. The communities in Houston haven't seen EPA make good on that promise.

Even worse, after committing to an increase in enforcement resources to the most overburdened communities in EPA's Environmental Justice Strategic Plan, the Agency is, instead, turning its back on communities that need enforcement the most, like Houston. These communities simply cannot rely on compassion or the good will of industry to comply with the law.

In conclusion, I want to thank the subcommittee for conducting this hearing and for the opportunity to testify today.

[The prepared statement of Dr. Nelson follows:]

Before the United States Oversight & Investigations Subcommittee Hearing on Trump  
EPA's Troubling Enforcement Record

Testimony of Bakeyah S. Nelson, Ph.D.  
Executive Director  
Air Alliance Houston

February 26, 2019

Thank you, Chair DeGette, Ranking Member Guthrie, and members of the Oversight & Investigations Subcommittee, for the opportunity to testify here today about EPA's enforcement record and the implications for the eight-county Houston region. My name is Bakeyah Nelson. I am the executive director of Air Alliance Houston, a local nonprofit organization that works to improve air quality and public health through research, education and advocacy. Our primary focus is Harris County, where consistently clean air remains out of reach for the more than 4 million people living there, particularly for communities of color and low wealth.

Air Alliance Houston believes everyone has a right to breathe clean air every day. Where you live, work, learn, and play should not determine your health.

**Rogue releases of air pollution are all too common in Texas. Industry says these releases, known generically as emissions events, are unavoidable. Yet they also know the U.S. Environmental Protection Agency (EPA) and Texas Commission for Environmental Quality (TCEQ) will not hold them accountable. This leaves people across Houston and Texas almost defenseless against harmful air pollution, including cancer-causing benzene and lung-damaging particulate matter.**

More than 400 petrochemical facilities, including two of the four largest U.S. oil refineries, reside in Harris County. For the people living here, enforcement action is critical to deter industry from violating air permits. A recent study found that emissions events in Texas lead to the premature deaths of at least 16 people and \$148 million in

health-related costs per year.<sup>1</sup> TCEQ, however, fails to penalize violators 97% of the time, according to an analysis by Environment Texas.<sup>2</sup>

**This general unwillingness to enforce the law has essentially given industry a pass to poison.** The Valero Houston Refinery, for example, released 256,980 pounds of hydrogen cyanide and 720 pounds of cyanide compounds into the air in 2016 despite not having a permit to do so.

The consequence? There has been none to date. Neither EPA nor TCEQ has taken enforcement action.

This is extremely concerning because the Valero refinery is located beside Houston's Manchester community, where 97 percent of the residents are people of color, 37 percent live in poverty, and 90 percent live within one mile of an industrial facility that is subject to the EPA's Risk Management Program.<sup>3,4</sup> Many homes are within yards of the refinery, which has self-reported more than 200 unauthorized releases of toxic air pollutants since January 2003.

The Centers for Disease Control says high exposures following accidental releases of hydrogen cyanide can be extremely harmful to people's health and can result in death within minutes while exposure at lower concentrations can cause eye irritation, headache, confusion, nausea, among other health effects.<sup>5</sup>

Valero has now applied for a "retroactive" permit to allow them to release hydrogen cyanide legally. The initial proposed permit would have originally allowed 512.86 tons per year of HCN emissions. However, Manchester is already overwhelmed by toxic air pollution. What's more, the Valero Refinery was the source of one of the largest releases of air pollution in Texas in the days after Hurricane Harvey made landfall in August 2017.

**An alarming amount of pollution escaped into the air during Hurricane Harvey because of inadequate preparation for the storm by industry, EPA, and TCEQ. Yet neither EPA nor TCEQ have taken enforcement action against many of those responsible for the largest releases: Valero Refining, Magellan Terminals Holdings in Galena Park, and Arkema's Crosby plant.**

Simply, Hurricane Harvey serves as a cautionary tale about the vulnerability of millions of Americans who live near chemical plants. The storm also revealed how ill-equipped

<sup>1</sup> Understanding Excess Emissions from Industrial Facilities: Evidence from Texas. Nikolaos Ziogiannis, Alex J. Hollingsworth, and David M. Konisky *Environmental Science & Technology* 2018 52 (5), 2482-2490 DOI: 10.1021/acs.est.7b04887.

<sup>2</sup> Environment Texas. Major Malfunction: Air Pollution from Industrial Malfunctions and Maintenance in Texas in 2017. Available at [https://environmenttexas.org/sites/environment/files/reports/TX\\_MajorMal\\_scrn.pdf](https://environmenttexas.org/sites/environment/files/reports/TX_MajorMal_scrn.pdf)

<sup>3</sup> Double Jeopardy in Houston: Acute and Chronic Chemical Exposures Pose Disproportionate Risks for Marginalized Communities (2016). <https://www.ucsusa.org/sites/default/files/attach/2016/10/ucs-double-jeopardy-in-houston-full-report-2016.pdf>

<sup>4</sup> <https://www.epa.gov/rmp>

<sup>5</sup> Hydrogen Cyanide (HCN) CAS 74-90-8; UN 1051. <https://www.atsdr.cdc.gov/mhmi/mmg8.pdf>

the state of Texas and the EPA are to handle future disasters. The hurricane produced a second storm of air pollution. We know this because of industry's own pollution reports to the state. We also know because of measurements of air pollution in and around Houston by Air Alliance Houston, Environmental Defense Fund and the City of Houston while parts of the city were still underwater.

Industry estimates that facilities released an additional 8.3 million pounds of air pollution immediately before, during, and after Hurricane Harvey. The largest share of this pollution was in the Houston region, apparently a result of industrial facilities waiting too long to shut down. While Harvey's flooding impacted neighborhoods across the socioeconomic spectrum, communities of color and low wealth suffered a disproportionate share of the burden from air pollution released during the storm.

Before Harvey reached Houston, TCEQ shut down over 75 percent of its stationary air monitors in the region. Air Alliance Houston worked with the media to raise awareness about the fact that regulatory agencies were not providing adequate information to the public about air pollution. TCEQ and the EPA, meanwhile, offered broad assertions that the air quality was not of concern. Yet industrial facilities along the Houston Ship Channel were reporting pollution releases. One of the worst releases (of which we are aware) happened at Valero Energy's refinery in southeast Houston. After reports of a leaking storage tank at the refinery, city officials detected concentrations of cancer-causing benzene of over 300ppb in the Manchester community.

Air Alliance Houston worked with EDF to dispatch a mobile monitoring unit from a California-based company, Entanglement Technologies, to take air quality samples in Manchester and other communities in Houston and across southeast Texas. Between Sept. 4 and Sept. 10, the last day of our sampling, we had conducted the largest and most robust active air monitoring campaign of any agency or organization. Air Alliance Houston and EDF took action because neither the EPA nor the TCEQ conducted active surveillance fast enough or in the areas most likely to have problems with air quality.

For example, EPA did not conduct its first ASPECT flight over the Houston Ship Channel until Sept. 7. EPA also did not deploy TAGA buses until Sept. 5. It is also unclear whether TCEQ had any of its own active surveillance because the agency has not released any data beyond what was recorded at stationary monitors. The detection of a benzene plume in the Manchester community later resulted in an EPA investigation of the Valero Refinery.

The agency, however, has taken no enforcement action and hasn't required correction to prevent similar problems.

The biggest release of air pollution after Hurricane Harvey made landfall happened in Galena Park, a predominantly Latinx and low-wealth community along the Houston Ship Channel. Two storage tanks at the Magellan Terminal released more than 11,000 barrels of gasoline. The company did not report the incident until 11 days after the spill occurred, the Houston Chronicle found.

“An explosion risk prompted workers to evacuate upwind as the nearly half-million gallons of gasoline gushed out of failed storage tanks, state environmental and Coast Guard records show. The spill ranked as Texas’ largest reported Harvey-related venting of air pollutants at 1,143 tons,” the Houston Chronicle reported.

Lifelong Galena Park resident Juan Flores, who works as a community organizer for Air Alliance Houston, said he and his neighbors smelled the strong odor of petroleum for several days after Harvey. People complained about the extreme stench, burning eyes and more. They closed doors and windows, but many still could not escape the odor, Flores said.

Yet EPA and TCEQ have taken no enforcement action against Magellan.

Finally, the explosions at Arkema’s flooded Crosby plant filled the air with black smoke, sending emergency responders to hospitals with breathing problems. The Chemical Safety Board launched an investigation and later concluded that Arkema could have done more to prevent the explosion that occurred during Harvey. This incident is just one of many examples that highlights why facilities that store and process hazardous chemicals need to prioritize protecting public health and safety. A Harris County grand jury later indicted Arkema executives for the ‘reckless’ release of toxic chemicals during Harvey.

EPA, however, has taken no enforcement action against Arkema. It is essential for EPA to do inspections and ensure compliance with the 2017 Chemical Disaster Rule, which a court ordered EPA to put in full effect after the agency unlawfully tried to delay these protections. Now we need EPA to implement, not rollback those regulations, because communities need both stronger safety measures and more enforcement.

**Communities suffered public health impacts from the storm. Yet EPA and TCEQ are not ensuring compliance or holding the polluters accountable.**

During and in the immediate weeks after the storm, several organizations, including Air Alliance Houston, collected information from residents about the public health impacts during this period. One month after the storm, our staff members went door-to-door, collecting over 1,300 surveys in North Pasadena. More than 40 percent of residents reported Harvey-related health impacts.

Furthermore, the Episcopal Health Foundation’s survey revealed that among those who suffered damage to their home or property, 17 percent reported that they or a family member experienced new or worsening health conditions. Four months after the storm, the University of Texas School of Public Health found that 22 percent of residents experienced worsening of an existing health condition or physical injury, or a new illness – including 22 percent reporting respiratory issues such as asthma.

At this point, we will never know the actual amount of air pollution released during this time or the true extent of adverse health outcomes. However, these sources of data shed light on how the storm affected air quality and public health. Since Harvey, the Houston

Health Department, Rice University and Environmental Defense Fund, have launched a health registry to track health impacts related to the storm and plan to use this information to take steps to minimize exposures during future disasters.

**Texas needs robust oversight from EPA because the state also limits the ability of local agencies to pursue enforcement actions against industrial polluters.** A legal review commissioned by Air Alliance Houston identified significant challenges to local enforcement of the Texas Clean Air Act (TCAA). Specifically, the findings identify “one of the challenges to local enforcement of the TCAA is that in some types of cases, the City must notify the TCEQ of a violation and give the state agency the first opportunity to determine whether to pursue an enforcement action. More specifically, notice is required before the City files a lawsuit for criminal enforcement of the TCAA<sup>6</sup>, and in civil actions when the City intends to request the court to assess a monetary penalty against the violator.<sup>7</sup>

After receiving notice, the TCEQ could choose to remedy violations at the state level through administrative proceedings or other strategies, which would preclude the City from moving forward with an enforcement action.<sup>8</sup> The TCEQ’s approach to enforcement may not be aligned with the City’s priorities. For example, in a case for a civil penalty, the TCEQ may choose not to address all of the alleged violations set forth in the City’s notice—so long as the TCEQ commences a proceeding addressing at least one of the alleged violations, the City is precluded from enforcing any of the others.<sup>9</sup> When the City provides notice to the TCEQ of an alleged criminal violation, the TCEQ could decide that an administrative or civil remedy—or even no penalty at all—is the appropriate course of action.”<sup>10</sup>

**Enforcement action is critical for communities of color and low wealth to protect them from the disproportionate impact of air pollution on their health and safety.**

In 1994, President Bill Clinton issued Executive Order 12898 to address environmental justice issues in communities of color and low-wealth populations. The EPA defines environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or wealth, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”

The overwhelming majority of incidents that occurred during Harvey took place in or near environmental justice communities. Furthermore, hazardous facilities are disproportionately concentrated in communities of color and low-wealth neighborhoods – compromising the health and safety of people with some of the greatest health challenges and the fewest resources to address these issues. Communities of color and

<sup>6</sup> Tex. Water Code § 7.203; Tex. Code Crim. Pro. art. 2.12.

<sup>7</sup> Tex. Water Code §§ 7.351(a), 7.3511.

<sup>8</sup> Tex. Water Code §§ 7.203(d), 7.3511(d).

<sup>9</sup> Tex. Water Code § 7.3511(d).

<sup>10</sup> Tex. Water Code § 7.203(d); BCCA Appeal Grp., Inc. v. City of Houston, 496 S.W.3d 1, 14 (Tex. 2016).

low-wealth continue to be treated as collateral damage by industries that prioritize profits over public health. Both the EPA and the TCEQ have failed to take vigorous action to enforce existing laws and effectively uphold the intent of EO 12898.

Years ago, EPA had recognized the need to make preventing chemical disasters a national enforcement initiative – but communities in Houston haven’t seen EPA make good on that promise. Even worse, after committing to **increase** enforcement resources to the most overburdened communities in EJ2020, EPA’s strategic plan for environmental justice, the agency is instead turning its back on communities that need enforcement the most, like Houston.<sup>11</sup>

**It is incumbent upon the EPA to take steps to ensure that all people breathe clean air every day and to protect them from exposure to harmful pollution during disasters.** The agency must communicate accurate information about air quality to emergency responders and the public to protective of their health and safety.

In the 2018 Arkema Investigation Report, the Chemical Safety Board called for more and better preparation, to prevent these double disasters, but EPA has been failing to exercise its enforcement authority to ensure this happens.<sup>12</sup> The Board has also urged EPA to implement and not rollback the 2017 Chemical Disaster Rule which would require facilities to take steps to prevent and mitigate harm from these incidents.<sup>13</sup> As then-CSB Chairperson Vanessa Allen Sutherland said:

*“Considering that extreme weather events are likely to increase in number and severity, the chemical industry must be prepared for worst case scenarios at their facilities. We cannot stop the storms, but working together, we can mitigate the damage and avoid a future catastrophic incident.”<sup>14</sup>*

An EPA funded study about ambient air concentration levels in Southeast Louisiana after the Deepwater Horizon oil spill recommended that EPA establish “health-based and regulatory air quality levels that should apply during environmental disasters including the types of emergency monitoring equipment that would be acceptable to capture as much data as possible.

According to the study, there should be plans to protect “fence-line” communities that may need to shelter in place or evacuate, as well as health-based disaster thresholds that could facilitate decision-making, increase public awareness, and reduce the potential

<sup>11</sup> EPA, EJ2020 Action Agenda: The U.S. EPA’s Environmental Justice Strategic Plan for 2016-2020, p. 20 (2016), [https://www.epa.gov/sites/production/files/2016-05/documents/052216\\_ej\\_2020\\_strategic\\_plan\\_final\\_o.pdf](https://www.epa.gov/sites/production/files/2016-05/documents/052216_ej_2020_strategic_plan_final_o.pdf) (“Action 1.2: EPA will increase compliance evaluations and enforcement actions for serious violations affecting overburdened communities. In particular, over the next five years, EPA will work with co-regulators to identify and undertake community-focused compliance reviews and enforcement strategies in at least 100 of the most overburdened communities where data indicate that facilities present a high likelihood of serious non-compliance issues impacting those communities, and address serious violations if found...”).

<sup>12</sup> Arkema Final Investigation Report (May 2018), <http://www.csb.gov/file.aspx?DocumentId=6068>;

<sup>13</sup> CSB Comments to EPA opposing rollback of Chemical Disaster Rule, <https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-1897>.

<sup>14</sup> CSB Releases Arkema Final Report, May 24, 2018, <https://www.csb.gov/csb-releases-arkema-final-report>.

public health impact during an environmental disaster.”<sup>15</sup> These recommendations could supplement enforcement efforts if implemented.

Thank you for the opportunity to testify today.

Respectfully,

A solid black rectangular box used to redact the signature of Bakeyah S. Nelson.

Bakeyah S. Nelson, Ph.D.

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<sup>15</sup> Earthea Nance, Denae King, Beverly Wright & Robert D. Bullard (2016). Ambient air concentrations exceeded health-based standards for fine particulate matter and benzene during the Deepwater Horizon oil spill, *Journal of the Air & Waste Management Association*, 66:2, 224-236, DOI: 10.1080/10962247.2015.1114044.

Ms. DEGETTE. Thank you, Doctor.

Mr. Tenpas, you are now recognized for 5 minutes.

**STATEMENT OF RONALD J. TENPAS**

Mr. TENPAS. Madam Chair DeGette, Ranking Member Guthrie, members of the subcommittee, thank you for the opportunity to be here today and offer my perspective on environmental enforcement efforts.

Just briefly, by way of my background on this, I've spent approximately 20 of my 30-year legal career focused on issues of enforcement of Federal law and regulation, seeing it both from the perspective of the government and the perspective of those who are subject to those laws and regulations.

I started by spending 12 years at the Justice Department, beginning as an AUSA indeed in Congressman Castor's home location as an AUSA in Tampa, Florida. I then spent, after 6 years as a line attorney, I spent 6 years as a political appointee, including in two Senate-confirmed posts as a United States Attorney in the Southern District of Illinois, and then later as the Assistant Attorney General for the Environment and Natural Resources Division, the ENRD, as it is often called in shorthand. Just like you have been referencing OECA here at EPA, the ENRD is the group of lawyers that really take on all of the major Federal environmental cases that end up in the courts, including, of course, the most significant Federal environmental enforcement cases.

And then following that time at the Justice Department, I've spent the last 10 years in private practice assisting clients, as they say, as they assess their environmental obligations and address potential violations.

From that there are sort of five overall observations I would offer to the committee today. First, as there has been a great deal of discussion, both EPA and DOJ do try to measure and report on their enforcement results and EPA is currently using 12 major metrics. This data is, as I often put it, noisy. Single case outcomes from year to year can drive the annual results, making it sometimes difficult to discern fundamental trends.

And so I would urge some amount of caution in drawing strong conclusions based on any single subset of those metrics or from even a narrow, relatively narrow period of years, a single year, or 2 years.

As I look at the most recent EPA data that has been published and that the committee has been discussing, I see what I regard as a pretty typical mixed bag. Some enforcement metrics are up. From what was observed during periods of the prior administration, some are down, some are roughly in line with prior history. Thus, to me, that data doesn't overall suggest there has been an abandonment of environmental enforcement.

Second, that kind of level of stability there is not surprising to me, given that between EPA and DOJ there is a very large and dedicated group of career professionals. And that group ensures that, regardless of administration, there is always likely to be a meaningful and continuous enforcement effort, as there should be.

Third, for all of the attention that these annual statistics may get, at the end of the day they are proxies and they are somewhat

poor proxies for the real objective here, which is consistent compliance with our environmental regulations. Enforcement is not an end in itself. The purpose of enforcement is to incentivize and, when necessary, to coerce compliance with our environmental regulations.

And this leads to my fourth point, which is that we should always be open to the possibilities that there are better ways, there are alternative ways to secure compliance. Use of the enforcement stick need not be and likely should not be the only strategy. In this respect, things like voluntary self-reporting programs and similar incentive systems that aren't always accompanied by formal enforcement actions or a formal enforcement stat, as people in the government sometimes put it, those programs can be very important nevertheless.

Finally, I will just say I have yet to meet the client who has taken the view that, because there is some impression or some reporting as has been discussed here, that enforcement efforts are down, it's going to cut back on its own environmental and compliance efforts. And one of the things that I think the Congress and this country should be proud of is that we know had a robust body of environmental statutes for several decades and that has in fact spurred within the corporate community them to develop large environmental health and safety professional staff who do believe in and are committed to complying with the law and who are well aware that there is an active and effective sect of career professionals at the enforcement agencies, Federal, State, and local. They are aware that there is more than one agency on the job, besides the EPA, under our scheme of cooperative federalism.

Thus to me it is likely a false narrative to assume that even if enforcement efforts are subject to some adjustment at the Federal level, the reaction within the regulated world is a corresponding increase in noncompliance. I simply don't tend to see that level of cause and effect in my own observations.

So I thank you for the opportunity to be here today. I appreciate the committee's invitation, and I look forward to addressing any questions.

[The prepared statement of Mr. Tenpas follows:]

**United States House of Representatives**  
**Committee on Energy & Commerce**  
**Subcommittee on Oversight and Investigations**  
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**Prepared Statement of the Honorable Ronald J. Tenpas**  
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Chairman DeGette, Ranking Member Guthrie & Members of the Committee:

Thank you for the invitation to participate in today's hearing and to offer my perspective on environmental enforcement efforts, both as it relates to the current Administration and more broadly. Just to explain my perspective on this – in my roughly thirty year legal career I have spent more than twenty focused on enforcement of federal law and regulation, seeing it both from the perspective of the government and the perspective of those who are subject to those laws and regulations. I spent twelve years in the Justice Department, beginning as an Assistant United States Attorney – a line prosecutor – investigating and trying a full range of cases, ranging from violent crime and narcotics to white collar corporate matters. I also spent six years as a senior political appointee, including two Senate confirmed posts: United States Attorney for the Southern District of Illinois and, later, Assistant Attorney General for the Environment and Natural Resources Division. That last job involved running a seven hundred person division responsible for nearly all of the federal government's environmental litigation occurring under approximately 150 different environmental statutes. The Division included about one-hundred eighty attorneys who focused on civil and criminal investigations – what amounted to the most significant enforcement cases the United States was investigating or which the United States brought to court. During my tenure as Assistant Attorney General, thanks to the excellent work of those many career attorneys, we resolved a variety of matters that were pathbreaking at the time – to name just two, the largest Clean Air Act criminal penalty achieved up until that time and the largest Clean Air Act injunctive civil environmental settlement, involving an estimated \$4.6 billion in injunctive relief.

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<sup>1</sup> This statement and any associated testimony are the views of Ronald J. Tenpas and do not represent positions of Vinson & Elkins, LLP.

For the last ten years in private practice, I have frequently assisted clients in assessing their environmental obligations and in addressing potential violations and, thus, interacting with Justice Department or EPA lawyers and agents on matters involving the major environmental statutes such as the Clean Air Act, the Clean Water Act, RCRA, CERCLA and TSCA. Based on that collective experience, there are five major observations that I would offer the Committee today. I will summarize them briefly initially and then turn to each in more depth later in my statement.

First, while it is common for both EPA and DoJ to try and measure and report on their enforcement results annually, the typical metrics used are incredibly “noisy” – from year to year, single case outcomes can drive the annual numeric results, making it difficult to discern more fundamental trends. That isn’t to say that such data are useless but it is to say that one should be cautious in drawing strong conclusions based on such numeric reporting alone. And, as I look at the most recent EPA data that has been published, I see what I regard as a pretty typical mixed bag – some enforcement metrics are up from what was observed during preceding Administrations, some are down, some are roughly in line with prior history. Thus, to me, that data does not suggest there has been an abandonment of environmental enforcement.

Second, it is not surprising to me that the overall results of the last two years are roughly in line with many prior years. Between the EPA and the DoJ, there is built into the two major federal enforcement agencies a very large and dedicated group of career professionals who are skilled at investigating matters and preparing them for efforts to settle or, when necessary, bringing them to court. Therefore, regardless of Administration, there is always likely to be a meaningful and continuous enforcement effort, as there should be. While changes in Administration may allow for shifts in emphasis, or in priorities for types of investigations and cases to pursue, the steadiness and competence of the career staff ensures a level of continuity and baseline enforcement that remains relatively constant.

Third, for all of the attention that the annual statistics may get, at the end of the day, they are proxies, and somewhat poor proxies, for the real objective, which is consistent compliance with our environmental regulations. Put another way, enforcement cases are a means to an end, not the end themselves. We use enforcement both as a threat to encourage compliance – i.e. for purposes of deterrence – and also as a means to force those who are not into compliance to come into compliance through the force of court orders and similar directives. Sometimes the enforcement mechanism becomes the vehicle by which disputes are resolved over what the regulations actually require – for example, a company may believe it has been in compliance, the EPA or DoJ disagrees, and a judge is needed to sort that out. Sometimes the government wins those cases, but sometimes it loses. Ultimately, all of this enforcement activity serves to clarify what the rules are and to achieve compliance with those rules.

