



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL



Response to Congressional Request on EPA Enforcement

Report No. 13-P-0168

February 28, 2013



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Abbreviations

CAA	Clean Air Act
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act (Superfund)
CWA	Clean Water Act
DOJ	U.S. Department of Justice
ECHO	Enforcement and Compliance History Online
EPA	U.S. Environmental Protection Agency
FTEs	Full-Time Equivalents
FY	Fiscal Year
IR	Injunctive Relief
MERs	Monetary Enforcement Results
NEIs	National Enforcement Initiatives
NPDES	National Pollutant Discharge Elimination System
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
SDWA	Safe Drinking Water Act
SEPs	Supplemental Environmental Projects

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At a Glance

Why We Did This Review

We conducted this review in response to a congressional request for information about U.S. Environmental Protection Agency (EPA) enforcement results overall and, specifically, for Region 7 in fiscal year (FY) 2010.

EPA is responsible for enforcing many environmental laws across the country. EPA directs much of its enforcement towards sectors with histories of high noncompliance as part of its national enforcement initiatives. EPA annually reports environmental and monetary enforcement results to Congress and the public.

This report addresses the following EPA Goal or Cross-Cutting Strategy:

- *Enforcing environmental laws*

For further information, contact our Office of Congressional and Public Affairs at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2013/20130228-13-P-0168.pdf

Response to Congressional Request on EPA Enforcement

What We Found

EPA enforcement data show that the amount of monetary results EPA regions achieve from concluded enforcement cases varies from year to year and from region to region. While the number of enforcement cases concluded for FYs 2006 through 2011 remained relatively constant, the overall monetary results varied. The variations are linked to when and where in the nation a few large cases are concluded. These few large cases can result in unusually large monetary results in any given year. National Enforcement Initiatives (NEIs) set by EPA's Office of Enforcement and Compliance Assurance drove the majority of these large cases.

In FY 2010, Region 7 concluded two enforcement cases with large monetary results. Both cases were pursued under EPA's NEIs. The two cases accounted for 24 percent of all of EPA's monetary enforcement results for FY 2010 and 98 percent of Region 7's monetary results for FY 2010. Region 7's results typically fell in the middle of the 10 regions. We found that from FYs 2006 through 2011, Region 7's enforcement results, regulated facilities, and staff allocated to enforcement were proportional with each other. Large cases took several years to close and relied on coordination with the U.S. Department of Justice, companies, and courts, which meant that EPA did not have full control over the year in which a case was settled.

There are no recommendations associated with this report. The Office of Enforcement and Compliance Assurance and Region 7 agreed with the Office of Inspector General's conclusion that enforcement results can vary from year to year and from region to region based on when and where large cases are concluded.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

February 28, 2013

MEMORANDUM

SUBJECT: Response to Congressional Request on EPA Enforcement
Report No. 13-P-0168

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Cynthia Giles
Assistant Administrator for Enforcement and Compliance Assurance

Karl Brooks
Regional Administrator, Region 7

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains results that describe the problems the OIG has identified. This report represents the opinion of the OIG and does not necessarily represent the final EPA position.

Because this report contains no recommendations, you are not required to respond to this report. However, if you submit a response, it will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification. We have no objections to the further release of this report to the public. We will post this report to our website at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Carolyn Copper, Assistant Inspector General for Program Evaluation, at (202) 566-0829 or copper.carolyn@epa.gov; or Dan Engelberg, Product Line Director, at (202) 566-0830 or engelberg.dan@epa.gov.

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Chapter 1

Introduction

Purpose

We conducted this review in response to a congressional request for information about U.S. Environmental Protection Agency (EPA) enforcement results. We addressed the following questions:

- What are the trends in enforcement results stemming from EPA enforcement actions (injunctive relief, supplemental environmental projects, and penalties) over time [fiscal years (FYs) 2006 through 2011] and across regions?
- What are the key factors explaining differences in enforcement results stemming from EPA enforcement actions among EPA regions?
- How do enforcement results stemming from EPA enforcement actions in Region 7 compare to those in the rest of the EPA regions?

Background

EPA's mission is to protect human health and the environment, ensuring that all Americans are protected from significant risks where they live, learn, and work. EPA administers programs under federal environmental statutes.¹ Each of these programs has specific regulations. EPA is tasked with enforcing these regulations at approximately 40 million regulated federal and private entities. EPA's Office of Enforcement and Compliance Assurance (OECA) works with EPA's 10 regional offices, state and tribal governments, and other federal agencies to ensure that federal laws and regulations are enforced fairly and effectively. EPA strives for a nationally consistent enforcement policy to promote a level playing field among regulated entities and to ensure that all Americans live in states that meet minimum environmental standards.

EPA's goal is to direct its core enforcement activities so that the Agency may achieve the highest environmental benefits and reductions in risks to human health and the environment.

¹ Federal environmental statutes include the Clean Air Act (CAA); Clean Water Act (CWA); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund); Emergency Planning and Community Right-to-Know Act; Federal Insecticide, Fungicide, and Rodenticide Act; Marine Protection, Research and Sanctuaries Act; National Environmental Policy Act; Oil Pollution Act; Resource Conservation and Recovery Act; Safe Drinking Water Act (SDWA); and Toxic Substances Control Act.

EPA Can Take Enforcement Actions When Violations Are Found

When EPA finds that facilities have violated the law, it may take enforcement actions to correct any environmental damage and to deter future violations. These actions may be informal, such as notices of violation; or formal, such as administrative orders and seeking judicial orders or consent decrees. Depending on the severity of the violation, and on whether the violation was willfully or knowingly committed, EPA may also pursue criminal charges against an individual or corporate defendant.

For each concluded enforcement case, EPA typically tracks two categories of results:

- **Environmental results.** These include environmental improvements achieved through returning to compliance. OECA typically reports these as “pounds of pollution reduced,” or a similar environmental or human health improvement.
- **Monetary enforcement results (MERs).** These include financial costs to the violator. OECA reports these in three ways: (1) injunctive relief (IR), (2) supplemental environmental projects (SEPs), and (3) penalties (see table 1). EPA considers money the violator agrees to spend on IR as money the company should have spent complying with the law. IR makes up the vast majority of MERs. Both IR and SEPs are investments made by the company, which often result in an improvement to the environment. For example, the violator agrees to decontaminate soil or reduce the pollution produced by installing technology. Penalties are money paid directly to the government. EPA also reports MERs associated with criminal enforcement actions and violations of administrative and judicial orders.

