

washingtonpost.com

Bush's EPA Is Pursuing Fewer Polluters

Probes and Prosecutions Have Declined Sharply

By John Solomon and Juliet Eilperin
Washington Post Staff Writers
Sunday, September 30, 2007; A01

The [Environmental Protection Agency](#)'s pursuit of criminal cases against polluters has dropped off sharply during the Bush administration, with the number of prosecutions, new investigations and total convictions all down by more than a third, according to [Justice Department](#) and EPA data.

The number of civil lawsuits filed against defendants who refuse to settle environmental cases was down nearly 70 percent between fiscal years 2002 and 2006, compared with a four-year period in the late 1990s, according to those same statistics.

Critics of the agency say its flagging efforts have emboldened polluters to flout U.S. environmental laws, threatening progress in cleaning the air, protecting wildlife, eliminating hazardous materials, and countless other endeavors overseen by the EPA.

"You don't get cleanup, and you don't get deterrence," said [Eric Schaeffer](#), who resigned as director of the EPA's Office of Civil Enforcement in 2002 to protest the administration's approach to enforcement and now heads the Environmental Integrity Project, a watchdog group. "I don't think this is a problem with agents in the field. They're capable of doing the work. They lack the political support they used to be able to count on, especially in the [White House](#)."

The slower pace of enforcement mirrors a decline in resources for pursuing environmental wrongdoing. The EPA now employs 172 investigators in its Criminal Investigation Division, below the minimum of 200 agents required by the 1990 Pollution Prosecution Act, signed by President [George H.W. Bush](#).

The actual number of investigators available at any time is even smaller, agents said, because they sometimes are diverted to other duties, such as service on EPA Administrator [Stephen L. Johnson](#)'s eight-person security detail.

Johnson, [President Bush](#)'s chief environmental regulator, foreshadowed a less confrontational approach toward enforcement when he served as the EPA's top deputy in late 2004. "The days of the guns and badges are over," Johnson told a group of farm producers in [Georgia](#) the day before Bush won reelection, according to a news account of the speech.

Administration officials said they are not ignoring the environment but are focusing on major cases that secure more convictions against bigger players.

"We have been on an unprecedented run of success in the enforcement arena," said Granta Y. Nakayama, EPA assistant administrator for enforcement and compliance assurance. "These are major cases we are pursuing."

Advertisement



Bloomberg.com

Click to download
Bloomberg Podcast

Rollover for Podcast:

- On the Economy
- Political Capital
- Analyst Calls

Nakayama said that, in the past three fiscal years, the EPA has cut between 890 million and 1.1 billion pounds of air pollution through enforcement, making them "three of the four highest years in the agency's history. . . . You're seeing, I think, a historic period in terms of getting pollution out of the air."

He added that he hopes to boost the number of criminal investigators and said that, over the past five years, the agency has won convictions against 95 percent of the people indicted for environmental crimes.

Administration officials acknowledge taking a new approach to environmental enforcement by seeking more settlements and plea bargains that require pollution reductions through new equipment purchases or participation in EPA compliance programs.

Justice Department spokesman [Brian Roehrkas](#) said the department secured \$13 billion in such corrective measures from polluters in 2005-06, up from about \$4 billion in the final two years of the Clinton administration.

"Environmental prosecutions continue to be very important to the department," Roehrkas said. Settlements and judgments that impose corrective measures "protect the nation's environment and safeguard the public's health and welfare," he said.

[House Energy and Commerce Committee](#) Chairman [John D. Dingell](#), whose panel oversees environmental enforcement, disagrees. "Where once a polluter could expect criminal prosecution, there are now civil settlements. Where once there were criminal penalties, there are now taxpayer subsidies," Dingell (D-Mich.) said.

The environmental crimes unit at Justice Department headquarters in Washington has grown to a record 40 prosecutors. Last year, it secured near-record highs in years of confinement and criminal penalties, Roehrkas said.

But environmental prosecutions by U.S. attorneys' offices have sharply dropped as prosecutors facing new pressures on issues such as terrorism and immigration take away resources for environmental prosecutions and try to divert cases to the main Justice Department, EPA agents said.

"Environmental crimes are simply not in the U.S. attorney top 10 priorities," said one senior EPA official, who spoke on the condition of anonymity because he is not authorized to talk to the news media.

Prosecutors counter that the EPA has fewer agents and is bringing them fewer cases. "We're not turning away environmental crimes in order to prosecute other crimes. They are just not being presented in the first case," said Don DeGabrielle, the U.S. attorney in [Houston](#).

EPA memos show that investigators also have encountered new obstacles to their long-standing practice of directly referring cases to federal or state prosecutors. A new policy distributed May 25 requires agents to seek prior approval from the head of their division and establishes new paperwork procedures. This has slowed agents' ability to make referrals, congressional investigators said.

Nakayama said he was not "personally familiar" with the new policy and would look into it.

