

EPA's FY 2024 Enforcement Results

EPA's Office of Enforcement and Compliance Assurance (OECA) recently issued its annual results for FY 2024. OECA announced that the results “include [the] strongest outcomes since 2017” and were achieved by “leveraging an expanded and reinvigorated enforcement program that had suffered more than a decade of budget cuts.” EPA's enforcement budget has certainly grown. Its FY 2024 civil enforcement budget (Annualized Continuing Resolution) was \$205,942,000, an increase of \$38,327,000 (nearly 29 percent) over its Estimated FY 2021 Enacted budget of \$167,615,000.¹ EPA's FY 2024 criminal enforcement budget was \$62,829,000, an increase of \$15,194,000 (nearly 32 percent) over its FY 2021 budget of \$47,635,000. Although funding has increased, the effect of massively increased telework among EPA and other federal government employees remains unclear. A recent report by a Republican Senator estimated that just “[s]ix percent [of government employees] report in-person on a full-time basis while nearly a third of the government workforce is entirely remote.”² The same report estimates that only around 8 percent of EPA's Washington, D.C., headquarters building is currently occupied.

For the most part, the new EPA enforcement numbers are a mixed bag that reflects a return to pre-COVID numbers during the first Trump Administration. There are a few preliminary points to make for necessary context:

- Many of the numbers are lagging indicators. For example, civil and criminal penalties obviously come at the end of an enforcement action after it has been investigated, charged (or a complaint filed in a civil case), and resolved by settlement, guilty plea, or at trial. It is not at all unusual for those activities to take multiple years, so some of the statistics are more reflective of past efforts than current ones.
- Cases come in different shapes and sizes. A five co-defendant criminal case involving hazardous waste dumping is certainly important, but it is not particularly complex compared, for example, to some of the diesel software investigations of major automakers over the past few years. Less complex cases take less time to resolve, and multiple defendants can inflate case initiation and resolution numbers.
- Big cases cause big spikes. EPA correctly points this out in its report.
- Some of these numbers are out of EPA's control. EPA depends on the Department of Justice to bring judicial civil and criminal enforcement cases (as opposed to cases that EPA handles itself administratively). EPA and DOJ have little control over the calendars of federal judges and less over the decisions of juries.

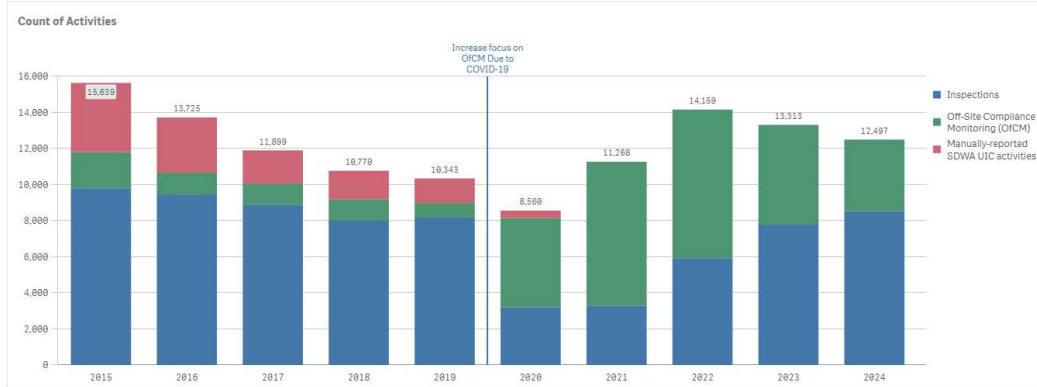
¹ EPA FY 2025 Budget Justification, Tab 5: Environmental Programs and Management (available at <https://www.epa.gov/system/files/documents/2024-04/fy25-cj-05-epm.pdf>) compared to EPA FY 2021 Budget Justification, Tab 4: Environmental Programs and Management (available at <https://19january2021snapshot.epa.gov/sites/static/files/2020-03/documents/fy21-cj-04-epm.pdf>).

² *Out of Office, Bureaucrats on the beach and in bubble baths but not in office buildings*, U.S. Senator Joni Ernst, December 2024 (available at www.ernst.senate.gov/imo/media/doc/final_telework_report.pdf).