Fourth, a corollary of the third point is that we should always remember that the ultimate goal is compliance, not enforcement for its own sake. Thus, we should be open to the possibility that better ways, or alternative ways, exist to secure compliance. Use of the enforcement “stick” need not be, and likely should not be, the only strategy. In particular, voluntary disclosure programs – at both the federal and state level – can be very effective “force multipliers”, providing strong incentives for self-audits and similar programs that detect problems and result

in improved compliance without requiring the investigative resources and litigation efforts that an enforcement action typically requires.

Finally, because “compliance” rates are comparatively hard to measure when compared to enforcement statistics, there is a tendency to equate the two. But that simply does not correspond to my personal experience – for example, I have yet to meet the client who has taken the view that because there is a popular impression that “enforcement efforts are down” (regardless of whether that is, in fact, true) it will cut back on its own environmental compliance efforts, such as by shrinking its environmental, health and safety staff. My experience is that the private companies with whom I work, instead, typically have professional staffs that believe in and are committed to complying with the law and who are well aware that there is an active and effective set of career professionals at EPA, at DoJ, and with other federal agencies and the States. Thus, even if those who are regulated perceive there to be some changes in emphasis or tone between one Administration and another, that does not lead them to reduce their efforts to comply with the environmental rules. In turn, it is likely to be a false narrative to assume that even when enforcement efforts are subject to some adjustment that the reaction within the regulated world is a corresponding increase in non-compliance. That level of cause and effect is simply not present in my observation.

Let me now turn to each of the above points in somewhat greater detail.

First, as to enforcement data. For at least fifteen years EPA and DoJ have produced annual reports that attempt to quantify the prior year’s enforcement results. And, while the reports have had periodic adjustments in what is counted and how, and despite changes in political and career staff across the years, each of these reports has settled around a fairly stable set of metrics. EPA currently reports on twelve different measures annually, ranging from the pounds of pollution reductions that are secured through consent decrees or other actions, to cubic yards of soil and debris that are to be cleaned up through resolved cases, to total years of imprisonment and number of defendants criminally convicted, to civil penalties secured, to the cost in dollars of the environmental controls and improvements that defendants (typically businesses) have agreed to make, to the number of voluntary self-reports EPA has received. DoJ’s Environment Division takes a similar approach. I believe one reason that so many measures are being tracked and reported, and that the data categories reported have remained fairly stable across many years and many leaders, is that those who have held leadership positions at EPA and DoJ recognize that any single metric, or even any three or four metrics, would give an incomplete and imperfect picture. Thus, rather than focusing on only one or several items, the better way to assess the direction and effectiveness of the enforcement program overall is to bring all of these measures into the picture and see if there are any dominant trends across all data and across multiple years. In addition to getting a broader picture, at least one other reason to take this approach is that single case results can have outsized impact on the annual data, giving a false sense of underlying fundamental trends if one focuses on a single category that has had a “big year” or a “low year.”

With that in mind, I have looked at EPA's most recent OECA report<sup>2</sup> and the picture I see is one that is typical of what you could likely have found had you picked up the report in any of the last fifteen years – some measures appear up from historic trend lines, some are about even, some are down. What the Report does not support is a narrative that enforcement has gone off a cliff and disappeared. Let me give just a couple of examples:

- In the category of hazardous and non-hazardous waste treated the data runs from 2012–2018, seven years total. Two of the years, (2012 and 2016), appear to have had anomalous results, from individual cases dominating the results. Comparing the remaining five years – two from the current Administration and three from President Obama's Administration -- shows that the Obama Administration had both the lowest enforcement year (2013), the middle enforcement year (i.e. 3d, 2015) and the highest enforcement year (2014), with the two years of the Trump Administration generally situated right in the middle, with years that rank second (2018) and fourth (2017) , respectively.
- In the category of quantities of soil and water to be cleaned, the first two years of the Trump Administration resulted in higher totals than either of the the last two years of the Obama Administration but lower than some of the earlier Obama Administration years.
- In the category of criminal fines and restitution, the data runs for eleven years, back to 2008. In three of the years (2017, 2015 and 2013) there were single cases that so dominated the outcomes that including them in year-to-year comparisons would be problematic. Taking the remaining years – one involving the Trump Administration, five involving the Obama Administration and one involving the Bush Administration – last year's criminal fines rank third overall – lower than two years in the Obama Administration, higher than three years, and higher than the last year of the Bush Administration.
- Finally, in the category of voluntary disclosures, the number of self-disclosures in 2017 and 2018 are nearly identical to the 2016 number – and far above those in 2015 and 2014 – and the number of facilities covered by those self-disclosures in 2017 and 2018 has trended dramatically upward from prior years.

On the other hand, one can certainly find in the data other pieces where enforcement numbers are “down” during the first two years of the Trump Administration compared to recent years, for example, the area of civil penalties in 2018. But the point is that the data are mixed and that is commonly – indeed in my experience, routinely – the case.

While I have not done a long and detailed statistical, my sense is that this kind of “mixed bag” is what you would see if you looked at any of the last fifteen years. For example, I believe we had very sound enforcement results during the time I was Assistant Attorney General, but I expect that if we looked at the data during the relevant two year period – 2007 and 2008 – some of those measures would have been up and some down when compared to surrounding years. But I wouldn't then take those isolated years and results to suggest that enforcement efforts were fundamentally better or different among the two times being compared. My overall point is that

<sup>2</sup> Available at <https://epa.maps.arcgis.com/apps/Cascade/index.html?appid=0b9d73f351d648698f63bba3f3b15114>.

you should look at all the data. And where some numbers are up, some are down and some are generally in the range of historic experience, it is difficult to conclude that environmental enforcement has been abandoned or undermined over the first two years of the Trump Administration.

One other point worth noting about the data, in part because it relates to a point I will develop later – it looks to me that there may be something of a long-term trend, that extending through the prior Administration, that the commitments to eliminate pollution metric (measured in pounds per year) is trending downward. But the fact that this enforcement number is going down over time, rather than up, is likely a marker of success in enforcement, not failure, because it is explained by the fact that the EPA has, over several decades already addressed a variety of facilities that produce the largest output of pollution. As a result, EPA also is now more likely to have cases addressing facilities with smaller pollution output. You might say that the “low hanging fruit” has already been addressed, even if there are still operating facilities that emit constituents that due to toxicity or other reasons warrant control under our regulations. In other words, sometimes declining enforcement numbers are a marker of success because the decline is explained by the fact that, over time, important facilities or industries are now achieving consistent compliance.

Apart from the data, there can, of course, be critiques that particular cases have not been brought that ought to have been brought or that cases were resolved in ways that were not sufficiently punitive. As to that, I would first note that it is easy when on the outside to imagine that a case would have been straight-forward to bring and easy to prove for the government. In reality, you need to be in the government’s chair, hearing the defenses that will be put forward in a particular matter, doing the detailed analysis that a government attorney owes to each potential defendant to genuinely understand the merits and weaknesses of any particular case. Thus, I am always wary of critiques of particular case decisions, and I think all of us not in the chair ought to recognize that the decisions in any particular case and the complexities of a case may be more than we understand or, in fact, can ever be privy to due to appropriate confidentiality and privacy concerns that United States also has to recognize. And when there is a critique about a particular case not having been brought, at least one reality check is to consider whether any citizen suit or state action could have been brought and hasn’t been. Where the federal government has not yet taken action, the lack of such citizen suits or state enforcement actions may at least somewhat indicate that the facts and law are complicated and the claim that a violation has occurred is less easily proved than might first appear.

Moreover, even as to cases that are brought and are resolved there have to be some “fairness limits” that will apply in any particular case. However effective it might be in terms of general deterrence theory to hit a minor violation with a major penalty as a means of “sending a message”, in my view, it is unjust to do so and achieving fair outcomes to individual regulated entities needs to occur lest the whole system lose public respect and acceptance. In sum, not all violations are equal and the government owes a measure of fairness in outcome to each individual entity or individual against whom it brings an enforcement action. The words of Justice Jackson in describing the role of the prosecutor are well heeded not simply for the criminal enforcement lawyer but for all enforcement officials in the government: “the

[government lawyer] is the representative of not an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore . . . is not that it shall win a case but that justice shall be done.” *Berger v. United States*, 295 U.S. 78, 88 (1935). Thus, before launching too far down the road in criticizing any particular case result or resolution, I always try to take a deep breath and remind myself that in any particular case there may be a complicated brew of factors that went into the overall resolution. Having said all of that, one thing we can generally expect is that, in the resolutions the United States does reach, it is insisting that compliance with rules and regulations be achieved going forward. My sense is that this has remained a consistent feature of this Administration’s approach – companies are required to come into compliance as a required element of all settlements.

This brings me to my third overall point, which is to emphasize the purpose of enforcement is to incentivize, and when necessary to coerce, compliance with our environmental regulations. Enforcement is not an end in itself. Indeed, in my view, one indication that a regulatory regime is truly failing would be if you observed that the enforcement numbers year after year after year were consistently on the rise. Those kind of results, if you had them, would suggest major defects in the underlying regime because it would suggest that increasingly serious violations were occurring over time, resulting in greater need for enforcement and greater penalties for misconduct. But that is precisely the opposite of “success” and of what we should be striving for – we should be hoping to achieve a world where those who are regulated are regularly in compliance or, when they violate the rules, routinely and regularly quickly address that issue. In that world, we’d have little or no enforcement need at all. Now, obviously, that is not a world that we have today and there is, as a result, a legitimate need for enforcement activity today and that need will exist in the future. But I use this to illustrate the point that we always need to look behind the enforcement numbers – declining numbers may indicate underlying success in achieving better regulatory compliance and, conversely, ever increasing numbers might well be a sign of failure in the underlying regime and requirements. The challenge, and one I readily admit I never found a way to fully resolve when I was in DoJ’s leadership, is how one gets good and recurring data on rates of compliance – how do you measure in a meaningful way whether overall compliance is improving within our regulated entities? Certainly there are some options through reporting that must occur under statutes such as the Clean Air Act and Clean Water Act. But even so, that is a tough nut to crack on a consistent basis and so there is a tendency to revert to “enforcement numbers” as a proxy for how well we are doing to insure compliance. But the two are not interchangeable and, thus, we should always be careful about making too much of movements in the enforcement data or assuming that such movements then presage that compliance will suffer.

Let me now turn to my fourth large point – enforcement is a necessary part of creating an effective compliance enforcement regime, but it is not the only part. One challenging aspect of creating an effective set of overall incentives for compliance is recognizing the reality that there are, and always will be, regulatory violations that will go undetected by the relevant enforcement agencies. That fact, in turn, creates some incentives for those who are regulated to “not look too hard” at their internal practices to identify possible problems. On the other hand, self-inspection and internally initiated company audits can be a very powerful “force multiplier” for identifying

problems, well beyond what the government can itself ever hope to achieve through a regime of inspections, investigations and similar traditional enforcement tools. Thus, to me it seems clear that a sound government enforcement program must, in many situations, create a meaningful incentive structure that rewards those who are regulated when they look for and correct problems, without then fearing that identifying failures will ultimately work to their greater detriment as an enterprise. This problem is hardly unique to environmental law – DoJ’s Antitrust Division has had long-standing policies that provide strong incentives to be the first company to report any detected price fixing violations and the DoJ’s Criminal Division similarly has programs that recognize self-detected and reported foreign bribery violations deserve lesser (or sometimes zero) enforcement sanction. Thus, it can be a sign of success in achieving the overall goal of compliance if an enforcement program generates significant self-reports of violations, assuming that self-reporting is also then paired with corrective action. My understanding is that EPA’s self-reporting policies create this pairing – self-reporting can help avoid formal compliance actions or can limit the penalties assessed in connection with them, but only where there is corrective action that addresses the violation. I am not aware of any actions in the current Administration that have receded from this general principle. As a result, I think there is likely some positive news in terms of overall compliance reflected in the fact that self-reporting numbers appear to have been on the rise in recent years as those self-reports then also likely correlate to corrective actions to create compliance.

Finally, let me turn to my last major point and depart from my focus on the overall EPA enforcement data. It is admittedly always a little dangerous to generalize from one’s own personal and somewhat anecdotal experience. Acknowledging that limitation, I do think it worth observing that, in my experience, those in the regulated community to whom I am most often providing advice and counsel do not tend to expand or contract their environmental regulatory compliance efforts in response to perceived ebbs and flows in the level of environmental enforcement activity. I certainly am not aware, for example, of companies who have responded to a narrative that “enforcement is on the decline” with concomitant decisions to deemphasize or downgrade their environmental compliance efforts. And the reasons are fairly straight-forward: first (and far and away most significantly), responsible companies simply believe in following the law and try to do so, whether it is environmental or any other area; second, environmental and operations business leaders are generally aware that there is a core environmental enforcement effort, driven by skilled and dedicated career staff found in both federal and state agencies, that is always present and at work; and, third, even if business was willing to consider ways of “cutting compliance,” it would simply be too hard to draw a line from “decreased enforcement generally” to “we can cut here specifically and feel safe in doing so.”

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To sum up, it is certainly the case that, as a country, we need our federal agencies such as EPA and the Justice Department to have available to them effective mechanisms to investigate potential environmental violations and to act against such violations when detected. And it is clear that we should expect those tools to be used in a meaningful way, calibrated to the nature and seriousness of violations that do occur. But it is also clear that, in measuring whether that is occurring, there is no single metric that can capture the scope of enforcement efforts, much less

provide us a definitive picture of these efforts on an annualized basis. And assessing the overall enforcement climate becomes even more complicated when recognizing that the States also play significant enforcement roles in the cooperative federalism design that Congress has embraced for our major environmental statutes. But for me, both from looking at the full range of data with all its variation, and drawing on my experience, nothing demonstrates that environmental enforcement has become so weak that we are, in turn, suffering a deteriorating level of environmental compliance. And achieving that compliance is, and should be, the basic goal for which we are all striving.

Ms. DEGETTE. Thank you so much, Mr. Tenpas, and thanks to the entire panel.

The Chair now recognizes herself for 5 minutes.

On the first panel today, we heard about some of the key EPA enforcement mechanisms and how the enforcement figures have really just plummeted by pretty much any index under this administration. For example, we heard that EPA performed fewer inspections last year than it had in over a decade. We heard that the injunctive relief figure was the lowest in 15 years. We heard that the civil penalties were the lowest in nearly 25 years, and the number of civil cases initiated was the lowest since 1982. So I just want to ask some questions about this.

Mr. Schaeffer, in your written testimony, you said quote, the "EPA's enforcement results for the 2018 fiscal year were historically low by almost every measure." Is that accurate?

Mr. SCHAEFFER. That is right.

Ms. DEGETTE. OK. Now, you are a former EPA career enforcement official. And so I don't know if you heard Ms. Bodine's testimony, but she seemed to think that these statistics were unimportant and that in fact EPA's enforcement activities were just fine for a variety of reasons.

What do you think the low numbers tell you about the EPA's enforcement of environmental laws by this administration? And are you concerned about some of these indicators and, if so, which ones?

Mr. SCHAEFFER. So Madam Chairman, I am concerned. I think first of all, these are measures that the EPA enforcement program itself has selected to reflect their performance and what you get out of enforcement.

Ms. DEGETTE. So it is their own statistics.

Mr. SCHAEFFER. Their own statistics and these are performance measures that are published year after year.

And I think it is true that across the board, with very few exceptions, they are all very far down. So they are well below not just prior years, the prior few years, but historical averages and that is of concern.

Ms. DEGETTE. Now, Mr. Buckheit, you are also a former EPA career enforcement official. So do you agree with Mr. Schaeffer that these indices can be used to see whether the Nation's environmental laws are being adequately enforced?

Mr. BUCKHEIT. Yes, I do. I mean they are all sort of a mosaic that look at different parts of the program and when you put them together, you get an overall picture of decline.

Ms. DEGETTE. An overall picture of decline?

Mr. BUCKHEIT. Yes.

Ms. DEGETTE. OK, thank you.

Now last year, the President's budget request called for a nearly 25 percent cut to the Agency. Had Congress not prevented those cuts from taking place, the budget would have been at its lowest level since 1991.

So Mr. Schaeffer, I wanted to ask you what message did last year's budget request send to polluters and EPA's own staff about the approach to environmental enforcement?

Mr. SCHAEFFER. That enforcement doesn't matter. Enforcement requires staff. You can't do the work without people. You are trying to cut the budget by a quarter, you are telling the staff their work doesn't matter.

Ms. DEGETTE. Now what did you make of Ms. Bodine's statement just a few minutes ago that, irrespective of what the President's budget for next year, she is going to support it? What do you think that message that sends in terms of enforcement?

Mr. SCHAEFFER. Well, I think I suppose she has to, as the—

Ms. DEGETTE. Well, yes, but what do you think? What message do you think that sends?

Mr. SCHAEFFER. I think it is confused, anyway. It is pretty hard to constantly refer to the great work of the program at the same time that your President is trying to slash it by so much.

Ms. DEGETTE. Thank you.

Dr. Shimshack, I wanted to ask you because Ms. Bodine seemed to indicate that well, some of the national figures weren't so important because the EPA was working with the States on enforcement. And I think you would agree that State enforcement is important. Is that correct?

Dr. SHIMSHACK. That is correct.

Ms. DEGETTE. But is that in a vacuum or is it important to do that in conjunction with these other efforts?

Dr. SHIMSHACK. So I think provided States have the resources and the capacity. Even then, my best guess is that further devolution may result in declines in environmental quality, as I testified.

Ms. DEGETTE. Why is that?

Dr. SHIMSHACK. Again, there are issues of spillovers across States when they are not well coordinated. There are issues of regulatory capture, et cetera, so the things that I mentioned in my testimony. I do want to emphasize States do great work.

Ms. DEGETTE. Well right, but they can't do it in a vacuum.

Dr. SHIMSHACK. But they are already doing the overwhelming majority of the day-to-day oversight. There is enormous variation in enforcement intensity across States. And States are already being asked repeatedly to do more with less.

Ms. DEGETTE. Speaking about the enormous difference between enforcement in States, Dr. Nelson, I think that is what your testimony was about is the enforcement by your State of Texas.

Dr. NELSON. That is correct.

Ms. DEGETTE. So do you think Texas can be relied on to do the environmental enforcement by itself?

Dr. NELSON. I don't think so.

Ms. DEGETTE. Thank you. Thank you very much.

The Chair now recognizes the gentleman from Kentucky, the ranking member, for 5 minutes.

Mr. GUTHRIE. Thank you very much. So this has been an important hearing and I appreciate everybody being here.

Mr. Tenpas, in your testimony, you specifically talked about noisy metrics and that single case outcomes can drive annual numeric enforcement results reported by EPA and DOJ. Can you further get into that? I know you only had 5 minutes to make five points but I would like you to talk about how the metrics are noisy

and how that can show trends in reporting that may not be accurate.

Mr. TENPAS. So what I meant by noisy is that you can get particularly significant individual cases in any year that cause that year to spike. And we have heard some discussions of those, BP in the year that matter was resolved, Volkswagen in the year that matter was resolved, and that feeds across the variety of metrics that you might have.

In addition to some of these penalty ones, as was referenced, there is data on, for example, what is the level of commitment to clean up materials that have been achieved through various agreements and consent decrees. That as well can be very heavily influenced by a single case resolution with one big company in a single year.

Mr. GUTHRIE. OK. You talked about—we have all talked about other measurements other than just enforcement. And I think someone said the trends were down across a lot of those measurements.

Given what EPA measures, what else do you think we should ask them to measure that would give us a better indication of what they are doing?

Mr. TENPAS. Well I think you have heard a couple of good ideas from Ms. Bodine this morning, when she talked about trying to find ways to capture times when they have worked effectively with a State to potentially do an inspection and help identify a problem that then the State takes the lead in working with the facility in resolving.

You have heard ideas, you know I think the tracking of the self-reports that they have begun and I think is something of a more recent development, I mean it precedes this administration but I think it is more recent, is a very helpful metric for folks to be watching and to see how—what that produces.

Mr. GUTHRIE. OK and also, Mr. Tenpas, as you currently note in your testimony, the objective of EPA is to promote and ensure compliance with our environmental laws and regulations. In your opinion, what tool does EPA have that is most helpful in ensuring compliance with environmental laws and regulations?

Mr. TENPAS. I don't know that I have a single tool. I mean, part of that is what we are I think here to discuss today. I think, as said, it is the mosaic of tools, the threat of investigations, the use of and bringing cases, the use of inspections, the working very cooperatively with States in the regime that Congress established of cooperative federalism. I mean Congress anticipated the States to have a kind of primacy type role and EPA working with them to support them are probably the three most important things.

Mr. GUTHRIE. So I always look in these hearings if something can result in Congress making corrections and fixes to this. That is one of the reasons we do this.

So are there any tools that EPA does not have that would be helpful for it to have to help ensure compliance with environmental laws and regulations?

Mr. TENPAS. There is nothing that occurs to me immediately. I think there are always sort of adjustments that you make in the program as you go along and as conditions change.

I mean as I noted in my testimony, there are some metrics, you know one of the metrics has been sliding for years, and years, and years. I take that to be a marker of success because it is showing that some of the worst problems in terms of pollution locations and pounds to be corrected have been dealt with. And now we are at a different point in our enforcement and compliance approach.

Mr. GUTHRIE. So I know Kentucky had a program in OSHA not EPA but had a program that industry could invite OSHA inspectors in. And if they came in and found negligence, there were certain exceptions, that they came in and found they immediately got fined. But what they really did was come in at the invitation of the company, do inspections, here are things you need to improve, go back and do follow-up. So the goal with that was compliance, not necessarily just getting a fine to go move forward. And I don't know the data because I like professors to do studies on things because data is data. But I don't know the result. But I would have to feel like that we were getting more compliance, even though we were getting this anecdotal less enforcement dollars.

Mr. TENPAS. And that sounds right to me. There is, as I say, a variety of facilities they have staff, they do self-audits, they do inspections, they sometimes bring in third parties. But the government has a certain level of inspection expertise as well. And so a program that allows a company to draw on that expertise without necessarily feeling that its reward for that if something is identified is going to be a massive penalty. I can see how that program could be very successful in improving compliance outcomes.

Mr. GUTHRIE. All right, well thank you.

And I yield back. My time has expired.

Ms. DEGETTE. Thank you.

The Chair now recognizes the gentlelady from Florida, Ms. Castor, for 5 minutes.

Ms. CASTOR. Thank you. Thank you to all the witnesses for being here today.

I would like to touch on EPA's 2018 annual enforcement numbers and the trends, including what the overall picture tells us about the lack of environmental enforcement under this administration.

Mr. Schaeffer, your organization recently analyzed EPA's enforcement trends, in light of the Agency's very own 2018 report. Broadly speaking, I think I heard you answer to Chairwoman DeGette that the message that you take away is that they do not prioritize enforcement of our bedrock American environmental laws. Is that correct?

Mr. SCHAEFFER. I think that is true.

Ms. CASTOR. Would you go as far as to say that EPA currently is abdicating its responsibility to the American public?

Mr. SCHAEFFER. I would.

Ms. CASTOR. And Dr. Sellers, do you agree with that as well?

Dr. SELLERS. I agree with both those answers.

Ms. CASTOR. Because you recently contributed to a report on the erosion of EPA's enforcement, the same organization that developed this report analyzed the annual report. What else do you want the American people to understand is going on at EPA right now?

Dr. SELLERS. Well, I think there are a lot of things going on kind of below the publicity surface, below the level of the media, that a lot of the employees feel like that industry is absolutely calling the shots. This is a quote from one of our interviewees.

Ms. CASTOR. Yes, can I just stop you there? You, in your testimony, you said that your organization conducted hundreds of interviews with recently retired and current EPA employees. And you say that many told you of pressures applied by Agency leadership explicitly urging EPA employees to go easy on industry.

Give us some examples. What did they say? How many of the folks you interviewed said that?

Dr. SELLERS. I would not say hundreds. We did a hundred interviews.

Ms. CASTOR. OK.

Dr. SELLERS. I mean, examples include, for instance, Scott Pruitt parading around the Agency with a trade association group and then calling people in from the career staff, the enforcement staff, to berate them and tell them they should listen to this trade association group.