In the fall of 2001, EPA agents descended on a vacant [Massachusetts](#) field seeking to prove that a state agency broke the law by demolishing a century-old mental hospital without first removing the

asbestos inside.

The investigators detected high concentrations of the cancer-causing material in the buried debris. They located witnesses who said state officials knew about the asbestos but scrapped a plan to remove it before demolition because of the cost, investigative reports show.

The EPA's top [New England](#) law enforcement official recommended charging the state agency and some of its workers with crimes. But after waiting more than three years to decide, the U.S. attorney's office in [Boston](#) declined prosecution.

Thomas R. Kiley, a private lawyer hired to represent the state and its workers during the investigation, said the EPA "was pushing hard" for indictments. Kiley believes that the state's agreement to clean up the asbestos at the site "may have had some persuasive effect" on the decision not to file charges.

The Massachusetts case is emblematic of the steep decline in criminal cases initiated by the EPA. The number of environmental prosecutions plummeted from 919 in 2001 to 584 last year, a 36 percent decline, according to Justice Department statistics collected by [Syracuse University's](#) Transactional Records Access Clearinghouse.

Those same Justice Department data also show that the number of people convicted for environmental crimes dropped from 738 in 2001 to 470 last year.

Similarly, the number of cases opened by EPA investigators fell 37 percent, from 482 in 2001 to 305 last year, according to data the EPA provided congressional investigators.

EPA and Justice officials have highlighted recent cases such as the conviction this summer of oil giant Citgo on two counts of violating the Clean Air Act and three misdemeanor violations of the Migratory Bird Treaty Act. Just last week, Justice officials held town hall meetings in [Corpus Christi, Tex.](#), collecting more than 200 victim-impact statements from residents affected by refinery operations. The statements will be used in an upcoming sentencing hearing.

But government officials said even that case was marred by early inaction. When the EPA's criminal investigations office in Houston first recommended prosecuting the company, the U.S. attorney's office would not immediately commit unless Justice Department headquarters took the lead.

"Yes, we did have limited resources, and we decided if it could be handled by experts in Washington, we would work with them on it," said DeGabrielle, the U.S. attorney.

The Justice Department in August also touted a plea bargain with IMC Shipping Co. that required the [Singapore](#) ship operator to pay \$10 million in connection with a massive oil spill in 2004 that killed thousands of birds in [Alaska's](#) Maritime National Wildlife Refuge.

Prosecutors told the court they had enough evidence to indict the company for criminal negligence under the Clean Water Act and for making false statements early in the investigation. But the deal they reached called for guilty pleas to two counts of violating the Refuse Act and one violation of the Migratory Bird Treaty Act. Prosecutors cited the company's cooperation for the leniency.

The decision to drop the negligence charges could be valuable to the company, which as a result remains eligible to seek reimbursement from a special government fund for \$77 million of the more than \$100 million it has spent cleaning up the spill.

The Oil Spill Liability Trust Fund -- administered by the [U.S. Coast Guard](#) and funded by a special oil tax -- can reimburse shippers for all cleanup costs not covered by insurance, but only if the incident does not involve gross negligence or willful misconduct.

"Surely nobody here would have wanted to have a finding of negligence for any number of reasons, the fund and the civil side among them," said Robert C. Bundy, a private lawyer who represented IMC in the criminal case.

EPA agents cite other instances that they say have sent a subtle message about their enforcement work, such as the time James Palmer, the EPA's Southeast regional administrator, took a day off in 2005 to testify as a private citizen against his own agency as a defense witness for a [Mississippi](#) developer accused of environmental violations.

"The government's proposals were heavy-handed," Palmer testified when asked about the EPA's actions against the developer, his former law client. He also acknowledged calling the agency's tactics in the case "unethical."

Research editor Lucy Shackelford and staff researcher Madonna Lebling contributed to this report.

Post a Comment

[View all comments](#) that have been posted about this article.

You must be logged in to leave a comment. [Log in](#) | [Register](#)

Submit

Comments that include profanity or personal attacks or other inappropriate comments or material will be removed from the site. Additionally, entries that are unsigned or contain "signatures" by someone other than the actual author will be removed. Finally, we will take steps to block users who violate any of our posting standards, terms of use or privacy policies or any other policies governing this site. Please review the [full rules](#) governing commentaries and discussions. You are fully responsible for the content that you post.

© 2007 The Washington Post Company

Ads by Google

[Not Guilty. FightBack NY](#)

Innocent Until Proven Guilty! Experienced Criminal Defense Lawyer
www.fightbacknewyork.com

[Criminal Attorney Phoenix](#)

Consult w/ An Expert Defense Lawyer All Areas of Criminal Law - Arizona
SipeandLane.com

[Wash. DC Criminal Lawyer](#)

An experienced former prosecutor available to discuss your case now!
www.dccriminallawyers.com