

*Section of Environment, Energy, and Resources
American Bar Association*

Environment, Energy, and Resources Law: The Year in Review 2021

Chapter E · Environmental Enforcement and Crimes

Copyright 2022 American Bar Association. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the publisher. To request permission, contact the ABA's Department of Licensing and Copyrights via www.americanbar.org/utility/reprint.

The materials contained herein represent the opinions of the authors and editors and do not necessarily express the views or position of the American Bar Association, the Section of Environment, Energy, and Resources, or The University of Tulsa College of Law.

Nothing contained herein is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. These materials and any forms and agreements herein are intended for educational and informational purposes only.

Chapter E: ENVIRONMENTAL ENFORCEMENT AND CRIMES 2021 Annual Report¹

I. ENVIRONMENTAL ENFORCEMENT RESULTS

The U.S. Environmental Protection Agency (EPA) and Department of Justice's (DOJ) Environmental and Natural Resources Division enforce compliance with environmental laws and regulations, including through administrative proceedings, civil actions, and criminal prosecutions. These enforcement actions have been pursued in accordance with a [2021 executive order](#), stating it is government policy to:

[L]isten to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.²

Consistent with federal policy, EPA and DOJ administered civil and criminal enforcement actions against individuals and corporations, including under the Clean Air Act (CAA), the Clean Water Act (CWA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA has also continued its [National Compliance Initiatives](#) (NCIs), which were promulgated in 2020 and will remain in effect through 2023.³

II. NEW ENVIRONMENTAL NCIs FOR 2020-2023

A. [Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants](#)⁴

EPA established a goal to address the health and environmental effects caused by emissions of hazardous air pollutants (HAPs) and volatile organic compounds (VOCs).⁵ This initiative focuses on sources of HAPs that have a significant impact on air quality and human health, and it also addresses sources of VOCs that have a substantial impact on air quality, with the potential to impede attainment of the National Ambient Air Quality Standards (NAAQS) and adversely affect vulnerable populations.⁶ During fiscal year 2020,

¹Prepared by Greenberg Traurig attorneys: David B. Weinstein, shareholder and chair of the firm's Environmental and Toxic Tort Litigation Practice; Christopher Torres, shareholder; Kayli Smendec, associate; and Logan Wright, associate.

²Exec. Order No. 13,990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, 86 Fed. Reg. 7037 (Jan. 25, 2021).

³*National Compliance Initiatives*, ENVTL. PROT. AGENCY (last visited Feb. 20, 2022).

⁴*National Compliance Initiative: Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants*, ENVTL. PROT. AGENCY (last visited Feb. 20, 2022) [hereinafter *EPA NCI: Creating Cleaner Air*].

⁵*Id.*

⁶*Id.*

EPA's efforts under this initiative included enforcement actions that resulted in a reduction of almost 27 million pounds of VOCs and over 2.8 million pounds of hazardous air pollutants.⁷ Additionally, EPA took numerous other actions in furtherance of this initiative, including: employing infrared cameras using optical gas imaging and the National Enforcement Investigations Center's geospatial measurement of air pollution (GMAP) vehicle for real-time monitoring and mapping of pollutants, enhancing use of compliance tools, continuing and creating new partnerships, issuing an enforcement alert, and improving the Compliance Assistance Portal.⁸

*B. [Stopping Aftermarket Defeat Devices for Vehicles and Engines](#)*⁹

EPA also focused on halting the manufacture and sale of "hardware and software specifically designed to defeat required emissions controls on vehicles and engines" as part of its effort to address mobile sources, which are a significant contributor to air pollution.¹⁰ This NCI seeks to "stop[] the manufacture, sale, and installation of defeat devices on vehicles and engines used on public roads as well as on nonroad vehicles and engines."¹¹ Prior to 2020, these devices would result "in more than 570,000 tons of excess NOx and 5,000 tons of excess particulate matter" over the lifetime of certain diesel trucks.¹² In fiscal year 2020, EPA resolved approximately thirty-one civil enforcement cases, partnered with states, and provided compliance assistance in pursuit of this goal.¹³ As a result of its efforts, EPA prevented 18.2 million pounds of emissions from mobile air sources.¹⁴