Table 1: Types of monetary results associated with concluded enforcement cases

Monetary enforcement results	Description	Examples
Injunctive relief (IR)	The action that EPA orders a violator to take, through court or administrative order, ² in order to achieve and maintain compliance with environmental laws. Facilities typically make these investments over several years or even decades, even though EPA reports the total investment amount in the year the case was concluded.	<ul style="list-style-type: none"> • An energy company must install a new cooling system to comply with thermal discharge requirements in a National Pollutant Discharge Elimination System (NPDES) permit. • A petroleum refinery must install controls to reduce emissions of air pollutants to permitted levels.
Supplemental environmental projects (SEPs)	Environmental improvement projects that a violator agrees to perform as part of an enforcement settlement. These projects supplement the projects required to correct the violations (injunctive relief), and produce environmental or public health and safety benefits beyond those required by law. EPA may grant a credit to the violator to partially offset the penalty imposed during settlement.	<ul style="list-style-type: none"> • A wastewater treatment plant connects low-income residents to its system. • A company restores a section of stream impacted by a release of a toxic substance from its facility.
Penalties	The money the violator pays in connection with noncompliance or violation. Penalty amounts are established by criteria from relevant environmental law or agency policy. Criteria affecting penalty amounts may include prior knowledge of regulations, monetary benefits the violator received by not complying and severity of the violation.	<ul style="list-style-type: none"> • A company must pay a penalty of \$1 million for NPDES permit violations at 61 of its wastewater treatment plants. • An energy company must pay \$13 million in penalties for illegally discharging harmful substances to surface waters without a permit.

Source: Office of Inspector General (OIG) summary based on OECA website and enforcement case summaries.

EPA Reports Annual Enforcement Results to the Public and Congress

Each fiscal year, EPA reports its enforcement results to the public and Congress through its annual results process. Prior to releasing national year-end results, OECA collects and validates data from the regions about their enforcement activities. OECA refers to the final data as “certified data.” The annual results provide overviews of the enforcement program, details about annual results (both monetary and environmental), and year-to-year enforcement trends. The annual

² Technically, only courts can issue “injunctions.” However, EPA uses the term “injunctive relief” to refer to activity required by both courts and administrative orders.

reports often highlight specific accomplishments, like cases that resulted in large MERs and/or environmental results.³

In addition to OECA’s annual reporting, individual EPA regions may describe their year-end results to the public in press releases. For example, Region 7 issued a press release on December 6, 2010, describing its enforcement results in FY 2010. The press release stated that in FY 2010 Region 7 concluded cases resulting in over \$3 billion in IR. The press release also said this dollar amount accounted for 31 percent of the total for EPA in FY 2010 (see appendix A). Table 2 summarizes EPA’s monetary enforcement results for FYs 2006-2011.⁴

Table 2: EPA annual monetary enforcement results for all regions by year, FYs 2006-2011

Fiscal Year	Number of concluded enforcement cases	Injunctive relief (\$ in millions)	Supplemental environmental projects (\$ in millions)	Total administrative and judicial penalties (\$ in millions)	Enforcement total (\$ in millions)	Average monetary commitment per concluded case (\$ in millions)
2006	3,593	\$4,801	\$69	\$103	\$4,973	\$1.38
2007	3,403	\$10,538	\$30	\$62	\$10,631	\$3.12
2008	3,541	\$11,706	\$39	\$122	\$11,866	\$3.35
2009	3,670	\$5,319	\$41	\$87	\$5,447	\$1.48
2010	3,292	\$12,111	\$24	\$92	\$12,227	\$3.71
2011	3,206	\$19,050	\$25	\$140	\$19,215	\$5.99

Source: OIG summary of OECA’s certified annual results by fiscal year.

EPA Sets National Priorities for Its Enforcement Activities

Every 3 years, EPA sets national enforcement initiatives (NEIs) to focus civil and criminal enforcement resources and expertise on serious environmental problems. EPA’s NEIs have focused on pollution problems such as mineral processing, air toxics/air pollution, stormwater, and petroleum refineries.⁵ EPA’s current NEIs for FYs 2011-2013 focus on five areas:

- Reducing air pollution from the largest sources and cutting hazardous air pollutants.
- Keeping raw sewage and contaminated stormwater out of the nation’s waters.
- Preventing animal waste from contaminating surface and groundwater.

³ FY 2011 year-end results are reported at <http://www.epa.gov/compliance/resources/reports/endofyear/eoy2011/eoy-data.html>.

⁴ All of the dollar amounts presented in this report are real dollars (i.e., not adjusted for inflation) as reported in the annual results for that given fiscal year.

⁵ The petroleum refineries NEI was returned to the core enforcement program after the FY 2005 through FY 2007 cycle, but the others have carried over to the FY 2011 through FY 2013 NEIs.

- Ensuring energy extraction activities comply with environmental laws.
- Reducing pollution from mineral processing operations.

OECA and regions negotiate region-specific enforcement commitments to support the goals and measures of the NEIs. Depending on the level of progress, EPA may either carry over a NEI to the next cycle, or consider the issue addressed and return the program to the core enforcement program.

Scope and Methodology

We conducted this evaluation in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our review objectives. We believe that the evidence obtained provides a reasonable basis for our analysis and results based on our evaluation objectives. We performed our review from July to December 2012.

To answer this congressional request, we evaluated EPA enforcement data from EPA's Enforcement and Compliance History Online (ECHO) database and supplemental region-certified data provided by OECA. We reviewed the MERs associated with civil enforcement cases (including Superfund)⁶ concluded by EPA regions. We used the real dollar amounts as reported in the Agency's annual enforcement results reports. The period for our review was from FYs 2006 through 2011. We selected this timeframe because it gives a sense of the number and types of enforcement cases concluded by EPA over different administrations. We did not include criminal actions because the request focused on civil enforcement results. We also did not include cases taken by EPA headquarters since the focus of this review was regional results.

To examine trends in EPA's regional MERs, we obtained annual enforcement results for all 10 regions over our study period and employed descriptive trend analysis techniques. This analysis involved plotting values from year to year and describing the shape of the plot. We also calculated the average over the 6-year period and compared yearly results by calculating the percent change from the average for each year.

We also analyzed annual enforcement results for IR, SEPs, and penalties for each region. We assessed the extent of variability in regional MERs by identifying the frequency with which these results exceeded 150 percent of the 6-year average for that region. We chose this threshold after an initial assessment of the data demonstrated that the threshold captured all years in which a substantial variation from the 6-year average occurred. Once we identified years when results

⁵ This includes concluded Superfund cases, which are different from other civil enforcement cases since they focus on locating and negotiating with the parties responsible for contamination at a site, and accomplishing site cleanup. Further information about Superfund enforcement is at <http://www.epa.gov/oecaerth/cleanup/superfund/index.html>.

exceeded 150 percent of the 6-year average, we determined the key factors leading to differences in MERs by identifying the cases that contributed to the substantial variations from the averages. We interviewed OECA staff and managers and reviewed EPA enforcement data to identify the reasons for variations over this period.

To determine whether the enforcement results in Region 7 were different from those in other EPA regions, we analyzed the distribution of the region's MERs over the selected time period. We also analyzed the distribution of EPA's regulated facilities and full-time equivalents (FTEs or staff) across the regions. We also identified the cases that contributed to Region 7's FY 2010 enforcement results through a review of EPA's enforcement data and interviews with Region 7 enforcement personnel. Based on the objectives of the review and the analysis performed, the OIG has no recommendations to report.

