

ARTICLE

EPA Raises Maximum Civil Penalties Under Every Major Environmental Statute

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On December 23, the U.S. Environmental Protection Agency (EPA) promulgated a Final Rule increasing the maximum statutory civil penalties for violations of major environmental statutes, including the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Toxic Substances Control Act (TSCA), the Emergency Planning and Community Right-to-Know Act (EPCRA), and the Resource Conservation and Recovery Act (RCRA), among others. The Final Rule became effective upon its publication in the Federal Register on December 23, 2020. Here's what you need to know.

Each year, the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, requires EPA to increase its maximum civil penalties to reflect inflation adjustment.

According to the December 23 Final Rule, maximum civil penalty amounts will increase as follows:

- FIFRA civil penalties increased to \$20,528 (from \$ 20,288) per violation.
- RCRA civil penalties increased to \$76,764 (from \$75,867) per violation.
- TSCA civil penalties increased to \$41,056 (from \$40,576) per violation.
- EPCRA civil penalties increased to \$59,017 (from \$58,328) per violation.

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- CAA civil penalties increased to \$102,638 (from \$101,439) per violation.
- CWA civil penalties increased to \$56,460 (from \$55,800) per violation.

These adjusted amounts apply to penalties assessed on or after December 23, 2020 for violations that occur or occurred after November 2, 2015, the date Congress enacted the penalty adjustment legislation.

Companies involved in enforcement actions with EPA rarely pay the maximum civil penalty figures listed above for each violation. However, the maximum penalties guide EPA's enforcement decisions and penalty calculations. As such, even incremental increases in the statutory maximum civil penalties for a single violation can add up to significant penalties in the context of settlement and in fully litigated enforcement actions. This is particularly true in cases where the violation is defined on a per-day basis. Even where the violations are defined in terms of discrete actions (selling an unregistered pesticide product) or failure to undertake certain actions (not filing a required report) – the potential for significant penalties is high because the underlying statutes and enforcement policies give EPA considerable discretion to define how a single violation is counted.

A case in point is the October 2020 settlement between Electrolux Home Products Inc. (Electrolux) and EPA over violations of FIFRA, which resulted in a \$6.9 million civil penalty. Between January and May 2020, Electrolux imported around 420,000 dehumidifiers and air conditioners that contained filters treated with a nanosilver pesticide. These products were labeled and marketed with pesticidal claims like “antibacterial filter,” and “helps eliminate bacteria in the air that can make breathing difficult.” However, the nanosilver pesticide was unregistered and Electrolux failed to submit required Notice of Arrivals (NOA) to EPA prior to the arrival of the pesticidal products. The penalty amount per violation for Electrolux’ two violations wasn’t particularly significant, but because the violations were multiplied over numerous shipments and imports of the offending products, the penalty quickly rose to a significant sum.

Thus, when EPA’s civil penalties rise, so does the value of compliance. To avoid falling subject to EPA penalties, companies should have robust compliance programs designed to identify and apply EPA’s myriad and ever-changing environmental statutes and regulations. Although it may be tempting for companies to forego investment in compliance programs to save costs, the value of a good compliance program in preventing violations is enormous when the costs of non-compliance are considered.