*C. [Reducing Hazardous Air Emissions from Hazardous Waste Facilities](#)*¹⁵

While EPA has noted significant RCRA noncompliance regarding leak detection and repair requirements for equipment used in storage and treatment of hazardous waste, significant progress is being made.¹⁶ To further this goal, EPA partnered with authorized states to identify and address violations in an effort to ensure a nationally consistent approach. EPA also sought to resolve ongoing incidents of noncompliance and provide better training to prevent future noncompliance. In fiscal year 2020, EPA identified and addressed over 230 hazardous waste releases as a result of RCRA Air NCI inspections, improved inspections and targeting, increased capacity in regions and states, and enhanced use of compliance assurance tools.¹⁷

*D. [Reducing Risks of Accidental Releases at Industrial and Chemical Facilities](#)*¹⁸

⁷*EPA Enforcement Annual Results FY 2020: Overview*, ENVTL. PROT. AGENCY (last visited Feb. 20, 2022) [hereinafter *EPA FY 2020: Overview*].

⁸*EPA NCI: Creating Cleaner Air*, *supra* note 4.

⁹*National Compliance Initiative: Stopping Aftermarket Defeat Devices for Vehicles and Engines*, ENVTL. PROT. AGENCY (last visited Feb. 20, 2022).

¹⁰*Id.*

¹¹*Id.*

¹²*Id.*

¹³*EPA FY 2020: Overview*, *supra* note 7.

¹⁴*Id.*

¹⁵*National Compliance Initiative: Reducing Hazardous Air Emissions from Hazardous Waste Facilities*, ENVTL. PROT. AGENCY (last visited Feb. 20, 2022).

¹⁶*Id.*

¹⁷*Id.*

¹⁸*National Compliance Initiative: Reducing Risks of Accidental Releases at Industrial and Chemical Facilities*, ENVTL. PROT. AGENCY (last visited Feb. 20, 2022).

EPA recognized significant dangers associated with facilities that store hazardous substances.¹⁹ Indeed, EPA’s review of the historical record revealed an average of 150 catastrophic accidents annually at industrial and chemical facilities regulated under the CAA Risk Management Program. Accordingly, EPA has set a goal of “reduc[ing] the risk to human health and the environment by decreasing the likelihood of chemical accidents.”²⁰ EPA sought to accomplish this through improving safety, increasing regulatory compliance, and promoting coordination with state and local responders and communities. In fiscal year 2020, EPA provided numerous trainings to further this initiative, including: inspector training to government authorities; a three-day Process Hazard Analysis training; and a training on ammonia refrigeration systems, technology, and safety.²¹

E. [Reducing Significant Non-Compliance with National Pollutant Discharge Elimination System \(NPDES\) Permits](#)²²

In fiscal year 2018, EPA identified 46,000 NPDES-permitted facilities, 20.3% of which were in significant noncompliance with their permits.²³ As part of the overall goal to improve surface water quality, EPA seeks to reduce the noncompliance rate by half by fiscal year 2022 and enforce compliance as to the worst violators. In fiscal year 2020, EPA reduced the rate of significant noncompliance to 16.4%, coordinated a national symposium on reducing significant noncompliance, developed compliance assistance resources, established a circuit rider technical assistance program for small systems, developed tools for early detection of significant noncompliance, and improved data transfer processes.²⁴

F. [Reducing Non-Compliance with Drinking Water Standards at Community Water Systems](#)²⁵

In fiscal year 2018, EPA identified 40% of the nearly 50,000 Community Water Systems (CWSs)—defined as “regulated drinking water systems that serve water to the same people year-round”—that violated at least one drinking water standard.²⁶ Additionally, 30% had monitoring and reporting violations, and 7% had health violations. EPA implemented this new NCI with the goal of reducing noncompliance with health-based standards among CWSs by 25%.²⁷ EPA also implemented this NCI in accordance with the [FY 2018-2022 Agency Strategic Plan](#).²⁸ In fiscal years 2020-2021, EPA expanded

¹⁹*Id.*

²⁰*Id.*

²¹*Id.*

²²*National Compliance Initiative: Reducing Significant Non-Compliance with National Pollutant Discharge Elimination System (NPDES) Permits*, ENVTL. PROT. AGENCY (last visited Feb. 20, 2022).

