



## EPA Enforcement Totals in Fiscal 2022 Were Lowest in Decades in Key Areas

*Lack of Congressional Support for Enforcement Contributes to Continued Downward Trend*

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The Biden Administration’s Environmental Protection Agency (EPA) was expected to step up enforcement of the Clean Air Act, Clean Water Act, and other environmental laws after the investigation and prosecution of polluters reached new lows under the Trump Administration. It has yet to keep that promise, thanks to a refusal by Congress to reverse more than a decade of budget cuts or to confirm President Biden’s nominee to head EPA’s Office of Enforcement and Compliance Assurance. The number of staff working in EPA’s civil enforcement program has declined by almost a third over the last decade, from 3,294 in the 2012 fiscal year to just 2,253 in 2022. EPA had 189 criminal agents in FY 2012 but only 155 in FY 2022.

The annual accomplishments report for the 2022 federal fiscal year just released by EPA shows that instead of getting back on track, federal enforcement of environmental law has continued to decline. You can find annual enforcement results back to 2001 [at this link](#), including inflation adjusted totals for civil penalties and criminal fines and results with and without several huge “outlier” cases.

Inspections and Compliance Evaluations: EPA reported 13,873 inspections and compliance evaluations, an increase relative to totals reported last year and during the Trump Administration, but well below the annual averages reported between 2005 and 2016.

**Table 1. Annual Average Federal Inspections and Evaluations**

Fiscal Year	Administration	Federal Inspections and Evaluations
2005-2008	Bush	21,500
2009-2012	Obama	20,260
2013-2016	Obama	15,903
2017-2020	Trump	10,371
2021	Biden	10,841
2022	Biden	13,873

Civil Case Completions: The most serious violations are referred to the Justice Department for civil prosecution or, when violations are deliberate, for criminal prosecution.

Public records indicate that the Department of Justice (DOJ) and EPA resolved just 72 civil enforcement cases in federal court during the 2022 fiscal year, which ended on September 30. That is the lowest

number of civil judicial case conclusions in at least 22 years. For comparison, this is well below the annual average during the Administration of Presidents Trump (94), Obama (182 judicial case closures during the first term, 131 during the second), or President Bush (176 in second term). The data includes cases that are resolved when federal courts approve consent decrees or unilaterally order a violator to comply.

EPA referred just 88 cases to the Justice Department for civil prosecution in FY 2022, the lowest in at least 22 years, and one half to two thirds below the annual averages reported during President Bush's second term and President Obama's eight years in office.

**Table 2. Annual Average Civil Case Conclusions and Referrals to the Department of Justice**

Fiscal Year	Administration	Administrative Case Conclusions	Judicial Case Conclusions	Referrals to Dept. of Justice
2005-2008	Bush	4,385	176	295
2009-2012	Obama	3,118	182	263
2013-2016	Obama	2,207	131	158
2017-2020	Trump	1,673	94	106
2021	Biden	1,489	114	98
2022	Biden	1,584	72	88

Criminal Enforcement Actions: In FY 2022, EPA opened 117 investigations into criminal violations of environmental law, the second-lowest total in at least 22 years (only 115 investigations were opened in 2017).

One hundred and eleven defendants were charged with criminal violations, the fourth lowest total in the last two decades, and half or less than the annual number of criminal defendants charged during President Bush's second term and President Obama's Administration. Defendants in criminal cases were sentenced to a combined 21 years of incarceration, another record low going back 22 years.

**Table 3. Annual Average Criminal Investigations Conducted, Polluters Charged, and Years of Incarceration**

Fiscal year	Administration	Criminal Investigations	Polluters Charged	Years of Incarceration
2005-2008	Bush	334	256	115
2009-2012	Obama	356	243	80
2013-2016	Obama	238	209	136
2017-2020	Trump	165	118	92
2021	Biden	123	105	28
2022	Biden	117	111	21

Civil Penalties: Public records indicate that civil penalties from civil judicial and administrative cases will reach an estimated \$154 million in FY 2022, but does not include an additional \$11 million in penalties paid to state agencies that participated in EPA enforcement actions. Civil penalties totaled \$1.2 billion in FY 2021, thanks in large part to two motor vehicle cases that brought in just under \$1.1 billion. As with

injunctive relief, the annual amount of civil penalties that EPA recovers can be affected by a small handful of cases that may involve massive noncompliance. For a fairer comparison, the annual totals below include an adjustment to remove any case for which a violator paid more than \$250 million in civil penalties.

Adjusted for inflation and with the largest outlier cases excluded, civil penalties recovered in FY 2022 were not far from the averages achieved in prior years.

**Table 4. Annual Average Value of Civil Penalties for Judicial and Administrative Cases (Millions of Dollars)**

Fiscal year	Administration	Total Reported	Total, adjusted to 2022 dollars	Total Reported with outliers removed*	Total, without outliers, adjusted for inflation*
2005-2008	Bush	119	174	119	174
2009-2012	Obama	160	212	160	212
2013-2016	Obama	1,823	2,260	198	249
2017-2020	Trump	576	688	137	161
2021	Biden	1,215	1,300	340	364
2022	Biden	165	165	165	165

\*The following outlying penalty values were removed: BP/Transocean (2013) \$1 billion, BP (2016) \$5.5 billion, VW (2017) \$1.45 billion, Fiat (2019) \$305 million, and Mercedes-Benz (2021) \$875 million.

Criminal Enforcement Outcomes:

EPA reported recovering \$149 million in criminal fines in FY 2022, about two thirds of which came from resolution of the Fiat-Chrysler case involving manipulation of vehicle emission controls. When results from prior years are adjusted for inflation and two huge “outlier” cases are removed from the annual totals, the criminal fines recovered in FY 2022 are the highest since 2017, and above the annual totals reported for most of the past 22 years.