Data Limitations

We obtained our enforcement data from EPA's publicly available and certified enforcement data. There are limitations in using these data to reach conclusions about the number of regulated facilities in an EPA region. First, EPA relies on the number of permits issued as a proxy for the number of facilities regulated by the agency. However, a single facility may have multiple permits, so the permit count is higher than the facility count. Second, EPA does not know the location of all regulated facilities.⁷ This results in underreporting for the facility universe. However, EPA has also found that its facility universe includes closed facilities, which results in overreporting the facility universe. Third, because facility complexity varies and complex facilities require more inspection and enforcement resources, the ratio of permits to resources may not provide a precise picture of the regions' requirements and capabilities. A region with a smaller number of more complex facilities could have a larger enforcement burden than a region with a larger number of less-complex facilities. Facility numbers do not capture this nuance. After considering these limitations, we do not believe that any of the limitations have material implications for our results.

⁷ For more information, see the OIG reports *Limited Knowledge of the Universe of Regulated Entities Impedes EPA's Ability to Demonstrate Changes in Regulatory Compliance* (Report No. 2005-P-00024, issued September 19, 2005) and *EPA Needs to Further Improve How It Manages Its Oil Pollution Prevention Program* (Report No. 12-P-0253, issued February 6, 2012).

Chapter 2

Results

EPA regions' MERs vary from year to year. A few extremely high-value enforcement cases that were concluded explain large variations across regions and over time. For FYs 2006 through 2011, the annual number of cases EPA regions concluded remained relatively constant. However, over the 6 years, the MERs stemming from these cases varied. A factor linked to this variation was the timing and distribution of a few large cases concluded in a given year. In FY 2010, Region 7 results included two large concluded cases that accounted for 24 percent of nationwide enforcement results. However, FY 2010 was not an ordinary year in Region 7. Over the 6-year period, Region 7 MERs accounted for only 6 percent of national results on average. In addition, we found that for FYs 2006 through 2011, Region 7 enforcement results were in proportion to both the number of regulated facilities and the number of enforcement FTEs in the region. Based on this information, the number of concluded cases and associated MERs in Region 7 for these years were similar to the level of activity in the other nine regions.

EPA's Monetary Enforcement Results Varied From FYs 2006 Through 2011

Although the annual MERs varied from year to year, the number of concluded cases remained relatively constant across EPA regions and over our review period. Most of EPA's MERs were in the form of injunctive relief, focused on completing tasks that will return and keep facilities in compliance. IR made up nearly 99 percent of the \$64 billion in MERs assessed in the study period.⁸ Penalties and SEPs accounted for under 2 percent of MERs. In addition, MERs also varied across regions.

EPA enforcement data for the period reviewed (FYs 2006 through 2011) indicate that the number of cases EPA regions concluded remained relatively constant, differing by an average of 4 percent from the 6-year average over the study period (see table 3). However, the monetary results associated with these cases fluctuated widely from year to year, differing by an average of 35 percent from the 6-year average. Therefore, an increase in the number of concluded cases does not necessarily lead to an increase in MERs (or vice versa). For example, in FY 2009 the number of concluded cases increased while the MERs decreased.

⁸ IR is substantially higher than penalties and SEPs because IR reflects long-term investments (e.g., 15-20 years) made by companies to correct noncompliance. However, EPA reports the total amount in the year that the case is concluded.

Table 3: Comparison of the percent change from the 6-year average for concluded cases and MERs

Fiscal Year	Number of concluded cases	Percent difference from 6-year average number of concluded cases*	Total monetary enforcement results (\$ in billions)	Percent difference from 6-year average MERs*
2006	3,593	4%	\$4.9	54%
2007	3,403	1%	\$10.6	1%
2008	3,541	3%	\$11.9	11%
2009	3,670	6%	\$5.3	51%
2010	3,292	5%	\$12.3	15%
2011	3,206	7%	\$19.1	79%
6-year Average	3,451	--	\$10.7	--
Average percent difference	--	4%	--	35%

* Above 6-year average indicated in black text; below 6-year average indicated in red text.

Source: OIG analysis of OECA's certified annual results by fiscal year.

Monetary enforcement results varied across the three categories (IRs, SEPs, and penalties) as well. Over the 6-year period we reviewed, IR differed 173 percent between the highest and lowest regions. This variation also occurred *within* individual regions. For example, Region 7's IR amounts differed 191 percent from its lowest to highest years. Similar results were also apparent for SEPs.

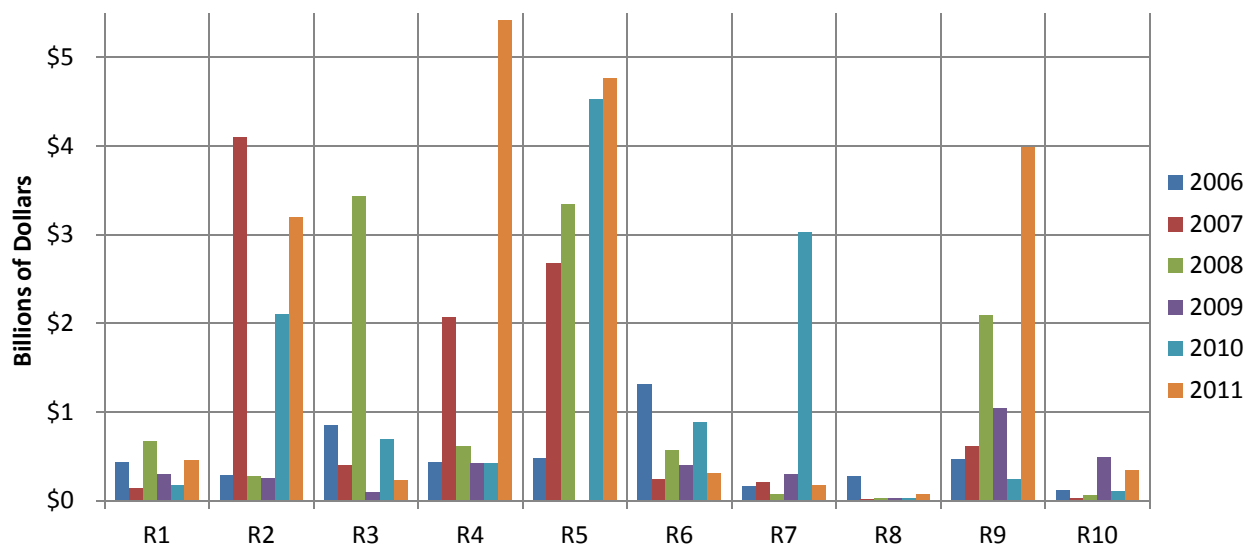
Penalties varied 153 percent between the highest and lowest region over the study period. For an individual region, Region 10 showed the largest variation, posting a 163-percent difference between the highest and lowest year.

Variations in Monetary Enforcement Results Are Linked to When Large Cases Conclude

For FYs 2006 through 2011, the conclusion of a few cases with large monetary results influenced MERs variation. When regions concluded large cases, the overall value of these cases increased those regions' MERs in that year. This led to variability in MERs from year to year, both within and across regions. Due to multiple stakeholders in these types of cases (e.g., the defendants, the U.S. Department of Justice (DOJ), and others), EPA regions had limited control over when a large case settled. Additionally, EPA's NEIs drove the majority of these large cases. (These cases are italicized in figures 1 through 3).