The FY 2024 statistics and trends are broken out into over a dozen different categories with further analysis about the extent to which the numbers reflect enforcement activities in “EJ Communities,” which are a somewhat amorphous category of “communities with potential environmental justice concerns.” For example, EPA points out that 86 percent of its \$1.72 billion in Administrative and Judicial Penalties Assessed in FY 2024 is attributable to a \$1.48 billion penalty in a settlement with Cummins, Inc., for vehicle emission controls – i.e., allegedly installing software in diesel engines designed to control emissions during certification testing, but not when the engines were used on the road. In the following graph, Administrative and Civil Judicial Penalties Assessed *in Areas of Potential Environmental Justice Concerns*, the same settlement accounts for 90 percent of the \$1.64 billion spike in FY 2024. Given that the settlement involved engines supplied to Fiat Chrysler for diesel pickup trucks for six model years, its impact on vehicle emissions was ubiquitous, both as to the communities that were breathing increased diesel emissions and as to the owners of vehicles subject to recall. If that is what EPA touts as an increased impact on “communities with potential environmental justice,” it is a statistic of marginal value. Some statistics are more helpful than others in attempting to assess EPA’s enforcement efforts, and those will be the focus here.

Enforcement and Compliance Assurance Annual Results for FY 2024: Data and Trends

Federal Compliance Monitoring Activities Conducted by EPA
FY 2015 – FY 2024



Highlights:

- EPA has increased the number of on-site inspections, while still utilizing off-site compliance monitoring activities where appropriate (e.g., reviewing responses to information requests, facility monitoring reports, and sampling data). Since on-site inspections are often more time-consuming, the result has been a slight decrease in the overall number of compliance monitoring activities.

Footnotes:

- An inspection is performed on-site at a regulated facility or activity; off-site compliance monitoring (OFCM) activities are performed off-site typically at an office. Beginning in FY 2021, the Office of Compliance required all manually reported SDWA UIC activities to be appropriately reported as either inspections or OFCM in ICIS.
- Prior to FY 2020, OECA used a different methodology to determine which OFCM activities would be reported in Annual Results and did not collect data on all OFCM activities conducted.

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

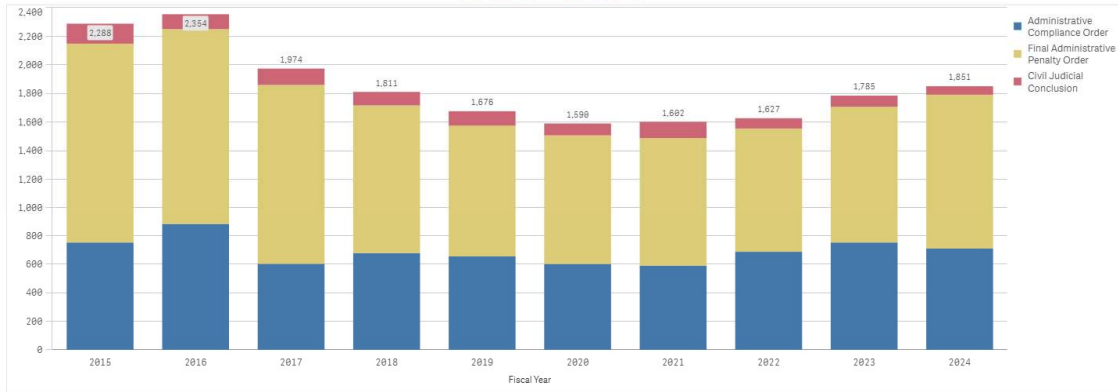
[Export Data](#)

Data Source: Integrated Compliance Information System (ICIS), RCRA Info (for RCRA HW), manual (for SDWA UIC) U.S. Environmental Protection Agency
Data as of: November 13, 2024

EPA’s onsite inspections (in blue above) have roughly returned to the levels of FY 2018 and FY 2019 before the COVID-19 pandemic, when onsite inspections were difficult because of travel restrictions and access to facilities. During that period, EPA significantly increased its use of “offsite compliance monitoring,” which is reviewing information submitted by the regulated entities. EPA’s use of onsite inspections has increased, but its use of offsite compliance monitoring remains strong. Before President-Elect Trump’s first term, EPA regions were not consistent in what they counted as inspections and some regions inflated their numbers. For example, in some regions it had been common for an EPA inspector to visit an office where records related to underground injection wells were located and count a review of a folder related to a well as an inspection.



Total Civil Enforcement Case Conclusions FY 2015 – FY 2024



Highlights:

- In FY 2024, EPA concluded 1,851 civil judicial and administrative cases, which includes 709 administrative compliance orders, 1,082 final administrative penalty orders, and 60 civil judicial conclusions.
- The highest number of case conclusions over the last seven years.
- Recent increases in staffing resources has enabled EPA's civil enforcement program to conclude more cases.