²³*Id.*

²⁴*EPA FY 2020: Overview*, *supra* note 7.

²⁵*National Compliance Initiative: Reducing Noncompliance with Drinking Water Standards at Community Water Systems*, ENVTL. PROT. AGENCY (last visited Feb. 20, 2022) [hereinafter *EPA NCI: Drinking Water Standards*].

²⁶*Id.*

²⁷*Id.*; [Press Release](#), Env’tl. Prot. Agency, EPA Announces FY 2020-2023 Priorities for Enforcement and Compliance Assurance (June 12, 2019).

²⁸ENVTL. PROT. AGENCY, WORKING TOGETHER: FY 2018-2022 U.S. EPA STRATEGIC PLAN (Sept. 2020).

inspector capacity and technical expertise, initiated a circuit rider program, and developed a model to identify at-risk systems.²⁹

III. CIVIL CASE UPDATE

A. [Notable TSCA Enforcement](#)³⁰

In 2021, EPA and DOJ administered over 100 enforcement actions to protect the public and particularly vulnerable populations from [lead paint exposure](#).³¹ One notable [enforcement action](#) was against Flipnmove Productions and EQ Media, Inc. for alleged TSCA violations, particularly of the Lead, Renovation, Repair and Painting (RRP) Rule, on the home renovation television show Texas Flip N Move.³² This action concluded with a civil penalty of \$30,000 after a \$248,037 remittance, requirements for future compliance, and other settlement conditions.³³ These conditions aimed to promote education and compliance with the RRP Rule and required banner displays of identified lead-based paint related disclosures for two episodes of the show, EQ Media to include specific lead-based paint content on its website, discussion of certain lead-based paint information during a television episode, and performance of an abatement project in low-income or child-occupied facilities in the Dallas-Fort Worth, Texas area.³⁴

Another notable example is EPA Region III's TSCA [enforcement action](#) against Pennrose Management Company for alleged failures to include mandatory disclosures with lease contracts, resulting in a civil penalty of \$56,700.³⁵ EPA Region 8 also initiated a TSCA [enforcement action](#) against TRI Property Management for alleged failures to comply with target housing renovation requirements, concluding with a civil penalty of \$61,500.³⁶

B. [Notable CWA Enforcement](#)

On March 18, 2021, EPA, DOJ, and the Bureau of Land Management (BLM) entered a proposed [consent decree](#) with ranch owner John Raftopoulos, Diamond Peak Cattle Company, LLC, and Rancho Greco Limited, LLC to resolve alleged violations of the CWA and Federal Land Policy and Management Act (FLPMA) for alleged unauthorized discharges of dredged or fill material into water and alleged trespass on federal lands.³⁷ The defendants were required to pay a civil penalty of \$265,000 for alleged

²⁹EPA NCI: *Drinking Water Standards*, *supra* note 25.

³⁰EPA's *Lead-based Paint Enforcement Helps Protect Children and Vulnerable Communities – 2021*, ENVTL. PROT. AGENCY (last visited Feb. 20, 2022); *see also* [Press Release](#), Env'tl. Prot. Agency, EPA Enforcement Actions Help Protect Vulnerable Communities from Lead-Based Paint Health Hazards (Oct. 27, 2021).

³¹OFF. OF ENF'T & COMPLIANCE ASSURANCE, ENVTL. PROTECT. AGENCY, 2021 LEAD BULLETIN (Oct. 2021).

³²Consent Agreement & Final Order at 5, 11-12, Flipnmove Productions; and EQ Media, Inc., No. TSCA-06-2020-6137, 2021 WL 1165355 (EPA Feb. 3, 2021).