In years when a region reported MERs significantly higher than the 6-year average, the region concluded one or more large cases in that year. See figures 1 through 3 for more information on these cases.

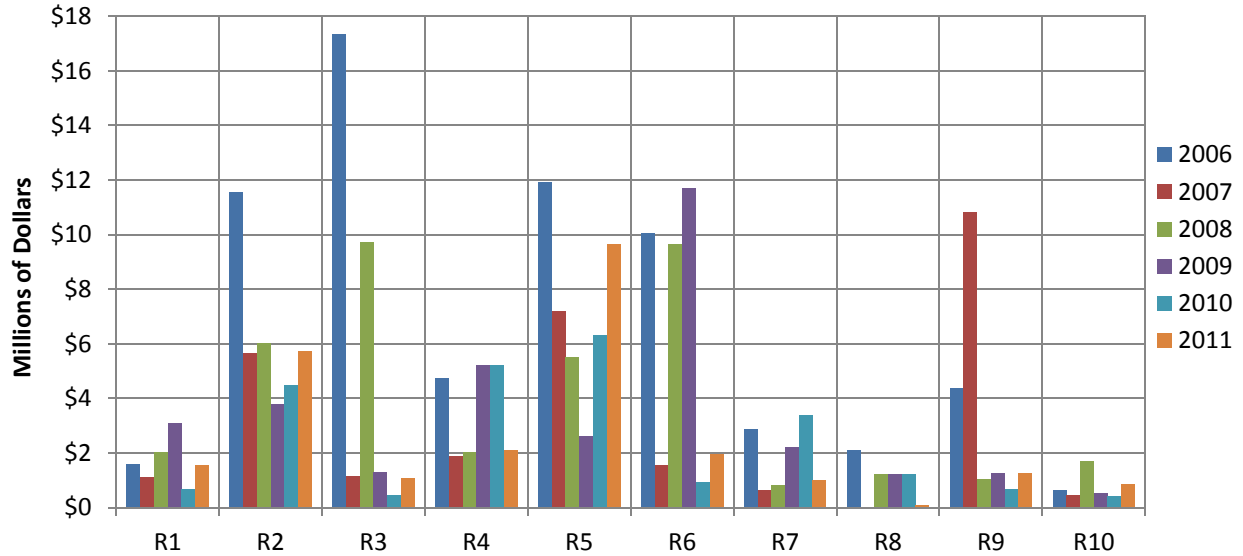
Figure 1: The value of injunctive relief by region and the contributing cases, FYs 2006-2011



Cases contributing to higher than normal injunctive relief results	
2006	<ul style="list-style-type: none"> Region 6 - Valero Refining Company, \$457 million; ExxonMobil Corporation, \$193 million; ConoccoPhillips, \$192 million; ExxonMobil and Supply Baton Rouge Refinery, \$154 million. These four cases accounted for 76% of Region 6's injunctive relief in 2006.
2007	<ul style="list-style-type: none"> Region 2 - Prasa V -Puerto Rico Aqueduct and Sewer Authority, \$1.7 billion; PSEG Fossil, LLC (CD Amendment), \$1.1 billion; New York City Department of Environmental Protection, \$930 million. These cases accounted for 91% of Region 2's total injunctive relief for 2007.
2008	<ul style="list-style-type: none"> Region 1 - Brayton Point, \$500 million. This case accounted for 75% of Region 1's injunctive relief for 2008. Region 3 - American Electric Power Company (national case), \$1.9 billion; Allegheny County Sanitary Authority, \$1.4 billion. These cases accounted for 96% of Region 3's injunctive relief for 2008. Region 8 - Kennecott South Zone Superfund Site, \$197 million; Libby Asbestos Site, \$191 million; Atlantic Richfield Corporation, \$97 million. These three cases accounted for 84% of Region 8's Injunctive Relief for 2008.
2009	<ul style="list-style-type: none"> Region 10 - Asarco Bankruptcy (NC) CDA Basin, \$373 million. This case accounted for 77% of Region 10's injunctive relief for 2009.
2010	<ul style="list-style-type: none"> Region 5 - Hamilton County, \$1.79 billion; Lyondell Chemical Company, Inc, et al. (NC), \$983 million; Enbridge Energy Partners, L.P. Order (Marshall), \$600 million. These three cases accounted for 76% of Region 5's injunctive relief for 2010. Region 7 - City of Kansas City, Missouri, \$2.4 billion; Westar Energy Inc, \$556 million. These two cases accounted for 97% of Region 7's injunctive relief in 2010.
2011	<ul style="list-style-type: none"> Region 2 - General Electric Company, \$2.1 billion; Hovensa LLC (Global), \$700 million. These two cases accounted for 88% of Region 2's injunctive relief in 2011. Region 4 - Tennessee Valley Authority, \$5 billion, This case accounted for 92% of Region 4's injunctive relief in 2011. Region 5 - NEORDS-Cleveland, \$3 billion; NIPSCO, \$609 million; City of Evansville, \$500 million. These three cases accounted for 86% of Region 5's injunctive relief for 2011. Region 9 - Honolulu, City and County, \$3.7 billion. This case accounted for 94% of Region 9's injunctive relief for 2011. Region 10 - Coeur D'Alene Basin Hecla Mining, \$114 million; BP Exploration (Alaska) Inc, \$60.5 million; EMF J.R. Simplot Company, \$50 million. These three cases accounted for 65% of Region 10's injunctive relief for 2011.

Source: OIG analysis of EPA enforcement data for FYs 2006-2011. Cases in italic print were part of an NEI.

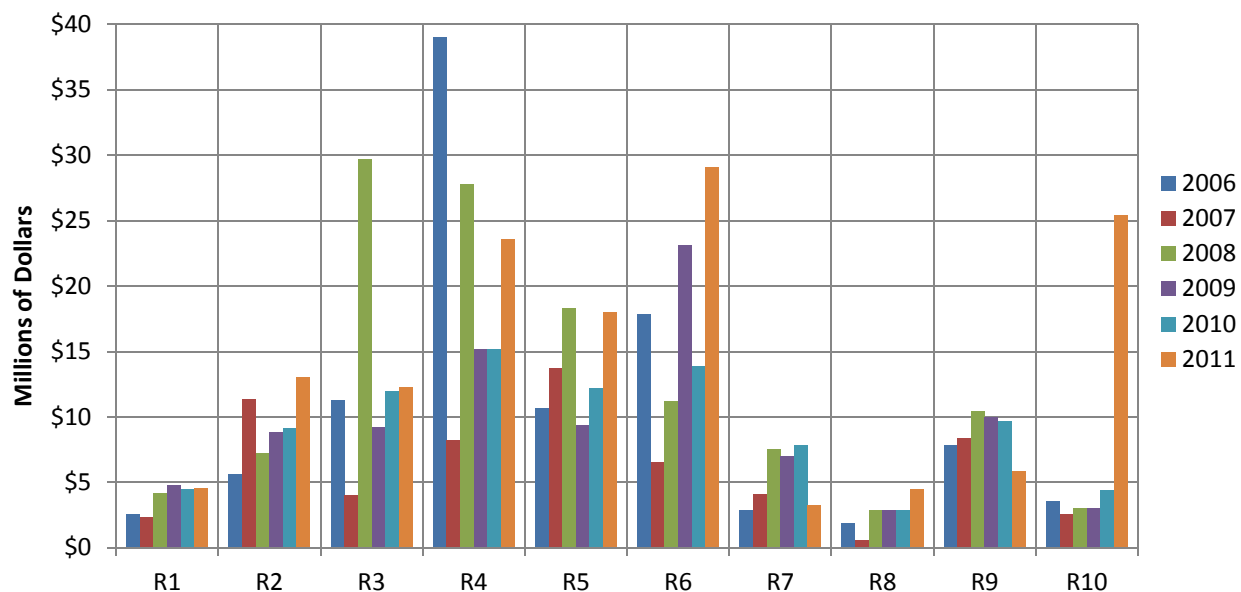
Figure 2: The value of supplemental environmental projects by region and the contributing cases, FYs 2006-2011