Footnotes:

1. Conclusions include the number of administrative and judicial enforcement actions concluded, as well as CERCLA cases.

Show Graph Show Table
Export Data

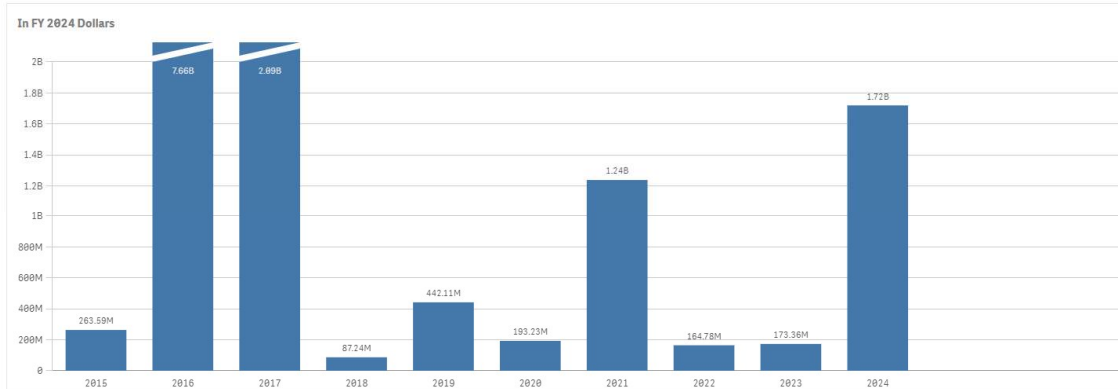
Data Source: Integrated Compliance Information System (ICIS)
Data as of: November 13, 2024

U.S. Environmental Protection Agency

Total Civil Enforcement Case Conclusions are a lagging indicator, where cases have been in the pipeline for some time. The trend again returns to roughly FY 2018 numbers, and the vast majority of these (blue and yellow above) relate to administrative actions, as opposed to civil judicial case conclusions (red above), which have been roughly consistent over the years. Civil judicial cases generally represent more serious actions and rely on the Justice Department and the courts for resolution.



Administrative and Civil Judicial Penalties Assessed FY 2015 – FY 2024



- In FY 2024, EPA assessed over \$1.7B in federal administrative and civil judicial penalties.
- The Cummins Inc. Vehicle Emission Control Violations Settlement accounted for 86% of the total FY 2024 penalty amount. The \$1.48 billion penalty was the largest ever assessed in a Clean Air Act case.

Footnotes:

1. The rate of inflation/deflation is determined by the U.S. Department of Labor Consumer Price Index for All Urban Consumers.
2. Dollar figures referenced in the bullets are not adjusted to reflect inflation/deflation.

Show Graph Show Table
Export Data

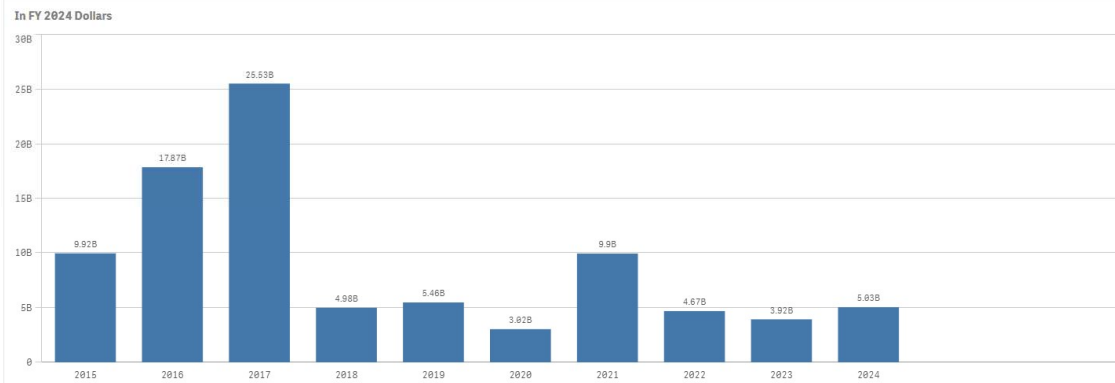
Data Source: Integrated Compliance Information System (ICIS)
Data as of: November 13, 2024

U.S. Environmental Protection Agency

As mentioned earlier, Administrative and Civil Judicial Penalties Assessed (let alone the “EJ” version) is an example of a marginally helpful statistic – first because it is a lagging indicator, and second because major cases (that have been in the pipeline for a year or more) account for significant spikes over the years. Here, the FY 2024 spike is due to the Cummins diesel settlement. The FY 2021 and FY

2017 spikes were attributable to similar settlements with Mercedes, Daimler, and Volkswagen, and the FY 2016 spike was due to large cases involving BP and Transocean after the 2010 Gulf oil spill.³

Estimated Value of Administrative and Civil Judicial Complying Actions (Injunctive Relief) FY 2015 – FY 2024



Highlights:

- In FY 2024, EPA enforcement actions required companies to invest more than \$5B in actions and equipment to resolve violations and ensure compliance with applicable laws (called "injunctive relief").
- EPA required over \$650M in injunctive relief in the County of Hawai'i ACO case addressing wastewater treatment violations, which is more than 13% of the total.