And I could multiply those stories. They are happening—they happened all around the Agency, all these kinds of pressures that staff was under. And it registered. And so I think that is one of the big reasons.

Also that they have had to report even routine inspection initiatives now to the political leadership. They have had pushback from the regulated communities. It has been harder to do their jobs just on the ground because of all the industries feeling embolden.

For instance, a person doing a housing inspection for lead, a childhood brain-damager, found that landlords are not returning her calls or they were getting angry on the phone with her.

So there is kind of micro-level pushback also is a big part of it.

Ms. CASTOR. And Dr. Nelson, reading your testimony, I remember well after Hurricane Harvey and all the reports of it, environmental issues, and spills, and leaks in the Houston area. And part of your testimony is entitled The Path to Poison. I think folks would be appalled to understand that after that—while you had the county grand jury indict executives of a corporate polluter, EPA did not take any enforcement action at all. Is that true?

Dr. NELSON. Not to my knowledge.

Ms. CASTOR. What, in your opinion, has happened with EPA's interest in enforcing our environmental laws?

Dr. NELSON. I think EPA is behaving in a negligent manner and communities in Houston and across the country are suffering the public health impacts as a result.

Ms. CASTOR. Thank you.

Mr. Schaeffer, given the downward trend of several key enforcement indicators, I am worried that in some cases that EPA may not be getting the attention they deserve. I understand your organization, the Environmental Integrity Project, has documented certain cases that you have concerns about.

Walk us through a few of those examples.

Mr. SCHAEFFER. Sure. We have, for example, two plants in Louisiana. In one case, the EPA inspectors found massive breakdowns in the compliance system that led to release of chloroprene, which

is very toxic. It is a carcinogen, actually. The chloroprene levels downwind in the African American community that has been there forever, are way higher than EPA thinks is safe.

We have butadiene coming out of the Firestone Polymers plant because, according again to EPA inspectors, the company really had no idea what was escaping out of its production process. And we are talking here about thousands and thousands of pounds. These are not paperwork violations. These are not little things.

This is a company that is in the business of making chemicals, and it should know when they get into the environment. I don't think that is too much to ask. These cases have been sitting for years.

We have got many other examples. We have got lead being blown from facilities that aren't managing their lead emissions and causing the air quality to exceed health-based standards in communities downwind. Why are these cases—why have they not resulted yet, several years later, in some cases 3 or 4 years later, in an enforcement action?

So you are always going to find these problems out there.

Ms. DEGETTE. The gentlelady's time has expired.

Mr. SCHAEFFER. If you don't, you are not looking.

Ms. CASTOR. Thank you.

Ms. DEGETTE. Thank you.

The gentleman from Virginia is recognized for 5 minutes.

Mr. GRIFFITH. Thank you very much, Madam Chair.

Mr. TENPAS, we have heard some of the witnesses today criticize the administration's emphasis on cooperative federalism, implying that cooperative federalism will diminish or eliminate the EPA's role in controlling pollution. Is this how you understand cooperative federalism to work?

Mr. TENPAS. No, sir. I mean EPA has a significant role in first establishing the rules. It has a significant role continuing and being able to investigate both civil and criminal violations, pursuing resolution of those cases. But as the name implies, cooperative federalism also involves a substantial robust and important role for the States.

Mr. GRIFFITH. So the EPA's role is not eliminated, is it?

Mr. TENPAS. No.

Mr. GRIFFITH. And in these bad cases that we were just hearing about, the EPA can take action. Isn't that true?

Mr. TENPAS. I don't know the specifics of those cases but, generally, as a general matter, yes.

Mr. GRIFFITH. Well it was interesting because I was listening and it was 3, 4 years. So obviously, it is not something new that has caused those problems that were just mentioned.

What do you think the benefits are of the EPA's enhancing its collaboration with State and Tribal partners to enforce the environmental laws?

Mr. TENPAS. Well I think you get a variety of things. One is EPA does have a level of expertise that it can, by working with the States, transfer to officials in those States as to the best practices for inspections, as to particular areas of concern, as to what the regulatory requirements are overall in discussing and making sure there is a clear understanding of those.

So I think you know on the one hand bet, you get that. On the other hand, I think part of what undermines all federalism, cooperative or otherwise, is a recognition that often local officials know their communities best and they have an appreciation for the facilities, they have appreciation for the issues in the community, and they probably have a sensitivity and a level of contact with those facilities in a more regular way that just makes them knowledgeable and effective in trying to bring compliance to bear.

Mr. GRIFFITH. And in your opinion, how does cooperative federalism help promote a higher compliance rate?

Mr. TENPAS. Well, as I said, I think it primarily comes about through drawing on and making robust the capacity that the State has, those officials who are in their communities in a regular way, and making them effective in using all of the tools we have talked about, again, not just enforcement actions but inspections, self-report and auditing programs. The effectiveness comes about by making those State officials able to do their work in a sensible way.

Mr. GRIFFITH. And in many ways, I mean if you have a bad actor, they are going to be bad actors no matter what. But for those people that are struggling in the medium-sized businesses, or even in small and large businesses, if they are struggling to figure out, "OK what are the rules here, what do I need to do?" if they are sensing—and you can correct me if you think I am wrong—if they are sensing that there is a no win and even if they try hard, they are not going to succeed and they are going to get fined or penalized, it just becomes an adversarial proceeding.

Whereas, if you are trying to help them and say "Look, if you do it this way, things will be better and we are not going to fine you," doesn't that get more cooperation as well? Isn't that part of what the EPA is trying to do right now?

Mr. TENPAS. My sense is that is part of what they are trying to do. And I would say just as a general matter for some of those, as you say, smaller entities that don't have necessarily the staff and the sophistication, they are trying hard. They want to follow the rules; sometimes they can be quite complicated.

And there is something to the fact that I think for a lot of folks in that situation, the Federal Government sounds big and scary. A State government agency feels like a place that they think they can go to and get that advice that they need to get them to the place they want to be, which is in compliance.

Mr. GRIFFITH. Yes. In my district you know there are a lot of people, and I don't adhere to that, and a lot of people have advocated you know just we will abolish the EPA because they feel so put down, burdened, oppressed, that they just like forget it all. And yet I think the EPA can do some good things and that is why I support what the EPA is currently trying to do and what you have advocated for here today.

I appreciate it very much and I yield back.

Mr. KENNEDY [presiding]. The gentleman yields back.

I will recognize myself for 5 minutes.

I want to start by thanking the witnesses for being here, and your testimony, and your service. And I wanted to begin by touching on the importance of deterring those bad actors, some of which my colleague just mentioned.

I am worried that the most recent EPA numbers, as heard about earlier this morning, may send the wrong message to polluters and that the Agency is in fact failing to deter those future violations.

So Dr. Shimshack, to start with you, sir, your testimony touches on this point and you have done some academic work in this area. Can you generally speak to the importance of deterrence and what approach to enforcement may be needed by the EPA to inhibit future environmental violations?

Dr. SHIMSHACK. Sure. So deterrence, the fact that inspections and penalties have implications for deterring future violations is important not just in the sanction and inspection facility but also there are spillover effects, what we call general deterrence of interventions. Those spillover effects of inspections and enforcement activities increase compliance and reduce pollution among others. And deterrence effects can also reduce future pollution beyond compliance behavior as well.

Mr. KENNEDY. So for you, Doctor, and for Mr. Schaeffer, what specific tools do you believe the EPA has in its arsenal to deter would-be polluters and do you believe that they are currently effectively using them now?

Dr. Shimshack first.

Dr. SHIMSHACK. So I will say that the evidence suggests that interventions with teeth, fines are most effective. I otherwise defer to Dr. Schaeffer—Mr. Schaeffer.

Mr. SCHAEFFER. Well, EPA uses a mix of tools and they have always included giving people compliance assistance and helping them to understand the rule of the road and those are important.

I think one of the most important things that EPA does as a national program is step in against, frankly, some of the biggest polluters with lots of political connections and power and take enforcement actions that States will not or cannot because they don't have the capacity. If the EPA loses that ability, then we lose something very important.

Mr. KENNEDY. Are you concerned they are not leveraging that capability?

Mr. SCHAEFFER. I am concerned about the direction the Agency is going in in that way. And we have, again, examples of violations that are pretty serious at big plants that just seem to be sitting there and not getting attention.

Mr. KENNEDY. And why is that, do you think?

Mr. SCHAEFFER. Well, I don't know. I think there is a reluctance to enforce in this administration. I just have to put that on the table.

There is a lot of talk about cooperative federalism. It has its value but there are certain responsibilities that you can't just push on—push off, rather, to the State agencies and I think that is letting a lot of these violations just sit.

Mr. KENNEDY. And Dr. Nelson, I wanted to see if you could chime in.

You have noted in your testimony that Texas does not penalize 97 percent of its air pollution violations. If that number is accurate, and I am sure it is, the State either lacks the will or the capacity to deal with a lot of these issues, even during nonemergency times.

So Doctor, can you comment further on what it may mean if the State of Texas is failing to penalize air pollution violations and how important it is for the EPA to deter bad actors, given the State may not always do so, building off of what Mr. Schaeffer said?

Dr. NELSON. So if I understand your question correctly: What are the implications of the State not enforcing?

Mr. KENNEDY. Yes, and any reason as to why you think a State would not enforce 97 percent of the violations that would come up.

Dr. NELSON. I don't think that the culture supports the State enforcing much of the violations. I think the evidence speaks for itself.

I think in terms of the implications of that, that communities on the ground are experiencing the public health impacts of the State not enforcing the laws of the Texas Clean Air Act.

I don't think that it is cost-efficient in a State like Texas for industry to comply with the law, when the risk of being caught is low and, even if they are caught, the risk of penalty and the penalties are so low as well. So the State of Texas can penalize facilities for \$25,000 per day, per violation. And in that most recent report, they collected \$1.2 million, which is about two cents per pound of the pollution that was released.

Mr. KENNEDY. Doctor, going off of what I think somebody taught me in law school way back when, if you judge the strength of the law by the power of its remedy and you have got remedies in place but the State just chooses not to enforce it, is there really any regulation to begin with?

Dr. NELSON. Well the regulation exists. I think the burden is on the State agency and the State legislature to make it effective.

Mr. KENNEDY. And if there is no cost for compliance?

Dr. NELSON. If there is no cost for compliance, again, I think that industry is going to behave in a manner that maximizes its bottom line until it is forced not to.

Mr. KENNEDY. Thank you.

I yield to Ms. Kuster. Seeing no more from the witness, Ms. Kuster, you are recognized for 5 minutes.

Ms. KUSTER. Thank you very much. I appreciate it.

I will start with Dr. Sellers, if I could. The report you contributed to says, quote, "EPA employees point to budgetary uncertainty and staff loss as factors that help explain the downturn in enforcement under the Trump administration."

Given the budgetary uncertainty and loss of staff that we have been discussing here today, what did EPA employees tell you about EPA's ability to enforce environmental laws? And if you could, give us one or two examples about how EPA was unable to go after polluters because of understaffing or this approach.

Dr. SELLERS. Sure. Yes, all the employees that we spoke with mentioned this factor about losing staff. I mean, there has been a gradual attrition and then there is, on top of that, the buyouts and so on.

Ms. KUSTER. Does that cause a lack of morale?

Dr. SELLERS. It does. I mean, it doesn't send a positive message. I think some of the departures are because people got that message and decided to leave.

In terms of the kinds of things that are being lost, I could give you an example, for instance, of someone who is in charge of the asbestos program, at the enforcement, that left in one of these departures, and there was no exchange of knowledge. There was no effort. He had been there 20 years. He was kind of the expert on this area, and it was not passed along.

So EPA is now at a loss and there is a big hole there in terms of what EPA can offer, even just in an advisory capacity, to industry, much less issues of enforcement.

Ms. KUSTER. Thank you.

And I am going to direct this at Mr. Schaeffer but, to continue on that same theme, returning to my questions this morning, we in my district, a town called Litchfield, New Hampshire, had an incident of per- and polyfluorinated compounds, PFAs, caused by a company, Saint-Gobain's. And I discussed this morning that we have had to spend millions of dollars to hook up these households in this community to clean water because their wells are contaminated. They were on bottled water the whole time while they waited for that to happen.

In our case, we were fortunate that it did happen, but I noticed there was an action plan released on PFAs last week from the EPA, but it doesn't seem to include any action, despite being called an action plan. While EPA officials said they intend to move forward with maximum containment levels, there is no commitment in the plan. And I am just curious about your response to that.

And if you could comment, the witness this morning talked a great deal about voluntary disclosures and we have been given charts that the voluntary disclosures are going up. How can they count on these companies to voluntarily disclose what they know about the contaminants that they have put into our soil, and our water, and our air? And are we doing what is needed to keep American families safe?

Mr. SCHAEFFER. So, Congressman, I don't know the specific facts of the New Hampshire case. I would just say in general, your fundamental to enforcement and I would say just to justice is the responsible party should pay for the problems they created and enforcement has a huge role in that. And so I would look for that in any EPA strategy to deal with these contaminants. I think that would be really, really important.

The government does, and I was there, I was part of this, the government rolls out a lot of plans and makes a lot of announcements. What you should look for are deadlines, and numerical targets, and specific outcomes. And that—

Ms. KUSTER. And some type of time table. And when I asked her about the time table this morning, she said oh I will have to get back to you on that. There is no time table, as far as I can tell.

Mr. SCHAEFFER. Well and maybe they will come back with a time table and it is great that you pushed for one. I think the government benefits from that kind of push. But without deadlines, not much happens in government agencies.

Ms. KUSTER. And what is your experience, just in my waning time here, with companies voluntarily disclosing that they have massive incidents of pollution, knowing that if they were caught, if there was remedy, they would be on the hook to pay for that?

Mr. SCHAEFFER. They would have to pay. Well you know I think in my experience you can get those kinds of voluntarily disclosures when you have a strong enforcement program and people understand the consequences of not coming forward.

They also want to know their competitors will be treated more or less the same way. If you don't have that level playing field, then you come forward, you know cut your deal to clean the mess up, and you are looking sideways at your competitors and you don't see that happen, then your voluntary compliance will fall off the cliff.

Ms. KUSTER. And given Dr. Nelson's comment about State-by-State, if you are in a State with very low compliance activity, why would you? I mean you are going to put yourself at a competitive disadvantage.

So well, thanks to all of you for coming in today. We appreciate it.

With that, I yield back.

Mr. SARBANES [presiding]. I thank the gentlewoman for yielding back.

I am going to yield 5 minutes to myself for questions.

I want to thank you all for being here today. I appreciate your testimony.

I want to come back, as I was this morning, and talk about injunctive relief. And obviously, this is a really critical enforcement tool. It is saying to industries, it is saying to violators, it is saying to polluters you need to adopt a different way of behaving. You have to come into compliance with certain rules, there are costs associated with that.

Mr. Buckheit and Mr. Schaeffer, as former EPA enforcement officials, tell me why you view this within the toolkit that is available to the EPA as such a critical enforcement mechanism.

Mr. BUCKHEIT. The EPA's enforcement program is not about collecting money for the Treasury. It is about protecting public health. Fines are a part of that but the really important part of that is what measures are installed to reduce pollution as a result of your actions. And the surrogate for that is the dollar amount of the injunctive relief. That reflects the kinds—the amount that must be invested which is directly related to the pollution reduction.

Mr. SARBANES. Mr. Schaeffer?

Mr. SCHAEFFER. I think that answers directly. I think injunctive relief captures the cost of cleanup. When you see bigger commitments, that tells you that you are finding the right cases. You are finding the most serious problems where you need companies to make a real long-term investment in cleanup.

Mr. SARBANES. So I want to go back to the numbers a little bit because in fiscal year 2018, the EPA enforcement actions, injunctive relief actions resulted in \$3.9 billion in injunctive relief. According to the Christian Science Monitor, this figure is the lowest in 15 years.

And in that same article, it was indicated that 40 percent of that total comes from cases that were settled by the EPA during the Obama administration, which means that the fiscal year 2018 numbers could have been worse.

I understand that when you capture these things makes a difference. You have to look at what the window is and so forth.

But in any event, given what you know, Mr. Schaeffer, Mr. Buckheit, about this and these numbers that I just read to you, I am curious just to get your thoughts on the 2018 numbers. What do you think they mean and, frankly, is it sending some kind of signal to industry, and how are they interpreting that signal?

Mr. BUCKHEIT. Obviously, to state the obvious, they mean that there is less activity to reduce pollution coming out of the air.

What I think is happening here is a pipeline issue. You see a number of years of fairly robust activity under the Obama administration and you have heard different witnesses talk about how it takes a period of time to build and maintain this pipeline of cases that will go through the system.

What I saw in the enforcement policies was, I think, that the administration is cutting off activity, except for matters that are already referred to the Justice Department, in the four key sectors that have been identified as priorities. And so I think that then creates a gap in the pipeline, which then leads to the lower numbers in the bigger cases.

Mr. SARBANES. Which means we could see this trend continue—

Mr. BUCKHEIT. I think so.

Mr. SARBANES [continuing]. In the future because the number of initiatives that are being undertaken now, we will see the results or lack of results of that further down the pipeline.

Mr. BUCKHEIT. I fully agree and I note that they don't have any sectors that they are focusing on for future activities, you know which big industrial sectors.

Mr. SARBANES. Right.

Mr. Schaeffer, do you have any comments on kind of how the industry is going to interpret this?

Mr. SCHAEFFER. I think that is a complete answer.

To be fair, the total value of injunctive relief in any one year can be affected by one or two very large cases. But even controlling for those outliers, it is a pretty substantial drop. And I agree with Bruce that it reflects the fact that kind of less is being put in to enforcement than used to be and, sooner or later, that plays out in declining results.

Mr. SARBANES. And again, I just want to emphasize before I close here that if this isn't being exercised properly as an enforcement tool, it is sending a signal to industry that, in a sense, the cop is off the beat. They don't have to be as conscientious about the measures that need to be undertaken here.

Whether they were inclined to do that or not absent somebody is leaning on them is a different question but, overall, that is not good signaling to have.

Thank you all very much.

Now I would like to yield 5 minutes to Congressman Tonko.

Mr. TONKO. Thank you there, Mr. Chair and welcome to our witnesses.

Mr. Schaeffer, as I understand it, civil penalties are an important EPA enforcement tool. I heard some of this last exchange and find it interesting. The penalties are monetary assessments, obvi-

ously, paid by a regulated entity because of a violation or non-compliance. They are designed to recover the financial benefit a company has obtained by breaking the law and they impose added costs to deter firms from breaking the law again in the future.

So my question to you is, very briefly, could you explain why civil penalties are an important enforcement tool for EPA?

Mr. SCHAEFFER. It has to cost you more when you violate the law you know than—it has to cost you more if you violate the law and ignore it than not. If there is no sanction, nothing hits your pocket-book when you fail to comply with your pollution limits, then you have less incentive to comply.

Some companies with better management will continue to try to do that but slowly, the system erodes if people realize you never have to pay anything for violating the law.

Mr. TONKO. Thank you.

Again, Mr. Schaeffer, according to EPA's annual enforcement report for fiscal year 2018, EPA obtained just over \$69 million in Federal administrative and civil judicial penalties last year. The Washington Post noted that the number of civil penalties assessed was the lowest since the Office of Enforcement and Compliance Assurance was established back in 1994. While that seems troubling on its face, I will hold up a chart that I did in the last for Administrator Bodine that adding now 2019 to date, and most of that spike, a huge spike, but it is explained I believe by the Fiat Chrysler situation. So now we have asked for information we hope to receive relatively soon what the impact of 2019 is if you take that Fiat Chrysler out of the picture.

So troubling certainly on the face, is it a legitimate concern that we ought to have about those numbers?

Mr. SCHAEFFER. Well I think you can take Fiat out and you can also take out the very large once in a great while penalties like the one for the BP—

Mr. TONKO. BP and VW.

Mr. SCHAEFFER. Right.

Mr. TONKO. And this chart was adjusted for that.

Mr. SCHAEFFER. Right. If you do take those outliers out, I think you will still see a decline in 2018 and perhaps continuing into 2019 as well.

Mr. TONKO. And Mr. Buckheit and Dr. Sellers, do you have any thoughts on what the latest civil enforcement numbers mean like those that I just shared? It seems like we had a few cases that drove things, especially now in 2019.

Mr. BUCKHEIT. I totally agree that the reduction in numbers, these numbers reflects badly on the program.

And I would just add a comment about the mobile source enforcement numbers. It is a good thing that the administration is doing this and assessing a large fine but you have to keep in mind that California has its own independent enforcement authorities and California is pursuing this and getting a per vehicle penalty associated with it.

So again, kudos to the administration for getting involved in doing this but you know it is a little bit—it is led by California in terms of pushing towards those large numbers.

Dr. SELLERS. Yes, I would just say that it is a mistake just to focus on the kinds of enforcement numbers that do have these big penalties or these big chunks that distort the data. If you look at all the other data that is not distorted by that kind of sum, and that is most of it, then the declines are even more marked and unmistakable.

So that was what——

Mr. TONKO. Thank you. And Dr. Shimshack and Mr. Schaeffer, do you believe focusing on compliance assistance is a suitable substitute? Now, I heard some of that exchange that you had but as a suitable—is it a suitable substitute for enforcement activity, such as issuing civil penalties?

Mr. SCHAEFFER. Certainly not. Compliance assistance is very important. A serious violation, unless there is some extenuating circumstances especially by large companies with deep pockets, they should pay. There is no conflict between compliance assistance and enforcement. You need both.

Mr. TONKO. OK, Dr. Shimshack.

Dr. SHIMSHACK. My view is that they are complementary and not appropriate as substitutes for one another.

Mr. TONKO. OK. Well you know many of us are concerned about the mission statement of EPA taken somewhat lightly. And the improvements we have made through the years and some of the concerns coming before them, as my colleague from New Hampshire raised with PFAS, there is real concern that the enforcement of these statutes and various programs become very, very critical to the quality of life in the communities that we all represent.

And so I thank you all for sharing your thoughts today.

With that, I yield back.

Ms. DEGETTE [presiding]. Thank you, gentlemen. The charts that Mr. Tonko was referring to are part of the package of charts that were provided to both Democratic and Republican staffs by the EPA when we were being briefed. Ms. Castor also referred to one of these charts.

And so I am going to ask unanimous consent to put these charts into the record.

Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Ms. DEGETTE. I want to thank all the witnesses for their participation in today's hearing. And I want to remind the Members that pursuant to committee rules, you have 10 business days to submit additional questions for the record to be answered by witnesses who have appeared before the subcommittee. I would ask all of you, if you do get these questions, to please respond as quickly as possible.

And with that, the subcommittee is adjourned.

[Whereupon, at 1:40 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Senator Jessica Unruh  
North Dakota State Senate  
District 33  
1224 1<sup>st</sup> Ave. NE  
Beulah, ND 58523

February 25, 2019

The Honorable Markwayne Mullin  
2421 Rayburn House Office Building  
Washington, DC 20515

Dear Congressman Mullin:

I am North Dakota state Senator Jessica Unruh. In addition to representing the fine citizens in my district of North Dakota for the past 8 years, I have spent 15 years as an environmental regulatory manager for a coal mine, working hand in hand with state regulators implementing federal environmental regulatory programs.

I write to express my support for and describe the value of a state-run primacy program for environmental quality monitoring and enforcement. I will outline the local approach a state-run program provides, its efficacy and the benefit to the American taxpayer as the state partners with EPA on environmental compliance and enforcement.

North Dakota is only one of a handful of states that meets all the national air quality standards and is one of the largest producers of energy in the nation. We are the number two oil producer in the country, ninth in production of coal, thirty-third in electrical generation from coal, number thirty-nine in wind, biomass, and hydroelectric generation, number one in six total agriculture crops and North Dakota is still ranked number one in air and water quality. The environmental quality we North Dakotans enjoy shows that we put the environment first. The North Dakota Department of Environmental Quality (DEQ), created with a bill I introduced, through its programs and its primacy will continue to provide our citizens clean air, clean water and superior soil quality.

