

# EPA's FY2022 Enforcement Results: Key Focus on Environmental Justice and Climate Change

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The US Environmental Protection Agency ("EPA") announced its enforcement and compliance results for Fiscal Year 2022 ("FY2022") in late December. In the [Annual Results](#) report prepared by EPA's Office of Enforcement and Compliance Assurance ("OECA"), OECA highlights EPA's efforts to target the most serious violations of the country's core environmental statutes and civil rights laws—effectuating the mission and principles set forth in its [FY2022 to 2026 EPA Strategic Plan](#). According to OECA, EPA's enforcement and compliance program used "a range of tools and best practices" to specifically target water, air, land and chemical violations that impacted communities the most. In so doing, EPA reportedly reduced, treated or eliminated approximately 95 million pounds of pollutants and compelled violators to pay over \$300 million in fines, restitution or penalties. The enforcement and compliance trends highlighted below continue an overall decline seen in the last decade, yet provide evidence that EPA is succeeding in its enforcement and compliance efforts in areas that are the biggest priority for the Biden administration.

## **FY2022 Data and Trends**

### ***Environmental Justice.***

Unsurprisingly, EPA's FY2022 report is filled with highlights related to environmental justice. OECA commended the Agency's ability to advance President Biden's Executive Order 14008 ("[EO 14008](#)") and embrace the principles from EPA Administrator Michael Regan's [internal directive](#) implementing President Biden's policies. In fact, EPA's "primary focus" for FY2022 "was advancing environmental justice" and "mitigating the effects of climate change, particularly in communities overburdened by pollution."

These successes came to fruition via EPA's implementation of [four key policies](#) issued by OECA and were accentuated by [EPA launching a new national office](#) specifically positioned to "better advance environmental justice, enforce civil rights laws in overburdened communities, and deliver new grants and technical assistance." For example, environmental justice was at the core of EPA's execution of

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its [National Compliance Initiatives](#) (“NCIs”)—improving air quality, ensuring clean and safe water, reducing risks from hazardous chemicals and acting to reduce lead exposure—in FY2022: Nearly 57% of EPA’s on-site compliance monitoring and on-site inspections occurred at facilities impacting areas with potential environmental justice concerns. This result significantly exceeded the goal established in EPA’s Strategic Plan, aiming for 45% of EPA’s on-site inspections to be conducted in such areas by 2026.

Additionally, EPA took measures to address violations that potentially posed immediate risks to areas identified with potential environmental concerns. For example, the Agency issued 86 SDWA orders—many of which were emergency orders—to public water systems. Further, EPA’s approach included engaging with community members in overburdened communities. Through this strategy, EPA aimed to comprehensively address environmental justice—“better inform[ing] EPA’s ability to negotiate injunctive relief and cleanup work that is responsive to those [communities’] concerns.”

One such collaborative method involved EPA’s Enforcement and Compliance History Online (“[ECHO](#)”) website. The ECHO website is an “integrated compliance and enforcement information” platform that allows users to (1) “Search for facilities;” (2) “Find EPA enforcement cases;” (3) “Analyze compliance and enforcement data;” (4) “Access data services;” and (5) “Inform EPA.” In April 2022, the Agency [significantly updated](#) the ECHO website and launched its related notification system called “[ECHO Notify](#).” This new tool alerts users to changes in facilities’ data related to environmental compliance and enforcement. The notifications are tailored to the options of interest (geographic location(s) and/or facility ID(s)) that each user selects. In effect, [ECHO operates](#) not only as a comprehensive information hub for interested users, but also as an additional mechanism for EPA to take action with regard to potential violations.

### ***Civil Enforcement Cases.***

During FY2022, EPA initiated and concluded approximately 1,650 civil judicial and administrative cases, including 866 administrative penalty orders and 718 administrative compliance orders. The overall number is slightly higher than FY2021 and FY2020 (which, as [we noted](#), were “about level” with each other).

OECA’s report prominently displays the results of the Agency’s environmental justice efforts. FY2022 recorded the highest percentage of civil cases addressing environmental justice concerns since EPA began tracking the statistic in FY2014. Compared to 28% in [FY2021](#), more than 44% of EPA’s civil enforcement actions focused on facilities located in historically overburdened and underserved communities.

EPA’s civil enforcement statistics for FY2022 are slightly muddled considering that EPA recorded a 20-year low in the number of closed civil judicial cases, 72, falling below the Trump Administration’s average of 94 cases per year. Nonetheless, the Agency [commends](#) its own civil enforcement efforts given what it describes as “the 30% decline in [staffing] resources over the past 10 years.” Declines in staffing—both due to retirements and other attrition and reduced appropriations from Congress—have been a consistent theme in OECA’s annual reports, but are more prominently mentioned this year.