Show Graph Show Table

Export Data

Footnotes:

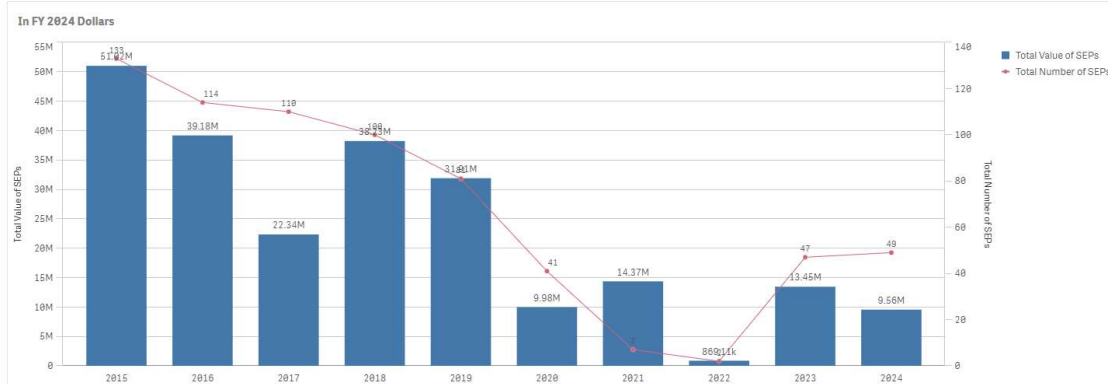
- "Injunctive relief" refers to actions mandated by an enforcement action that a regulated entity must perform, or refrain from performing, to bring that entity into compliance with environmental laws.
- The rate of inflation/deflation is determined by the U.S. Department of Labor Consumer Price Index for All Urban Consumers.

Data Source: Integrated Compliance Information System (ICIS)
Data as of: November 13, 2024

U.S. Environmental Protection Agency

FY 2024 injunctive relief numbers again essentially returned to FY 2018 and FY 2019 levels. The spike in 2021 related to three wastewater treatment cases against the cities of Houston, New York, and Dekalb County, Georgia.⁴ Injunctive relief is an effective way for EPA to quickly address environmental harm early in the process without having to wait for a judicial case to wind its way through the system.

Supplemental Environmental Projects (SEPs) FY 2015 – FY 2024



Highlights:

- In FY 2024, EPA concluded 49 enforcement cases that included agreements by the violator to voluntarily perform SEPs with a total estimated value of over \$9.5M. SEPs are environmentally beneficial projects that are not legally required, that have a close nexus to the violations being resolved, and that a defendant/respondent voluntarily agrees to undertake as part of the settlement of an enforcement action.
- The Friesland Campina Ingredients North America, Inc. settlement include over \$1.4 million in SEPs, 15% of the FY 2024 total. The SEP is to install a closed-cycle water cooling system to reduce discharges of cooling water to the West Branch of the Delaware River by approximately 83%.

Show Graph

Show Value Table Show Number Table

Export Data

Footnotes:

- A single settlement can have multiple SEPs.
- The rate of inflation/deflation is determined by the U.S. Department of Labor Consumer Price Index for All Urban Consumers.

