

Environmental Civil and Criminal Enforcement Current Trends in Region 7

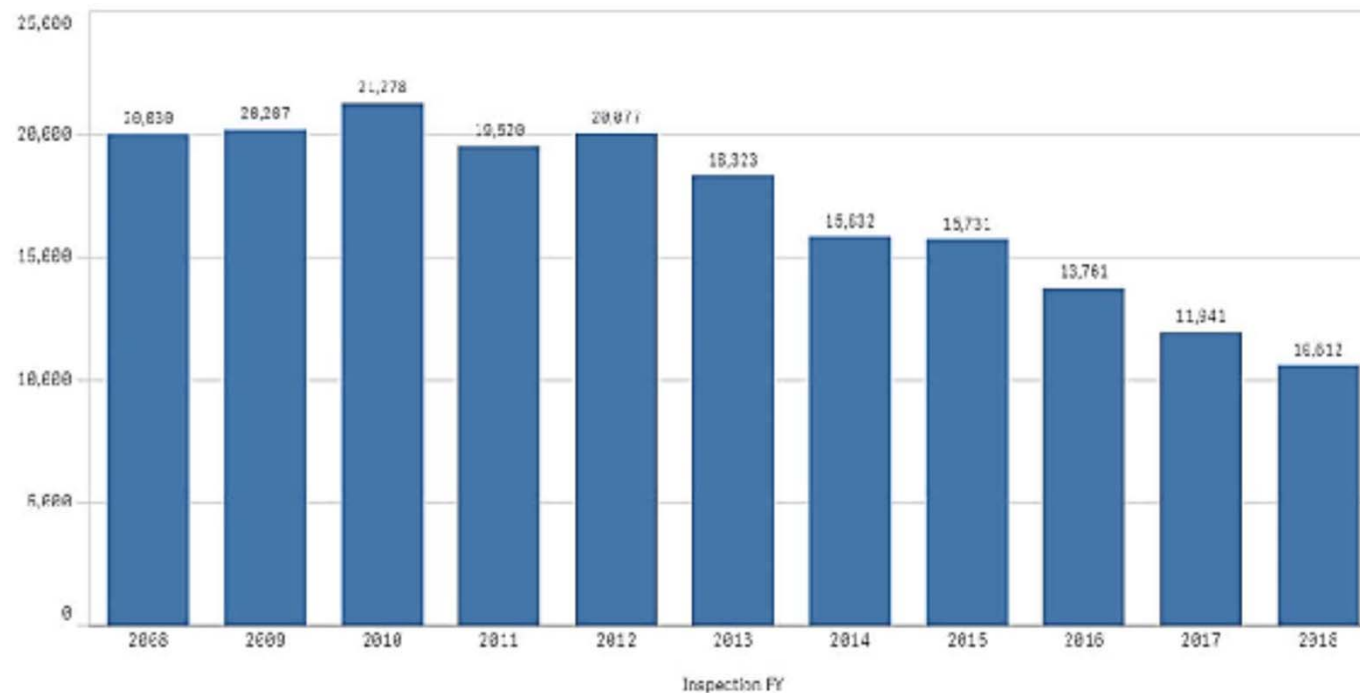
Midwest Environmental Compliance Conference
Kansas City, Missouri
April 24, 2019



