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REPORT



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EPA's Fiscal Year 2017 Statistics Reflect Accelerating Decline in Federal Environmental Enforcement

*By Matthew D. Thurlow**

Environmental enforcement statistics for the U.S. Environmental Protection Agency declined in fiscal year 2017. The decrease in federal environmental enforcement reflects a long-term trend that began during the Obama administration and appears likely to accelerate in the Trump administration.

The U.S. Environmental Protection Agency (“EPA”) released its environmental enforcement statistics for fiscal year 2017 (“FY 2017”). Because EPA’s fiscal year ends in September, the newly released statistics capture the final three plus months of the Obama administration and slightly more than the first eight months of the Trump administration. The enforcement statistics appear noteworthy on their face: commitments of \$1.2 billion by private parties to clean up contaminated sites; criminal fines, restitution, and mitigation of approximately \$2.98 billion; increases in the value of actions to improve compliance; and \$1.6 billion in collected administrative and civil judicial penalties.¹ Despite these seemingly impressive statistics, the enforcement results actually reflect a rapid decline in environmental enforcement by EPA.² This steep decline in environmental enforcement began during the Obama administration and appears to be accelerating during the Trump administration.

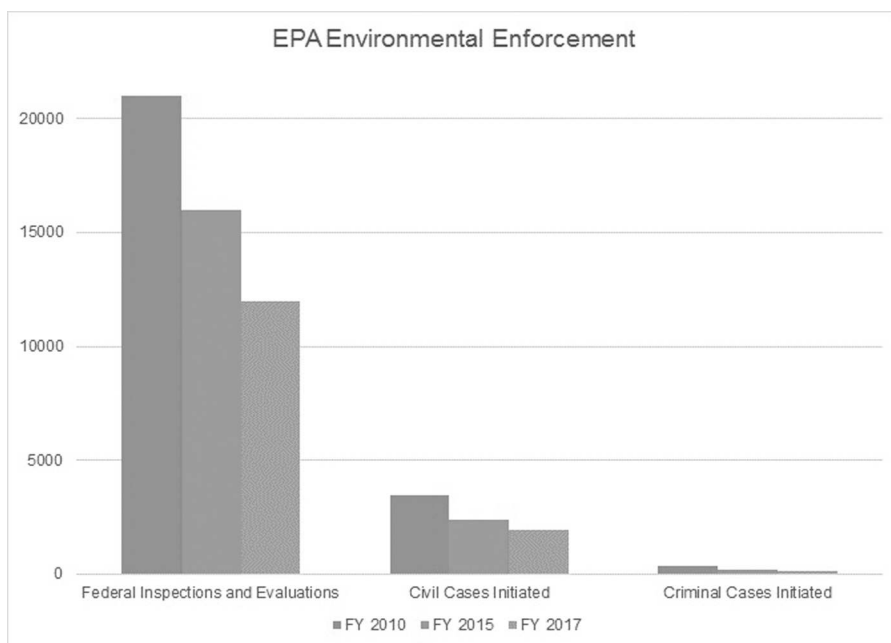
ENVIRONMENTAL ENFORCEMENT

It can be difficult to assess environmental enforcement statistics from year to year because federal environmental enforcement cases typically take several years to reach resolution. Moreover, extremely large cases, like the Deepwater Horizon oil spill, can skew enforcement results in any given year.

* Matthew D. Thurlow is a partner at Baker & Hostetler. He formerly worked as an environmental enforcement attorney at the U.S. Department of Justice. Mr. Thurlow may be reached at mthurlow@bakerlaw.com.

¹ EPA Announces 2017 Annual Environmental Enforcement Results, U.S. EPA, Feb. 8, 2018, available at <https://www.epa.gov/newsreleases/epa-announces-2017-annual-environmental-enforcement-results>.

² Eric Lipton and Danielle Ivory, *Under Trump, E.P.A. Has Slowed Actions Against Polluters, and Put Limits on Enforcement Officers*, N.Y. Times (Dec. 20, 2017).