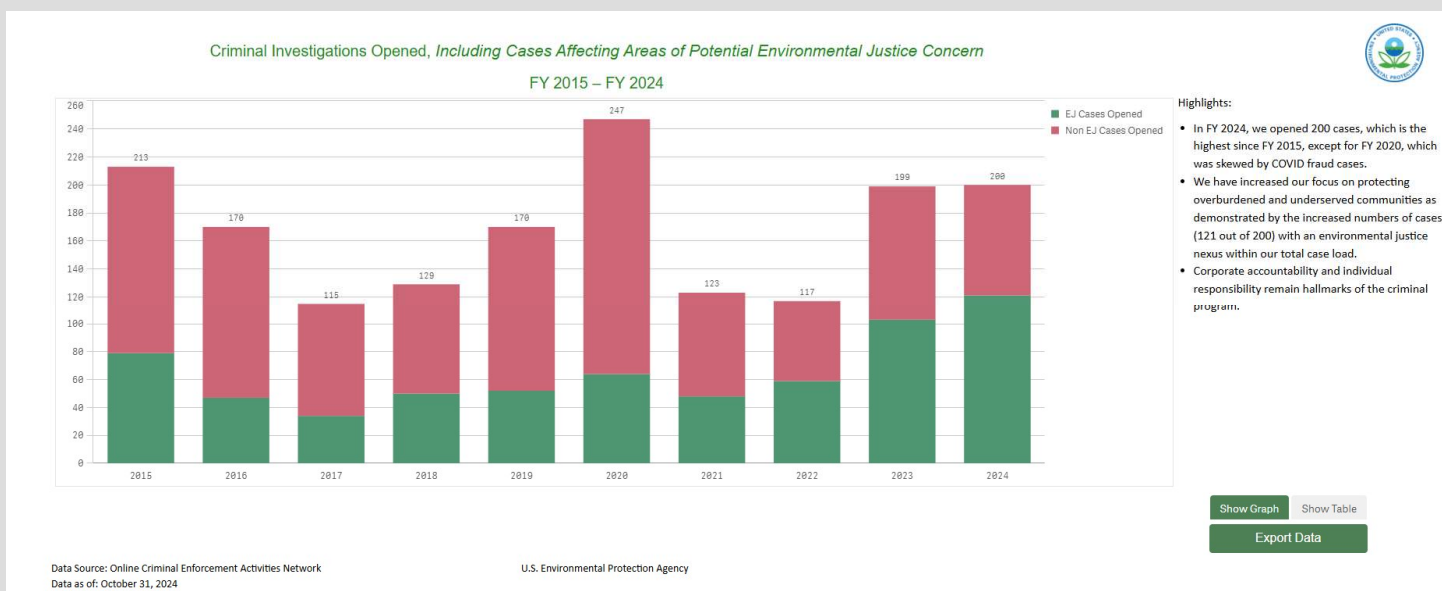
Data Source: Integrated Compliance Information System (ICIS)
Data as of: November 13, 2024

U.S. Environmental Protection Agency

³ EPA Enforcement Annual Results for Fiscal Year 2021, Data and Trends (available at <https://www.epa.gov/enforcement/enforcement-annual-results-fiscal-year-2021#data%20and%20trends>).

⁴ Id.

Supplemental Environment Projects (SEPs) have been a disputed issue for a long time. These are environmental projects that violators agree to in addition to a penalty in civil case settlements. The government takes the SEP into account when setting penalty numbers. The government likes SEPs because they make it easier to reach a settlement. Violators like them because they reduce the severity of the civil penalty and allow the violator to put a positive public relations spin on an otherwise unhelpful event. The Justice Department prohibited the use of SEPs in judicial cases in 2020 arguing that they divert funds from the Treasury in violation of the Miscellaneous Receipts Act and require unlawful payments to non-victim third parties chosen by officials who lack budgetary authority.⁵ The incoming Biden Administration withdrew that directive.⁶ The SEP prohibition resulted in the significant dip in SEPs in FY 2022 (again showing that many of these statistics are lagging indicators). SEPs returned in FY 2023 and FY 2024, but not to the level that might be expected. It will be interesting to see the fate of SEPs in the new administration.