North Dakota prioritizes the environment and achieves results all while producing energy our country can rely on. North Dakota lignite coal provides low-cost and dependable electricity to over two million consumers and businesses throughout the Midwest and, according to the U.S. Energy Information Administration, North Dakota ranks near the top for low-cost electricity for residential use. North Dakota is also a top oil producing state, second only to Texas. In December we set a new production record of 1.4 million barrels per day.

EPA's strategic plan for 2018 -2022 includes three goals: to deliver real results, embrace cooperative Federalism, and follow the rule of law and process. These three goals will protect

the environment while providing cost savings and real buy in from companies regulated under the law.

In this strategic plan, EPA recognizes the partnership that the states provide as the first line of regulation and enforcement, with EPA as the second layer, ready to step in when the states need assistance.

EPA's strategic plan says: "The idea that environmental protection is a shared responsibility between the states, tribes, and the federal government is embedded in our environmental laws, which in many cases provide states and tribes the opportunity and responsibility for implementing environmental protection programs. More than 45 years after the creation of the EPA and the enactment of a broad set of federal environmental protection laws, most states, and to a lesser extent territories and tribes, are authorized to implement environmental programs within their jurisdictions in lieu of EPA-administered federal programs. Specifically, states have assumed more than 96 percent of the delegable authorities under federal law."

Environmental quality programs run at the state level can account for geology, geography, topography, hydrology and weather factors specific to the state's longitude and latitude. In engineering and science, temperatures and pressures matter and geology matters. In recovering oil, it matters whether your well completions are a half mile below the surface or two miles below the surface, like they are in North Dakota. In recovering coal, topography, geology and hydrology matter so much they are the first items investigated when looking into a new coal field. North Dakota is a producing state, and we take pride in our products produced for the market, but also the high quality of our clean water and air as we produce.

States are able to design their programs and hire resources necessary to evaluate the specifics, how they change the engineering and science, and regulate within the boundaries of that scientific and engineering design arena. EPA must have a national perspective. It would not make sense, or be a good use of taxpayer dollars, for EPA to have enough resources to regulate to the level of specificity needed to account for each state's physical characteristics. A national approach is not always a sufficient approach, and that is why EPA has the authority to delegate responsibility to the states, partnering with them to make the best use of the manpower, resources, and institutional knowledge available.

State programs have inspectors who make frequent observations of the facilities which the state has permitted. These inspectors are familiar with the facilities they monitor, the sources of discharge and potential emissions, and where to focus inspections to monitor for compliance. If you are not inspecting, you cannot effectively monitor compliance. A state-run primacy program also provides regulatory certainty for industry. EPA is subject to political changes that come with every change in administration. But once established, the state programs provide a steady hand, only modified when new rules are promulgated.

EPA's model of enforcement is a sue and settle model. Once a company receives a notice of violation, the Department of Justice (DOJ) attorneys become the point of contact. Further discussion on data, science or engineering cannot take place with DOJ. The engineers are no longer in the room and the goal becomes negotiating a settlement, which provides no protection of the environment. In North Dakota's experience, the sue and settle model targets one company at a time, takes several months or years to finalize, and can generate millions of dollars in legal fees, both for the taxpayers and the companies, the latter of which only pass on the cost to the consumer.

North Dakota's model for industry has been dubbed "Find it and Fix it," a robust monitoring and inspection program that leads to immediate fixes and compliance to the benefit of the environment. This is possible because North Dakota DEQ meets with multiple companies at one time to discuss ideas for science and engineering-based solutions. In 2016, the oil and gas industry took these discussions further, collectively developing equipment and inspection tools that DEQ director, David Glatt called "Compliance Plus." Not only does this model benefit North Dakotans, but the new designs and tools have already been shared across multiple states and globally within the oil and gas industry.

A state-run program allows the science, data, and facts of environmental controls to govern the discussion, leaving the political and litigation agendas on the side lines. These types of state and industry partnerships encourage the creative minds in the room to develop the most innovative solutions. I have included a fact sheet comparing North Dakota's "Find it and Fix it" program with the EPA's sue and settle model.

As a North Dakotan and a state senator, I am extremely confident that our citizens, state leaders, and regulatory agency employees want and desire clean air and water, we know our state and we will do everything possible to ensure our state continues to have the cleanest air, water, and soil in the nation. I take personal pride in it. North Dakota has continued to achieve the cleanest air and water in the country while becoming a leader in energy development. This has helped our country move toward energy independence while substantially reducing energy costs for every citizen and business across this country.

Thank you. I hope you consider our experience in North Dakota as your committee addresses these important issues.

Sincerely,

Senator Jessica Unruh  
North Dakota State Senate

## A COMPARATIVE CASE STUDY

The State of North Dakota and the U.S. Environmental Protection Agency under the Obama Administration employed substantially different regulatory approaches to oil and gas development in North Dakota.

### NORTH DAKOTA

#### "FIND & FIX"

Embrace compliance, prevention and innovation for future efficiencies industry-wide. Through this process, regulators and industry work together to identify the issue, find solutions, and fix the issue, resulting in Day 1 compliance that quickly benefits the environment.

### THE U.S. EPA

#### "SUE OR SETTLE"

Emphasis is on penalties and compliance through intimidation. This method embraces bureaucracy and expensive legal pursuits that forces compliance through intimidation rather than focusing on problem-solving. Action is also done one company at a time, meaning very little to no benefit to the environment during the process.

### PROCESS DURATION & PARTICIPANTS



#### 10 MONTHS

working with industry to identify solutions & an agreement issued Oct. 2018. Meanwhile, companies were voluntarily inspecting and modifying equipment.



#### 30 MONTHS

to resolve 1 case with 6 still pending.



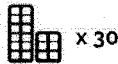
#### 3 STATE EMPLOYEES

including 2 from Dept. of Health and 1 from Attorney General's Office.



#### 12 FEDERAL EMPLOYEES

including 5 EPA Attorneys, 2 Dept. of Justice Attorneys and 5 EPA scientists



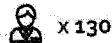
#### 30 COMPANIES

producing 93% of ND's oil and the North Dakota Petroleum Council participated in finding solutions.



#### 1 COMPANY

that produces about 25% of North Dakota's oil had its case resolved.



#### 130 INDUSTRY EMPLOYEES

participated in the Task Force, consolidating time, effort and expertise.



#### 500 PAGES

of documentation, plus more than 10,000 data points of information requested and filed.

### COST IN TIME AND MONEY



#### 3,000+ MANHOURS

spent by 30 companies for industry-wide standard.



#### \$4.1 MILLION

in equipment inspection and modification.



#### \$255,000 to \$616,000

in estimated industry employee time.



#### \$1.2 MILLION

in industry employee time and contractor fees for one company.



#### \$29,200

in estimated government employee time for industry-wide plan.



#### \$186,900 and \$560,700

in estimated federal employee time alone, plus thousands for mileage and travel.

### RESULTS



#### 19 CONSENT DECREES

Signed, covering 69% of ND's oil production & affecting 7500 wells.



#### 1 CONSENT DECREE

signed, with 170 wells modified into compliance.



#### FUTURE COMPLIANCE

Prevention and even new, leak-proof equipment were created.

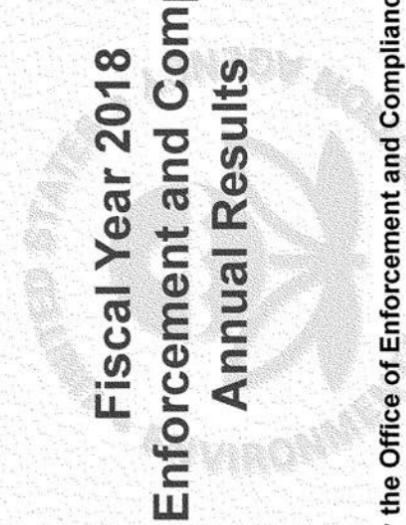


#### \$4.1 MILLION

spent on fines and mitigation projects that do not assist in resolving issue.

**CONCLUSION.** North Dakota's inclusive approach consolidates time and effort, allowing for collaborative education, new technologies and designs for enhanced compliance industry-wide that are beneficial early in the process and well into the future.

**CONCLUSION.** The U.S. EPA's approach addresses the issue one company at a time at a pace three times slower than the "Find and Fix" approach. This means more resources are depleted with very little return to the environment.



**Fiscal Year 2018  
EPA Enforcement and Compliance  
Annual Results**

**Prepared by the Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency**

**February 8, 2019**



## FY 2018 Enforcement and Compliance Annual Results

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#### **Acronyms and Descriptions for Statutes/Sections**

Note: This data reflects all EPA enforcement actions, including Federal Facility Compliance Agreements and inspections, unless otherwise noted. Does not include state and local enforcement actions or inspections.

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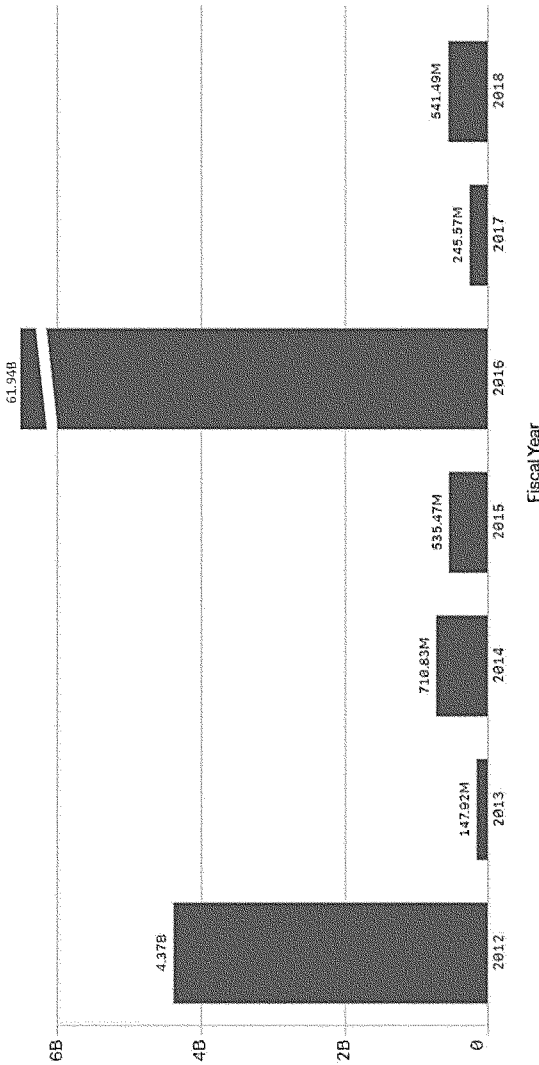
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Estimated Environmental Benefits Hazardous Waste and Non-Hazardous Waste Treated, Minimized, or Properly Disposed  
FY 2012 – FY 2018



- In FY 2018, EPA enforcement actions required facilities to commit to treat, minimize, or properly dispose of over an estimated 540 million pounds of hazardous and non-hazardous waste.
- Annual totals for environmental benefits are often strongly influenced by one or two large cases. In FY 2018 two RCRA hazardous waste actions accounted for nearly 99% of the national total.
- FY 2016, the IMC Phosphates Co. (Mosaic Fertilizer) RCRA case accounted for over 99% of the hazardous and non-hazardous waste total of 62 billion pounds in that year.

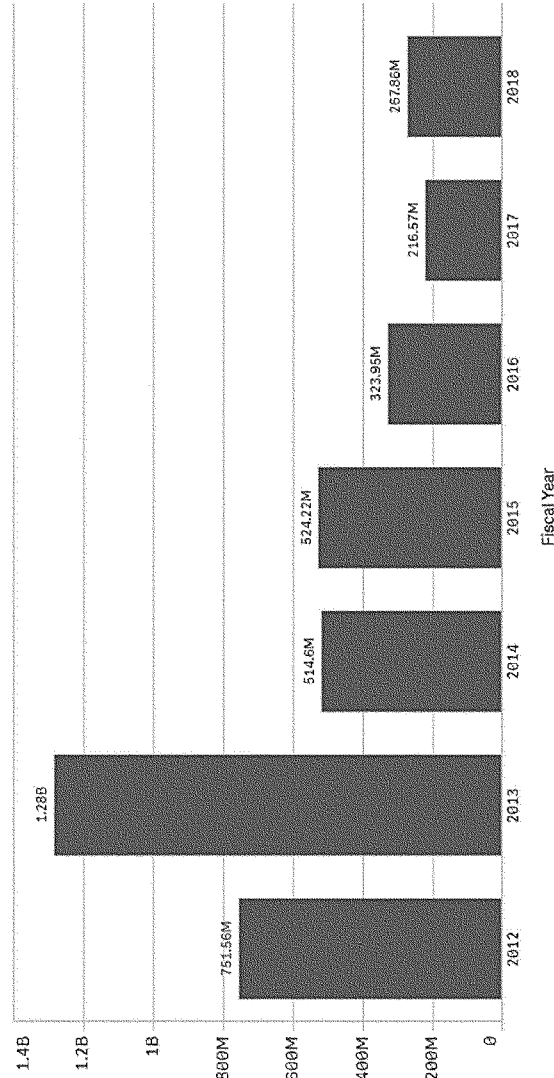
1. Starting in FY 2012, EPA changed the way it stores environmental benefit information in the ICIS data system. Therefore, data are not comparable for years prior to FY 2012.
2. Starting in FY 2016, EPA combined reductions in hazardous waste and non-hazardous waste into one measure.

Data Source: Integrated Compliance Information System (ICIS)  
Data as of: Dec-9-2018

U.S. Environmental Protection Agency



Estimated Environmental Benefits: Commitments to Reduce, Treat, or Eliminate Pollution (Air, Toxics, and Water)  
FY 2012 – FY 2018



- In FY 2018, EPA enforcement actions required facilities to commit to reduce, treat, or eliminate pollution by an estimated 268 million pounds per year.
- Annual totals for environmental benefits are often influenced by one or two large cases. In FY 2018 Midwest Generation (a CAA stationary source action) committed to reduce, treat, or eliminate an estimated 105 million pounds per year, which accounts for nearly 40% of the national total.
- EPA has, through actions in prior years, addressed the largest stationary sources of air pollution and the largest municipal dischargers. As a result, we recently have increased our focus on reducing toxic pollutants, which are less in volume but higher in toxicity.

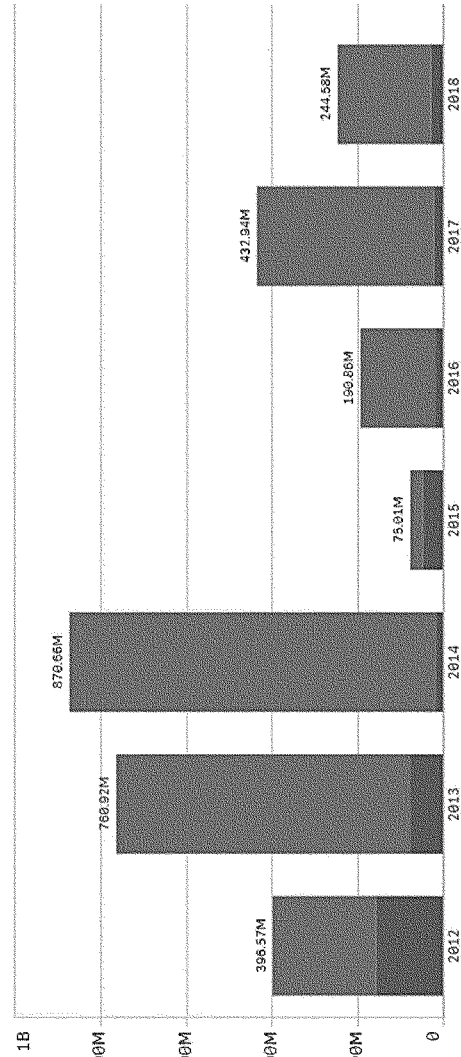
1. Starting in FY 2012, EPA changed the way it stores environmental benefit information in the ICIS data system. Therefore, data are not comparable for years prior to FY 2012.

Data Source: Integrated Compliance Information System (ICIS)  
Data as of: Dec-9-2018

U.S. Environmental Protection Agency



Estimated Environmental Benefits: Volume of Contaminated Soil and Water to be Cleaned Up  
FY 2012 – FY 2018



➤ In FY 2018, EPA enforcement actions obtained commitments to clean up over 244 million cubic yards of contaminated soil and water.

➤ Annual totals of soil and water to be cleaned up are often strongly influenced by the existence of one or two large cases. For example, in FY 2013 and FY 2014 three big cases accounted for the majority of the soil and water to be cleaned up.

Fiscal Year, Environmental Benefit Metric

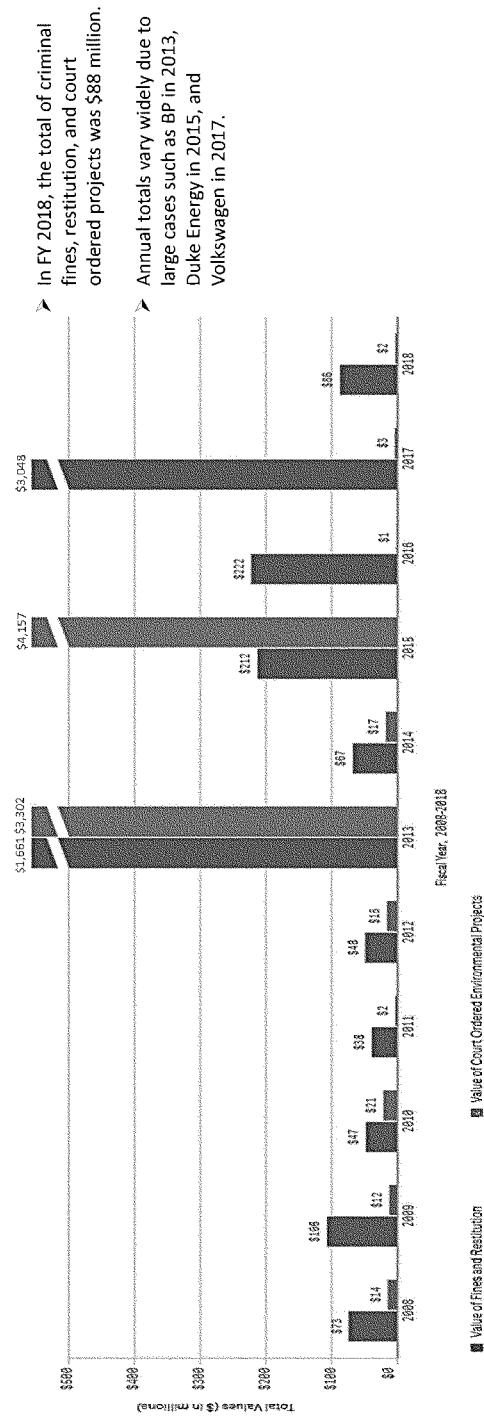
- Estimated Contaminated Soil/Debris to be Cleaned Up (cubic yds) ■ Estimated Contaminated Water/Aquifer to be Cleaned Up (cubic yds)
1. Starting in FY 2012, EPA changed the way it stores environmental benefit information in the ICIS data system. Therefore, data are not comparable for years prior to FY 2012.
  2. Starting in FY 2018, the Agency is reporting contaminated soil and water cleanup from all cases, not just from RCRA Corrective Action and CERCLA cases as in past years. However, RCRA and CERCLA cases account for more than 99% of the FY 2018 total.

Data Source: Integrated Compliance Information System (ICIS)  
Data as of: Dec-9-2018

U.S. Environmental Protection Agency



**Criminal Enforcement  
Value of Fines and Restitution and Court Ordered Environmental Projects  
FY 2008 – FY 2018**



- In FY 2018, the total of criminal fines, restitution, and court ordered projects was \$88 million.
- Annual totals vary widely due to large cases such as BP in 2013, Duke Energy in 2015, and Volkswagen in 2017.

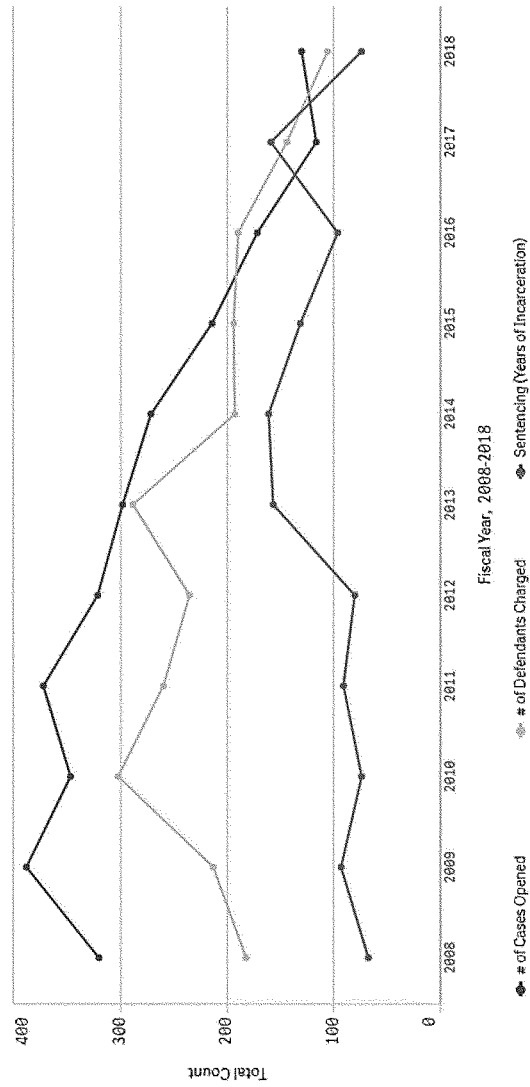
1. All prior FY dollar figures in the graph are adjusted to reflect the current value in FY 2018 dollars based on the monthly rate of inflation/deflation as determined by the U.S. Department of Labor Consumer Price Index for All Urban Consumers.
2. Dollar figures referenced in the bullets are nominal values. They are not adjusted to reflect inflation/deflation.

Data Source: Criminal Case Reporting System  
Data as of: Nov-13-2018

U.S. Environmental Protection Agency



Criminal Enforcement  
Environmental Crime Cases Opened, Defendants Charged, and Sentencing Results (Years of Incarceration)  
FY 2008 – FY 2018



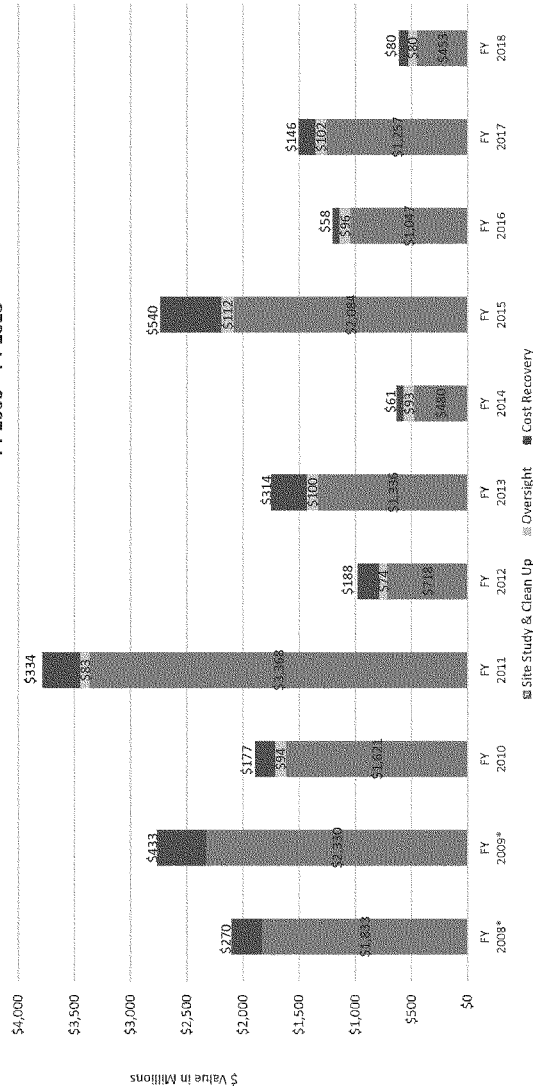
➤ In FY 2018, the criminal program continued to focus on complex cases that involve a serious threat to human health and the environment and/or undermine program integrity.

➤ For the first time since FY 2011, the number of environmental crime cases opened increased.