Cases contributing to higher than normal supplemental environmental projects results	
2006	<ul style="list-style-type: none"> Region 2 - <i>ConocoPhillips, \$8 million; Valero Refining Company, New Jersey, \$1.2 million.</i> These two cases accounted for 72% of Region 2's total SEP value for 2006. Region 3 - <i>Sunoco Inc., \$3.9 million; Washington Suburban Sanitary Commission, \$4.4 million; Motiva Enterprises LLC, \$6.4 million.</i> These three cases accounted for 87% of Region 3's total SEP value in 2006. Region 5 - <i>ExxonMobil Corporation, \$2.2 million; Eramet Marietta Inc., \$2 million; Archer Daniels Midland, \$1 million; Conoco Inc. Wood River Products, \$900,000.</i> These four cases accounted for 52% of Region 5's total SEP value for 2006. Region 6 - <i>Valero Refining, \$3 million; ExxonMobil Refining Complex, \$1 million; City of Dallas, \$1.2 million; Oxy Vinyls Limited, \$964,000.</i> These four cases accounted for 61% of Region 6's total SEP value for 2006. Region 7 - <i>Cargill Inc., \$2 million.</i> This case accounted for 70% of Region 7's total SEP value for 2006. Region 8 - <i>ExxonMobil Refining and Supply Company, \$1.8 million.</i> This case accounted for 85% of Region 8's total SEP value for 2006.
2007	<ul style="list-style-type: none"> Region 9 - <i>Nevada Power Company, \$9.7 million.</i> This case accounted for 89% of Region 9's total SEP value for 2007.
2008	<ul style="list-style-type: none"> Region 3 - <i>Merck and Company, \$4.5 million; Allegheny County Sanitary Authority, \$3 million; Southeastern Transportation Authority, \$1.1 million.</i> These cases accounted for 89% of Region 3's total SEP value for 2008. Region 6 - <i>Equistar Global (National Case), \$6 million; Premcor Refining Group (National Case), \$2.3 million.</i> These two cases accounted for 86% of Region 6's total SEP value for 2008. Region 10 - <i>USDOE Hanford Facility, \$837,000; Thea Foss Settlement, \$268,500; ConocoPhillips Company, \$200,000.</i> These three cases accounted for 77% of Region 10's total SEP value for 2008.
2009	<ul style="list-style-type: none"> Region 1 - <i>Franklin Park Apartments (The Community Builders), \$1.9 million.</i> This case accounted for 61% of Region 1's total SEP value in 2009. Region 4 - <i>Metropolitan Government of Nashville and Davidson County, TN, \$2.8 million; Memphis Light, Gas, and Water Division, \$10 million.</i> These two cases accounted for 92% of Region 4's total SEP value in 2009. Region 6 - <i>BP North American, \$6 million; Shintech Inc, \$4.7 million.</i> These cases accounted for 91% of Region 6's total SEP value for 2009.
2010	<ul style="list-style-type: none"> Region 7 - <i>City of Kansas City, Missouri, \$1.4 million; Kaneb Pipeline Operating Partnership, LP, A Nustar Energy LP Company, \$762,302.</i> These two cases accounted for 63% of Region 7's total SEP value for 2010. Region 8 - <i>McWane Inc., \$1 million.</i> This case accounted for 81% of Region 8's total SEP value for 2010.
2011	None

Source: OIG analysis of EPA enforcement data for FYs 2006-2011. Cases in italic print were part of an NEI.

Figure 3: Penalty amounts by region and the contributing cases, FYs 2006-2011

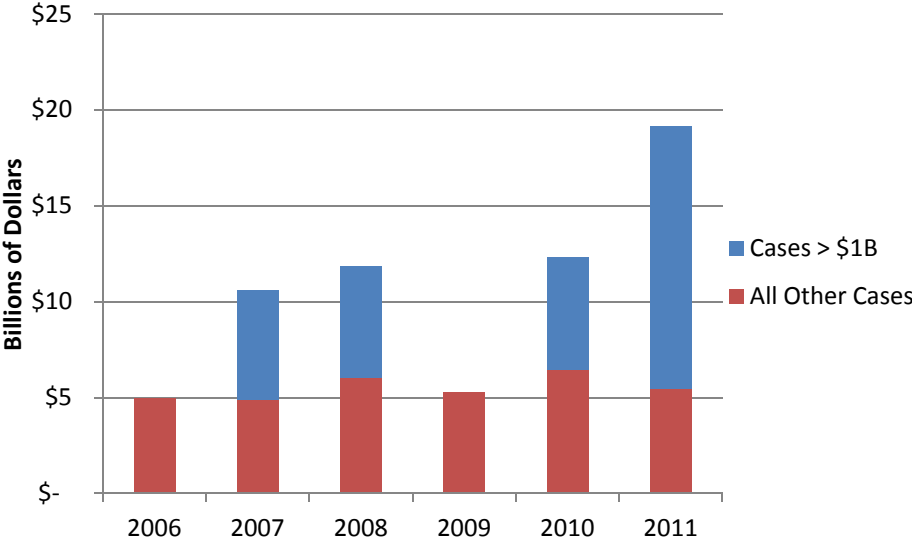


Cases contributing to higher than normal total penalties results	
2006	<ul style="list-style-type: none"> Region 4 - <i>United Organics Corporation & Malcolm Lieberman</i>, \$32.8 million. This case accounted for 84% of Region 4's penalties in 2006.
2007	None
2008	<ul style="list-style-type: none"> Region 3 - <i>Massey Energy Company et al.</i>, \$13.3 million; <i>American Electric Power Company (National Case)</i>, \$6.2 million; <i>Euclid of Virginia Inc.</i>, \$3.2 million. These three cases accounted for 76% of Region 3's penalties in 2008.
2009	<ul style="list-style-type: none"> Region 8 - <i>Anadarko Petroleum Corporation</i>, \$1.05 million; <i>Colorado Interstate Gas/Natural Buttes</i>, \$987,757; <i>Citation Oil and Gas Corporation</i>, \$280,000; <i>Miller Dyer & Company</i>, \$250,000; <i>Frontier Refining</i>, \$242,600. These cases accounted for 67% of Region 8's penalties for 2009.
2010	None
2011	<ul style="list-style-type: none"> Region 6 - <i>Citgo Petroleum Corporation</i>, \$6 million; <i>BP Texas City</i>, \$15 million. These two cases accounted for 72% of Region 6's penalties in 2011. Region 8 - <i>EOG Resources</i>, \$411,000; <i>QEP Energy Company</i>, \$381,000; <i>Slawson Exploration Company</i>, \$372,000; <i>Riverbend Compressor Station</i>, \$350,000. <i>Alfred Barone-Bar One Ranch</i>, \$275,000; <i>Marathon Oil Company</i>, \$294,000. These cases accounted for 46% of Region 8's penalties in 2011 Region 10 - <i>BP Exploration (Alaska) Inc.</i>, \$20.5 million. This case accounted for 81% of Region 10's penalties in 2011.