**Table 5. Annual Average Value of Fines and Restitutions for Criminal Cases (Millions of Dollars)**

Fiscal year	Administration	Total Reported	Total, adjusted to 2022 dollars	Total Reported with outliers removed*	Total, without outliers, adjusted for inflation*
2005-2008	Bush	72	102	72	102
2009-2012	Obama	61	71	61	71
2013-2016	Obama	551	639	238	276
2017-2020	Trump	836	970	136	158
2021	Biden	25	27	25	27
2022	Biden	149	149	149	149

\*The following outlying penalty values were removed: BP/Transocean (2013) \$1.25 billion and VW (2017) \$2.8 billion

Injunctive Relief (Pollution Control Costs): Civil enforcement actions in FY 2022 require defendants to spend an estimated \$4.3 billion to remedy their violations, i.e., by installing or upgrading pollution controls (the estimate does not include the cleanup of abandoned sites under the “Superfund” program). Adjusted for inflation, that is the second smallest amount that violators have had to spend on pollution controls in at least 22 years.

A handful of very big cases, like the BP Horizon Deepwater spill and Volkswagen’s manipulation of motor vehicle emission controls, can require billions of dollars in remedies, and lead to wide variations in the amount of injunctive relief from one year to next. The attached chart makes clear that even if these outliers are included, the amount of inflation-adjusted injunctive relief secured from violators in FY 2022 is the smallest in the past 22 years.

**Table 6. Annual Average Value of Pollution Control Costs (Injunctive Relief) for Judicial and Administrative Civil Cases (Millions of Dollars)**

Fiscal Year	Administration	Total Reported	Total, adjusted to 2022 dollars	Total Reported with outliers removed*	Total, without outliers, adjusted for inflation*
2005-2008	Bush	9,288	13,487	9,288	13,487
2009-2012	Obama	11,384	15,182	11,384	15,182
2013-2016	Obama	9,510	11,940	7,160	9,050
2017-2020	Trump	7,722	9,225	3,747	4,415
2021	Biden	8,473	9,066	8,473	9,066
2022	Biden	4,303	4,303	4,303	4,303

*\*The following outlying injunctive relief values were removed: BP (2016) \$9.4 billion and VW (2017) \$15.9 billion.*

Environmental Projects: Civil enforcement settlements sometimes include expenditures for community-based “supplemental environmental projects” (SEP’s) that are not required by law, but which can help to offset the harm caused by the defendant’s previous failure to comply. These projects may include, for example, the replacement of local school buses with cleaner vehicles. With much fanfare, the Biden Administration has promoted the use of these projects to help achieve environmental justice, reversing Trump policies that prohibited their use in settlement.

Yet based on the public records available, EPA’s FY 2022 civil enforcement actions secured an anemic \$803 thousand for supplemental projects, far lower than totals reported since at least 2001, whether SEP values are reported before or after adjustment for inflation.

**Table 7. Annual Average Value of Supplemental Environmental Projects (SEPs), (Millions of Dollars)**

Fiscal year	Administration	Total	Total (adjusted to 2022 dollars)
2005-2008	Bush	51.0	74.9
2009-2012	Obama	36.7	44.2
2013-2016	Obama	30.6	32.8
2017-2020	Trump	21.8	23.4
2021	Biden	12.3	13.2
2022	Biden	0.8	0.8

These results should not be surprising. As of 2022, EPA has lost more than 25 percent of its total enforcement staff since 2016 and the civil enforcement program about 31 percent of the workforce it had just ten years ago. That grim picture did not improve in the most recent fiscal year, as the 2022 appropriations for EPA enforcement barely covered the mandatory 2.7% cost of living increase for its diminished enforcement staff. Congress has not approved the very modest increases the Biden Administration has requested, although Senators Durbin, Markey and Warren have asked their colleagues to do so in the 2023 fiscal year.

The professional staff who monitor compliance, investigate violations and bring legal actions against polluters are doing the best they can with increasingly limited resources. But they are not helped by the continued inability of the Senate to confirm David Uhlmann as Assistant Administrator of EPA's Office of Enforcement Compliance Assurance. Mr. Uhlmann's confirmation has been pending since he was nominated in June of 2021 with enthusiastic support from public interest groups, attorneys representing regulated industries, and former political appointees who served both Republican and Democratic Administrations at the Department of Justice and EPA.

As EPA enforcement declines, polluters escape accountability for even the most serious violations. The Agency's Enforcement and Compliance History Online (ECHO) database identifies 257 major sources of air pollution with high priority violations that have persisted for more than 30 months without any real enforcement response. Similarly, discharge monitoring reports show that more than 900 facilities have violated water pollution limits at least 50 times over the past three years but faced no significant enforcement action. EPA has yet to require the Denka polymers plant in La Place, Louisiana to cut emissions of chloroprene that the agency concedes have exposed a nearby African-American community to dangerous levels of this carcinogen.

The former President's hostility to EPA and to the enforcement of environmental laws in particular are well known. But Democrats have controlled the House of Representatives for the past four years and the Senate for the past two. At this point, the Congressional refusal to support the enforcement of environmental laws it enacted is a bipartisan problem. The House and Senate will soon finish action on legislation to fund the federal government for the remainder of the 2023 fiscal year. Let us hope that this time, EPA gets the resources it needs to enforce the environmental laws that Congress wrote, and that the Senate wastes no more time in confirming David Uhlmann's nomination to head the Office of Enforcement and Compliance Assurance.