### ***Civil Penalties.***

EPA assessed more than \$154 million in administrative and judicial civil penalties in FY2022. This amount is a substantial drop from FY2021; however, FY2021 was an outlier compared to the prior

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three years, with the amount of civil penalties assessed being largely driven by two large CAA mobile source cases.

The decrease in FY2022's civil penalties metric can be attributed to EPA's efforts to pinpoint facilities in areas of potential environmental justice concern. One such effort involved EPA significantly increasing its enforcement actions under the SDWA to ensure public water systems supply clean water. For example, EPA issued an SDWA Section 1414 Administrative Order to [Benton Harbor, Michigan](#), informing the municipality of necessary steps to bring its public water system into compliance with the SDWA. As a result of this action and others throughout FY2022, EPA touts that it protected over 8.6 million people in FY2022 by ensuring access to safe drinking water. While significantly impactful to environmental justice communities, these SDWA enforcement actions, as the Agency noted, have a substantially lower average penalty assessed value than civil actions under the CAA, CWA and RCRA.

In highlighting its primary "accomplishments" for FY2022, EPA specifically recounted [two settlements in Utah's Uinta Basin](#) against oil-and-gas companies, alleging that 52 of their production facilities located on state and tribal lands violated the CAA's requirements to control volatile organic compound ("VOC") emissions from their facilities' storage tanks and vapor control systems. These two settlements alone resulted in the companies conducting injunctive relief at 246 facilities, paying approximately \$700,000 in civil penalties. Additionally, [EPA announced](#) successful results for its CWA permitting program, which showed a significant reduction in the national significance noncompliance ("SNC") rate for facilities permitted under the CWA—from 20.3% in 2018 to 9.0% in FY2022.

### ***Criminal Enforcement.***

Continuing the downward trend from [FY2021's criminal enforcement results](#), EPA opened only 117 new criminal cases in FY2022, the second lowest number on record. Nonetheless, the total amount of fines, restitution and court-ordered projects for which defendants had to pay increased significantly to over \$157 million. As has been the case in other years, criminal fines in FY2022 were driven by a single case; in this instance, a plea agreement resolving violations of the CAA's vehicle emission standards, wherein the defendant agreed to pay more than \$96 million in a criminal penalty. Additionally, individual defendants who were convicted received court sentences totaling 21 years of incarceration, which is the lowest amount since EPA started reporting this data point in 2012. And defendants, in the aggregate, were ordered to forfeit more than \$214 million in illegal proceeds, which included a \$203 million forfeiture by one single defendant.

OECA expects its criminal statistics to increase in FY2023 as the Agency increases its civil inspections and resumes its in-person Environmental Crime Task Force meetings, which were impacted by the COVID-19 pandemic. Task Forces bring federal, state and local law enforcement together to identify focus areas and evaluate local trends, and act as a force multiplier when investigating and developing cases. OECA is acknowledging here that Task Forces are an important element of the EPA's ability to overcome its own challenges in criminal enforcement.

EPA concentrated its criminal enforcement efforts on violations that seriously threatened human health and the environment. Thus, it is unsurprising that 32% of the defendants sentenced in FY2022 engaged in criminal activities that affected areas identified as potential environmental justice concerns. For example, a [railcar cleaning company and its two owners](#) were convicted for willfully violating RCRA and OSHA when flammable gases in a rail tanker car exploded in a potential environmental justice community, resulting in two workers dying who were removing petroleum

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residue from inside the tanker car. And the Director of Operations for a [biofuel company](#) received a prison sentence and was fined for violating the CWA and tampering with wastewater sensors and monitors to hide evidence of the company's unlawful releases of polluted wastewater located in an area with potential environmental justice concerns.

### ***Superfund Enforcement.***

In FY2022, EPA reached 74 settlements, issued 5 orders and finalized 7 settlement amendments that resulted in responsible parties committing to clean up contaminated sites valued at \$575 million. Of those 86 agreements, 59 incorporated cleanup projects focused on protecting the environmental justice communities directly affected by the Agency's cleanup efforts—effectuating [EPA's Implementation Plan for Strengthening Environmental Justice in EPA's Cleanup Enforcement Program](#) issued on April 27, 2022.