Source: OIG analysis of EPA enforcement data for FYs 2006-2011. Cases in italic print were part of an NEI.

Annual MERs had an average percent change of 35 percent from the 6-year average. There were 14 cases with MERs greater than \$1 billion that accounted for 48 percent of all of the MERs during the study period (figure 4). These 14 cases represent 0.07 percent of all cases concluded during the study period. (See appendix B for more information on the individual cases). However, when these 14 large cases are excluded, the average percent change is only 9 percent.

Figure 4: Total monetary enforcement results, FYs 2006-2011



Source: OIG analysis of EPA enforcement data for FYs 2006-2011.

The year with the largest MERs (FY 2011) included four cases with results over \$1 billion. These four cases accounted for 72 percent of the national total (see figure 4). The largest concluded case addressed violations of the Clean Air Act by the Tennessee Valley Authority in Region 4. In this case, EPA and the DOJ reached a \$5 billion agreement with the Tennessee Valley Authority to build new and upgraded state-of-the-art pollution controls. This case represented 26 percent of that year’s national MERs.

EPA’s NEIs drive the majority of these large cases. During our study period, on average 64 percent of the top 25 cases in a given year (measured in total MERs) were part of a NEI. Additionally, 12 of the 14 cases with results over \$1 billion were part of a NEI. These cases vary by region mainly due to the geographic location of the types of facilities under a given initiative. Geographic variation causes variability in results stemming from those cases. For example, Region 6 has approximately 55 active petroleum refineries while Region 7 only has 3, so Region 6 would most likely report more enforcement cases under the petroleum refinery initiative. The results from those cases could strongly influence annual results.

Adding to the variability in annual enforcement results is the fact that regions do not control the timing of when these large cases reach conclusion. Instead, the timing is based on EPA working with outside stakeholders, such as DOJ and defendants, to help them reach settlements. This can take several years. For example, in FY 2010, Region 7 concluded two large cases that began in FY 2004.

Additionally, many large MERs, such as multi-billion dollar IR agreements with noncompliant facilities, include costs that facilities will incur over many years. However, EPA reports the *total* result in the year the case concludes. For example, a settlement with a municipality may require it to install billions of dollars of pollution controls over a 25-year period. The municipality may spend only a portion of the cost in any single year, but EPA reports the entire amount in the year the case concludes.

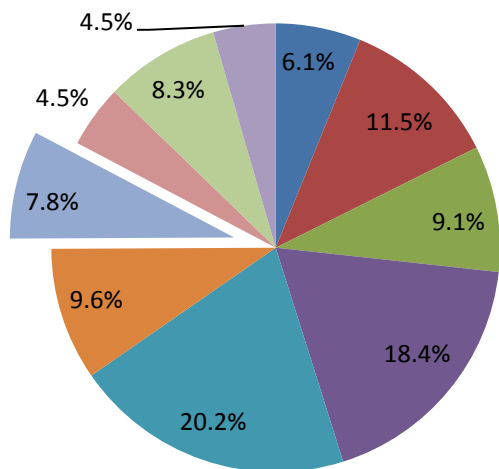
The Proportion of Region 7 Enforcement Results, Facility Universe, and Enforcement FTEs Are Similar

When we compared the regions' enforcement resources, responsibilities, and results, Region 7 enforcement results were similar to other regions' results. FY 2010 represented an atypical year for Region 7. During this year, the region settled two large NEI cases, which substantially increased the region's MERs for FY 2010.

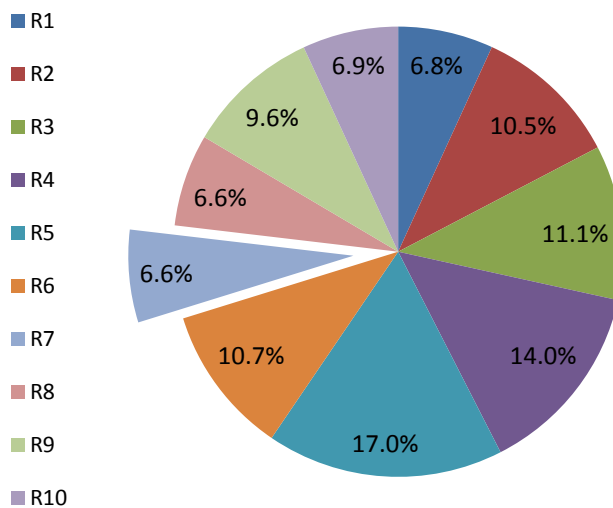
Based on estimates of permits that require EPA oversight, Region 7 was responsible for close to 8 percent of the EPA regulated universe (see figure 5a). Region 7 also employed close to 7 percent of enforcement personnel over the 6-year study period (see figure 5b). On average, Region 7 concluded almost 8 percent of the enforcement cases (see figure 5c), and achieved 6.2 percent of the national monetary enforcement results over this period (see figure 5d). The comparison suggests that the proportion of Region 7's concluded cases and MERs is similar to the proportion of its regulatory responsibilities and enforcement resources.

Figure 5: Region 7 compared with other EPA regions according to: (a) percent of regulated facilities, (b) percent of FTEs, (c) percent of total enforcement actions, and (d) percent of total enforcement monetary commitments, FYs 2006-2011

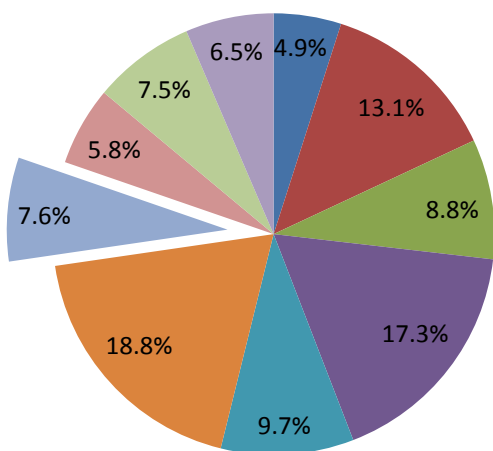
(a) Percent of regulated facilities



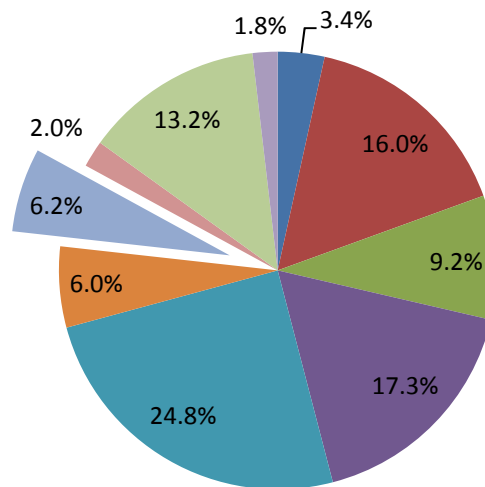
(b) Percent of FTEs



(c) Percent of total enforcement actions



(d) Percent of total monetary commitments



Source: OIG analysis of EPA enforcement data for FYs 2006-2011.