SpencerFane™



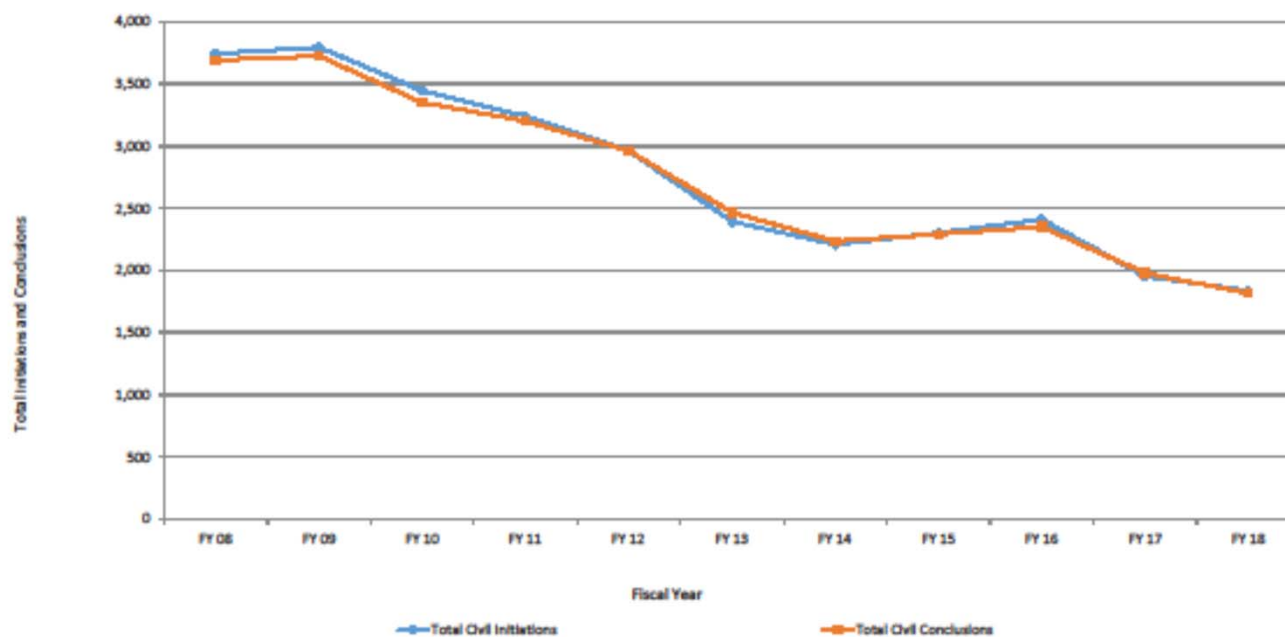
**Federal Inspections and Evaluations (Conducted by EPA)
FY 2008 – FY 2018**



- 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.



Total Civil Enforcement Case Initiations and Conclusions FY 2008 – FY 2018



- In FY 2018, EPA initiated and concluded more than 1,800 civil judicial and administrative cases.

1. Totals include CERCLA Initiations and Conclusions.

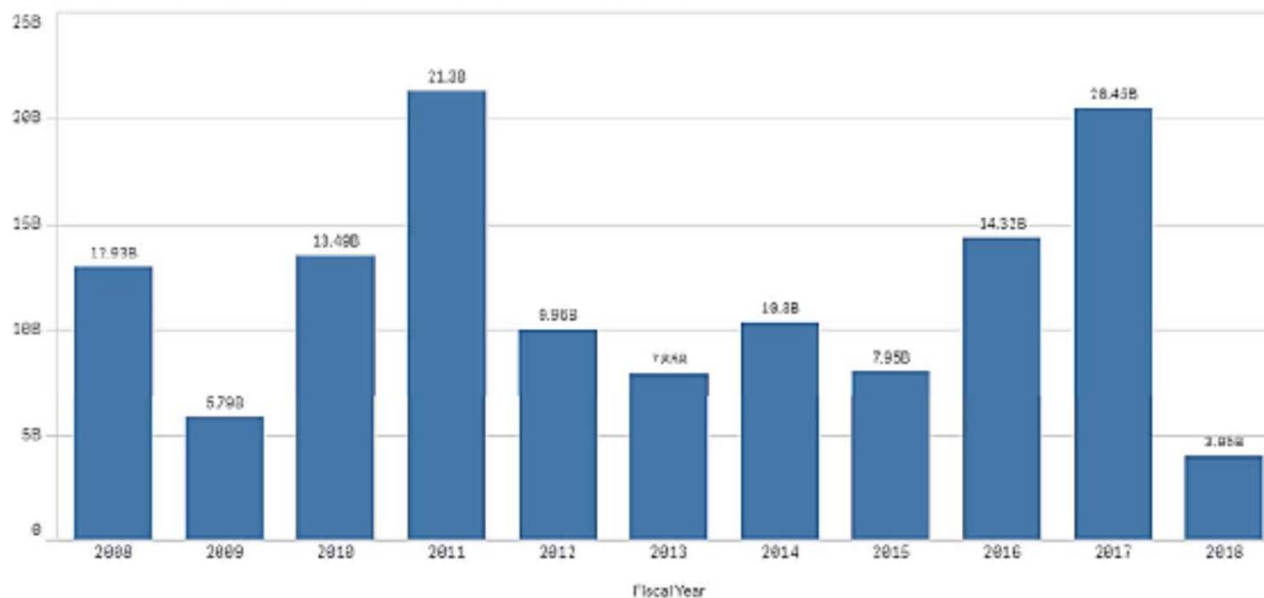
Data Source: Integrated Compliance Information System (ICIS)
Data as of: Dec-9-2018

