

# U.S. EPA CRIMINAL ENFORCEMENT UPDATE



2018



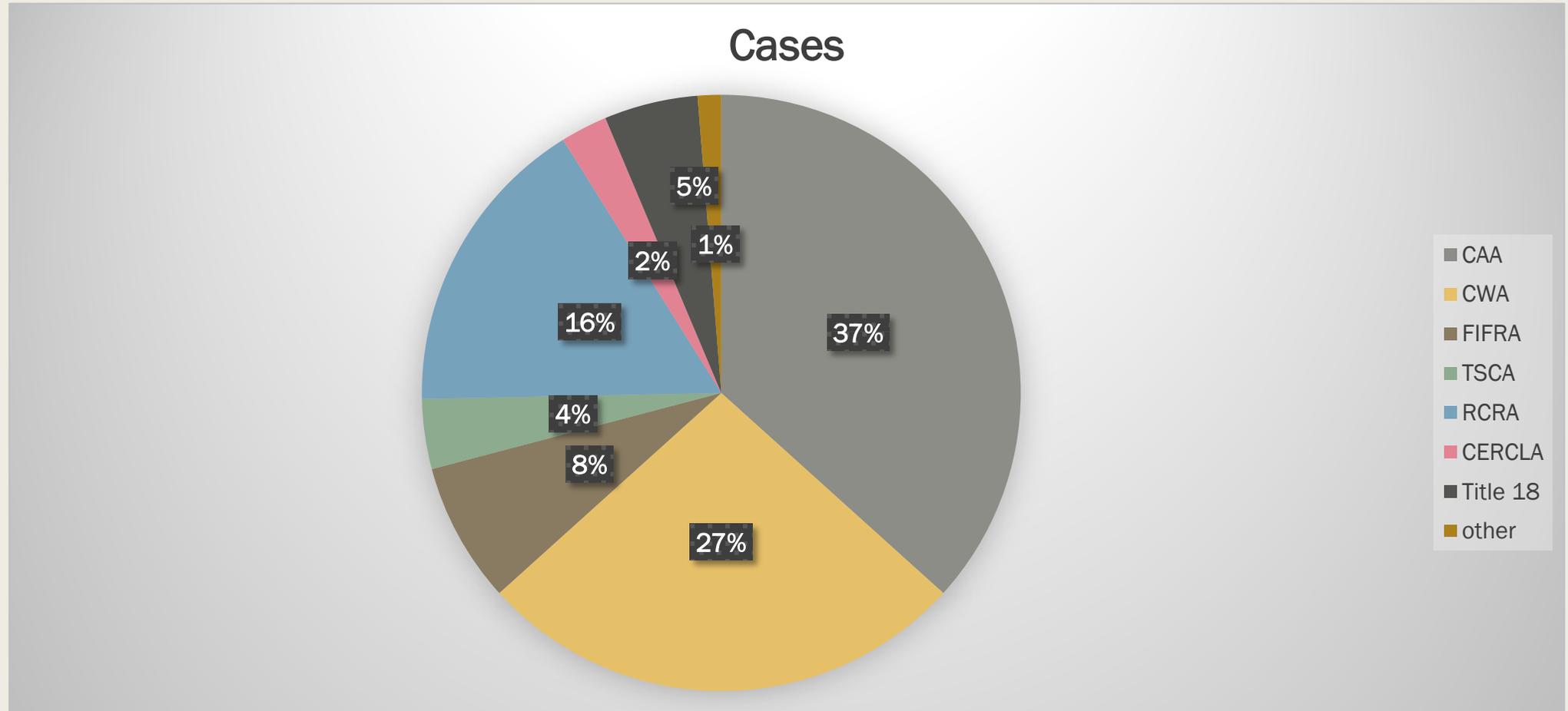
# Disclaimer

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# Organization of EPA Criminal Program

- Utilizes agents from the Office of Criminal Enforcement, Forensics and Training (OCEFT), within the Office of Enforcement and Compliance Assurance (OECA) in EPA-Headquarters
  - *New York Area Office supervised by a Special Agent in Charge (SAC) with satellite offices in Syracuse, Buffalo, Edison, San Juan*
  - *Region 2 SAC is also SAC for Region 1*
- Regional Criminal Enforcement Counsel (RCECs) are Regional attorneys in Office of Regional Counsel
  - *Legal support in Region 2, two full-time RCECs in New York, 1 part-time in New York and one part-time in San Juan*

# Region 2 Case Portfolio, May 2016-2018



# Specific Cases

# United States v. Terminix International Company, LP & Terminix International USVI

- Application of **methyl bromide** in a rental home in March 2015, critically sickening a vacationing family
- A restricted use pesticide was applied in a manner inconsistent with its label, in violation of the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA) 7 U.S.C. §136j(a)(2)(G)



# First Plea Agreement - RECAP

- Terminix entities each pleaded guilty to four counts of violating FIFRA
- \$8 million in criminal penalties between the two companies using alternative fines calculation available in 18 U.S.C. §3571
- Restitution of \$1 million in reimbursement for Superfund clean-up performed
- Community service payment of \$1 million to be paid to the National Fish & Wildlife Foundation (NFWF) for a pesticide applicator training to be offered in U.S. Virgin Islands

Judge accepted the guilty plea, but rejected the Plea Agreement

# Second Plea Agreement

- Superseding Plea Agreement submitted to the court on July 21, 2016
  - *Range of criminal fines and money for proposed community service payment*
- In August, Judge Gomez issued two orders requiring a broad inquiry into costs of medical care, including mental health, for each victim of the application and restitution for non-person victims
- Shortly thereafter, the Terminix parties withdrew their plea
- The judge set a trial for October 2016
- US filed motion to dismiss without prejudice