³³*Id.* at 8-9.

³⁴*Id.* at 11-15.

³⁵Consent Agreement & Final Order at 3-5, Pennrose Management Company, No. TSCA-03-2021-0021, 2021 WL 1773198 (EPA Feb. 15, 2021).

³⁶Consent Agreement & Final Order at 2-4, TRI Property Management, No. TSCA-08-2021-0005, 2021 WL 2794667 (EPA Apr. 23, 2021).

³⁷Consent Decree at 1, *United States v. Raftopoulos*, No. 1:20-CV-03166-SKC (D. Colo. filed Mar. 18, 2021); *see also* [Press Release](#), Env'tl. Prot. Agency, Reference News Release: United States Reaches Proposed Settlement with Ranch Owner to Restore Creek and

CWA violations, \$78,194 for alleged FLPMA violations, and up to \$20,000 in future administrative costs related to restoration oversight.³⁸

On October 13, 2021, the United States, on behalf of EPA, the U.S. Army Corps of Engineers, and the U.S. Department of the Interior acting through the U.S. Fish & Wildlife Service, and the State of Illinois, on behalf of the Illinois Environmental Protection Agency and Illinois Department of Natural Resources, entered a proposed [consent decree](#) with Buckeye Pipe Line Company, L.P. and West Shore Pipe Line Company for alleged CWA violations arising from a 2010 crude oil spill.³⁹ According to the consent decree, the companies agreed to pay a \$1.5 million civil penalty in addition to \$7.2 million to cover remedial costs.⁴⁰

C. Notable CAA Enforcement

On January 14, 2021, EPA and DOJ entered a proposed [consent decree](#) with Toyota Motor Corporation and certain affiliates for alleged CAA violations for failing to monitor vehicles for potential defects in emissions controls and report to EPA, and to timely file reports pertaining to recalls.⁴¹ The proposed consent decree requires payment of a civil penalty of \$180 million and includes a mandate to conduct an internal investigation of potential defects under certain conditions and provide supplemental reporting to EPA.⁴²

On September 13, 2021, EPA and DOJ entered a proposed [consent decree](#) with Formosa Plastics, Corp. for twenty alleged CAA violations related to fires and explosions that injured workers, and accidental chemical releases that Formosa allegedly failed to prevent at one of its petrochemical plants in Texas.⁴³ The consent decree required Formosa to pay a \$2.85 million civil penalty and to take steps to achieve compliance.⁴⁴

On September 15, 2021, EPA and DOJ entered a proposed [consent decree](#) with Xtreme Diesel Performance, LLC to resolve alleged violations of the CAA arising from the alleged manufacture, sale, and offer to sell aftermarket products that defeat emissions control systems equipped on diesel pickup trucks.⁴⁵ Under the consent decree, the company

Wetlands and Pay Damages for Trespass (Mar. 18, 2021); [John Raftopolous, et al. Clean Water Act Settlement](#), ENVTL. PROT. AGENCY (Mar. 18, 2021).

³⁸Consent Decree at 6-7, *Raftopoulos*, No. 1:20-CV-03166-SKC.

³⁹Consent Decree at 2, *United States v. Buckeye Pipe Line Co.*, No. 21-cv-5424 (N.D. Ill. filed Oct. 13, 2021); *see also* Morgan Conley, [Pipeline Cos. To Pay \\$8.7M to End Ill. Oil Spill Suit](#), LAW360 (Oct. 13, 2021) (subscription required).

⁴⁰Consent Decree at 8-9, *Buckeye Pipe Line Co.*, No. 21-cv-5424.

⁴¹Consent Decree at 2-4, *United States v. Toyota Motor Corp.*, No. 1:21-cv-00323 (S.D.N.Y. filed Jan. 14, 2021); *see also* [Press Release](#), Env'tl. Prot. Agency, Reference News Release: United States and Toyota Motor Company Reach Agreement for Decade-Long Noncompliance With Clean Air Act Reporting Requirements (Jan. 14, 2021); [Toyota Clean Air Act Emissions Defect Reporting Settlement Information Sheet](#), ENVTL. PROT. AGENCY (last updated Mar. 3, 2021).