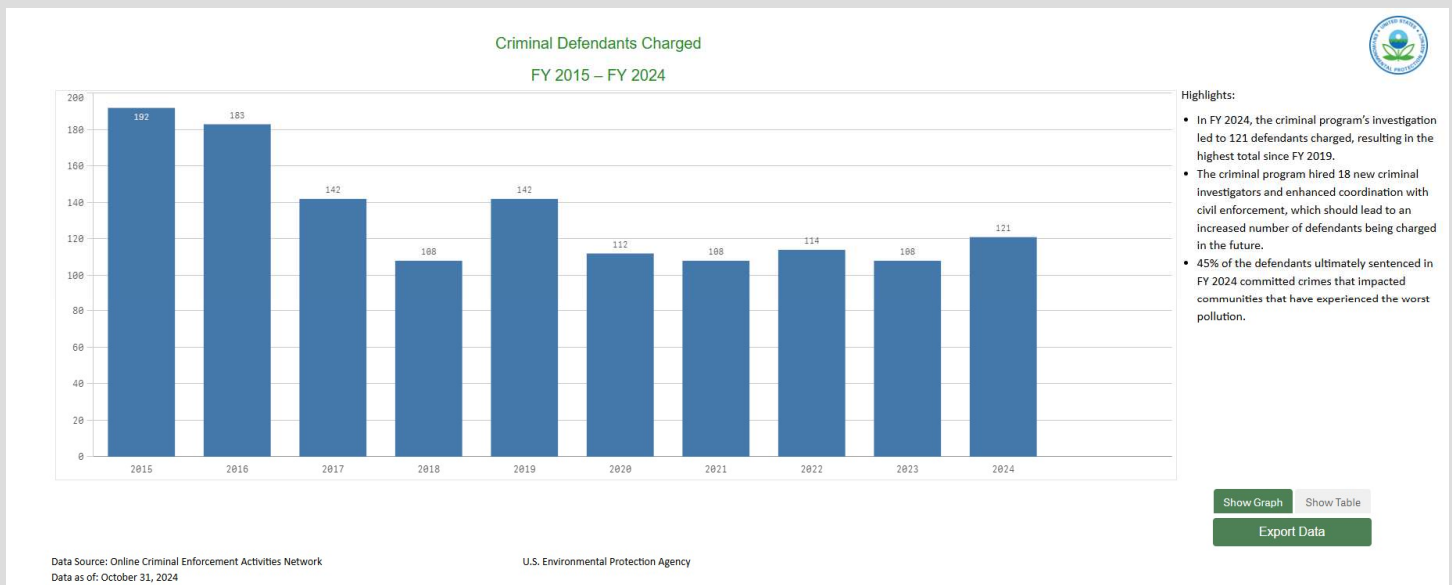
The number of criminal investigations opened has increased. EPA notes that the FY 2020 spike was “skewed” by COVID fraud cases. Whether that is an appropriate term where the cases involved unscrupulous individuals and companies falsely claiming that their products were effective against COVID (in violation of FIFRA) during a pandemic, it is true that they accounted for a higher number in FY 2020. A few points to make here:

- These are investigations opened, but it is unclear what portion of them resulted in indictments. These are essentially the opposite of lagging indicators, where the result of the investigations is unknown.

⁵ *Supplemental Environmental Projects (“SEPs”) in Civil Settlements with Private Defendants*, DOJ ENRD Assistant Attorney General Jeffrey B. Clark, March 12, 2020 (available at <https://www.justice.gov/enrd/file/1257901/dl>), See also *Guidance Regarding Newly Promulgated Rule Restricting Third-Party Payments*, 28 C.F.R. § 50.28, Jeffrey B. Clark, January 13, 2021 (available at <https://www.justice.gov/enrd/file/1353501/dl>).

⁶ *Withdrawal of Memoranda and Policy Documents*, DOJ ENRD Acting Assistant Attorney General Jean Williams, February 4, 2021 (available at https://www.justice.gov/d9/2023-07/enrd_withdrawal_memo.pdf).

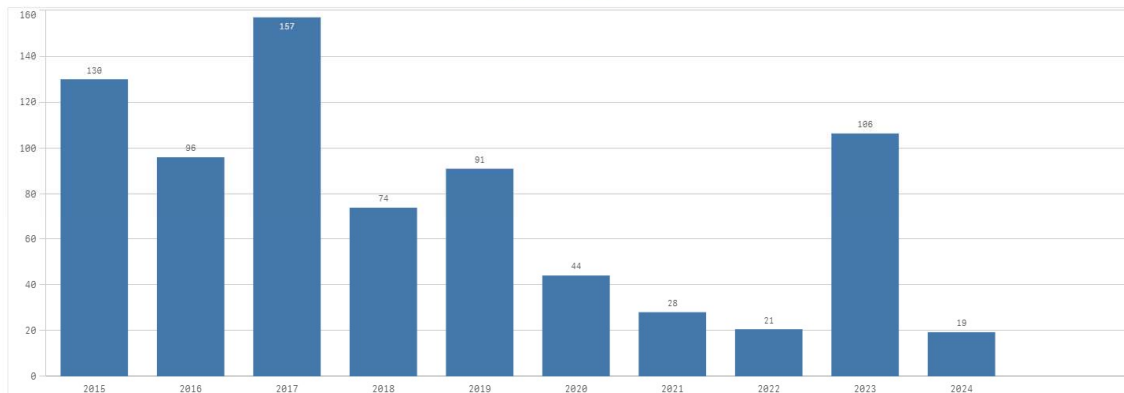
- The numbers are small in comparison to the number of civil cases. That is not a criticism – criminal enforcement should be reserved for the smaller number of actors who are lying, cheating, and stealing. These numbers also do not account for state-level criminal investigations. The point is that the trends in the graph seem less significant when one realizes that the difference between 200 investigations in FY 2024 and the 117 investigations in FY 2022 is only 83 investigations.
- The numbers do not provide insight into the complexity of the investigations. The resources and effort required for multi-target complex investigations can easily surpass those necessary for relatively straight-forward individual dumping cases (or COVID fraud cases).