Despite the difficulty of assessing the progress in environmental enforcement in any given year, there is a clear pattern of declining environmental enforcement by EPA over the past decade. The number of inspections and evaluations by EPA has declined from over 20,000 inspections in fiscal year 2010 to slightly more than 15,000 inspections in fiscal year 2015 to approximately 11,700 inspections in fiscal year 2017.³ Likewise, the number of civil environmental enforcement cases initiated by EPA has dropped from 3,436 cases in fiscal year 2010 to 2,378 cases in fiscal year 2015 and only 1,938 cases in fiscal year 2017.⁴ The number of criminal enforcement cases initiated by EPA has also dropped from approximately 350 cases in fiscal year 2010 to 213 cases in fiscal year 2015 and 115 cases in fiscal year 2017.⁵

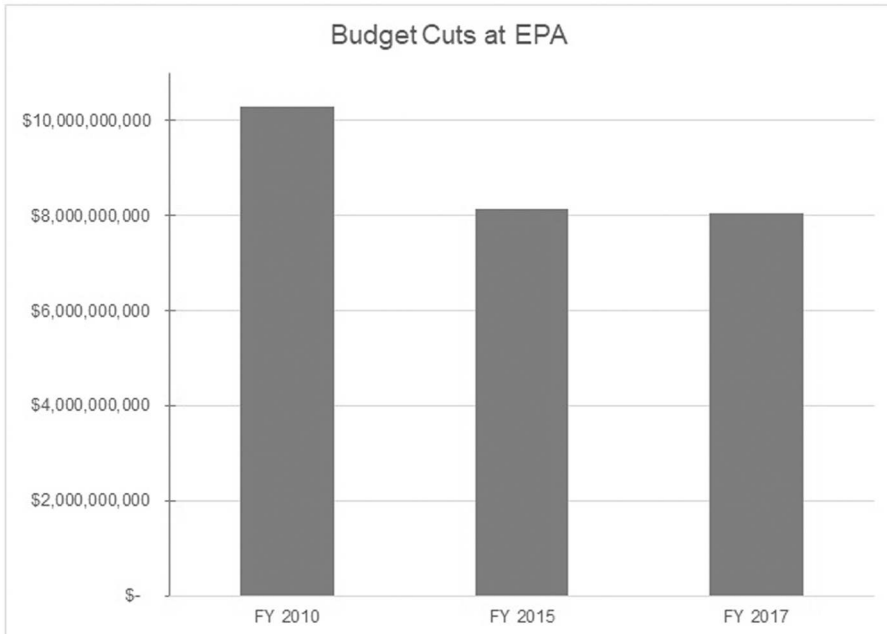
While there is little doubt that federal environmental enforcement declined in the first year of the Trump administration, it had already started a steady decline under the Obama administration. Indeed, the Obama-era 2014–2018 strategic plan for EPA anticipated a 25 percent drop in inspections and evaluations below baseline for the period ending in 2018 and a 28 percent drop

³ Enforcement Annual Results Analysis and Trends for Fiscal Year 2017, U.S. EPA, Feb. 8, 2018, *available at* <https://www.epa.gov/enforcement/enforcement-annual-results-analysis-and-trends-fiscal-year-2017>.

⁴ *Id.*

⁵ *Id.*

in initiated civil judicial and administrative enforcement cases.⁶ The actual drop in annual inspections and evaluations and initiated civil judicial and administrative enforcements has been even steeper than predicted.⁷ Year-over-year declines between fiscal year 2016 and 2017—which, as noted above, are not an apples-to-apples comparison of the Obama and Trump administrations because EPA's FY 2017 began on October 1, 2016—indicate a drop of approximately 15 percent in environmental inspections and evaluations and a drop of approximately 20 percent in initiated civil judicial and administrative enforcement cases.



The declines in environmental enforcement by EPA over the past decade can be traced to a variety of factors, including budget cuts, staff reductions, and EPA's increasing reliance on self-reporting of violations, electronic monitoring, and data sharing with the public (as described in EPA's Next Generation Compliance strategic initiative). EPA's budget has been repeatedly slashed over the past decade, from a recent peak of \$10.3 billion in fiscal year 2010 to \$8.14

⁶ U.S. EPA's 2014–2018 Strategic Plan, p. 73–74, April 10, 2014, available at https://www.epa.gov/sites/production/files/2014-09/documents/epa_strategic_plan_fy14-18.pdf.