Region 7's FY 2010 Monetary Enforcement Results Were Atypical

FY 2010 was an atypical year because it was the only year in our study period when Region 7's results significantly exceeded the 6-year national average. In FY 2004, Region 7 began work on two large cases that concluded in FY 2010. The results from these cases accounted for over 97 percent of Region 7's MERs for that year. Based on the results from these two cases, Region 7's IR accounted

for approximately 24 percent of the national total for that year. However, this was atypical of Region 7's annual results.

Over the 6-year period, Region 7's IR on average accounted for slightly more than 6 percent of the national total. Region 7's results typically fell in the middle of the 10 EPA regions. It was the sixth highest region for both number of concluded cases and monetary results. Region 7 was responsible for close to 8 percent on average of the concluded cases (see figure 5c) and assessed slightly more than 6 percent of the overall monetary enforcement results (see figure 5d). By these measures, Region 7's enforcement results were proportional to its resources and regulatory responsibility.

NEIs Drive Large Cases in Region 7

As discussed earlier, NEIs frequently drive atypical enforcement results in all EPA regions. As also mentioned previously in this report, in FY 2010 Region 7 settled two large cases that accounted for over 97 percent of its MERs for that year. These two cases resulted in Region 7 annual results for IR that were substantially greater than any other year between FY 2006 and FY 2010. They also resulted in a projected environmental improvement of over 200 million pounds of air and water pollution reduced, treated, or eliminated because of the enforcement actions.

Region 7 developed these two cases as part of two EPA NEIs to address municipal combined sewer overflows and combined sewer overflows, and coal-fired power plants. These cases took several years of research and negotiation to reach conclusion. Both cases began in FY 2004 but concluded in FY 2010, so the results reported in FY 2010 were the result of EPA, DOJ, and regional activities over the previous 6 years. Region 7 was not alone in settling significant cases under the NEIs during the study period; other EPA regions participated in the initiatives as well (see examples below).

- The larger case addressed CWA combined sewer overflows/combined sewer overflows violations in the City of Kansas City, Missouri. The region developed this case as part of EPA's NEI to improve compliance with combined sewer regulations. This case included IR of approximately \$2.4 billion, a civil penalty of \$600,000, and a SEP of about \$1.4 million. The IR amount for this case accounted for approximately 79 percent of the Region 7 total and 20 percent of the national total for 2010, and consisted of projects the municipality would implement over 25 years. EPA has concluded several similar cases under this initiative across the United States. For example, other significant CWA combined sewer overflows cases included a Region 5 case against the City of Cleveland, which was concluded in FY 2011 and resulted in over \$3 billion in monetary enforcement results; and a Region 3 case against the Allegheny County Sanitation Authority, which resulted in \$1.4 billion in enforcement results.

- The smaller of the two cases Region 7 concluded in FY 2010 addressed violations of the Clean Air Act at a Westar Energy power plant in Topeka, Kansas. The region developed the case as a part of EPA's NEI to improve compliance at coal-fired power plants. The case resulted in \$556 million in IR and included a \$2.75 million penalty. The IR in this case accounted for over 18 percent of the Region 7 total and 5 percent of the national total in FY 2010. Other EPA regions concluded coal-fired power plant cases during the study period, including a 2011 Region 4 case against the Tennessee Valley Authority resulting in over \$5 billion in MERs.

In other years, different regions showed larger than typical results for similar reasons (see figures 1 through 3).

Conclusion

Enforcement is a necessary tool for ensuring that entities regulated under EPA's environmental programs meet their obligations. During our study period, large case conclusions determined the size of monetary enforcement results in a given year. Due to yearly variations in the MERs of concluded cases, examining results for a single region or a single year may be misleading. More than a single year or result should be looked at when trying to understand a region's pattern of enforcement activity. For Region 7, two NEI enforcement cases that began in 2004 and ultimately concluded in FY 2010 drove FY 2010 MERs. Due to the variability and timing of large cases, EPA cannot reliably predict when cases will contribute to future annual MERs.

Agency Response and OIG Evaluation

We received joint comments on the draft report from OECA and Region 7 on January 18, 2013 (see appendix C). OECA and Region 7 agreed with the OIG's conclusion that enforcement results can vary from year to year and from region to region based on when and where large cases are concluded. We made changes to the report where appropriate.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
No recommendations							

¹ O = Recommendation is open with agreed-to corrective actions pending.
 C = Recommendation is closed with all agreed-to actions completed.
 U = Recommendation is unresolved with resolution efforts in progress.

Region 7's 2010 Annual Results News Release, December 6, 2010

**EPA Region 7 Compliance and Enforcement Actions in 2010 Result in Record
\$3 Billion in Pollution Control and Cleanup** Release Date: 12/06/2010

Contact Information: Chris Whitley, 913-551-7394, whitley.christopher@epa.gov

Environmental News
FOR IMMEDIATE RELEASE

(Kansas City, Kan., Dec. 6, 2010) - Environmental compliance and enforcement activities concluded by EPA Region 7 during fiscal year 2010 set a new record, securing more than \$3 billion in investments in pollution control and cleanup as a result of legal actions taken against polluters.

Region 7's total of more than \$3 billion in secured injunctive relief accounted for fully 31 percent of EPA's national total for the fiscal year, which ended September 30.

Region 7's actions will result in respondents in Iowa, Kansas, Missouri, Nebraska and on tribal lands eliminating more than 470 million pounds of pollutants, and implementing more than \$3 million in Supplemental Environmental Projects.

Region 7's targeted actions to achieve EPA's National Priorities – including reducing harmful discharges of pollutants into rivers and streams, and reducing air pollution from major industrial sources – will further result in the reduction, treatment, minimization or disposal of more than 227 million pounds of pollutants.

“Region 7's 15 million people benefited from a remarkable year of progress toward a cleaner and safer environment,” Regional Administrator Karl Brooks said. “Our EPA team that links environmental professionals in program staff with skilled attorneys in our Office of Regional Counsel worked effectively with state and federal partners to gain these important results.”

A report of Region 7's Fiscal Year 2010 Compliance and Enforcement Annual Results, including statistical summaries and state-by-state highlights, along with links to information about EPA's national environmental enforcement and compliance activity, is available online at:

www.epa.gov/region07/enforcement_compliance/end_of_year_10_results.htm

This year's national reporting of annual results includes an enhanced mapping tool that allows the public to view detailed information about enforcement actions taken at more than 4,500 facilities across the U.S. and its territories. The mapping tool shows facilities and sites where civil and criminal enforcement actions were taken for alleged violations of U.S. environmental laws. The tool also displays community-based activities, including locations of environmental justice grants awarded during FY 2010, and Environmental Justice Showcase Communities.

