

New Year, New Penalties from EPA

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Practices

Environmental Law

Article

01.04.2021

Since 1996, federal agencies have been required to review and adjust their statutory civil monetary penalties for inflation under the Federal Civil Penalties Inflation Adjustment Act. Initially, these adjustments were made every four years, but since 2017 inflation adjustments have become an annual occurrence. In keeping with these requirements, and with the type of ironic timing only the federal government seems capable of achieving, the U.S. Environmental Protection Agency (EPA) published its annual penalty adjustments two days before Christmas.

The year-over-year multiplier applied to EPA's penalties is 1.01182. In real terms, this translates into the following maximum penalties under several of the major EPA programs: Clean Water Act (CWA): \$56,460 per violation, per day Clean Air Act (CAA): \$102,638 per violation, per day Safe Drinking Water Act (SDWA): \$59,017 per violation, per day RCRA: \$76,764 per violation, per day CERCLA: \$59,017 per violation, per day FIFRA: \$20,528 per violation, per day TSCA: \$41,056 per violation, per day EPCRA: \$59,017 per violation, per day

The new penalties apply to violations that occurred after November 2, 2015, and which are assessed on or after December 23, 2020. While it is unusual for EPA to seek the maximum penalty for any given violation in the absence of exacerbating factors, the annual increases in penalty amount give EPA wider discretion in how heavy a hand to take in individual enforcement actions. Demonstrating good faith efforts to comply with the law, cooperation, and other mitigating factors will continue to play a significant role in the outcome of enforcement cases for those regulated by EPA.