Criminal Defendants Charged represents cases in midstream between investigation and resolution. It is likely that many of the 121 defendants charged in FY 2024 were among the 199 investigations opened in FY 2023 (which would mean that roughly 78 (or nearly 40 percent) of those investigations did not lead to criminal indictments). These are judicial cases that rely on DOJ for prosecution. While it is true that FY 2024 saw the most defendants charged since 2019, the numbers involved here are fairly consistent back to 2017; and as with the number of investigations opened, it is difficult to know from the numbers alone how sophisticated the cases are. In addition to the increased funding explained above, EPA notes that it hired 18 new criminal investigators and anticipates that these numbers will increase in the future.



Criminal Sentencing Results (Years of Incarceration) FY 2015 – FY 2024



Highlights:

- Although sentencing is outside the purview of EPA, our case results show that bad actors are being held accountable for their actions.
- FY 2024 years of incarceration is substantially lower than FY 2023, due primarily to Washakie Renewable Energy, which accounted for 83 years in FY 2023.

Show Graph Show Table
Export Data

Footnotes:

1. In FY 2020, the criminal program began using a new criminal case reporting system which also tracks outcomes. The system captured additional home detention - FY 2020 = 4 years; FY 2021= 6 years; FY 2022 = 4 years; FY 2023 = 2.3 years and FY 2024 = 4.7 years.

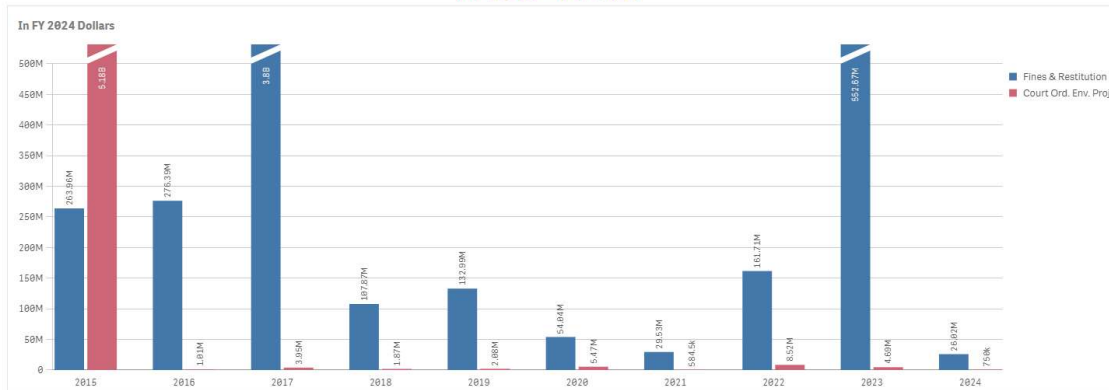
Data Source: Online Criminal Enforcement Activities Network
Data as of: October 31, 2024

U.S. Environmental Protection Agency

Criminal Sentencing Results in years of incarceration is also interesting. This is a lagging indicator for cases that were likely investigated over the past year or more. The numbers are also out of EPA's control, as DOJ and the courts must approve plea agreements, and sentencing is heavily influenced by the Federal Sentencing Guidelines. EPA correctly notes that the FY 2023 spike (83 of the 106 years) resulted from the \$1 billion Washakie biofuel renewable energy tax fraud case (that was indicted in August of 2018).⁷ Otherwise, the number of years of incarceration have been relatively low since 2021 – likely due in part to the lingering effects of COVID, perhaps also due to charging federal criminal cases where incarceration is less warranted under the Sentencing Guidelines and in the eyes of the courts. It is also unclear whether these numbers account for situations where a defendant pled guilty to or was convicted of non-environmental Title 18 crimes, such as False Statements or Obstruction of Justice.

⁷ United States District Court for the District of Utah Case No. 2:18-cr-00365.

Value of Criminal Fines and Restitution and Court Ordered Environmental Projects FY 2015 – FY 2024



Highlights:

- In FY 2024, the total of criminal fines, restitution, and court ordered projects exceeded \$26M and court ordered environmental projects were \$750,000.
- Annual totals vary widely due to large cases such as Duke Energy in 2015, Volkswagen in 2017 and Washakie Renewable Energy in 2023.

