



## UPDATE: Environmental & Utilities

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### 2013 EPA Enforcement Statistics Reveal an Agency Trying to do More with Less

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On February 7, 2014, the Environmental Protection Agency (EPA) announced the results of its enforcement efforts for the prior fiscal year. The collection of over \$5.5 billion in civil and criminal fines and penalties in 2013 reflects a record yield for the agency and suggests a year of robust enforcement activity. These strong results, however, are due primarily to three large cases, which together resulted in the vast majority of the EPA's collections. In reality, 2013 saw an overall decrease in enforcement actions by approximately 20 percent. The agency's approach—targeting major polluters for large penalties—is consistent with its Next Generation Compliance program. In its four-year plan announced at the end of the year, EPA indicated that traditional enforcement efforts will be scaled back while more limited resources will focus on violations that have the highest impact on public health.

In the past year, the Deepwater Horizon case continued to be a watershed event for environmental enforcement and corporate penalties. In 2013, BP agreed to pay \$4 billion to resolve criminal charges from the 2010 explosion and spill, and Transocean agreed to pay \$1 billion to settle its civil case with the United States. Transocean also paid an additional \$400 million criminal penalty. The Deepwater Horizon settlements dwarf the criminal resolutions the EPA has reached in prior years, and 2014 could prove to be another profitable year for the agency. The pending civil case against BP, alleging violations of the Clean Water Act, has the potential to result in over \$17 billion in penalties if the amount of oil released is determined to be in line with government estimates and BP is found grossly negligent. A resolution with Halliburton could further bolster the agency's enforcement statistics.

Other noteworthy highlights from the EPA press release include the following:

- EPA reached an \$80 million settlement with Walmart for mishandling pesticides and hazardous waste. The settlement also calls for Walmart to institute new hazardous waste-handling systems, as well as compliance and training programs.
- EPA reached a \$366 million settlement with AVX Corporation to clean up contamination in Massachusetts's New Bedford Harbor. The AVX resolution reflects the largest single cash settlement in Superfund history.
- Shell Oil agreed to resolve alleged violations of the Clean Air Act at a large refinery and chemical plant in Deer Park, Texas, by spending at least \$115 million to control harmful air pollution from industrial flares and other processes and by paying a \$2.6 million civil penalty.
- EPA reached agreements with Wisconsin Power and Light, Dominion Energy, and Louisiana Generating to reduce emissions from coal-fired power plants, requiring companies to cut pollution and conduct mitigation projects that promote energy efficiency.
- EPA settled claims with Seattle and King County, Washington, and Wyandotte County, Kansas, to reduce discharges of raw sewage and contaminated stormwater to public waterways.

These gains come at a time when total agency enforcement efforts have been sharply curtailed. In a trend that began in 2009, the initiation and conclusion of civil enforcement actions have steadily declined. Between 2012 and 2013, civil and administrative actions were down approximately 20 percent. Based on its Innovative Enforcement program, part of EPA's Next Generation Compliance, these trends will continue between 2014 and 2018. EPA projects 30 percent fewer inspections in the coming years, from the prior goal of over 100,000 inspections to approximately 70,000, and nearly 50 percent fewer civil

cases, from a planned 19,000 cases to approximately 10,000. Criminal enforcement is expected to remain consistent with prior years. Other enforcement goals will be reduced as well. The agency estimates the remediation of approximately 2 billion fewer pounds of waste annually through enforcement initiatives. In addition, 30 percent fewer pounds of water pollutants will be treated, from an annual average of 320 million pounds to approximately 220 million pounds.

Not surprisingly, the agency is reacting to sharp funding limitations. In a recent interview, Cynthia Giles, the EPA assistant administrator overseeing the Office of Enforcement and Compliance Assurance (OECA), acknowledged that “obviously, necessarily with budget cuts, we have to make tough choices. The choice we made is to focus on the biggest cases. And we’re going to invest in the future.” To further deterrence initiatives in the face of fewer inspections, the EPA will focus more on encouraging accurate reporting by industry to prevent noncompliance in the first instance.

Critics of the agency’s approach suggest that smaller companies will escape scrutiny and operate without the same degree of concern for inspections and penalties for noncompliance. Others question whether an emphasis on targeting large companies, most of which have sophisticated and carefully developed compliance programs, is the best use of agency resources. While enforcement cases against large-scale polluters can result in sizeable penalties, compliance issues are more pervasive with smaller operators.

While EPA enforcement efforts are trending down, the Occupational Safety and Health Administration (OSHA) anticipates an increase in inspections in the coming year. With a federal inspections program funded for 2014, and an increase in funding for its whistle-blower program, OSHA is anticipating an uptick in enforcement efforts in the coming years.

The EPA’s reduction of its enforcement goals over the next four-year period is drastic and calls for a significant shift in enforcement priorities. OECA has responded by focusing its efforts on major polluters involved in high-profile cases. Absent additional funding to support more broad-based inspection and enforcement activities, this trend will continue. Major settlements with BP and others involved in Deepwater Horizon have helped promote the efficacy of this approach, and the likely multibillion-dollar resolution of the Clean Water Act case against BP in 2014 will likely result in another strong year of enforcement results for the agency. Whether a handful of major enforcement actions against a smaller group of large polluters will continue to result in positive enforcement statistics following the resolution of the Deepwater Horizon cases is not yet certain.

For more information on EPA’s 2013 enforcement results, [click here](#).

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