# Superfund Enforcement Private Party Commitments FY 2008 – FY 2018



- In FY 2018, private parties committed to spend approximately \$453 million on new site cleanup. Responsible parties also agreed to reimburse \$80 million of EPA's past costs from clean up work at Superfund sites.
- Annual totals for both cleanup and cost recovery settlements are often influenced by the existence of one or two large cases that involve complex cleanups.



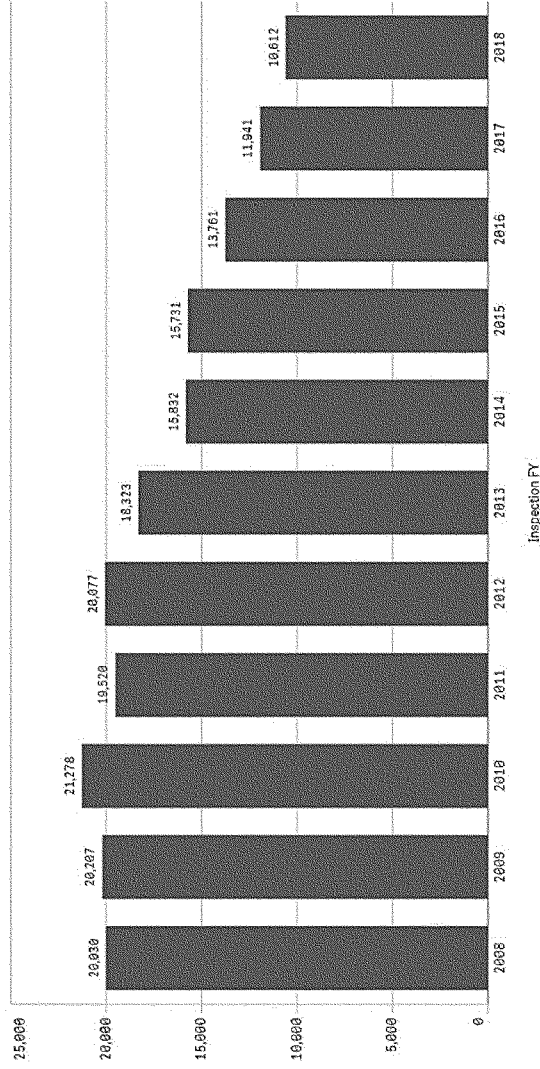
1. Totals include "allowed claims" under bankruptcy settlements.
  2. These results do not include commitments made for activities at Federally-owned or operated facilities.
  3. All prior FY dollar figures in the graph are adjusted to reflect the current value in FY2018 dollars based on the monthly rate of inflation/deflation as determined by the U.S. Department of Labor Consumer Price Index for All Urban Consumers.
  4. Dollar figures referenced in the bullets are nominal values. They are not adjusted to reflect inflation/deflation.
- \* Amounts billed for Oversight were not reported as part of end-of-year results prior to FY 2010.

Data Source for Cleanup and Cost Recovery: FY08-FY13 Comprehensive Environmental Response, Compensation & Liability Information System (CERCLIS); FY14-FY15 Manual Reporting; FY16 forward Superfund Enterprise Management System (SEMS).  
Data Source for Oversight: Compass Business Objects Reporting (CBOR).  
Data as of: Oct-16-2018

U.S. Environmental Protection Agency



Federal Inspections and Evaluations (Conducted by EPA)  
FY 2008 – FY 2018



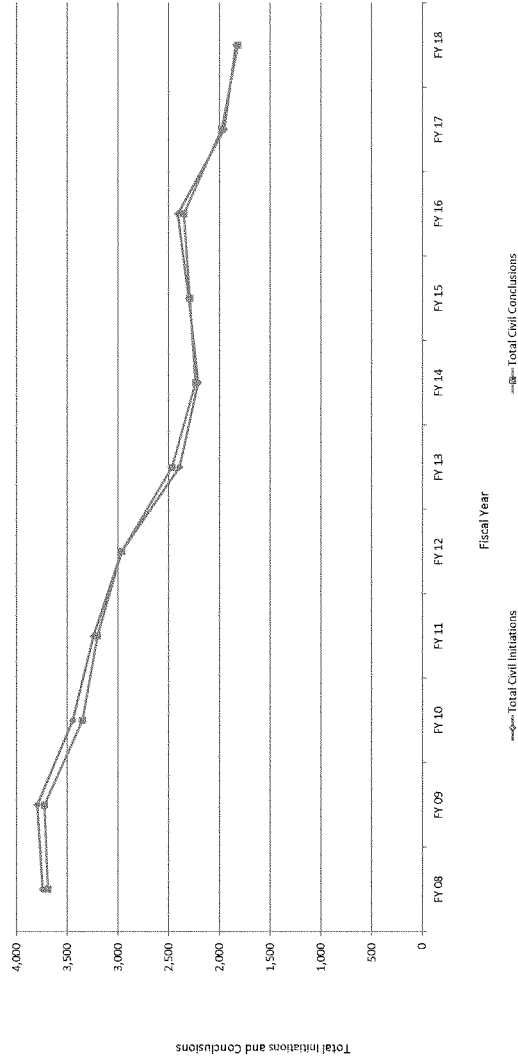
➤ In FY 2018, EPA conducted 10,600 inspections/evaluations.

➤ EPA continues to use data analytics and other tools to improve inspection targeting, which allows it to use its inspection resources more efficiently.



➤ In FY 2018, EPA initiated and concluded more than 1,800 civil judicial and administrative cases.

Total Civil Enforcement Case Initiations and Conclusions  
FY 2008 – FY 2018



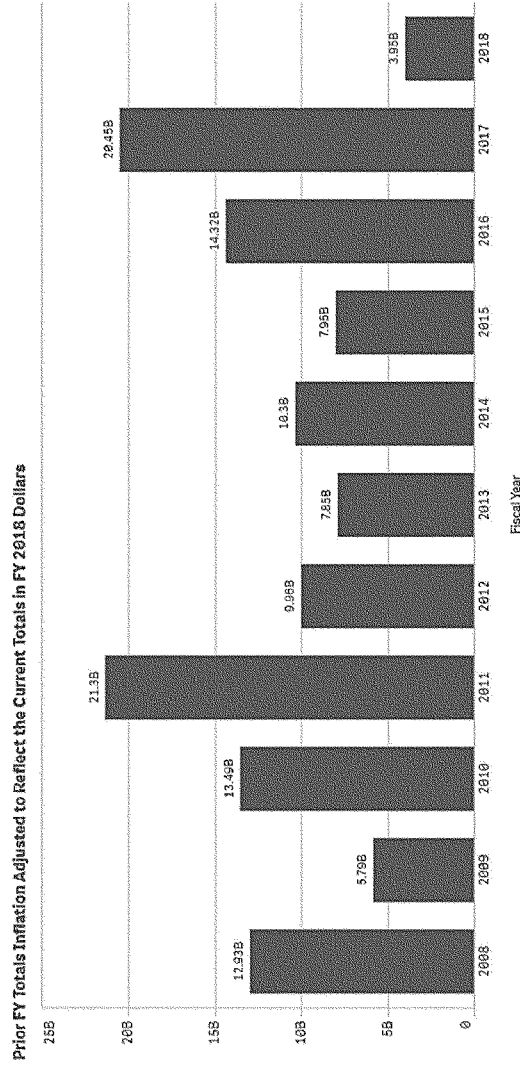
1. Totals include CERCLA Initiations and Conclusions.

Data Source: Integrated Compliance Information System (ICIS)  
Data as of: Dec-9-2018

U.S. Environmental Protection Agency



Estimated Value of Administrative and Civil Judicial Complying Actions (Injunctive Relief)  
FY 2008 – FY 2018



- In FY2018, EPA enforcement actions required companies to invest nearly \$4 billion in actions and equipment to control pollution (injunctive relief.)
- Injunctive relief results vary from year to year depending on the timing of the resolution of the largest cases.

1. Injunctive relief requires a regulated entity to perform, or refrain from performing, some designated action to bring the entity into compliance with environmental laws.
2. All prior FY dollar figures in the graph are adjusted to reflect the current value in FY2018 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.

Data Source: Integrated Compliance Information System (ICIS)  
Data as of: Dec-9-2018

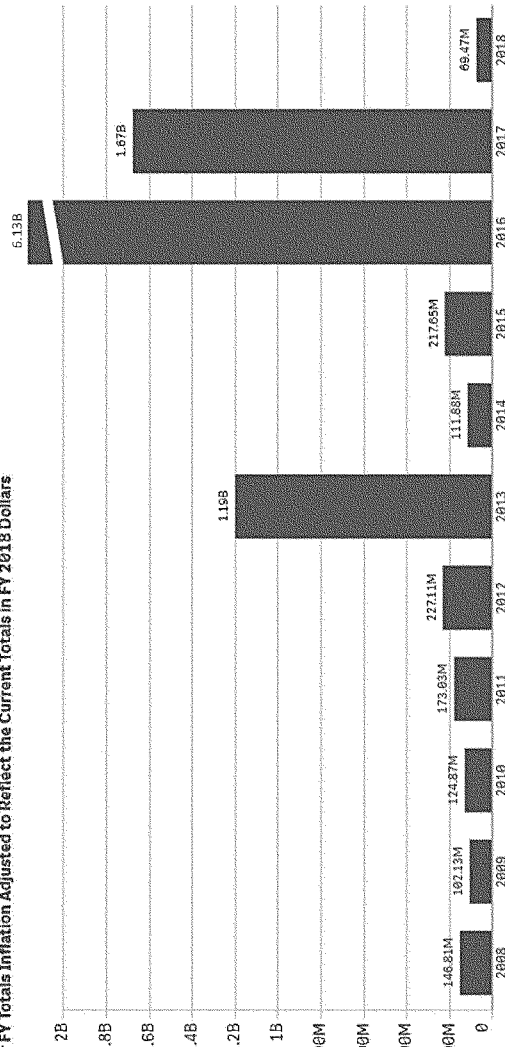
U.S. Environmental Protection Agency



# Administrative and Civil Judicial Penalties Assessed FY 2008 – FY 2018

Prior FY Totals Inflation Adjusted to Reflect the Current Totals in FY 2018 Dollars

- In FY 2018, EPA obtained over \$69 million in federal administrative and civil judicial penalties.
- Annual total penalties assessed are often strongly influenced by the existence of one or two large cases.
- The FY 2017 results were dominated by the record setting \$1.45 billion Clean Air Act – Mobile Source penalty in the Volkswagen case and the FY 2016 results were dominated by the \$5.7 billion BP action.



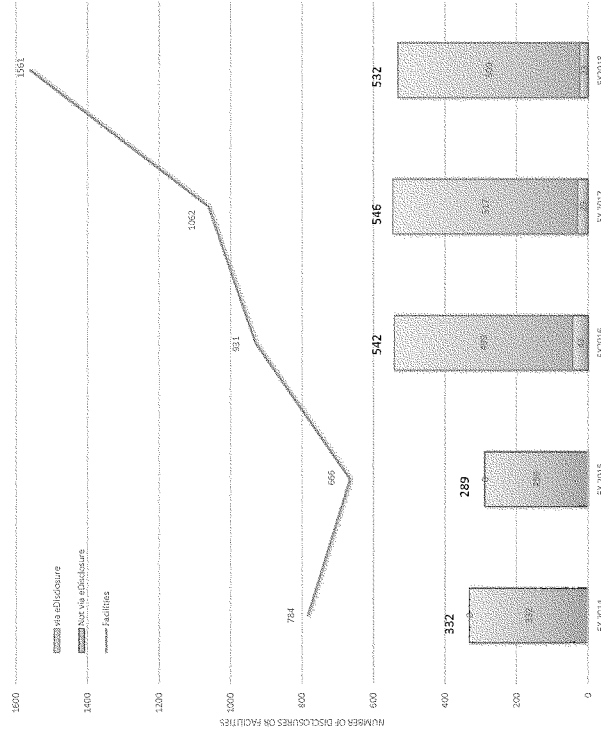
1. All prior FY dollar figures in the graph are adjusted to reflect the current value in FY 2018 dollars based on the monthly rate of inflation/deflation as determined by the U.S. Department of Labor Consumer Price Index for All Urban Consumers.
2. Dollar figures referenced in the bullets are nominal values. They are not adjusted to reflect inflation/deflation.

Data Source: Integrated Compliance Information System (ICIS)  
Data as of: Dec-9-2018

U.S. Environmental Protection Agency



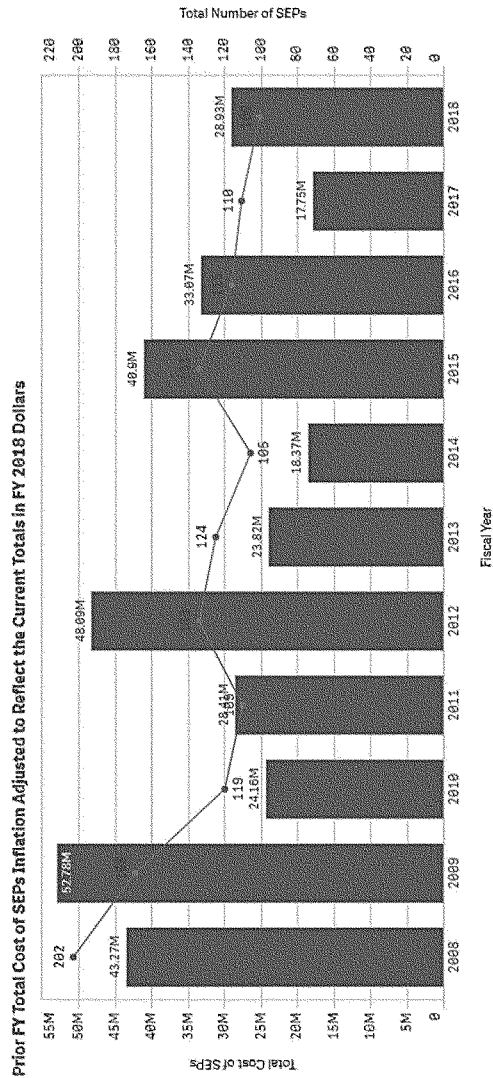
EPA Voluntary Disclosure Programs  
FY 2014 – FY 2018



- In FY 2018, 532 entities at over 1,500 facilities voluntarily disclosed violations pursuant to EPA's self-disclosure policies. The 47% increase in facilities self-disclosing violations over 2017 is attributed to several New Owner Audit Agreements involving large numbers of facilities.
- In the nearly three years since launching *eDisclosure*, EPA has seen about a 74% increase in the number of annual self-disclosures as compared to the two years prior to its launch.



### Supplemental Environmental Projects (SEPs) FY 2008 – FY 2018



▲ In FY 2018, EPA enforcement cases included 100 voluntary agreements to perform Supplemental Environmental Projects (SEPs) with a total estimated cost of over \$28 million.

▲ SEPs are environmentally beneficial projects that are not otherwise legally required, that have a close nexus to the violations and that a defendant/respondent voluntarily agrees to undertake as part of the settlement of an enforcement action; a SEP may be considered as a factor to mitigate a civil penalty.

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 2018 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.

Data Source: Integrated Compliance Information System (ICIS)  
Data as of: Dec-9-2018

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## FY 2018 Enforcement and Compliance Annual Results

### Acronyms and Descriptions for Statutes/Sections

CAA	Clean Air Act
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act ("Superfund")
CWA	Clean Water Act
EPCRA	Emergency Planning & Community Right-to-Know Act
FIFRA	Federal Insecticide, Fungicide and Rodenticide Act
MPRSA	Marine Protection, Research, and Sanctuaries Act
RCRA	Resource Conservation & Recovery Act
SDWA	Safe Drinking Water Act
TSCA	Toxic Substances Control Act
Title 18	U.S. Criminal Code - Crimes and Criminal Procedure

Questions for the Record  
 U.S. House of Representatives  
 Committee on Energy and Commerce  
 Subcommittee on Oversight and Investigations  
 Hearing on  
 “EPA’s Enforcement Program: Taking the Environmental Cop Off the Beat”  
 February 26, 2019

Ms. Susan Bodine, Assistant Administrator, Office of Enforcement and Compliance  
 Assurance, U.S. Environmental Protection Agency

**The Honorable Frank Pallone, Jr. (D-NJ)**

Proposed National Compliance Initiatives

On February 8, 2019, EPA published a notice of public comment period in the *Federal Register* soliciting public comment and recommendations on the National Compliance Initiatives to be undertaken in fiscal years 2020-2023 (EPA-HQ-OECA-2018-0843). The notice announces new initiatives and indicates EPA expects to return several current initiatives to the standard “core” enforcement program, including “Reducing Air Pollution from the Largest Sources.” The notice also states that EPA has required controls or commenced investigations at 91 percent, 96 percent, and 90 percent of facilities in the glass, cement, and acid manufacturing sectors, respectively.

1. Regarding enforcement cases and investigations of potential noncompliance in the steel manufacturing sector:
  - a. How many investigations were pending as of January 20, 2017? How many of those currently remain under investigation?
  - b. How many new investigations has OECA commenced since January 20, 2017? How many of those currently remain under investigation?
  - c. How many enforcement cases have been initiated from January 20, 2017 to present?
  - d. How many cases have been referred to the U.S. Department of Justice from January 20, 2017 to present?

**Response:** For civil enforcement activities, we are defining the steel manufacturing sector to be facilities in the Integrated Compliance Information System with a North American Industrial Classification System code associated with steel manufacturing. Clean Air Act investigative activities (inspections/evaluations, information requests and compliance investigations) were conducted at 340 facilities within the steel manufacturing sector between October 1, 2002, and January 20, 2017. There is one ongoing investigation that was initiated before January 20, 2017. Clean Air Act investigative activities were conducted at 76

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**facilities within the steel manufacturing sector since January 20, 2017 and there is one ongoing investigation. Since January 20, 2017, 17 enforcement cases have been initiated and one enforcement case has been referred to the U.S. Department of Justice.**

**Regarding criminal enforcement activities in the steel sector, EPA's Criminal Investigation Division (EPA-CID) did not have any investigations pending on January 20, 2017; EPA-CID has opened one investigation since January 20, 2017; EPA-CID has not brought any enforcement cases since January 20, 2017; EPA-CID has not referred any cases to DOJ since January 20, 2017.**

2. Regarding enforcement cases and investigations of potential noncompliance in the coal-fired power plant sector:
  - a. How many investigations were pending as of January 20, 2017? How many of those currently remain under investigation?
  - b. How many new investigations has OECA commenced since January 20, 2017? How many of those currently remain under investigation?
  - c. How many enforcement cases have been initiated from January 20, 2017 to present?
  - d. How many cases have been referred to the U.S. Department of Justice from January 20, 2017 to present?

**Response: For civil enforcement activities, the Coal-Fired Power Plant (CFPP) universe of facilities is identified in the Integrated Compliance Information System using a Facility Universe Indicator, which was populated using data from the Acid Rain program database, and North American Industrial Classification System codes. Clean Air Act investigative activities (inspections/evaluations, information requests and compliance investigations) were conducted at 204 coal-fired power plants between October 1, 2002, and January 20, 2017. There is one ongoing investigation that was initiated before January 20, 2017. Clean Air Act investigative activities were conducted at 22 coal-fired power plants since January 20, 2017 and there is one ongoing investigation. Since January 20, 2017, four enforcement cases have been initiated and one enforcement case has been referred to the U.S. Department of Justice.**

**Regarding criminal enforcement activities in the coal-fired power plant sector, EPA-CID did not have any investigations pending on January 20, 2017; EPA-CID has not opened any investigation since January 20, 2017; EPA-CID has not brought any enforcement cases since January 20, 2017; EPA-CID has not referred any cases to DOJ since January 20, 2017.**

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3. Regarding enforcement cases and investigations of potential noncompliance in the industrial boiler sector:
  - a. How many investigations were pending as of January 20, 2017? How many of those currently remain under investigation?
  - b. How many new investigations has OECA commenced since January 20, 2017? How many of those currently remain under investigation?
  - c. How many enforcement cases have been initiated from January 20, 2017 to present?
  - d. How many cases have been referred to the U.S. Department of Justice from January 20, 2017 to present?

**Response:** For civil enforcement activities, the industrial boiler sector was identified based on applicable regulations reported on the facility record in the Integrated Compliance Information System. The applicable regulations used are MACT Subpart DDDDD, and NSPS Subparts Db and Dc. These regulations apply to commercial, industrial, and institutional boilers. Clean Air Act investigative activities (inspections/evaluations, information requests and compliance investigations) were conducted at 2,270 facilities with boilers between October 1, 2002, and January 20, 2017. There are 27 ongoing investigations that were initiated before January 20, 2017. Clean Air Act investigative activities were conducted at 552 facilities with boilers since January 20, 2017, and there are five ongoing investigations. Since January 20, 2017, 87 enforcement cases have been initiated and 13 enforcement cases have been referred to the U.S. Department of Justice.

Regarding to criminal enforcement activities in the industrial boiler sector, EPA-CID did not have any investigations pending on January 20, 2017; EPA-CID has opened one investigation since January 20, 2017; EPA-CID has not brought any enforcement cases since January 20, 2017; EPA-CID has not referred any cases to DOJ since January 20, 2017.

4. What input, if any, was received from other EPA offices with regard to returning several current initiatives to the standard "core" enforcement program? Please explain the process by which this input was received and a description of input provided from each EPA office.

**Response:** In developing its NCI proposals, part of the internal Agency deliberations included discussions between OECA senior managers and senior managers in EPA's regional offices. We discussed our proposals with enforcement and compliance managers in the EPA regions, and sought input on areas of focus for new NCIs.

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In addition, OECA senior managers met in person with senior managers in EPA's Office of Air and Radiation (OAR), Office of Land and Emergency Management (OLEM), Office of Water (OW), and Office of Chemical Safety and Pollution Prevention (OCSPP). The purpose of these meetings was to discuss our proposals and to seek input on areas of focus for new NCIs. OAR, OLEM, OW, and OCSPP were supportive of OECA's proposals in terms of which NCIs to continue, modify, or return to the core enforcement program. In particular, OAR suggested adding a new NCI to focus on mobile sources and OW supported proposing a drinking water NCI.

5. How were the two new initiatives - increasing compliance with drinking water standards and reducing children's exposure to lead - selected? What input was received from other EPA offices?

**Response:** The NCIs for the next NCI cycle (FY 2020-2023) have not yet been selected, but it is correct that two of the NCI proposals under consideration are for a lead (Pb)-focused NCI and for a drinking water-focused NCI. OECA's guiding principle for developing new NCI proposals has been to focus on areas that would support the goals of EPA's FY 2018 – 2022 Strategic Plan. These goals include: addressing air quality nonattainment areas, impaired waters, public health threats posed by drinking water noncompliance, populations vulnerable to air toxics or chemical accidents, and children's health exposure to lead. The proposed NCI to increase compliance with drinking water standards directly supports the longer-term strategic plan measure to reduce the number of community water systems out of compliance with health-based standards. The proposed NCI to reduce children's exposure to lead is intended to help implement EPA actions under the interagency Federal Lead Action Plan and support the EPA's stated objective to pay particular attention to vulnerable populations, including children, the elderly, low-income communities, minority communities, and tribes. Members of these populations may experience increased lead levels through multiple exposure pathways. OCSPP and OW were supportive of these proposals. Regional offices provided good feedback on how reduction of exposure to lead is a priority across the Agency and how to integrate this proposal into those cross-program efforts.

#### Civil Penalties

6. What is the total amount of year-to-date civil penalties for fiscal year 2019, and the total amount of those penalties that are a result of the January 10, 2019 settlement with Fiat Chrysler?