Footnotes:

1. All prior FY dollar figures in the graph are adjusted to reflect the current value in FY 2024 dollars based on the rate of inflation/deflation as determined by the U.S. Department of Labor Consumer Price Index for All Urban Consumers.

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

Data Source: Online Criminal Enforcement Activities Network
Data as of: October 31, 2024

U.S. Environmental Protection Agency

EPA again explains the spikes in Criminal Fines and Restitution and Court Ordered Environmental Projects in FY 2015, 2017, and 2023. These too are lagging indicators. In fact, the \$511 million court ordered restitution in the Washakie case in 2023 was agreed to in a July 2019 plea agreement.⁸ What is interesting, though, is the relatively flat level of court ordered environmental projects (or “community service payments”) back to 2016. These are not unlike SEPs, but in the context of voluntary payments made to third parties as a condition in a criminal plea agreement. For similar reasons as with SEPs, the Justice Department prohibited these “community service payments” to third parties.⁹ Also as with SEPs, the prohibition on community service payments was withdrawn by the Biden Administration in February 2021, and the future of these payments directed to third parties is uncertain. It is somewhat surprising that community service payments have not risen much beyond their FY 2021 low point.

EPA’s National Enforcement and Compliance Priorities

Every four years, EPA selects priorities that guide its enforcement and compliance initiatives. It is worth taking a look at how those have evolved in recent years to better understand how the agency directs its enforcement and compliance efforts.

EPA’s priorities for FY 2016 through 2019 were:¹⁰

- Air
 - Reducing Air Pollution from the Largest Sources
 - Cutting Hazardous Air Pollutants
- Energy Extraction

⁸ <https://www.justice.gov/opa/press-release/file/1258476/dl>

⁹ See 85 Fed. Reg. 81,409 (Dec. 16, 2020); 28 C.F.R § 50.28.

¹⁰ Available at <https://archive.epa.gov/epa/enforcement/national-enforcement-initiatives-fiscal-years-2014-2016.html>.

- Ensuring Energy Extraction Activities Comply with Environmental Laws
- Hazardous Chemicals
 - Reducing Pollution from Mineral Processing Operations
 - Reducing Risks of Accidental Releases at Industrial and Chemical Facilities
- Water
 - Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters
 - Preventing Animal Waste from Contaminating Surface and Ground Water
 - Keeping Industrial Pollutants Out of the Nation's Waters

That evolved into the following priorities announced in June 2019 for FY 2020 through FY 2023:¹¹

- Improving Air Quality
 - Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants from Stationary Sources
 - Reducing Hazardous Air Emissions from Hazardous Waste Facilities
 - Stopping Aftermarket Defeat Devices for Vehicles and Engines
- Ensuring Clean and Safe Water
 - Reducing Significant Noncompliance with National Pollutant Discharge Elimination System Permits
 - Reducing Noncompliance with Drinking Water Standards at Community Water Systems
- Reducing Risk from Hazardous Chemicals
 - Reducing Risks of Accidental Releases at Industrial and Chemical Facilities
- Lead Action Plan
- Regional Coordination and Implementation
- State and Tribal Coordination

On August 17, 2023, EPA announced the following priorities for FY 2024 through FY 2027:¹²

- Mitigating Climate Change
- Addressing Exposure to PFAS
- Protecting Communities from Coal Ash Contamination
- Reducing Air Toxics in Overburdened Communities
- Increasing Compliance with Drinking Water Standards
- Chemical Accident Risk Reduction

Conclusion

EPA's FY 2024 enforcement and compliance results generally indicate an increase and a return to pre-COVID levels. As discussed, many of these statistics are of limited value in assessing the

¹¹ Available at <https://www.epa.gov/sites/default/files/2019-06/documents/2020-2023ncimemo.pdf>.

¹² Available at <https://www.epa.gov/newsreleases/epa-announces-federal-enforcement-priorities-protect-communities-pollution>.

agency's current efforts, but they are helpful to understand trends as long as they are given the proper context. It will be interesting to see how the agency moves forward in coming years, and that will largely depend on its funding levels and chosen priorities.



Contact E&W Law Partner John Irving:

Firm Bio: <https://www.earthandwatergroup.com/our-professionals/john-s-irving-esq/>

Email: John.Irving@earthandwatergroup.com

Phone: 301-807-5670

After nearly 30 years as a Washington, D.C., attorney, John Irving has broad experience with white collar criminal matters, government investigations, and corporate internal investigations. Mr. Irving has held senior positions in the U.S. Department of Justice and the EPA, worked on Capitol Hill and for an Independent Counsel, and spent more than a decade at private-sector law firms.