U.S. Environmental Protection Agency



Estimated Value of Administrative and Civil Judicial Complying Actions (Injunctive Relief) FY 2008 – FY 2018

Prior FY Totals Inflation Adjusted to Reflect the Current Totals in FY 2018 Dollars



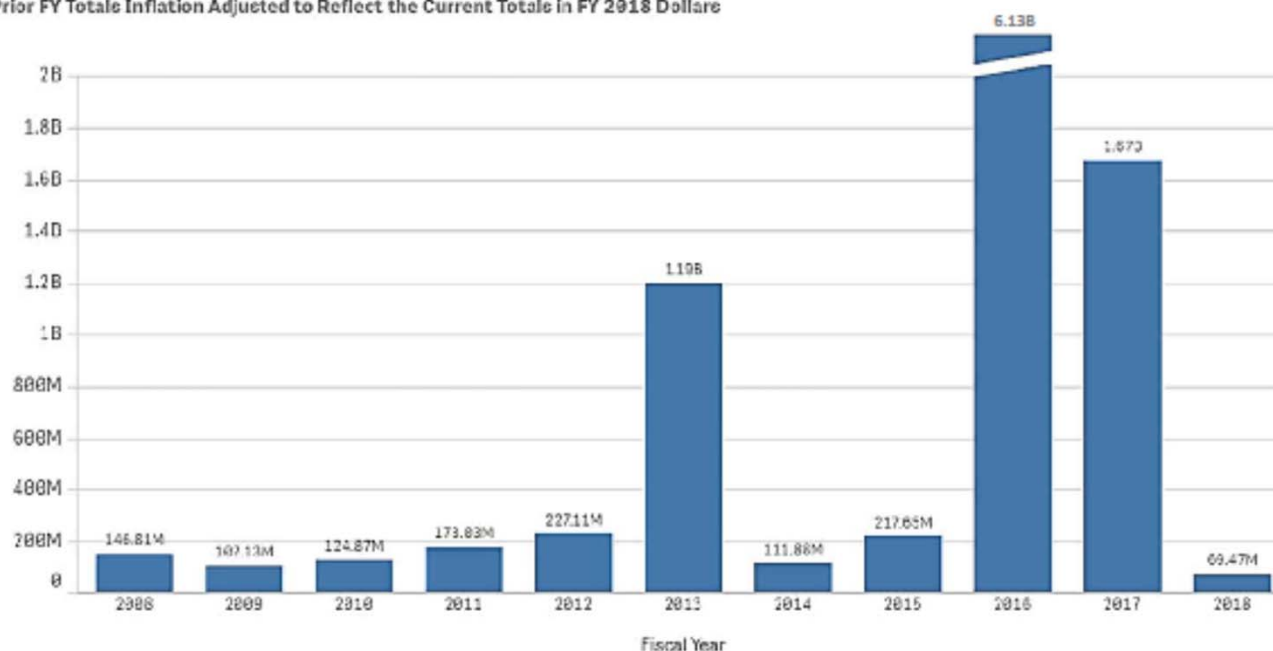
- In FY2018, EPA enforcement actions required companies to invest nearly \$4 billion in actions and equipment to control pollution (injunctive relief.)
- Injunctive relief results vary from year to year depending on the timing of the resolution of the largest cases.

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.



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.