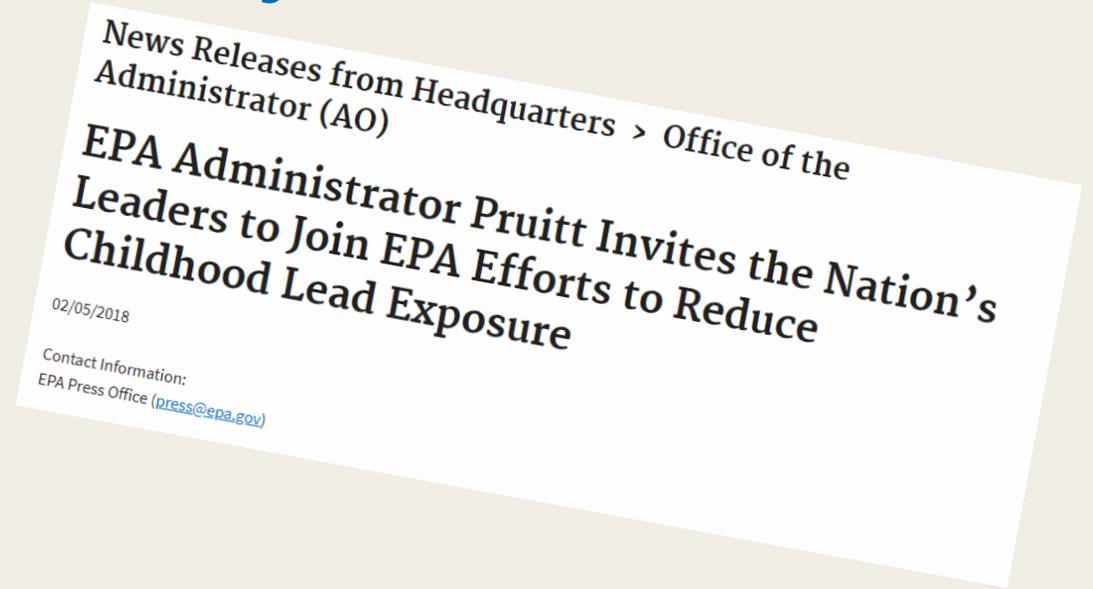
# Third Time's a Charm

- Criminal Information and Plea Agreement filed on January 20, 2017
- Recommendations were similar to the earlier pleas
- Judge's Sentencing from the bench
  - *Criminal fine: \$4.6 million each*
  - *Restitution: \$1.2 million*
  - *Community Service: Terminix (not NFWF) will arrange for training for commercial pesticide applicators, fumigation, and health services providers*
- The judge has not yet issued an order

# Next Steps Relating to the Incident

- Indictment on April 12, 2018 of the Branch Manager who was the pesticide applicator at the Sirenusa condo
- Alleging application of a restricted use pesticide in violation of FIFRA, 7 U.S.C. §136j(a)(2)(G)
  - *5 counts relating to applications at the Sirenusa complex*
  - *8 counts relating to applications at locations on St. Croix*
  - *1 count relating to an application on St. Thomas*
- Trial date has been set for September

# Lead Initiative Announced by Administrator Pruitt



- Toxic Substances Control Act (TSCA) governs Lead-Based Paint, among other hazardous materials

# *United States v. Walck (WDNY)*

- Walck was a real estate broker in western New York
- In the first attempted house sale, Walck provided lead disclosures to the potential buyers, who then backed out
- In the second attempted sale, Walck completed paperwork indicating that there were no records regarding lead-based paint in the house
- The second sale went through and within two years, the new owner's child was diagnosed with lead poisoning

# Walck Plea Agreement

- Walck pleaded guilty to a TSCA violation on January 9, 2018
  - *Paid the victims the cost of the lead abatement (\$53,326,07) as restitution*
- First case in which a realtor has been held liable for failing to provide lead-based paint disclosures under TSCA

# Criminal Penalties under TSCA

- June 2016 amendment of TSCA
- 15 U.S.C. § 2615(b)(2)(A) Imminent Danger of Death or Serious Bodily Injury:

“Any person who knowingly and willfully violates any provision of section 2614 or 2689 of this title, and who knows at the time of the violation that the violation places an individual in imminent danger of death or serious bodily injury, shall be subject on conviction to a fine of not more than \$250,000, or imprisonment for not more than 15 years, or both.”

# *United States v. Aireko Construction Company (DPR)*

- In May 2012, EPA received a tip about improper removal of asbestos containing material (ACM) at the Minillas Government Complex
- EPA conducted an inspection/sampling event
  - *ACM throughout the building, including in the elevators, stairs and the outside space used for garbage disposal*
  - *Sampling analysis verified ACM*
- Based on the contamination, EPA closed the building to the public
- Aireko Construction Company was charged in a six count indictment
  - *Counts 1 through 5 were for violating the Clean Air Act*
  - *Count 6 was for violating CERCLA*

# Aireko Plea Agreement and Sentencing

- Plea Agreement filed with the court January 11, 2016
  - *Pleading guilty to four Clean Air Act counts and the CERCLA count*
- Sentence imposed on August 16, 2017:
  - *\$300,000.00 as to each count for a total of \$1,500,000.00*
  - *3 years probation*
  - *Funding a medical baseline and follow-up study by the University of Puerto Rico Medical Sciences Campus up to \$ 172,020.12*

# Questions?

- Report an Environmental Violation

<http://www2.epa.gov/enforcement/report-environmental-violations>

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