⁴²Consent Decree at 6-7, *Toyota Motor Corp.*, No. 1:21-cv-00323.

⁴³Consent Decree at 1, *United States v. Formosa Plastics Corp.*, No. 6:21-cv-00043 (S.D. Tex. filed Sept. 13, 2021); *see also* Clark Mindock, [Formosa Plastics to Pay \\$2.8M for Texas Fires, Explosions](#), LAW360 (Sept. 14, 2021) (subscription required); [Press Release](#), Off. of Pub. Affs., Dep't of Just., Texas Plastics Corporation Will Pay Nearly \$3 Million for Violating Clean Air Act (Sept. 13, 2021).

⁴⁴Consent Decree at 6-7, *Formosa Plastics Corp.*, No. 6:21-cv-00043.

⁴⁵Consent Decree at 1, *United States v. Xtreme Diesel Performance, LLC*, No. 3:21-cv-16968 (D.N.J. filed Sept. 15, 2021); *see also* [Xtreme Diesel Performance, LLC, Clean Air Act Settlement](#), ENVTL. PROT. AGENCY (last updated Sept. 21, 2021); [Press Release](#), Env'tl.

is required to pay a civil penalty of \$1,125,000 over the course of two years, stop any sale of products alleged to violate the CAA, and take certain steps to prevent any future violations.⁴⁶

On December 1, 2021, EPA, DOJ, and Louisville Metro Air Pollution Control District entered a proposed [consent decree](#) with Louisville Gas & Electric (LG&E) concerning allegations that one of its Kentucky power plants emitted excessive amounts of sulfuric acid in violation of the CAA.⁴⁷ As a result of the consent decree, LG&E agreed to install permanent emission limits, comply with testing, reporting, and monitoring obligations, and pay a \$750,000 civil penalty.⁴⁸

D. Notable CERCLA Enforcement

On June 29, 2021, EPA and DOJ entered a proposed [consent decree](#) with Pioneer Natural Resources Company and Pioneer Natural Resources USA, Inc. under which they are required to pay \$5.8 million for alleged CERCLA violations by their predecessors related to the Nelson Tunnel/Commodore Waste Rock Pile Superfund site in Creede, Colorado.⁴⁹ According to the agreement, the U.S. Department of the Interior and the Department of Agriculture are also required to make a \$425,000 payment to EPA to settle their alleged liability for federally owned portions of the site.⁵⁰ In June 2016, another company settled claims involving the same Superfund site under an agreement requiring the payment of \$5.4 million to EPA and \$600,000 to the State of Colorado.⁵¹

On December 14, 2021, EPA and DOJ entered a proposed [consent decree](#) with Pharmacia LLC and Solutia Inc. for alleged CERCLA violations arising from Superfund sites in Sauget and Cahokia, Illinois.⁵² Under the consent decree, these companies are required to reimburse EPA \$700,000 for past cleanup costs and to cover future cleanup costs, estimated to be \$15.5 million.⁵³ This consent decree is one in a series of related settlements. Previously, in 2017, Pharmacia, Solutia, and other companies agreed to pay \$14.8 million to clean up six other waste disposal areas at the site.⁵⁴

Prot. Agency, EPA and Justice Department Reach Clean Air Act Settlement with Xtreme Diesel Performance, Ending Sale of Defeat Devices (Sept. 15, 2021).

⁴⁶Consent Decree at 11, 13, 15-18, *Xtreme Diesel Performance*, No. 3:21-cv-16968.

⁴⁷Consent Decree at 1-2, *United States v. Louisville Gas & Electric Co.*, No. 3:20-cv-00542-CRS (W.D. Ky. filed Dec. 1, 2021); *see also* Humberto J. Rocha, [\\$750K Penalty, Permanent Emission Limits for LG&E in Deal](#), LAW360 (Dec. 2, 2021) (subscription required); [Press Release](#), Off. of Pub. Affs., Dep't of Just., Louisville Gas & Electric Company to Permanently Limit Harmful Air Pollution (Dec. 1, 2021).