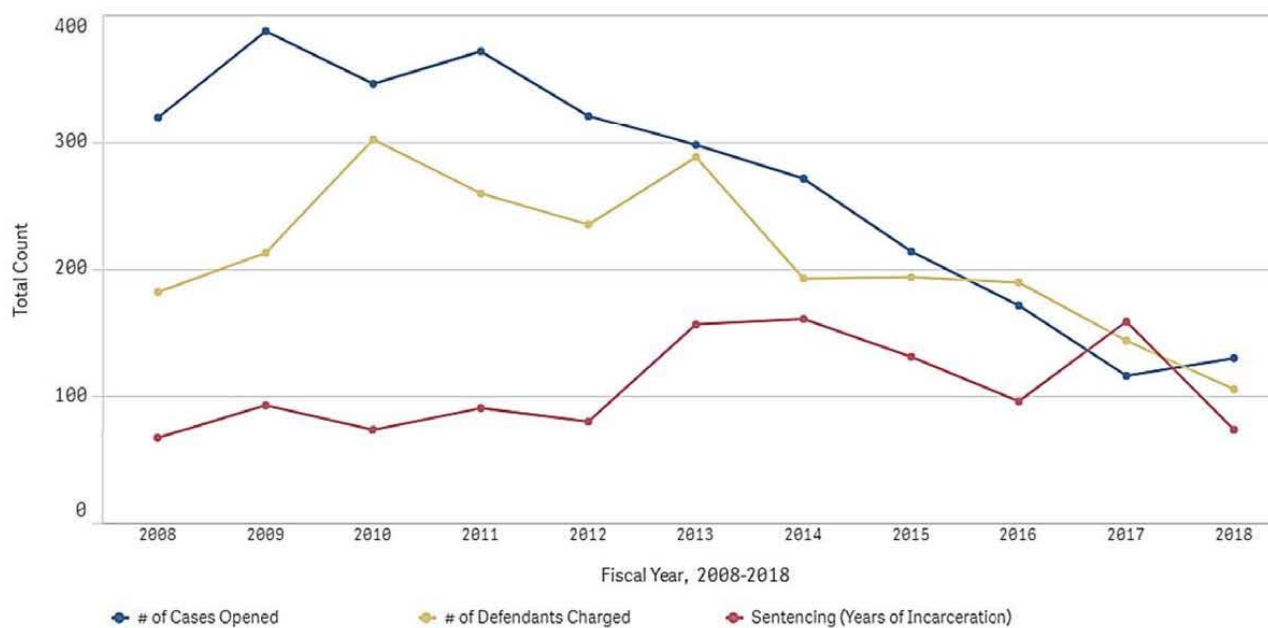
1. All prior FY dollar figures in the graph are adjusted to reflect the current value in FY 2018 dollars based on the monthly rate of inflation/deflation as determined by the U.S. Department of Labor Consumer Price Index for All Urban Consumers.
2. Dollar figures referenced in the bullets are nominal values. They are not adjusted to reflect inflation/deflation.

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Data as of: Dec-9-2018

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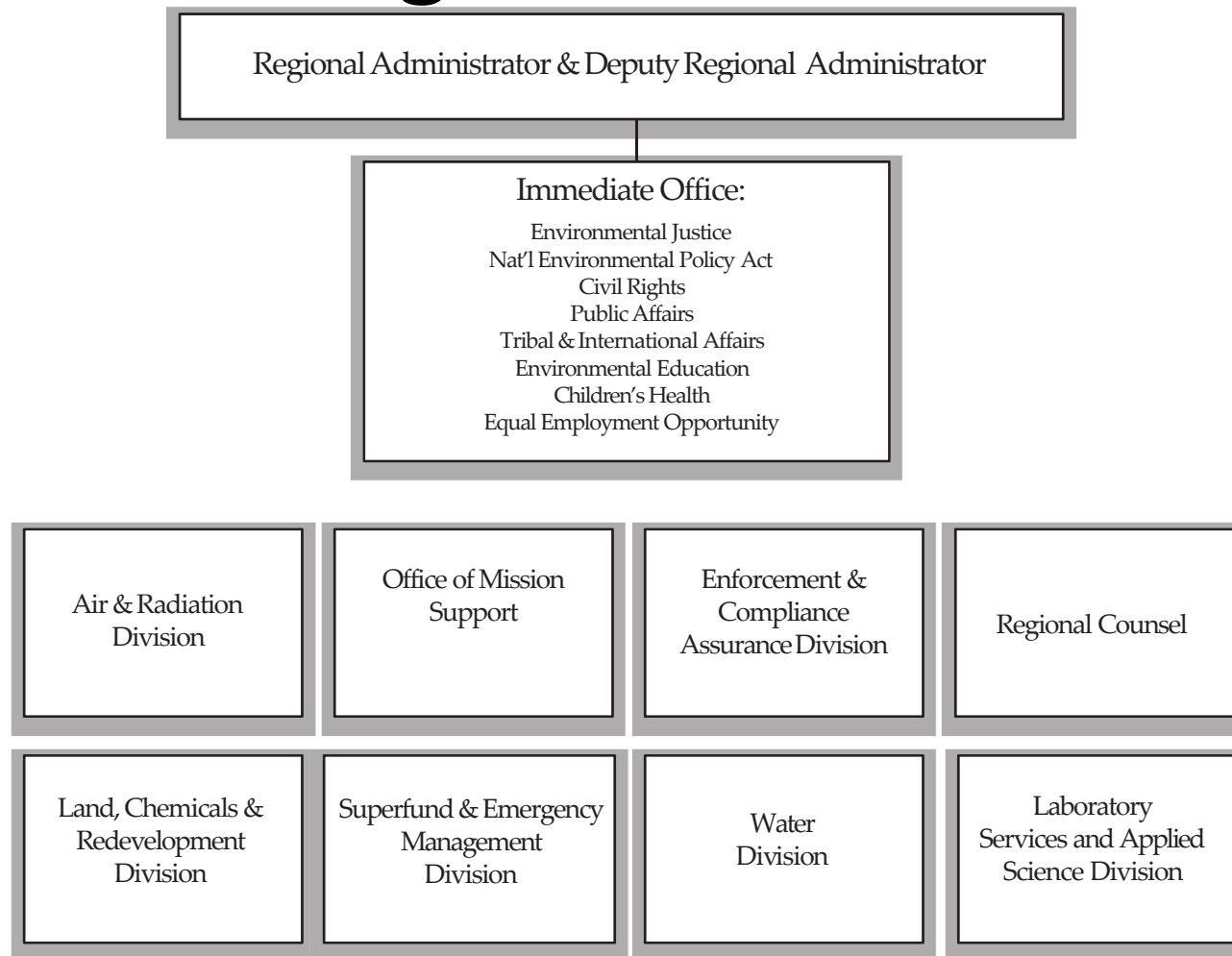