⁷ The drop in annual inspections and evaluations between fiscal year 2012 and fiscal year 2017 has been approximately 40 percent, and the drop in initiated civil judicial and administrative enforcement cases has been approximately 36 percent during that period. See *supra* note 3.

billion in fiscal year 2015 to \$8.06 billion in fiscal year 2017.⁸ Although the final fiscal year 2018 budget for EPA is more in line with the past few years, President Trump initially proposed a budget of \$5.655 billion.⁹ Likewise, EPA's staff has been eroding over the past decade from 17,278 employees in fiscal year 2010 to 14,725 employees in fiscal year 2015. Despite a slight uptick to 15,408 EPA employees in fiscal year 2017,¹⁰ EPA has offered and obtained hundreds of voluntary buyouts and proposed further staff reductions to 11,611 full-time employees in fiscal year 2018.¹¹

NEXT GENERATION COMPLIANCE

During the Obama administration, Next Generation Compliance was touted as a means of addressing environmental compliance and reducing the need for traditional enforcement, including litigation, through the clarification of and streamlining of environmental permits and regulations, use of electronic self-reporting, new environmental monitoring technology, and improved transparency.¹² EPA signaled that it sought to increase the role of states, tribes, and the public in assessing and enforcing environmental compliance by automating environmental monitoring and reporting and increasing the amount of environmental data available to the public.

While the Trump administration recently vacated an Obama-era directive requiring the inclusion of Next Generation Compliance principles in all of EPA's civil settlements, EPA's 2018-2022 Strategic Plan and other recent EPA guidance appear to continue to endorse Next Generation Compliance principles.¹³ The current administration appears to be using Next Generation Compliance tools to serve its own policy goals including increased collaboration and

⁸ EPA's Budget and Spending, *available at* <https://www.epa.gov/planandbudget/budget> (last updated Aug. 29, 2017).

⁹ U.S. EPA, FY 2018 Budget, *available at* <https://www.epa.gov/planandbudget/fy2018>.

¹⁰ *See supra* note 8.

¹¹ FY 2018 EPA Budget in Brief, p. 1, May 2017, *available at* <https://www.epa.gov/sites/production/files/2017-05/documents/fy-2018-budget-in-brief.pdf>; Brady Dennis, *EPA under Trump shrinks to Reagan-era staffing levels*, Washington Post, (Sept. 6, 2017).

¹² Next Generation Compliance Strategic Plan 2014–2017, U.S. EPA Office of Enforcement and Compliance Assurance, October 2014; Cynthia Giles, *Next Generation Compliance*, The Environmental Forum, p. 22 (September-October 2013).

¹³ Susan Parker Bodine, *The Appropriate Use of Compliance Tools in Civil Enforcement Settlements*, U.S. EPA, April 3, 2018, *available at* <https://www.epa.gov/sites/production/files/2018-04/documents/memoonappropriateuseofcompliancetoostoolsincivilenforcementsettlements.pdf>; FY 2018-2022 EPA Strategic Plan, Feb. 12, 2018, *available at* <https://www.epa.gov/sites/production/files/2018-02/documents/fy-2018-2022-epa-strategic-plan.pdf>.

delegation of environmental enforcement responsibility to states and tribes.¹⁴ EPA recently announced it will defer to states on most environmental compliance and enforcement matters, except in specified circumstances, including instances in which there are deficient in-state environmental programs, significant noncompliance not addressed by states, requests for enforcement by states, cases involving cross-boundary pollution or defendants with operations in multiple states, cases involving government-owned facilities, emergencies, and serious criminal matters.¹⁵

CONCLUSION

In light of EPA's decision to turn over much of its environmental enforcement docket to the states, EPA's enforcement results will likely continue to erode at an accelerated pace. In the environmental investigations Trump's EPA does choose to pursue, the agency has announced it may also rely more on informal environmental enforcement to resolve environmental violations.¹⁶ An emphasis on informal resolution of environmental violations appears aimed at avoiding litigation, conserving agency resources, speeding compliance, and potentially minimizing the costs of compliance and penalties for environmental violators. This approach, combined with anticipated budget cuts and additional staff reductions, will almost certainly result in further reductions in the environmental enforcement footprint of EPA in the near future.

¹⁴ National Program Manager (NPM) Fiscal Years 2018–2019, Office of Enforcement and Compliance Assurance, Sept. 29, 2017, *available at* <https://www.epa.gov/sites/production/files/2017-10/documents/fy18-19-oeca-npm-guidance.pdf>; Susan Parker Bodine, Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States, p. 2, Jan. 22, 2018 (“With respect to inspections and enforcement, the EPA will generally defer to authorized States as the primary day-to-day implementer of their authorized/delegated programs, except in specific situations.”).

¹⁵ *Id.* at 3.

¹⁶ Inside EPA, *Bodine Says “Informal” Enforcement May Cut Cases, But Speed Compliance* (Feb. 1, 2018).