⁴⁸Consent Decree at 7, 14, *Louisville Gas & Elec. Co.*, No. 3:20-cv-00542-CRS.

⁴⁹Consent Decree at 1, 14, *United States v. Pioneer Natural Resources Co.*, No. 1:17-cv-00168-WJM-NYW (D. Colo. filed June 29, 2021); *see also* Morgan Conley, [Pioneer Inks \\$5.8M Deal to End Suit over Colo. Superfund Site](#), LAW360 (June 30, 2021) (subscription required).

⁵⁰Consent Decree at 14, 16, *Pioneer Nat. Res. Co.*, No. 1:17-cv-00168-WJM-NYW.

⁵¹Juan Carlos Rodriguez, [EPA, Colo. Seek Approval of \\$6M Hecla Mine Settlement](#), LAW360 (June 1, 2016) (subscription required).

⁵²Consent Decree for Remedial Design/Remedial Action and Recovery of Response Costs for Operable Unit 1 Sauget Area 2 Superfund Site (Consent Decree) at 1, *United States v. Pharmacia, LLC*, No. 21-cv-1681 (S.D. Ill. filed Dec. 14, 2021); *see also* Juan Carlos Rodriguez, [Monsanto Successors Agree to \\$17.9M Superfund Cleanup](#), LAW360 (Dec. 14, 2021) (subscription required); Haley Rischar, [Monsanto Successor Companies to Pay \\$17.9M for Landfill Cleanup](#), WASTE TODAY (Dec. 16, 2021).

⁵³Consent Decree at 28, 33, *Pharmacia*, No. 21-cv-1681.

⁵⁴Rodriguez, *supra* note 52.

E. *Notable FIFRA Enforcement*

On June 16, 2021, EPA [amended](#) its June 10, 2020 stop-sale order, to eBay, Inc., to add 170 products to [the list](#) of over 40 unregistered, misbranded, or restricted-use pesticide products, alleged to violate FIFRA, due to unapproved claims for use against the coronavirus.⁵⁵

F. *Notable RCRA Enforcement*

On January 19, 2021, the Pennsylvania Department of Environmental Protection and EPA entered a proposed [consent decree](#) with American Zinc Recycling Corp. for alleged violations of Pennsylvania statutes and RCRA, CAA, CWA, and Emergency Planning and Community Right-to-Know Act violations, including exceedances of lead and carbon dioxide limits, excess discharges of cadmium and zinc, noncompliant hazardous waste management and storage, and noncompliant chemical recordkeeping.⁵⁶ As a result of the consent decree, the company is required to pay \$3.3 million in penalties, in addition to expending \$4.3 million to improve one of its facilities.

In June of 2021, EPA Region 6 [resolved](#) allegations of RCRA violations against United Parcel Service, Inc. (UPS) and TForce Freight, Inc. at Texas, Arkansas, Louisiana, Oklahoma, and New Mexico facilities for allegedly failing to file notifications of hazardous waste activities, meet generator requirements, provide land disposal restriction one-time written notices, submit a biennial report to EPA, and prepare adequate manifests for hazardous waste.⁵⁷ The consent decree requires payment of a \$3.8 million fine and for all of their facilities in Region 6 to come into compliance within two years.⁵⁸

IV. CRIMINAL CASE UPDATE

A. *Notable CAA Enforcement*

On March 22, 2021, J.P. Lillis Enterprises, Inc. (d/b/a Cape Cod Ice) was fined \$90,000 and placed on three years' probation for repeatedly failing to implement a Risk Management Plan (RMP) for its Rhode Island facility to address accidental release of anhydrous ammonia, an extremely hazardous substance.⁵⁹ EPA had assessed civil penalties against Cape Cod Ice as early as 2012 for failing to submit an RMP. Moreover, a number

⁵⁵Amended Order Section 13(a) at 6, eBay, Inc., No. FIFRA-HQ-2020-5011 (EPA June 16, 2021); Amended Attachment A, Table 1, *eBay*, No. FIFRA-HQ-2020-511; *see also Amended Stop Sale, Use, or Removal Order Issued to eBay Inc.*, ENVTL. PROT. AGENCY (last updated Aug. 10, 2021).