One such cleanup occurred at a [former Lead facility](#) in East Chicago, Indiana, where EPA sought to eliminate potential lead exposure to a public housing complex and other residential properties nearby. EPA facilitated the cleanup by negotiating two agreements that (1) required the new developer-owner to clean up contamination on the property and (2) compelled five other previous owners/operators to pay future oversight costs to the local environmental agency and EPA. Another cleanup project involved the efforts of EPA, the State of Delaware and potentially responsible parties to address drinking water contamination resulting from [a landfill](#) polluting the site's soil and groundwater with waste, leachate and other hazardous substances. EPA negotiated a consent decree with 24 parties to perform or finance the site's cleanup activities—estimated at \$46 million—in accordance with an approved Remedial Action Workplan and implementation schedule. Notably, EPA actively encouraged affected community members to participate in EPA's [Community Involvement Program](#) throughout the cleanup process.

Beyond the Agency's settlements, EPA also issued 65 comfort/status letters to promote the reuse of contaminated sites. As a result, EPA's Superfund enforcement efforts in FY2022 transformed many properties from Superfund sites back to productive sites.

### ***Injunctive Relief.***

EPA's civil enforcement actions for FY2022 resulted in violators paying an estimated value of over \$4.3 billion in injunctive relief to implement projects to address noncompliance. In general, this trend has varied significantly since FY2012, as injunctive results vary significantly depending on the cases resolved that year. In FY2022, statistics were driven by two significant cases: (1) the Louisville and Jefferson County Metropolitan Sewer District (\$1.1 billion) regarding a CWA consent decree to improve its waste handling processes; and (2) the Jersey City Municipal Utilities Authority (\$1.1 billion) involving an agreement to improve its drinking water system infrastructure.

### ***Inspections.***

For FY2022, EPA performed 5,681 on-site inspections—a significant 78% increase from FY2021. This increase is likely a reflection of the lack of on-site inspections due to COVID-19 in FY2021, and a return to on-site inspections this year. For off-site inspections, EPA maintained (and even slightly increased) its FY2021 number to more than 8,000. Of the total inspections EPA conducted in FY2022, over 24% specifically related to EPA's [NCIs](#) (discussed above). Despite these noteworthy compliance results, the Agency has not yet matched its on-site inspection numbers from before the COVID-19 pandemic (8,179 in FY2019); however, EPA plans to continue this upward trend in

FY2023.

## **Emerging Focus Areas**

The FY2022 report identified climate change and PFAS as “evolving environmental and public health issues” that the Agency is committed to address. EPA’s actions in FY2022, according to OECA, set the foundation for tackling these crises. In addressing climate change, EPA touted two accomplishments: (1) the development of its [Climate Change Adaptation Implementation Plan](#) and (2) the establishment of a new enforcement program for hydrofluorocarbon (“HFC”) emissions—in accordance with the requirements set forth in the American Innovation and Manufacturing Act of 2020 (“[AIM Act](#)”).

With regard to PFAS, EPA’s enforcement and compliance programs for FY2022 focused on implementing its [2021 to 2024 Per- and Poly-fluoroalkyl substances \(PFAS\) Strategic Roadmap](#) (which [we reviewed](#) in October 2021). As noted in the FY2022 report, EPA took action to better understand PFAS and addressed PFAS contamination in unprecedented ways. In accordance with [EPA Administrator Regan’s directive](#): “EPA staff . . . use[d] every enforcement tool at [the Agency’s] disposal to require manufacturers of PFAS to address potential endangerment to the public.” While some have praised EPA’s efforts, others have contested EPA’s recently exercised authority to “hold polluters accountable.” Nonetheless, this area of enforcement will undoubtedly continue to make headlines as the Agency learns more [about PFAS chemicals](#) and works towards its enforcement and compliance goals set forth in its Strategic Roadmap.

## **Takeaways**

EPA’s enforcement and compliance actions in FY2022 reflect the Agency’s Environmental Justice and Climate Change goals established by President Biden’s EO 14008 and advanced by EPA Administrator Regan’s internal directive. With FY2021 acting as the Agency’s foundational year, FY2022 served as EPA’s implementation year—effectuating its Strategy Plans, Roadmaps and other policies. Undoubtedly, environmental justice considerations will continue to motivate EPA’s enforcement approach. In particular, EPA’s focus will likely remain on those entities and individuals posing the most significant risks to overburdened communities. Whether those risks come in the form of harmful chemical releases or emissions that facilitate climate change impacts, EPA’s FY2022 results make clear that the Agency is looking to enforce the biggest violations to achieve results with the biggest impact.

*Hunton Andrews Kurth Law Clerk Meredith Doswell also contributed to this article.*

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