



Environment, Land Use & Natural Resources ADVISORY ■

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Trends and Predictions for Environmental Enforcement in 2015

The U.S. Environmental Protection Agency (EPA) recently released its enforcement and compliance [statistics](#) for 2014. The statistics show a decline in the total number of inspections from roughly 18,000 in 2013 to 15,600 in 2014. The number of defendants charged for environmental violations also fell from about 300 to 200. But these numbers don't tell the whole story.

Instead, the statistics in part reflect the EPA's new enforcement and compliance strategy. Enforcement appears to no longer be a numbers game: It's now about quality over quantity.

Indeed, in its 2014 report, the EPA emphasized its increased use of technology and reporting schemes to supplement boots-on-the-ground inspections. The premise is that "big data" will help investigators focus their resources on violations that pose the most serious threat to human health and the environment.

From the EPA's perspective, this emphasis on more serious violations seems to be paying off. Though the number of persons formally charged in 2014 dropped from 2013, the amount of incarceration served by defendants charged with environmental crimes increased, totaling over 150 years. Criminal fines totaled nearly \$100 million in 2014, as well.

D.C. Bar's Criminal Enforcement Panel Provides Key Insight for 2015 and Beyond

On January 8, 2015, Alston & Bird's [Bruce Pasfield](#) moderated the D.C. Bar's Criminal Environmental Enforcement Update, featuring:

- Doug Parker, Director, Criminal Investigation Division, U.S. EPA;
- Deborah Harris, Section Chief, Environmental Crimes Section, U.S. Department of Justice (DOJ); and
- Steven Solow, Partner, Katten Muchin Rosenman LLP

Mr. Parker confirmed that the EPA will continue to encourage its agents to use data obtained through reporting and permitting programs to create "analytically driven investigations." Such programs, he said, will hopefully spur "proactive criminal enforcement"—i.e., early intervention that prevents catastrophic events. Mr. Parker also noted that core cases such as illegal hazardous waste disposal, violations related to aging private infrastructure, especially pipeline and refinery infrastructure, and the booming oil and shale gas sectors will receive particular scrutiny in 2015.

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Echoing Mr. Parker, Ms. Harris stated that the DOJ similarly will focus on cases involving aging private infrastructure and energy extraction. Ms. Harris singled out fraud in the renewable fuels sector as an area of particular concern. Moreover, Ms. Harris explained that as part of its worker endangerment initiative, the DOJ hopes to leverage its partnerships with other agencies, particularly the Occupational Safety & Health Administration (OSHA), to increase effectiveness. Ms. Harris explained that the DOJ's environmental crimes section is now reviewing all of OSHA's criminal referrals to the DOJ based on the notion that companies that are alleged to have violated OSHA laws may also be skirting environmental laws. Ms. Harris also stated that her office will put greater emphasis on pollution and fraud cases as opposed to the wildlife cases that have occupied more of its caseload in recent years.

In all, the panel provided a rare window into the agenda steering environmental enforcement policy in the United States. The regulated community should recognize that the agencies' investigative efforts will be data driven. Accordingly, more so than ever, companies must ensure that reports, permits and other compliance mechanisms are timely and accurate. They should also make sure capital expenditures and other financial related data that may touch on environmental concerns are consistent with its environmental reports. And, should any entity find itself at the center of an investigation, its response must be transparent and accurate, as the panel made clear that the EPA not only investigates the underlying violation, but also the company's investigation of the violation.

For more information, please contact [Bruce Pasfield](#), [Doug Arnold](#), or [Maureen Gorsen](#).

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