⁵⁶Consent Decree at 1-5, *United States v. American Zinc Recycling Corp.*, No. 3:21-cv-00098-RDM (M.D. Pa. filed Jan. 19, 2021); *see also Press Release*, Env'tl. Prot. Agency, U.S., Pennsylvania Settlement to Reduce Hazardous Pollution from the American Zinc Recycling Facility (Feb. 9, 2021); Mike Curley, *Pa. Zinc Co. to Pay \$3.3M to Settle EPA Pollution Suit*, LAW360 (Feb. 9, 2021) (subscription required).

⁵⁷Consent Agreement and Final Order at 8-13, *United Parcel Service, Inc. & TForce Freight, Inc.*, No. RCRA-06-2021-0906, 2021 WL 3265439 (EPA June 8, 2021); *see also United Parcel Service, Inc. (UPS) Settlement*, ENVTL. PROT. AGENCY (last updated Sept. 17, 2021).

⁵⁸Consent Agreement and Final Order at 13-15, *United Parcel Serv.*, No. RCRA-06-2021-0906.

⁵⁹[Press Release](#), U.S. Att'y's Off., Dist. of R.I., Dep't of Just., Ice Company Fined, Required to Remedy Clean Air Act Violations (Mar. 22, 2021).

of governmental agencies inspected the facility – which is near an elementary school—and found that the equipment used to store the anhydrous ammonia was in need of repair.⁶⁰ Cape Cod Ice was required to undergo an audit, submit an action plan on how to address problems identified in the audit, and propose a timeline for remedial actions.

On April 20, 2021, Rockwater Northeast LLC was sentenced and ordered to pay \$2 million in fines and \$12,400 in special assessments for CAA violations.⁶¹ Rockwater pled guilty to thirty-one CAA violations for tampering with emissions systems and installing defeat devices on thirty-one heavy duty diesel trucks. Four former Rockwater employees and two former third-party vendors were also prosecuted.⁶² Separately, a related entity entered a three-year non-prosecution agreement with EPA under which the entity was required to pay \$2.3 million for similar violations related to twenty-nine separate heavy duty diesel trucks.

On August 23, 2021, U.S. Minerals, Inc. pled guilty to CAA violations arising from employee arsenic exposures.⁶³ Specifically, U.S. Minerals admitted to one misdemeanor count of negligent endangerment under the CAA for negligently releasing inorganic arsenic into the air and exposing employees. During the preceding investigations, OSHA inspected the facility and found employees had been exposed to arsenic at levels between 1.25 and 4.75 times the permissible limits.⁶⁴ According to the plea agreement, the government recommended that U.S. Minerals pay a \$393,200 fine, be placed on a five-year probationary period during which the company must implement a health and safety plan at all its U.S. facilities, and create a medical monitoring plan for current and former employees exposed to arsenic.

B. Notable CWA Enforcement

On January 14, 2021, Robert Massey, president and owner of Oil Chem, Inc. pled guilty to CWA violations stemming from the illegal discharge of more than 47 million gallons of landfill leachate into the City of Flint sanitary sewer system.⁶⁵ Oil Chem operated a wastewater sewage treatment plant in Flint, Michigan, pursuant to a CWA permit, which allowed the company to discharge treated water from the plant within set limits. The permit did not allow Oil Chem to discharge landfill leachate. Nevertheless, Massey arranged for the plant to receive leachate from eight landfills in Michigan and release the leachate at the end of each day to allow the waste to flow into the sewer overnight. Between 2007 and 2015, Oil Chem received over 47 million gallons of landfill leachate.⁶⁶ Massey was sentenced to one year in prison.⁶⁷

On April 1, 2021, Jay Earnest Niday, the former Superintendent of the Sioux City Wastewater Treatment Plant, was sentenced to three months in prison for conspiring to

⁶⁰*Id.*

⁶¹[Press Release](#), U.S. Att’y’s Off., Middle Dist. of Pa., Dep’t of Just., Water Management Company Sentenced To Pay \$2 Million In Fines For Clean Air Act Violations (Apr. 21, 2021).