**Response:** The total amount of civil penalties assessed in FY 2019 reported to the Integrated Compliance Information System, EPA's system of record for enforcement and compliance data, as of May 24, 2019 is \$318,920,000. This amount includes the United States share of the \$305,000,000 penalty assessed in the Fiat Chrysler consent decree (\$262,300,000 of which is due to the United States and

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**\$42,700,000 of which is due to the California Air Resources Board). The Fiat Chrysler consent decree was entered on May 3, 2019.**

No Action Assurances

7. How many requests for No Action Assurances has OECA received since January 20, 2017?
8. How many No Action Assurances has OECA provided since January 20, 2017?
9. Please explain the process by which Assistant Administrators for other program offices request No Action Assurances.
  - a. Please list any verbal requests for No Action Assurances made to OECA, including the date of the request and the name, title, and office of the requesting individual.
  - b. Please list any written requests for No Action Assurances made to OECA, including the date of the request and the name, title, and office of the requesting individual.
10. For each No Action Assurance provided, please list date of the request, the date the request was provided, and the name, title, and office of the requesting individual.

**Responses combined for 7-10: EPA's Policy Against "No Action" Assurances, states that NAAs are only to be used in "extremely unusual cases." Because they are rare, OECA has not created a system to track them. Thus, to respond to these questions, EPA manually collected the relevant information. Note that it is particularly difficult to track requests for NAAs that are for the purpose of facilitating emergency response and recovery efforts following hurricanes, severe weather or other disasters. While OECA's preferred practice is to require a written request for a NAA, due to the exigency of the circumstances following a disaster, sometimes those emergency requests are conveyed orally. Between January 20, 2017, and June 28, 2019, OECA issued over two dozen NAAs, some of which were extended or amended, to assist with extensive disaster recovery efforts following Hurricanes Harvey, Irma, Maria, Florence and Michael, and flooding in the midwest and south. General details of these NAAs are provided in the following table:**

Emergency NAAs Issued to Assist with Disaster Recovery		
Date NAA Requested	Date NAA Provided	Requesting Individual and/or Recipient of NAA
September 2017, various dates following Hurricanes Harvey, Irma and Maria	Various dates, including extensions (over a dozen NAAs, some of which were extended or amended)	Richard A. Hyde, Executive Director Texas Commission on Environmental Quality
		Chuck Carr Brown, Secretary Louisiana Department of Environmental Quality
		Noah Valenstein, Secretary Florida Department of Environmental Protection
		Tom Pugh, Government Relations Yamaha Motor Corporation, U.S.A.
		Virgin Islands
		Puerto Rico
		Adam Kushner, Partner Hogan Lovells US LLP on behalf of the Puerto Rico Electric Power Authority (PREPA)
		Edward McTieman Arnold & Porter Kaye Scholer LLP on behalf of Merck, Sharp & Dohme Corp.
September 2018, various dates following Hurricane Florence (seven NAAs)	9/11-9/13/18	Michael Abraczinskas, Director Division of Air Quality North Carolina Department of Environmental Quality
	9/11-9/14/19	Rhonda Banks Thompson, P.E. Chief, Bureau of Air Quality South Carolina Department of Health and Environmental Control
	8/13-9/14/18	David K. Paylor, Director Virginia Department of Environmental Quality
	9/14/18	Karen Hays, P.E. Chief, Air Protection Branch Georgia Environmental Protection Division
October 2018, various dates following Hurricane Michael (4 NAAs)	10/11-10/12/18	Jeffery F. Koerner, Director Division of Air Resource Management Florida Department of Environmental Protection
	10/12/18	Karen Hays, PE Chief, Air Protection Branch Georgia Environmental Protection Division
4/25/19	4/26/19	Catharine Fitzsimmons Chief, Iowa Air Quality Bureau Iowa Department of Natural Resources
6/10/2019	6/11/2019	Becky W Keogh,

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		Director, Arkansas Department of Environmental Quality
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To the best of our knowledge, also between January 20, 2017, and June 28, 2019, OECA has received ten requests for an NAA unrelated to disaster response. OECA has issued five NAAs in response to these requests, denied three requests, and two requests are pending. The details for the non-emergency NAAs that OECA received between January 20, 2017, and June 28, 2019, are in the following tables:

Non-Emergency NAAs - Provided		
Date NAA Requested	Date NAA Provided	Name, Title, Office of Requesting Individual
12/22/17	1/4/2018	Bill Wehrum Assistant Administrator Office of Air and Radiation
3/5/18	3/5/18	Bill Wehrum Assistant Administrator Office of Air and Radiation
6/13/18	6/21/18	Amanda Kohler, Chief Permits Branch Program Implementation and Information Division Office of Resource Conservation and Recovery Office of Land and Emergency Management
7/6/18	7/6/18	Bill Wehrum Assistant Administrator Office of Air and Radiation (Note, Fitzgerald Glider Kits had written Administrator Pruitt on June 14, 2018, requesting an NAA)
2/15/19	3/8/19	David H. Lax Scientific Advisor API

Non-Emergency NAAs – Denied or Pending as of June 28, 2019		
Date NAA Requested	Date NAA Denied (if applicable)	Name, Title, Office of Requesting Individual
12/21/17	May 2018	DC Water and Sewer Authority
4/9/19	4/19/19	Allegheny County, PA
12/10/18	6/26/2019	The Beaver Village Council, AK
2/14/19	Pending	Waste Management, Republic Services, Solid Waste Association of North America, and National Waste & Recycling Association
5/6/19	Pending	Bristol-Myers Squibb

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There is no formal written procedure by which Assistant Administrators from other programs request a No Action Assurance (NAA) from OECA. As a general practice, however, OECA requires that a request from a program office be made in writing, be signed by the Assistant Administrator, set forth how the request is consistent with the exceptions in OECA's NAA Policy, and confirm that the action to be taken (or refrained from) under the NAA is appropriate from an environmental health and safety perspective. Thus, OECA is not aware of any verbal requests made by an Assistant Administrator for an NAA since January 20, 2017. The few written requests are set forth in the second table above.

11. Regarding the No Action Assurance regarding glider vehicles OECA issued July 6, 2018:

- a. How did you first become aware of this request? Please include the date and time you were made aware.
- b. What was your role in developing this No Action Assurance?
- c. Did you express any concerns with granting this No Action Assurance? Please explain if you shared any concerns with then Administrator Pruitt or any other EPA political appointees.

**Response:** I first became aware of a request for a No Action Assurance on or about June 15, 2018, when I first saw a letter dated June 14, 2018, from Fitzgerald Glider Kits to Administrator Scott Pruitt requesting a No Action Assurance. In conversations with EPA political appointees and career staff about the company's request, I discussed OECA's policies that govern the issuance of No Action Assurances. The Office of Air and Radiation (OAR) made an initial request, and OECA assisted OAR in submitting a formal request for a No Action Assurance that adhered to OECA's policies. I then issued the No Action Assurance based on my exercise of enforcement discretion.

#### Coordination with EPA Program Offices

12. Please describe OECA's role in the drafting and review of EPA's December 7, 2017, memorandum titled, "New Source Review Preconstruction Permitting Requirements: Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability" ("DTE Memo"), which reversed EPA's prior position in litigation against DTE Energy Company.

**Response:** OECA provided comments on the December 7, 2017, memorandum but did not draft it.

13. Did you or anyone from OECA attend any internal EPA meetings concerning any issue related to the DTE Memo? If so, please state the date of the meeting, who attended the meeting, and what specific issues were discussed.

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**Response:** In my capacity as Senior Advisor to the Administrator, I recall attending four meetings with participants outside of OECA. The first was on December 4, 2017. The invitees included Mandy Gunasekara (OAR), Justin Schwab (OGC), and Patrick Traylor (OECA). The general topic was comments on the draft memorandum. The second was on December 5, 2017. The invitees included William Wehrum (OAR), David Harlow (OAR), and a wide range of OAR, OGC, and OECA political appointees and career staff. The topic was comments on the draft memorandum. The third was on December 8, 2017. The participants were Administrator Scott Pruitt and Patrick Traylor. The topic was the final, issued memorandum. The fourth was on December 11, 2017. The invitees were William Wehrum (OAR), Patrick Traylor (OECA), Mandy Gunasekara (OAR), Justin Schwab (OGC), Liz Bowman (OPA), and David Harlow (OAR). The topic was the final, issued memorandum.

14. Are you aware of any meeting, including any meeting on or near December 5, 2017 attended by William Wehrum, Assistant Administrator for the EPA's Office of Air and Radiation (OAR), or David Harlow, Senior Counsel in OAR in which any issues related to the DTE Memo were discussed? If so, please state the date of the meeting, who attended the meeting, and what specific issues were discussed. Please describe any participation of Mr. Wehrum, Mr. Harlow, and yourself in these meetings.

**Response:** Please see my response to Question 13, above. I recall that William Wehrum and David Harlow attended the meeting. However, DTE and the DTE case were not discussed.

15. Did you include Mr. Wehrum or Mr. Harlow on any emails in which you provided any comments on the DTE Memo either before or after it was finalized? If so, please state the date of any emails, who was included on the emails, and what specific comments were raised.

**Response:** Yes. I included Mr. Wehrum on three emails dated December 7, 2017, and one email dated December 8, 2017, all of which raised OECA comments on the application of enforcement discretion. However, I did not discuss DTE or the DTE case.

#### National Enforcement Investigation Center

16. The most recent Employee Viewpoint Survey (EVS) results at EPA's National Enforcement Investigation Center (NEIC) reportedly revealed extremely low morale and high distrust of management, and that staff turnover is high. Please provide a summary of Employee Viewpoint Survey (EVS) results of staff morale for 2014, 2015, 2016, 2017, and 2018 and explain in detail what actions, if any, EPA Headquarters and NEIC management have taken since January 20, 2017 intended to improve employee morale.

**Response:** Sublevel agency reports for NEIC were not produced in 2014 and 2015. The EVS reports in 2016, 2017, and 2018 contained almost the same top 10 areas for

the highest percent scored positive and the same top 10 areas for the highest percent scored negative. In 2016, 48 staff responded to the EVS survey. In 2017, 40 staff responded to the EVS survey. In 2018, 26 staff responded to the survey.

Analysis by NEIC management of the EVS surveys since 2016 reveal that staff have consistently expressed their concerns in the following categories: limited resources, policies and practices of management, and lack of understanding regarding promotions and pay raises in government service. NEIC management held six listening sessions with staff during the week of March 18, 2019, to better understand their concerns and received active participation from over 95% of all staff. The listening sessions exposed the core problems or areas of concern in several key areas including:

- Staff are concerned with the future of EPA and subsequently their own jobs.
- NEIC has an older workforce and with departures a great deal of institutional knowledge departs the Agency.
- Career management has focused on increased accountability and has embraced the Agency's emphasis on delivering products with decreased timelines. Historically, NEIC took an average of 256 days to complete an inspection report (often a 20-30 page report). Under new leadership, 85.6% of inspection reports are completed in 60 days and with the same level of quality as previous reports. Such changes as these create uncertainty and concerns among a limited number of staff. However, the emphasis on accountability and metrics is critical to maximizing the environmental benefit. The goal of significantly decreased timelines is to enable the Agency to achieve environmental results for the public quicker.

Examples of steps that have been taken by the career management of NEIC to improve employee morale include:

- Providing for strategic direction of the Center and ensure routine communication with staff to promote understanding and buy-in of direction through All-Hands meetings, branch meetings, and section meetings.
- Engaging staff in direction and leadership of NEIC through the development of a business plan that outlines the future direction of the organization and includes a detailed work plan of priorities that will help NEIC succeed in its mission.
- Focusing on innovation and streamlining by supporting a staff-led engagement group that evaluates and deploys cutting-edge technology and approaches to enforcement work.
- Revitalizing employee development through supporting details and reassignments that are more in line with employee goals, skillsets, interests, and organizational needs.
- Continuing emphasis and support for work-life balance through embracing the OPM approved programs that support such balance.

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17. Please list all NEIC positions vacated from January 2017 to present, including the reason the position was vacated (e.g. buyout, retirement, dismissal) and current status of the position (e.g. filled by new hire, currently vacant, eliminated).

**Response:** As of January 2017, NEIC had 71 FTE onboard. As of April 2019, NEIC has 58 FTE onboard and is in the process of hiring an additional nine FTE to bring NEIC to a total of 67 FTE by early summer 2019. The following information provides data and analysis of all departures since January 2017:

- **Buyouts:** Eight staff departed NEIC when offered the buy-out. None of these positions have been backfilled per the VERA-VSIP requirements.
- **Retirements:** There have been eight retirements. One of those positions was backfilled through a permanent promotion of an existing staff member to a leadership position and another position is being backfilled through rotational promotion opportunities of existing staff members. Two of the other positions still need to be backfilled. Based upon current priorities, the remaining four positions lost to retirement are not being filled at this time.
- **Resignations:** Seven staff have resigned from NEIC for a myriad of reasons (including the desire for a geographic move or a change in their personal work/life balance). Of the seven positions, two have been backfilled due to the critical nature of the position.
- **Dismissals:** There have been no dismissals from NEIC since January 2017.

18. Please list all NEIC positions created or filled from January 20, 2017 to present.

**Response:** Eight new staff have been hired and onboarded. An additional nine staff are in the process of being hired. The positions include management positions, a health and safety officer, chemists, an IT specialist, and engineers.

19. According to testimony provided during the hearing by Dr. Chris Sellers, EPA employees in confidential interviews reported “many pressures applied by the Agency’s political leadership.” Have any NEIC employees reported a fear of retaliation, either through EVS responses or any other method? If so, please explain how many reports have been received and any Agency corrective action to address fear of retaliation.

**Response:** As explained in the response to question #16, NEIC staff openly discussed with NEIC management concerns related to fear of retaliation. The staff explained that because they heard certain managers or peers received a disciplinary action, and in some cases were transferred to new positions, the staff assumed it was retaliatory actions because they didn’t have any other information. Under civil service rules, management cannot discuss these cases with staff.

Approximately 12 NEIC staff reported a negative response on the 2018 EVS survey to the question of “I can disclose a suspected violation of any law, rule, or regulation without fear of reprisal.” In response to this result, NEIC management reiterated to all staff their obligation to report such violations and encouraged them to report concerns to the Inspector General, the Office of Special Counsel, the union, any level

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**of management, and/or our office's own internal investigative unit. It is important to know that since new leadership arrived in 2017, there has not been a single formal report or allegation of retaliation at NEIC.**

**During the NEIC EVS listening sessions, NEIC management heard that most staff did not understand the genesis of claims of fear of retaliation and found it to be a distraction from focusing on topics of greater interest to them.**

20. NEIC's investigations may require the use of non-standard methodologies and innovative investigative strategies, including complex process-based investigations, development of new analytical and field methods, evaluations and modification of existing methods, and expert technical consultation and advice. Please provide the total number of relevant trainings and conferences attended by NEIC staff for calendar years 2014, 2015, 2016, 2017, and 2018, including a list of trainings and conferences for each year.

**Response: A list of trainings and conferences for each year is included in the table below.**

Year	Number of Course/Conference Offerings
2014	183
2015	204
2016	187
2017	161
2018	135

Product Compliance and the Good Laboratory Practices Standards (GLPS) Compliance Monitoring Program

21. How many inspectors conduct inspections pursuant to this program? Are GLPS inspections the sole responsibility of these inspectors?

**Response: As of May 1, 2019, there are three full time GLP inspectors and one inspector-in-training. GLP inspections are the only responsibility for the three full time inspectors. The inspector-in-training will conduct GLP inspections in addition to other duties.**

22. What number of facilities are subject to inspection under GLPS?

**Response: Currently, there are approximately 1,200 laboratories in the United States that have submitted studies to the EPA that were required to comply with GLP and, therefore, would be subject to inspection.**

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23. How are facilities identified for inspection under this program?

**Response:** Facilities are identified for inspection in multiple ways – through a neutral inspection scheme, based upon a tip or complaint, or through a request by the EPA program office in furtherance of program responsibilities to register pesticides or chemicals. Additionally, as a member of the Organization for Economic Cooperation and Development (OECD), GLP Working Group, Mutual Acceptance of Data program, EPA conducts GLP inspections at the request of a member country.

24. Please explain OECA's role in ensuring the safety and integrity of pesticide products imported to the United States, including any ongoing efforts to coordinate with foreign countries to reduce counterfeit pesticides.

**Response:** OECA issues a National Program Guidance which identifies national compliance and enforcement priorities, discusses national direction for all compliance assurance programs, and identifies activities to be carried out by authorized programs. For the FIFRA program, OECA has identified product integrity and border compliance (imports) as focus areas in the National Program Guidance. This guidance document identifies specific activities to support these focus areas. Import inspections, pesticide production establishment inspections and marketplace inspections contribute to the safety and integrity of pesticide products imported into the United States by providing a deterrent effect to non-compliance with the law. OECA provides compliance monitoring guidance to support those state inspection activities (i.e. FIFRA Compliance Monitoring Strategy, FIFRA Inspection Manual, Worker Protection Inspection Manual, inspector training, etc.).

OECA and the U.S. Department of Homeland Security's Bureau of Customs and Border Protection (CBP) are working together to address environmental and import safety issues specific to pesticides which are regulated by the EPA. OECA and EPA regional personnel, address the illegal importation of non-compliant pesticide and device products with enforcement actions against importers and other persons, compliance assistance to manufacturers, importers and brokers; and cooperation with other governments, agencies and stakeholders to prevent and reduce risks of unsafe products entering the United States.

OECA provides the regional offices with technical and legal expertise on a case-by-case basis to ensure proper and nationally consistent implementation of existing regulations and enforcement response policies and guidance.

Prior to the arrival of pesticides or devices to the United States, the importer is required to submit the EPA Form 3540-I "Notice of Arrival (NOA) of Pesticides and Devices" either electronically or to the appropriate EPA regional office of the CBP port of entry where the shipment is to arrive. CBP regulations prohibit the importation of pesticides without a completed Notice of Arrival (NOA). EPA reviews the NOA and makes a determination about whether to approve the

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shipment or not. The importer must obtain EPA's approval before presenting the pesticide shipment to U.S. Customs and Border Protection (CBP) for entry into the United States. The submission and processing of the Notice of Arrival is the crucial first step in the responsible movement of pesticides and devices imported into this country. NOA review enhances our ability to assure the protection of human health and the environment by preventing noncompliant pesticides from entering U.S. commerce. If EPA determines that the pesticide is adulterated or misbranded or otherwise violates the provisions set forth in FIFRA, or is otherwise injurious to health or the environment, the pesticide or device may be refused admission or placed under a Stop Sale, Use or Removal Order.

EPA-CID investigates and partners with the Department of Justice to assist in the prosecution of cases involving the illegal importation of counterfeit, misbranded, and banned pesticides. These investigations often involve partnering with Custom Border Protection and other federal partners to hold those accountable for their criminal conduct and prevent them from bringing additional shipments of these dangerous substances into the country.

Regarding coordination with foreign countries to reduce counterfeit pesticides, OECA collaborates with member-states of the Organization for Economic Co-operation and Development (OECD) through its participation in the OECD Network on Illegal trade of Pesticides (ONIP); a network of "national competent authorities fighting illegal international trade of pesticides." Network members share best practices, brainstorm content of future training, and report on the results of enforcement and compliance initiatives. The following is a link to a collaborative ONIP document released in 2019 "Best Practice Guidance to Identify Illegal Trade of Pesticides": [https://one.oecd.org/document/ENV/JM/MONO\(2018\)35/en/pdf](https://one.oecd.org/document/ENV/JM/MONO(2018)35/en/pdf).

25. You noted the agreement with Amazon regarding the sale of unregistered, illegal pesticide products. Many other possibly illegal products are being sold on Amazon, e.g. products containing unacceptable levels of asbestos, cadmium, lead, phthalates. Has OECA worked to investigate and enforce EPA regulations on the sale of online products available on Amazon and other outlets? If so, please produce a description of these efforts and any results.

**Response:** Yes, EPA monitors unlawful sales of noncompliant products that are sold online to ensure compliance with environmental laws, including those governing pesticides (FIFRA) and chemicals (TSCA). In the TSCA context, one of the elements of the draft 2020-2021 National Program Guidance (NPG) (<https://www.epa.gov/planandbudget/draft-fy-2020-2021-office-enforcement-and-compliance-assurance-oeca-national-program>) is Border Compliance; one of the avenues for addressing border compliance is a review of products made available via e-commerce sites. A similar FIFRA focus area has been proposed for the 2020-21 NPG: "eCommerce - Focus on assuring the compliance of pesticide products offered for sale on eCommerce platforms with emphasis on those which pose the greatest risk of harm to human health or the environment." EPA works with domestic

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stakeholders such as the Association of American Pesticide Control Officials (AAPCO), partner agencies such as U.S. Customs and Border Protection, and international parties, e.g., OECD, on developing best practices and guidance for targeting violations and enforcing federal environmental laws in an e-commerce environment. EPA-CID is working with regulatory personnel within the Agency and Department of Justice to investigate and prosecute the on-line sales of illegal pesticides. We currently have open investigations and ongoing enforcement actions but cannot discuss their status.

Similarly, EPA enforces the Clean Air Act prohibition against the manufacture, sale, offering for sale, and installation of parts and components that defeat emissions controls on EPA-certified vehicles and engines. This includes both hardware and software products that hack into and reprogram electronically managed engines, and that completely remove critical emissions controls like filters and catalysts. The EPA is holding accountable the manufacturers of these aftermarket defeat devices, as well as the retailers who sell them online. The EPA has resolved numerous cases against online retailers of aftermarket defeat devices and has open investigations and ongoing enforcement actions but cannot discuss their status.

#### President's Proposed Budget for EPA

On March 11, 2019, the Office of Management and Budget released the President's proposed budget for fiscal year 2020. This budget proposes \$6.1 billion for EPA, a \$2.8 billion or 31 percent decrease from fiscal year 2019 levels.

26. What would be the impact of these proposed budget cuts on EPA's civil and criminal enforcement programs?

**Response:** The FY 2020 President's budget requests nearly \$478 million and 2,286 FTE for EPA's enforcement and compliance assurance programs. These resources will support robust enforcement and compliance assurance programs. While the budget request is a reduction from the FY 2018 enacted budget, it is important to understand that the reduction in part is due to the transfer of the Office of Environmental Justice and the work performed under the National Environmental Policy Act (NEPA) to the Office of Policy. Recognizing that states are the primary implementers of our nation's environmental laws, EPA focuses its resources where it can provide the most value, including matters affecting multiple states or tribes, serving as a backstop when a state or tribe does not address serious noncompliance in a timely fashion, and assisting states and tribes when they lack the capability, resources, or will to address noncompliance.

27. How would the proposed budget cuts impact EPA's ability to support state and tribal enforcement programs?

**Response:** OECA primarily supports state and tribal enforcement programs through capacity building and work sharing. To ensure the best use of combined

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resources where a state or tribal government is authorized to implement a federal enforcement program, OECA has recently released for public comment a revised policy on Enhancing Planning and Communication Between the EPA and states in Civil Enforcement and Compliance Assurance Work. The proposed replacement policy (to be published in the Federal Register for public comment) is available here: <https://www.epa.gov/sites/production/files/2019-04/documents/guidance-enhancingregionalstatecommunicationoncompliance-190422.pdf>.

#### Coordination with State and Tribal Enforcement Programs

28. Please explain instances from January 2017 to present where EPA had to rescind its delegated enforcement authority, including a stated rationale.

**Response:** There have been no instances between January 2017 to the present where EPA has had to rescind its delegated enforcement authority. EPA does reserve the right to take enforcement action in delegated programs and will take action from time to time, for a number of reasons, such as at the request of a state because the state lacks the expertise or resources.

29. You testified that OECA's "goal is to eliminate inefficient duplication with state programs, and to direct federal resources to help achieve the Agency's Strategic Plan Goals," has EPA conducted any assessment that has been conducted on where duplication occurred? What metrics are used to make such a determination?

**Response:** States authorized to implement federal environmental programs conduct large numbers of enforcement and compliance activities including compliance assistance, inspections and other compliance evaluations, and administrative and judicial enforcement actions. While authorized states provide EPA with information on a range of their activities, it would be too burdensome to collect and manage information on all activities. The best way to eliminate duplication in this complex environment is to ensure clear roles and responsibilities and robust planning and communication between EPA and states. Toward that end, I issued an interim policy for enhancing planning and communication between EPA and states in civil enforcement and compliance work and we are currently taking public comment on a revised, replacement policy that OECA plans to issue later this year. The interim policy is available at this link: <https://www.epa.gov/sites/production/files/2018-01/documents/guidance-enhancingregionalstatecommunicationoncompliance.pdf>. The proposed replacement to the interim policy (to be published in the Federal Register for public comment) is available here: <https://www.epa.gov/sites/production/files/2019-04/documents/guidance-enhancingregionalstatecommunicationoncompliance-190422.pdf>.