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For a national summary of EPA's compliance and enforcement results for fiscal year 2010, go to:
www.epa.gov/compliance/resources/reports/endofyear/eoy2010/index.html

Source: EPA Newsroom

<http://yosemite.epa.gov/opa/admpress.nsf/e77fdd4f5afd88a3852576b3005a604f/418c95dfcd20be41852577f100645d27!OpenDocument>

**Summary of Concluded Enforcement Cases With
Monetary Enforcement Results Greater Than
\$1 Billion, FYs 2006-2011**

Fiscal Year	Case name	Case number	Case type	Laws and sections	NEI (Y/N)	Monetary enforcement results (rounded)	Case summary
2007	Sanitation District No. 1 of Northern Kentucky	04-2005-9011	Civil Judicial	CWA 301/402	Y	Federal penalty = \$138,200 SEP cost = \$311,000 Injunctive relief = \$1.1 billion	Civil enforcement violations of Section 301 of CWA by Sanitation District No. 1 of Northern Kentucky for unauthorized discharges of pollutants into waters of the U.S. and other NPDES permit deficiencies.
	PSE&G Fossil, LLC	02-2001-0020	Civil Judicial	CAA 165, 173, 113A	Y	Federal penalty = \$4.25 million Injunctive relief = \$1.1 billion	PSE&G made modifications at its Hudson, Mercer, and Bergen facilities without obtaining a prevention of significant deterioration permit and without installing best available control technology.
	PRASA V – Puerto Rico Aqueduct and Sewer Authority	02-2004-0008	Civil Judicial	CWA 301/402, 301	Y	Federal penalty = \$1 million SEP cost = \$2.6 million Injunctive relief = \$1.7 billion	Violations of NPDES permits at 61 wastewater treatment plants throughout Puerto Rico.
	City of Indianapolis	05-2000-0583	Civil Judicial	CWA 301, 301/402	Y	Federal penalty = \$558,900 SEP cost = \$2 million Injunctive relief = \$1.9 billion	Settlement related to the City of Indianapolis developing and implementing a long-term control plan to eliminate sanitary overflows, implement all feasible alternatives to bypassing at the city's two wastewater treatment plants, and to ensure the city's combined sewer overflows comply with the CWA.

Fiscal Year	Case name	Case number	Case type	Laws and sections	NEI (Y/N)	Monetary enforcement results (rounded)	Case summary
2008	Allegheny County Sanitary Authority (ALCOSAN)	03-2000-0106	Civil Judicial	CWA 301/307, 301/402, 301	Y	Federal penalty = \$400,000 SEP cost = \$3 million Injunctive relief = \$1.4 billion	Under certain conditions, materials are diverted from the path leading to the treatment plant and instead flow out of an outfall into the waters of the U.S. The diversion of material from the sewer system to the outfall is controlled in whole or in part by ALCOSAN. While there are 315 outfalls throughout the system that carry material to ALCOSAN, the sanitary authority is only permitted in its NPDES permit to discharge from 3 (out of 315) outfalls under certain conditions.
	American Electric Power Company (National Case)	03-1999-0388	Civil Judicial	CAA 111, 165, 173, 110	Y	Federal penalty = \$6.2 million Injunctive relief = \$1.9 billion	Company did not comply with prevention of significant deterioration permit requirements when it implemented at least nine capital improvement projects, resulting in a significant increase in SO ₂ , NO _x , and/or particulate matter emissions without a permit.
	Muskingum River Station, AEP (Ohio Power) (National Case)	05-1999-0644	Civil Judicial	CAA 110, 111, 165	Y	Federal penalty = \$8 million Injunctive relief = \$2.5 billion	AEP failed to apply for a permit prior to commencing major modifications under prevention of significant deterioration permit and new source performance standards, and failed to install best available control technology.
2010	New York City Department of Environmental Protection	02-2010-8027	Administrative Formal	SDWA 1412/1414	N	Injunctive relief = \$1.6 billion	Administrative order issued to establish an enforceable schedule to achieve compliance with the requirements of SDWA and the Long Term 2 Enhance Surface Water Treatment Rule.

Fiscal Year	Case name	Case number	Case type	Laws and sections	NEI (Y/N)	Monetary enforcement results (rounded)	Case summary
	Hamilton County	05-1998-0750	Civil Judicial	CWA 301/402, 301	Y	Injunctive relief = \$1.79 billion	Hamilton County (Ohio) owns six municipal wastewater treatment plants and the sewer system that feeds into these wastewater treatment plants. For a number of years, the defendants have violated the CWA in several significant respects.
	City of Kansas City, Missouri	07-2004-0333	Civil Judicial	CWA 301/402	Y	Federal penalty = \$600,000 SEP cost = \$1.4 million Injunctive relief = \$2.4 billion	Violation of a permit.
2011	General Electric Company	02-2005-0015	Civil Judicial	CERCLA 170A, 106A	N	Injunctive relief = \$2.1 billion	Consent decree related to the Hudson River PCBs Superfund Site.
	NEORDS – Cleveland	05-2003-0627	Civil Judicial	CWA 308, 301/402	Y	Federal penalty = \$600,000 SEP cost = \$1 million Injunctive relief = \$3 billion	Combined sewer overflow violations.
	Honolulu, City and County	09-1991-0033	Civil Judicial	CWA 301/307, 301/402, 309, 402, 301	Y	Federal penalty = \$800,000 Injunctive relief = \$3.7 billion	City and County of Honolulu failed to develop and administer a pre-treatment program at seven (of eight) treatment plants. Also, chronic releases of raw wastewater to surface water.
	Tennessee Valley Authority	04-2010-1760	Administrative Formal	CAA 165	Y	Injunctive relief = \$5 billion	Injunctive relief secured at all of Tennessee Valley Authority's coal-fired power plants across three states to resolve alleged violations of the CAA New Source Review provisions.

Source: OIG analysis of EPA enforcement case summaries.

Agency Response to Draft Report

January 18, 2013

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report No. FY12-0018: *Response to Congressional Request on EPA Enforcement*, dated December 19, 2012

FROM: Cynthia Giles. Assistant Administrator
Office of Enforcement and Compliance

TO: Carolyn Copper
Assistant Inspector General for Program Evaluation

The Office of Enforcement and Compliance Assurance and Region 7 appreciate the opportunity to respond to the draft report *Response to Congressional Request on EPA Enforcement*, dated December 19, 2012. We agree that enforcement results can vary from year to year and from region to region based on when and where large cases are concluded. Because there are no findings or recommendations in this report, our response only addresses the factual accuracy of the draft report. Technical corrections to address factual accuracy are proposed in the attached document.

If you have any questions regarding this response, please contact Susan Shinkman, Director, Office of Civil Enforcement at (202) 564-2220.

cc: Karl Brooks, Region 7
Kathy Finazzo, Region 7
Lauren Kabler, OECA-OCE
Stephen Keim, OECA-OSRE
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