⁶²*Id.*

⁶³[Press Release](#), U.S. Att’y’s Off., Dist. of Mont., Dep’t of Just., U.S. Minerals, Inc. admits Clean Air Act Violation for Exposing Employees to Arsenic at Anaconda Plant (Aug. 23, 2021).

⁶⁴*Id.*

⁶⁵[Press Release](#), U.S. Att’y’s Off., E. Dist. of Mich., Dep’t of Just., Robert Massey, Owner of Oil Chem, Inc., Pleads Guilty to Violating the Clean Water Act in Connection with Discharges of Landfill Leachate to Flint Sewer System (Jan. 14, 2021).

⁶⁶*Id.*

⁶⁷[Press Release](#), Off. of Pub. Affs., Dep’t of Just., Owner of Oil Chem Inc. Sentenced for Clean Water Act Violation (May 14, 2021).

falsify environmental testing at the plant.⁶⁸ This sentence came after Niday pled guilty to “one count of knowingly falsifying, tampering with, and rendering inaccurate a monitoring device” under the CWA.⁶⁹ As Superintendent of the wastewater treatment plant, Niday knew the plant was not working properly and could not properly disinfect the millions of gallons of wastewater the plant discharged into the Missouri River every day. To conceal these failures, Niday conspired with others to use fraudulent testing procedures to ensure the plant passed the required tests.⁷⁰

On December 6, 2021, Summit Midstream Partners, LLC was sentenced to pay a \$15 million fine and serve three years of probation for charges stemming from the largest ever inland oil spill.⁷¹ In 2014, a pipeline operated by Summit ruptured, discharging more than 700,000 barrels of oil (approximately 29 million gallons) over a four-month period into Blacktail Creek and adjacent land and groundwater in North Dakota. Summit pled guilty to CWA violations for both negligently discharging the oil and knowingly failing to report the discharge.⁷² The federal fines will be put toward the Oil Spill Liability Trust Fund and be used to respond to and clean future oil spills.⁷³

C. Notable Enforcement relating to Hazardous Waste

On June 3, 2021, WellgreensCA, Inc. and the company’s owner and manager pled guilty “to offenses related to the dumping of hazardous waste.”⁷⁴ Wellgreens extracts oils from cannabis and, in that process, generates various forms of waste, including large quantities of waste ethanol. This ethanol is a federally regulated hazardous waste, and therefore, must be transported using a uniform hazardous waste manifest.⁷⁵ Wellgreens did not follow this protocol, and instead gave several 55-gallon drums of ethanol waste to a contractor that disposed of it near several businesses around town. As part of the plea agreement, Wellgreens agreed to pay a \$45,000 fine in addition to \$26,482 for the costs of emergency response and restoring the sites where the waste was illegally disposed.⁷⁶

⁶⁸[Press Release](#), U.S. Att’y’s Off., N. Dist. of Iowa, Dep’t of Just., Former Sioux City Wastewater Treatment Plant Superintendent Sentenced to Federal Prison for Violating the Clean Water Act (Apr. 2, 2021).

⁶⁹*Id.*

⁷⁰*Id.*

⁷¹[Press Release](#), Off. of Pub. Affs., Dep’t of Just., Pipeline Company Sentenced for Largest-Ever Inland Oil Spill (Dec. 6, 2021).

⁷²*Id.*

⁷³*Id.*

⁷⁴[Press Release](#), U.S. Att’y’s Off., S. Dist. of Cal., Dep’t of Just., Cannabis Processing Firm and Managers Plead Guilty to Illegal Transportation of Hazardous Waste (June 3, 2021).

⁷⁵*Id.*

⁷⁶*Id.*