30. Please explain what types "state assist" actions EPA has conducted from January 2017 to present. For each type of action performed, please provide a total number of the types of these actions conducted for this time period.

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**Response:** State Assists are limited to instances where the region has expended substantial resources to identify the violation, developed the injunctive relief, and/or helped the state take an action to remedy the violation. In short, any instance where the state couldn't or wouldn't take the action without the EPA's help or explicitly requests the case after EPA has identified a violation would be measured as a "State Assist." EPA's civil enforcement program began asking the regions for information on civil State Assists this past year, FY 2018. In FY 2018, the regions reported 185 civil State Assists. Specifically:

- 155 Inspections
- 6 Information requests
- 24 other (generally, working with states on problem facilities, encouraging them to comply with the state or face potential EPA action)

In some instances, CID investigations of federal environmental crimes uncover other violations that are referred to state partners for potential prosecution. From January 2017 to the present, EPA-CID has completed 15 "state assists" – defined as a circumstance in which EPA-CID's investigation of an allegation leads to the prosecution of an environmental criminal case by state officials in state court.

#### Staff Resources

31. What is OECA's timeline for hiring staff to reach the office's current authorized FTE ceiling of 649?

**Response:** OECA's HQ ceiling of 649 is part of the operating plan to implement EPA's FY 2019 appropriations bill. This plan is submitted to the appropriations committees. OECA anticipates reaching that ceiling by September 30, 2019.

32. How many OECA staff have been hired for each month in 2019 to-date, and what are the hiring targets for each subsequent month this year? For what positions does OECA intend to hire?

**Response:** OECA has hired 25 new staff to date in 2019, broken out by month as follows:

January 2019:	3
February 2019:	4
March 2019:	10
April 2019:	8

An additional 33 new staff are anticipated to be onboard by the end of September 2019, broken out by month as follows:

May 2019:	4
June 2019:	5
July 2019:	5
August 2019:	10
September 2019:	9

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**The planned hires indicated above represent a broad range of specialties including scientists, engineers, analysts, attorneys, IT specialists, and criminal investigators.**

33. What is EPA's timeline for hiring new criminal investigators to reach its authorized FTE ceiling of 164?

**Response: The FTE target of 164 for criminal investigators is an internal allocation of criminal enforcement FTE among the divisions that make up the Office of Criminal Enforcement, Forensics and Training. OECA anticipates having 164 criminal investigators on board by September 30, 2019.**

34. Please detail EPA's justification for not maintaining 200 criminal investigators, as set forth in the U.S. Pollution Prosecution Act of 1990.

**Response: In 1990, Congress passed the Pollution Prosecution Act, which directed EPA to increase the number of criminal investigators over a five-year period reaching a total of 200 special agents at the beginning of FY 1996. The Act also authorized five years of appropriations to carry out the Act. EPA increased the number of criminal agents to 200 by FY 1997. However, EPA does not consider the Act to impose an ongoing obligation on the Agency. In fact, in the 22 years since 1996 EPA employed fewer than 200 more agents in 15 of those years. The Appropriations Committees have approved EPA's Operating Plan each year, whether the number of agents was above or below 200. This Administration is committed to reversing the years-long decline in the number of Special Agents and I have authorized the hiring and maintenance of 164 Special Agents. Increasing the number of agents to 200 would necessarily result in the reallocation of other criminal enforcement FTE resources, including from the National Enforcement Investigations Center.**

#### Hurricane Harvey

35. In her written testimony, Dr. Bakeyah Nelson states that: "An alarming amount of pollution escaped into the air during Hurricane Harvey because of inadequate preparation for the storm by industry, EPA, and TCEQ. Yet neither EPA nor TCEQ have taken enforcement action against many of those responsible for the largest releases: Valero Refining, Magellan Terminals Holdings in Galena Park, and Arkema's Crosby plant." Does EPA intend to take enforcement action against the parties responsible for these releases?

**Response: EPA supports hurricane preparedness and response in many ways, including the assessment of conditions at major industrial facilities in a storm's pathway to identify potential impacts and countermeasures. The Agency conducts follow up inspections and damage assessments in response to reports within EPA jurisdiction. During the response to Hurricanes Harvey, the EPA and the Texas Commission on Environmental Quality coordinated with local, state and federal**

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officials to address the human health and environmental impacts of Hurricane Harvey and its aftermath.

In coordination with the Texas Commission on Environmental Quality (TCEQ), EPA took the following actions:

Valero Refining Houston

EPA Region 6 coordinated with TCEQ on the investigation and enforcement at Valero Refining Houston. Region 6 conducted a joint inspection with TCEQ at Valero Refining on September 14, 2017, to investigate whether two tanks that were damaged during Hurricane Harvey were contributing sources of emissions in the adjacent community. The inspection included an evaluation of compliance with emission limits, installation of emission control equipment, testing, monitoring, recordkeeping, and reporting requirements. That inspection report was provided to the facility and TCEQ and posted online in December 2017. EPA Region 6 also issued an information request to Valero on September 14, 2017 to request records to determine compliance with the Clean Air Act. Region 6 evaluated the company's response and provided our evaluation to TCEQ during a series of conference calls in the Fall and Winter of 2017. TCEQ took the lead on enforcement on the Valero Houston facility and referred the case to the Texas Office of Attorney General where it is pending.

Magellan

TCEQ took the lead on investigation and enforcement at the Magellan facility. The state conducted an inspection at the facility on November 1-6, 2017, and opened an investigation into the emissions event that began on August 31, 2017 and lasted 276 hours. That incident was reviewed and referred for a formal enforcement action because Magellan failed to prevent the unauthorized emissions during an emissions event. Specifically, Magellan released approximately 2,472,401.90 pounds of VOCs when Tanks 517 and 518 had floated and released their contents of approximately 10,988 barrels of gasoline into the standing floodwater in the aftermath of Hurricane Harvey. Magellan submitted an Act of God claim to TCEQ and that Claim is under review by TCEQ's Litigation Division.

Arkema

After the incident at Arkema Crosby, EPA Region 6 sent a short, targeted Information Request to Arkema Crosby on September 7, 2017, asking questions directly related to the incident. The response to the Information Request was received over the following months, which was then reviewed by EPA Region 6, EPA's Office of Enforcement and Compliance Assurance, and their contractor, Eastern Research Group, Inc. The organic peroxides at the facility related to the incident were not Risk Management Program regulated substances identified under 40 CFR § 68.130. EPA's evaluation of the information related to the incident did not identify significant noncompliance so formal enforcement was not initiated under 112(r) of the Clean Air Act. The Arkema Crosby facility has not yet reopened after the incident.

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36. NASA reportedly offered to fly a DC-8 equipped with air samplers over areas impacted by Hurricane Harvey in order to monitor pollution levels, but reportedly both EPA and the State of Texas stated that the monitoring flights should not be conducted. Did EPA believe that these monitoring flights should not be conducted? Did EPA defer to the state of Texas as to whether NASA monitoring should be conducted and, if so, why? Did EPA independently request data collection be conducted by NASA after Hurricane Harvey? If no, why not?

**Response:** During Hurricane Harvey, the EPA and the State of Texas, through the Texas Commission on Environmental Quality (TCEQ), were working together, along with other local, state, and federal authorities and emergency responders to address the potential human health and environmental impacts of Hurricane Harvey and its effects. As part of this coordination, a Unified Command was established between the EPA, the TCEQ, the Texas General Land Office (GLO), and the U.S. Coast Guard (USCG) to oversee all emergency response efforts.

In advance of Hurricane Harvey's landfall, breathing zone air quality monitors managed by TCEQ were shut down for their protection. In order to provide the public with information regarding air quality, TCEQ asked the EPA for air quality support until these permanent breathing zone air quality monitors could be restored. The EPA responded to the request by making the Airborne Spectral Photometric Environment Collection Technology (ASPECT) system and the Trace Analytic and Gas Analysis (TAGA) system available.

By the end of the 13-day deployment, ASPECT flew 28 missions, providing over 100 hours of chemical screening, thermal imagery, and aerial imagery data from 134 Risk Management Plan facilities, 456 drinking water plants, and 105 waste water facilities impacted by Hurricane Harvey. This information was shared with the federal, state, and local governments involved in the hurricane response as part of a rapid needs assessment to aid in identifying priority target areas that needed additional attention. It also allowed them to provide the public with preliminary information about the integrity of facilities.

The EPA's TAGA system was also used to screen specific areas for target contaminants affiliated with the aftermath of Hurricane Harvey. TAGA is a self-contained mobile laboratory capable of real-time sampling and analysis of outdoor air quality in the breathing zone. If the TAGA monitoring values exceeded the TCEQ Air Monitoring Comparison Values Short Term benchmarks, hand-held monitors were employed to further isolate the area of contaminant exceedances.

Both TCEQ and EPA investigators spent numerous hours, both day and night, monitoring breathing zone air quality in neighborhoods and industrial sites with hand-held instruments, such as optical gas imaging cameras, toxic vapor analyzers, summa canisters, and portable multi-gas monitors. The use of these tools allowed for the most effective source identification for drifting volatile organic compound

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(VOC) plumes so that swift action could be taken to address the cause of these emissions.

Additionally, EPA air quality technical specialists were deployed to Houston and conducted total VOC breathing zone monitoring in the Houston Ship Channel area. These specialists used a photoionization detector and a forward-looking infrared radiometer camera to monitor areas downwind of four refining and terminal facilities. Where the team reported VOC readings of significance, additional TAGA monitoring was recommended in the area. If TAGA identified elevated levels of VOCs of benzene, personnel conducted site specific evaluations.

During Hurricane Harvey, the State of Texas specifically requested assistance from the EPA for aerial high-resolution imaging of critical infrastructure in the widespread impacted area. EPA's mobile assets afforded response personnel the capability to identify potential sources of hazardous chemicals. NASA offered to fly a DC-8 plane used as part of their Atmospheric Tomography Mission (ATom), which studies the impact of human-produced air pollution on greenhouse gases and on chemically reactive gases in the atmosphere, in impacted areas during the response to Hurricane Harvey. The State of Texas did not authorize a mission assignment for the deployment of the NASA equipment due to the ground-based monitoring network already in place, including the EPA's deployment of the TAGA, ASPECT, and Portable High-Throughput Integrated Laboratory System (PHILIS) assets.

By the time NASA made its offer, there was no specific and immediate benefit that would have been derived from the measurements to address the on-ground issues occurring at the time that were not already being addressed by previous EPA or ongoing TCEQ monitoring. Additionally, the NASA asset was not able to 'pin point' the source of releases which is what TCEQ wanted so they could address any issues at the source.

#### Ethylene oxide emissions and Sterigenics, Willowbrook facility

37. Before the 2014 National Air Toxics Assessment (NATA) information was publicly available, several communities had voiced concerns about dangerous levels of ethylene oxide emissions. What is the record of EPA receiving such concerns and what was OECA's involvement in responding to those concerns?

**Response:** We interpret this question to ask how EPA responded to concerns about ethylene oxide emissions before the 2014 NATA was released. EPA Region 5 and OAR are not aware of communities voicing such concerns prior to release of the 2014 NATA on August 22, 2018. Around that time, the Air Enforcement Division (AED) in OECA learned of concerns about Sterigenics from Regional personnel; OECA was not involved in responding to such concerns.

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38. How was OECA consulted when the ethylene oxide emissions from the Sterigenics facility in Willowbrook, IL were being addressed by EPA? How were plans put into place regarding ambient air monitoring and did other offices in EPA consult with OECA on those plans? If so, what were the recommendations of OECA career and political staff and what was EPA's response to OECA input?

**Response: In Fall 2018, at the direction of the Administrator, EPA's Office of Air and Radiation and Region 5 prepared and followed a monitoring plan to measure the ambient concentrations of ethylene oxide in the commercial and residential areas surrounding the Sterigenics facility in Willowbrook. This plan was developed with input from community leaders and based on air dispersion modeling using results of stack tests conducted at the Sterigenics facility in Willowbrook in September 2018 and subsequent technical analysis. Based on feedback from the community, EPA began monitoring in Willowbrook on November 13, 2018 and continued through the end of March 2019.**

**For limited monitoring conducted in May 2018, Region 5 coordinated with relevant individuals in the Office of Air and Radiation and Office of Research and Development.**

**On June 21, 2018, Region 5 enforcement emailed OECA management to notify them:**

- of the elevated risk near Sterigenics; and
- that the Region 5 toxics program was engaged with the facility and likely to secure voluntary ethylene oxide emission reductions.

**Subsequently, Region 5 provided OECA with occasional verbal updates and sent news articles.**

**In addition, the Waste and Chemical Enforcement Division (WCED) in OECA received a copy of a Congressional letter dated February 13, 2019, addressed to EPA Administrator Andrew Wheeler. United States Senators Tammy Duckworth and Richard J. Durbin, and United States Representatives Sean Casten, Bill Foster, Daniel W. Lipinski, and Bradley S. Schneider raised concerns about the Sterigenics facility in Willowbrook, Illinois and requested that EPA investigate allegations of misuse highlighted in the CBS News report and whether Sterigenics had violated its conditional registration for the pesticide ethylene oxide ("EtO") under FIFRA, among other things. WCED has been coordinating with EPA Region 5 and the Office of Pesticide Programs on the situation.**

39. More than 100 ethylene oxide hotspot locations were identified in the 2014 NATA results (over 100 per million cancer risk). Are these communities being informed of those air toxics assessment screening results and will any of those communities, beyond DuPage, IL receive additional study and air monitoring by EPA? How will OECA be consulted about those plans?

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Response: NATA is a screening tool, intended to help EPA and state, local, and tribal air agencies determine if areas, pollutants, or types of pollution sources need to be examined further to better understand risks to public health. NATA does not provide risk estimates for any individual facility, however NATA results can be used to identify pollutants and types of pollution sources (e.g., point sources) of greatest concern and to help set priorities for the collection of additional information. In the 2014 NATA, EPA identified 19 metropolitan statistical areas (MSAs) containing census tracts with elevated cancer risks from exposure to air toxics. Of those 19 MSAs, 18 of them have elevated risks due to emissions of ethylene oxide. These MSAs include multiple census tracts.

Consistent with OAR direction, Region 5 called mayors and other elected officials in Region 5 communities with these NATA-identified ethylene oxide hotspots shortly after the release of NATA, to explain the NATA results. Initially, this included the mayors and congressional delegation from Willowbrook, Waukegan and Grand Rapids. Region 5 has also been in contact with the mayor of Gurnee after it was discovered that Vantage Specialty Chemicals was inadvertently excluded from NATA. States, and sometimes local governments, are taking the lead on additional study of these hotspots, with support from EPA. For instance, EPA is providing advice and technical support to the Lake County, IL Health Department in their upcoming effort to monitor ethylene oxide.

At the national level, EPA is following a two-pronged approach to address ethylene oxide emissions. The Agency is reviewing air regulations that apply to industrial facilities emitting this chemical, beginning with the Agency's National Emissions Standards for Hazardous Air Pollutants (NESHAP) for commercial sterilizers and the NESHAP for Miscellaneous Organic Chemical Manufacturing. Additionally, EPA and its state and local environmental Agency partners have significant work underway to further characterize ethylene oxide emissions from facilities identified as contributing to potentially elevated risks and to identify early opportunities for emissions reduction. The agencies are focusing on census tracts in the 18 MSAs identified in NATA. The characterization work is important to ensure the currency of the potential risks identified in NATA, which is a screening tool that is intended to help EPA and state, local, and tribal air agencies determine if areas, pollutants, or types of pollution sources need to be examined further to better understand risks to public health.

The NATA released in 2018 is based on emissions inventory information from 2014, the most recent available at that time. Ambient air quality monitoring is not necessary for evaluating potential risk from individual facilities, and limitations in the current monitoring methods mean that ethylene oxide cannot be measured in the outdoor air at all levels of concern. There are other tools available to accomplish this work that may use resources more effectively, including stack testing, reviewing permits and air dispersion modeling.

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40. Will actions to address the ethylene oxide emissions be a part of the upcoming Unified Agenda of Regulatory and Deregulatory Actions? If so, will OECA career staff be part of the action (e.g. rulemaking) workgroup(s)?

**Response:** EPA is reviewing Clean Air Act regulations for facilities that emit ethylene oxide to ensure that they protect the public from significant risk. OECA is on the workgroups for the two reviews in progress: the air toxics standards for miscellaneous organic chemical manufacturing and the air toxics standards for commercial sterilizers. We expect to issue proposed updates to these two rules this summer. Both rules appeared in the Spring 2019 Unified Agenda (RIN: 2060-AU37; and RIN: 2060-AT85)

#### Settlement Agreements

41. You testified that EPA is “expanding the use of Expedited Settlement Agreements to correct less complex categories of noncompliance quickly, using a template agreement, freeing up our enforcement resources to focus on more significant noncompliance.” Please explain the process used to develop that template, including any input and direction from management and staff from other relevant EPA offices, including but not limited to the Administrator’s Office, Office of General Council, Office of Air and Radiation.

**Response:** Model documents, or templates, for Expedited Settlement Agreements differ depending on the program. See, e.g., Expedited Settlement Offer for Storm Water (Construction): <https://www.epa.gov/enforcement/expedited-settlement-offer-eso-program-storm-water-construction-may-19-2006>. The model documents typically are developed by a workgroup comprised of enforcement technical and legal staff in OECA Headquarters and the Regions. For more information on Expedited Settlement Agreements generally, please see the Revised Guidance on the Use of Expedited Settlement Agreements: <https://www.epa.gov/enforcement/revised-guidance-use-expedited-settlement-agreements>.

#### The Honorable Scott H. Peters (D-CA)

A recent news article reports on a False Claims Act lawsuit in which the whistleblower alleges that for decades several large chemical companies have concealed from the EPA certain health hazards of their isocyanate chemicals in violation of Section 8(e) of the Toxic Substances Control Act. According to the article, the whistleblower alleges that the chemical companies fraudulently prevented the EPA from learning about the Section 8(e) information because they feared the EPA might limit or even ban the sale of these chemicals if it learned about the hazards. The chemical companies also allegedly breached the EPA’s Compliance Audit Program contract by falsely certifying that they had audited and corrected past TSCA violations, when instead they were concealing this Section 8(e) health hazard information. The whistleblowers allege that these TSCA violations have “resulted in injury to many unsuspecting consumers and workers, and has prevented the EPA from discharging its hazard identification and risk assessment responsibilities.”

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1. When did the EPA first learn of the TSCA violations alleged in this whistleblower case?
2. Has the EPA obtained information about the alleged TSCA violations from the whistleblower, such as the chemical companies' "internal documents" mentioned in the news article?
3. Isn't it the duty of the EPA's Office of Enforcement and Compliance Assurance to enforce TSCA's reporting requirements?
4. Has the EPA initiated an enforcement investigation or proceeding?
5. Has the EPA at least attempted to obtain the concealed isocyanate Section 8(e) information from the chemical companies? If so, has the EPA assessed whether there are gaps or deficiencies in EPA isocyanate hazard assessments?
6. If not, why not? Specifically, does the EPA lack sufficient personnel or financial resources to uncover this type of alleged fraud or to pursue enforcement action once it is discovered?
7. What type of resources or other tools would be helpful to the EPA in enforcing TSCA?
8. Does the EPA believe that whistleblower actions like this one are useful to assist the EPA in identifying TSCA violations and enforcing TSCA obligations to protect workers and consumers from harmful chemicals?
9. According to the news article, the whistleblower believes the trial court's ruling "effectively eviscerates the EPA's statutory duty and right to collect any penalties for transmission violations that precede its determination of the violation." Has the EPA assessed whether and to what extent the ruling would affect its ability to assess penalties for TSCA violations? Does the EPA have sufficient resources, either internally or through the DOJ, to defend its penalty assessment authority against this ruling?
10. Including based on email or other communications with you, OCSPP or others at EPA, please identify the names and positions of all other witnesses/officials at EPA and the Department of Justice (including but not limited to attorneys at the Civil Division at Main Justice or at the U.S. Attorney's offices for the District of Columbia or the Northern District of California) who may have information, knowledge or documents relating to the alleged TSCA violations in the whistleblower case, and/or who have email or other documents or communications relating to the alleged violations or that case.

**Responses Combined for 1-10: The EPA first learned of the TSCA violations alleged in the whistleblower case in the fall of 2015. The whistleblower alleged that certain chemical companies breached the EPA's 1991 TSCA Section 8(e) Compliance Audit Program by falsely certifying that they had audited and corrected their TSCA Section 8(e) violations. Specifically, the whistleblower took the position that under**

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the False Claims Act companies who participated in the 1991 TSCA Section 8(e) Compliance Audit Program entered into a contract with EPA to provide all information subject to TSCA Section 8(e). This legal theory is the subject of the whistleblower litigation. For more information, the public docket can be accessed through PACER and other legal research sites. The case cite is: *United States ex rel. Kasowitz Benson Torres LLP v. BASF Corp., et al.*, Civil Action No. 16-2269 (D.D.C.) (J. Collyer). EPA does not agree that the trial court's ruling "effectively eviscerates the EPA's statutory duty and right to collect any penalties for transmission violations that precede its determination of the violation."

EPA is responsible for enforcing TSCA and whistleblower actions can be useful to assist the Agency in identifying TSCA violations. The Agency does not provide information regarding ongoing or potential investigations.

**The Honorable Brett Guthrie (R-KY)**

1. In August 2018, you issued a memorandum acknowledging that the best way to increase the environmental law compliance rate and reduce the average time from violation identification to correction was to, among other things, ensure that a broad range of compliance assurance tools are available for use. To help emphasize that the EPA's focus is increased compliance, the EPA is evolving the National Enforcement Initiatives (NEIs) program into the National Compliance Initiatives (NCIs) program.

One of the changes in the EPA's enforcement framework that has received a lot of attention is the EPA's transition away from an enforcement approach that focused on specific industrial sectors to one that focuses on broader compliance with significant public health and environmental programs.

- a. One of the criticisms of this shift is that by no longer focusing on certain industries the EPA is implying that it considers enforcement efforts for those industries to be "done" or complete. Would you agree with that characterization? Why or why not?

**Response:** EPA's transition from focusing on specific industrial sectors to one that focuses on significant public health and environmental problems is about how the Agency sets priorities and focuses EPA resources. The Agency will focus on environmental outcomes, rather than limiting our focus to specific sectors. Thus, facilities that present significant public health or environmental risks will be a priority, even if they are from multiple sectors. The transition also emphasizes EPA's goal of increased compliance and the use of not only enforcement actions, but the full range of compliance assurance tools. These tools include helping regulated entities understand their compliance obligations, helping facilities return to compliance through informal enforcement actions, building state program capacity, supporting state enforcement actions, bringing federal civil administrative actions, and bringing federal civil and criminal judicial enforcement actions. These changes

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**will help EPA achieve its longer-term strategic measure of increasing the environmental law compliance rates.**

- b. Another criticism is that shifting away from the NEI approach will take away the deterrence effect for the industries that were previously listed by the EPA. Can you speak to whether that is true and if the deterrence effect has gone away with the shift to an NCI program?

**Response:** EPA will implement the NCI program with the goals of increasing the environmental law compliance rate and reducing the time from violation identification to correction, two of the Agency's longer-term strategic goals. To accomplish these goals, EPA will continue to conduct compliance monitoring activities such as onsite inspections as well as offsite reviews and evaluating electronic data and other records. These activities, along with applying our full range of compliance assurance tools, will ensure that EPA's enforcement and compliance assurance program will have a positive effect on compliance rates and will create a strong deterrence effect.

- 2. An Environmental Council of the States (ECOS)-EPA Workgroup was established to improve EPA-state collaboration on compliance assurance and their final report notes that the workgroup influenced EPA's transition from NEIs to NCIs. Can you describe the input provided from the states and how it influenced EPA's decision to make this shift?