Criminal Enforcement
Environmental Crime Cases Opened, Defendants Charged, and Sentencing Results (Years of Incarceration)
FY 2008 – FY 2018



- 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.

Proposed Organization for EPA's Region 7 Office



Proposed National Compliance Initiatives

Overall Adjustments:

- 1) modifying selection criteria;
- 2) engaging more fully with states and tribes in the selection and development of the initiatives;
- 3) enhancing use of the full range of compliance assurance tools;
- 4) extending the cycle to four years to better align with the Agency's National Program Guide cycle.

Selection Criteria:

- 1) Alignment with EPA's strategic plan
- 2) The need for EPA expertise, authority or resources
- 3) Where there is a need to address serious and widespread non-compliance across the country

Proposed National Compliance Initiatives, 2020-2023

<u>Discontinue</u>	<u>Continue</u>	<u>Potential New</u>
Preventing Animal Waste from Contaminating Surface and Ground Water (CAFOS) Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters (CSO/SSO) Reducing Air Pollution from the Largest Sources (NSR/PSD)	Reducing Risks of Accidental Releases at Industrial and Chemical Facilities (112r) Cutting Hazardous Air Pollutants (Air Toxics) Reducing Toxic Air Emissions from Hazardous Waste Facilities (RCRA AA, BB, CC) Reduce NPDES Noncompliance Rate (reconfigured prior initiative of Keeping Industrial Pollutants Out of the Nation's Waters)	Drinking Water Lead Mobile Sources

United States Environmental Protection Agency

Criminal Investigation Division



* EPA 20 year commemorative badge

EPA Criminal Investigation Division

EPA CID is part of the OCEFT

Special Agents are Criminal Investigators with full federal law enforcement authority to:

- Conduct investigations
- Carry firearms
- Execute and serve any warrant
- Make arrests for any offense against the United States



EPA-CID's Mission

- “While both corporations and individuals pay penalties, only individuals can go to prison – a sanction that no one person can pass along to the American consumer as just another cost of doing business.”

Mission Statement:

To investigate and refer for prosecution, the most significant and egregious violators of environmental laws that pose the greatest threat to human health and the environment.

Criminal Enforcement is the difference between a “Pay to Pollute” System



Environmental Violations

- **Accidents** (*Civil/Administrative*)
- **Negligence**
(*Civil/Administrative/Criminal*)
- **Knowing, Willful or Deliberate**
(*Criminal*)

Investigative Discretion

HARM

1. Harm
2. Threat of Significant Harm
3. Failure to Report
4. Illegal Conduct Represents a Trend or Common Attitude
5. History of Repeated Violations

CONDUCT

5. Deliberate Misconduct Resulting in Violation
6. Concealment of Misconduct or Falsification of Records
7. Tampering with Monitoring or Control Equipment
8. Business Operating Pollution Related Activities Without a Permit, License, Manifest

EPA CID: Other Duties



USEPA-CID ENVIRONMENTAL CRIMES

Questions

- **Presenters**
 - Dave Cozad – Regional Counsel, EPA Region 7
 - C.H. – Acting Assistant Special Agent in Charge of the Kansas City Area Office, EPA Criminal Investigation Division
- **Moderator**
 - Andrew Brought, Spencer Fane LLP