**Response:** The Environmental Council of the States (ECOS) began the Cooperative Federalism 2.0 initiative in June 2017 to improve the working relationship between state environmental agencies and the U.S. Environmental Protection Agency (EPA). Shortly afterwards, ECOS and EPA established a joint Compliance Assurance Workgroup to find ways to improve the state-federal relationship in the context of compliance assurance. ECOS had issued the document entitled "Cooperative Federalism 2.0" which identified principles that informed the workgroup including: "U.S. EPA should involve states as partners early and often in developing federal environmental and public health policy, and should specifically seek state and other stakeholder input on the efficacy of new or changed standards or program requirements"; "U.S. EPA should respect the states' role as the primary implementer of national environmental regulatory programs..."; and, "U.S. EPA should seek to demonstrate [key outcomes] through environmental and service delivery (i.e., time) "outcome" metrics rather than "output" metrics".

The dialogue among the senior state and EPA leaders helped OECA consider ways to improve the National Enforcement Initiatives (NEIs) that ultimately led to three primary changes to the NEIs (now National Compliance Initiatives or NCIs): 1) emphasizing compliance assurance tools beyond enforcement; 2) engaging earlier and more continuously with states in the NCI selection, development, and implementation process; and, 3) expanding the NCI cycle to four years to better align with the Agency's two-year National Program Guidance cycle.

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**The Honorable Michael C. Burgess, M.D. (R-TX)**

1. Assistant Administrator Bodine, since 2017, the Environmental Protection Agency (EPA) has sought to work together with the states and local communities to ensure the proper management and care of our nation's environment and protect the public health of its citizens. This approach stands in stark contrast to that of the previous administration, which leaned heavily on the punitive measures available to the EPA to enforce the compliance of federal environmental law.
  - a. Assistant Administrator Bodine, can you elaborate on the actions the EPA has taken to develop consensus between the state and federal agencies toward ensuring compliance with federal laws regarding the environment and public health?

**Response:** In June 2017, The Environmental Council of the States (ECOS) began the Cooperative Federalism 2.0 initiative to improve the working relationship between state environmental agencies and the U.S. Environmental Protection Agency (EPA). Shortly afterwards, ECOS and EPA established a joint Compliance Assurance Workgroup to find ways to improve the state-federal relationship in the context of compliance assurance. ECOS had issued the document entitled "Cooperative Federalism 2.0" which identified principles that informed the workgroup including: "U.S. EPA should involve states as partners early and often in developing federal environmental and public health policy, and should specifically seek state and other stakeholder input on the efficacy of new or changed standards or program requirements"; "U.S. EPA should respect the states' role as the primary implementer of national environmental regulatory programs..."; and, "U.S. EPA should seek to demonstrate [key outcomes] through environmental and service delivery (i.e., time) *outcome* metrics rather than *output* metrics."

The dialogue among the senior state and EPA leaders helped OECA consider ways to improve the National Enforcement Initiatives (NEIs) that ultimately led to three primary changes to the NEIs (now National Compliance Initiatives or NCIs): 1) emphasizing compliance assurance tools beyond enforcement; 2) engaging earlier and more continuously with states in the NCI selection, development, and implementation process; and, 3) expanding the NCI cycle to four years to better align with the Agency's two-year National Program Guidance cycle.

In addition, in January 2018, I issued an interim policy for enhancing planning and communication between EPA and states in civil enforcement and compliance work and we are currently taking public comment on a revised, replacement policy that OECA plans to issue later this year. Input from ECOS and the states played an important role in the development of these documents and we look forward to receiving further input from states on the proposed replacement document. The interim policy is available at: <https://www.epa.gov/sites/production/files/2018-01/documents/guidance-enhancingregionalstatecommunicationoncompliance.pdf>.

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The proposed replacement to the interim policy (to be published in the Federal Register for public comment) is available here:  
<https://www.epa.gov/sites/production/files/2019-04/documents/guidance-enhancingregionalstatecommunicationoncompliance-190422.pdf>.

- b. As seen in FY 2018's EPA Enforcement and Compliance Annual Results report, there has been a trend of declining inspections and evaluations conducted by the EPA since 2013. In 2018, there were nearly half the number of inspections as in 2008.
  - i. The report mentions that "data analytics and other tools" have increased the EPA's inspection efficiency. Can you explain how data analytics better inform resource allocation? Can you give examples of what "other tools" are used to increase efficiency?

**Response:** EPA develops and maintains a series of analytic tools that are available to state and EPA compliance staff. These tools have the capacity to identify potential pollution exceedances and target potential non-compliance with environmental requirements under the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, and Safe Drinking Water Act related to those hotspots. The tools integrate a variety of databases containing information on regulatory compliance, pollutant loadings and ambient environmental conditions. Use of these tools allow states and EPA to develop inspection plans that are more focused on potential instances of non-compliance and better informed by key data indicators.

EPA is also developing new predictive data analytics approaches that also seek to better focus inspections and investigations on the worst environmental problems and non-compliance. Notably, OECA is nearly completed with a predictive analytics study, in cooperation with the University of Chicago, for the RCRA hazardous waste program that began in 2017. The study uses machine learning algorithms to select inspection targets. Preliminary results suggest that use of the algorithms is associated with higher rates of non-compliance detection during inspections. EPA and the University of Chicago are continuing the study in an effort to statistically validate the results; it is anticipated that the study results will be released in 2020. EPA also plans to expand the use of machine learning algorithms to support inspection targeting in other areas – particularly the CWA NPDES program. EPA has also been pilot testing innovative enforcement targeting approaches that involve integration of databases to identify potential discrepancies in hazardous waste shipments and using the results to target inspections.

EPA is also piloting other uses of enhanced data analytics and fraud detection processes to automate and improve targeting inspections and investigations. EPA has instituted requirements for comprehensive electronic reporting of permit compliance information in the Clean Water Act NPDES permit program. Electronic reporting of compliance information makes it easier to detect instances of non-compliance because many of these violations were previously reported on paper

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forms that EPA and states could not easily review comprehensively. With the advent of electronic reporting, EPA is now using those data to focus EPA and state enforcement investigations on entities with the most significant or chronic instances of non-compliance. EPA is also beginning to implement automated reporting fraud detection programs.

- ii. Has this administration's effort to seek compliance through cooperation with the state and local entities contributed to this efficiency?

**Response:** Yes. The *Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States* (referenced in the answer provided to the prior question) that I issued calls for the EPA Regions to engage each of the authorized states in periodic joint work planning meetings at a senior management level. Per the Interim Guidance, these meetings are to cover the full range of enforcement and compliance topics with the goal of determining "how the combined resources of the state and the EPA could be used to effectively address these needs and ensure a level playing field. The implementation of this policy has served to enhance the EPA-state coordination leading to enhanced efficiency.

- iii. How do increasingly more efficient inspections benefit compliance, specifically in the realm of public health?

**Response:** EPA continues to incorporate new technologies that improve the effectiveness, efficiency and timeliness of the compliance inspection process. For example, EPA is making use of infrared (IR) video cameras to detect emission of hydrocarbon vapors from petroleum storage tanks, piping, and natural gas and petroleum wellhead production sites. These vapors are not visible with the naked eye, but leaks can quickly be spotted with the IR camera, allowing EPA and regulated entities to quickly and efficiently focus attention to where fixes need to be made. EPA is also developing digital tools for use by inspectors in the field to make the collection of evidence and documentation of inspection observations more efficient and timely, saving inspectors valuable time in organizing, writing up, and finalizing their inspection reports. The sooner inspector observations are conveyed to regulated entities, the quicker that the entities can address identified problems and reduce emissions that impact public health and the environment.

- c. While compliance is the end goal, recent media reports claim the EPA's enforcement has been subdued. In 2018 however, the EPA broke a nearly decade-long decline in the amount of criminal cases opened. Furthermore, the agency sentenced criminal defendants to a total of 73 years of incarceration the same year. Can you explain the importance of criminal penalties in achieving EPA's mission of compliance with federal environmental and public health standards?

**Response:** The mission of the EPA's criminal enforcement program is as important as any in government - to investigate, help prosecute and deter the most egregious

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environmental offenders. Environmental crimes are primarily motivated by the desire to illicitly make or save money. Perpetrators frequently enjoy an unfair competitive advantage over responsible businesses that are committed to meeting their pollution control responsibilities. Severe criminal fines aim to shift this financial calculus to ensure “crime does not pay.” An even more powerful deterrent is the threat of incarceration, a cost which cannot be passed on to the customer. Thus, criminal penalties create a powerful deterrent against future violations, protecting human health and the environment while ensuring a level economic playing field.

2. In June of last year, the EPA and Magnolia Waco Properties, LLC, which does business as Magnolia Homes, reached a settlement to resolve alleged violations of the Toxic Substances Control Act (TSCA) Lead Renovation, Repair and Painting Rule (RRP Rule), related to home renovations conducted without adequate lead paint protections as depicted on the television show “Fixer Upper”. Under the terms of the settlement, Magnolia will take steps to ensure compliance with lead-based paint regulations in future renovation projects, address lead-based paint hazards at high-risk homes in Waco, Texas, and educate the public to lead-based paint hazards and appropriate renovation procedures.
  - a. In your opinion, was one of the reasons that this regulation was not complied with by this party because of the complexity of the laws and regulations relating to the RRP Rule?

**Response:** The TSCA Lead Renovation, Repair and Painting Rule requirements are not overly complex or difficult. EPA continues to work with the regulated community to increase awareness of the requirements. Although I cannot speculate about the thinking or reasoning behind the actions of any regulated firm, I can say that after EPA contacted this company about its apparent non-compliance with the RRP Rule, the company took immediate steps to come into compliance.

- b. What are you doing more generally to address lead exposure?

**Response:** OECA helps to prevent and reduce lead exposure by assuring compliance, supporting authorized states in implementing federally-equivalent programs, providing information and compliance assistance to the regulated community, ensuring clean-ups where legal authorities apply and other activities.

For example, in FY2018:

- EPA had 140 lead-based paint enforcement actions. Also, we provided education and outreach to industry and consumers in our civil enforcement press bundle (<https://www.epa.gov/newsreleases/epa-enforcement-actions-help-protect-vulnerable-communities-lead-based-paint-health-0>); in our civil-criminal Enforcement Alert (<https://www.epa.gov/enforcement/enforcement-alert-lead>); and in our multi-media Lead Bulletin (<https://www.epa.gov/enforcement/enforcement-lead-bulletin-fy-2018>).
- OECA has a multi-program workgroup focused on sharing information and addressing lead issues. OECA issues a National Program Guidance (NPG) which

identifies national compliance and enforcement priorities, discusses national direction for all compliance assurance programs, and identifies activities to be carried out by authorized programs. OECA has identified lead risk reduction as a focus area under the TSCA program in the NPG. The NPG set forth specific activities in furtherance of this focus area. To support these activities, OECA provides compliance monitoring guidance, including the RRP Inspection Manual and TSCA Compliance Monitoring Strategy, as well as forums for inspector training and information. In addition to overseeing EPA's lead compliance monitoring activities, OECA provides grant funding to states to conduct lead inspections and to strengthen their ability to address environmental and public health threats from toxic substances such as lead-based paint. EPA provided \$1,748,000 in such grants in 2018 and \$2,000,000 in 2019.

- EPA entered into or issued over 30 enforcement actions under the Superfund law at sites with lead contamination in soils, water, demolition debris, tailings piles, sediments and other situations. These are in addition to the Superfund actions initiated in previous years that are still ongoing to address lead contamination.

EPA continues to work with states, territories, and tribes to help address lead in drinking water.

EPA released the Federal Lead Action Plan on December 19, 2018, which was a product of the President's Task Force on Environmental Health Risks and Safety Risks to Children (Task Force). The Task Force is the focal point for federal collaboration to promote and protect children's environmental health. Established in 1997 by Executive Order 13045, the Task Force comprises of 17 federal departments and offices. Currently, the Task Force is co-chaired by EPA Administrator Andrew Wheeler and HHS Secretary Alex Azar.

The Lead Action Plan is a blueprint for reducing lead exposure and associated harms through collaboration among federal agencies with a range of stakeholders, including states, tribes and local communities, along with businesses, property owners and parents.

The four goals of the Lead Action Plan are:

- Goal 1: Reduce Children's Exposure to Lead Sources
- Goal 2: Identify Lead-Exposed Children and Improve their Health Outcomes
- Goal 3: Communicate More Effectively with Stakeholders
- Goal 4: Support and Conduct Critical Research to Inform Efforts to Reduce Lead Exposures and Related Health Risks

EPA released the Implementation Status Report for EPA Actions under the December 2018 Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts (Status Report). The Status Report describes EPA activities that are being conducted in support of the Lead Action Plan including those performed in OECA. Through the President's Task Force on Environmental

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**Health Risks and Safety Risks to Children, EPA continues to work with its federal partners to improve coordinated activities and implement objectives of the Lead Action Plan. The Status Report outlines EPA's commitment to work strategically and collaboratively on the Task Force to implement the Lead Action Plan.**

**The Honorable Morgan Griffith (R-VA)**

1. Ms. Bodine, What is OECA doing to encourage the regulated community to identify, self-report and resolve violations of environmental law? Does OECA have sufficient flexibility in its penalty and injunctive relief policies to encourage self-reporting?

**Response: On May 15, 2018, EPA announced a renewed emphasis on encouraging regulated entities to voluntarily discover, promptly disclose, expeditiously correct, and take steps to prevent recurrence of environmental violations. Specifically, EPA's May 15 announcement clarified several features of the Agency's already highly successful self-disclosure policies and noted that EPA is issuing further clarifications in response to common misconceptions in the regulated community that may be discouraging even greater levels of self-reporting. Between FY 2017 and FY 2018, the number of facilities that voluntarily disclosed violations and certified a return to compliance increased by 47%, from 1,062 to 1,561**

**As noted in the May 15 announcement, EPA also stated that it is expanding its outreach and education efforts to the regulated community and other stakeholders concerning its 2008 New Owner Policy, a policy that provides additional flexibility to new owners who disclose violations.**

**In October 2018, EPA Region 8 signed a memorandum of agreement with Wyoming Department of Environmental Quality to encourage use of Wyoming self-audit law. See <https://www.epa.gov/wy/epa-self-audit-agreement-state-wyoming>**

**Also, on March 29, 2019, EPA finalized a separate voluntary disclosure program designed specifically for new owners of upstream oil and natural gas exploration and production facilities. In addition to the incentives that EPA provides in its self-disclosure policies, the Agency's media-specific penalty and injunctive relief policies provide flexibility to encourage self-reporting of violations.**

Subcommittee on Oversight and Investigations  
Hearing on  
“EPA's Enforcement Program: Taking the Environmental Cop Off the Beat”  
February 26, 2019

**The Honorable Ronald J. Tenpas, JD, Partner, Vinson & Elkins LLP**

**The Honorable Brett Guthrie (R-KY)**

1. In your testimony, you caution against critiques of particular case decisions because there are oftentimes so many complexities of a case that are only known to the government and not the public.

- a. To the extent you are able, can you explain some of the factors that might impact the government's enforcement approach in any given case?

*Enforcement in any given case is influenced by factors such as the following:*

- *How significant is the deviation from the legal requirement (e.g. repeated failures to file a required government report versus a single or episodic failure to file)?*
- *The nature of the legal requirement at issue (e.g. a failure to file a required report versus actual acts of pollution that endanger human health or the environment)?*
- *How consequential was the violation (e.g. loss of life, loss of property, disruption to the community)?*
- *How deliberate was the violation (e.g. did company officials know of the violation and sanction it or were they unaware that the legal requirement existed)?*
- *To the degree the violation was known or understood at the time it occurred, how senior were the company officials who had knowledge (e.g. was it known only to a small group of workers or known to senior management)?*
- *How strong is the evidence supporting the violation (e.g. is there a single witness or multiple witnesses to important events; are there reasons to distrust witnesses on whom the government would rely either because they have incentives to lie, such as animus toward the company, or because a witness's account of events has been inconsistent over time)?*
- *How clearly established is the regulatory requirement that is alleged to have been violated (i.e. are there plausible legal arguments that conduct the government intends to prove does not even violate the law)?*
- *How have prior similar cases been resolved?*
- *Does the case involve a regulatory requirement that has been made an enforcement or compliance priority because of perceived problems of*

*indifference or regular violations occurring over a long period by multiple industry participants?*

- *What is the prior enforcement and compliance record of the specific company or facility involved (i.e. is this the first violation or one of a repeating pattern)?*
- *Did the company have a compliance and training program at the time of the violation, and, if so, how effective was that program at the time of the violation?*
- *What actions did the company take to remediate any problems and to prevent a recurrence?*
- *Did the company self-report the matter or did the government detect it independently?*
- *Did the company cooperate in the investigation of the matter?*

*There are certainly other factors that can come into play, even beyond these, but these are factors that frequently recur in my experience.*

- b. Can you elaborate on why it may be considered “unjust” to hit a minor violation with a major penalty to create a deterrence effect? What are the advantages of doing so?

*Taking a relatively minor violation and imposing a major penalty is in tension with a widely-accepted notion of common law jurisprudence that each individual defendant deserves to be treated equally and according to the blameworthiness of the defendant's own specific conduct. Admittedly, our enforcement and penalty regime must manage several competing values (such as deterring future misconduct by others who will now fear similar punishment). But even given these competing objectives, over-penalizing a minor violation for the sake of deterrence essentially abandons our duty of fairness to an individual defendant in order to achieve some perceived larger common good. One thing I prize about the United States, the rule of law, and our system of justice is that we consistently reject this way of thinking—we are consistently skeptical of claims that fairness to individuals must be sacrificed to achieve some greater common good. Much of our Bill of Rights is designed to prevent this approach, as are many other legal protections. Perhaps a simple example can capture this thought most readily: nobody would accept even one defendant receiving life imprisonment for going 60 miles per hour in a 55 miles per hour zone, even though such a penalty system would surely encourage greater obedience to the traffic laws. That same principle holds true across all areas of law. Violations vary in their significance. It is thus critical that we strive to calibrate the penalty in a particular case to the seriousness of the violation.*

**The Honorable Michael C. Burgess, MD (R-TX)**

1. In your testimony, you describe two different matters that you and your team resolved during your time as an Assistant Attorney General. These include the largest Clean Air Act criminal penalty achieved up until that time and the largest Clean Air Act injunctive civil environmental settlement, involving an estimated \$4.6 billion in injunctive relief.

- a. Can you describe how long each of these matters took from start to finish to resolve?

*I do not have access to the government records that would show precise dates, but each took several years to investigate and resolve. I believe the Clean Air Act criminal matter referenced in my testimony took approximately 2.5 years from the date of the incidents that generated the prosecution until resolution through a plea agreement. The investigation of the Clean Air Act civil matter referenced in my testimony had begun before I was appointed Assistant Attorney General. From my general familiarity with such matters, I expect that matter took at least three years from the start of the investigation to resolve and may have taken considerably longer. It would not surprise me if that matter lasted as long as five years from start to finish.*

- b. How did the Department of Justice work with the EPA to resolve these matters?

*In each matter, the Department of Justice worked with the EPA in a cooperative manner. Generally, EPA provided the primary investigative resources for each case—for the criminal matter this was special agents with criminal investigative authority and for the civil matter this was legal and other expert technical staff within EPA's Office of Enforcement and Compliance Assurance. The Department of Justice would provide the lawyers likely to form the trial team if the matter went as far as a contested trial and would help guide each overall investigation to ensure a strong factual and evidentiary record to support an enforcement action. In each of the cases I referenced in my testimony, the defendant had a desire to resolve the matter without a trial and before a formal case was even initiated. The Department of Justice attorneys led the negotiating activity with the counsel for the defendant in each case, but those DoJ attorneys worked closely with their EPA counterparts to identify appropriate civil settlement and criminal plea agreement terms, respectively.*

- c. Did the Department of Justice work with state and local governments to resolve these matters? [If yes, please describe]

*In the criminal matter, I do not recall substantial state involvement. But it would not be unusual in criminal matters for state agencies to contribute investigative resources, such as agents who work on a combined federal-state environmental*

*investigations task force in their region or state prosecutors who are designated as "Special Assistant United States Attorneys" so that they are authorized to appear in federal court representing the United States on federal criminal matters. Factors that can affect the nature and shape of federal-state cooperation on a particular matter also include that, generally, under the Department of Justice's controlling policy, the federal government disfavors duplicative federal and state criminal prosecutions and a State legally cannot be a "co-sovereign" in a federal criminal matter. See Department of Justice Manual, Section 9-2.031, Dual and Successive Prosecution Policy ("Petite Policy"), available at <https://www.justice.gov/jm/jm-9-2000-authority-us-attorney-criminal-division-mattersprior-approvals#9-2.031>. As a result, the Department of Justice will sometimes consider "deferring" to a state criminal prosecution if one is pursued.*

*In the civil matter that I referred to in my testimony, there was coordination with several State Attorneys General who had an interest in the matter. Those States, through their Attorneys General, participated in the ultimate settlement. When the case was formally filed, with the settlement already agreed to, subject to public comment, those States participated as co-plaintiffs in the suit and were co-signatories to the settlement. This kind of cooperation is not unusual.*

2. For the last ten years in private practice, you have interacted with both the Department of Justice and the EPA on behalf of clients on matters involving the Clean Air Act, the Clean Water Act, etc.
  - a. Can you describe how the EPA typically works with companies to help ensure compliance with environmental statutes?

*The EPA works with companies in several ways to help ensure compliance. First, the EPA adopts the specific regulations that describe the detailed requirements with which companies must comply. Ideally, such regulations are clear and readily understood in application so that companies can have a fair opportunity to meet their compliance obligations. Second, EPA publishes guidance documents that can help to clarify the EPA's views on what it believes the regulations demand for a particular industry or under a particular requirement. There is sometimes disagreement within the regulated community whether such guidance documents accurately restate or explain the regulatory requirements, but such guidance documents, which lack the force of law (unlike formally adopted regulations), at least provide some additional clarity regarding the Agency's thinking. Third, the EPA (sometimes on its own and sometimes pairing with other entities such as trade groups or environmental non-governmental organizations, or state and local agencies) participates in public events, training seminars and similar activities and provides staff who speak at events such as industry conferences as a means to informally keep companies current on various issues. Fourth, at specific facilities, the EPA will conduct inspections and, as part*

*of such inspections, it will sometimes (but not always) provide an "exit interview" or "close-out discussion" with the facility staff, identifying matters of concern that were identified, allowing the facility to take immediate corrective action.*

*Finally, I would note that it is likely the EPA's view that many of its "enforcement actions" constitute "working with the companies" to help ensure compliance. I do not think many companies regard such enforcement "force" as being equivalent to "working with the company" but I have, at times, heard EPA staff describe their formal enforcement litigation activities in terms like "working with the companies" or similar language.*

- b. In your opinion, what actions can the EPA take that are likely to result in the highest compliance rate with environmental laws after EPA identifies a company that is not in compliance with federal laws and regulations?

*In my view, the best and most effective course of action for achieving high compliance after violations are identified is two-fold: (a) the EPA (or the state or local environmental equivalent agency) should give prompt and clear notice to the company of the Agency's concerns that violations are occurring and identify what the Agency considers to be necessary to correct the violations, and (b) the Agency must be prepared to have a frank and open-minded discussion with the company's representatives (legal or regulatory) regarding the claimed violations and any defenses the company has to the Agency's claim that violations have occurred. Prompt notification, such as through a post-inspection debrief (see answer 2a, above), allows companies to take action quickly for those violations it acknowledges, and frank and prompt follow-on discussions on disputed items can often clarify whether a violation is actually occurring and/or identify mutually acceptable solutions that can be promptly implemented.*

*Finally, I would note that bringing a level of consistency and stability to the regulatory requirements and their enforcement is essential. Compliance is fostered when there is general respect for the EPA in its administration of the laws and regulations. Few things breed cynicism and disrespect more quickly and powerfully than the sense that the EPA is being inconsistent or is changing the rules arbitrarily through new interpretations or enforcement theories, rather than changing the regulatory requirements through accepted rule-making processes of formal notice and comment rule-making.*