



## NEW JERSEY CHAPTER

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### New Jersey Sierra Club Report on NJDEP Enforcement and Compliance

4 May 2016

#### New Jersey Sierra Club Report Summary:

The NJDEP Compliance and Enforcement Department have failed to release its annual report for the past three years. The New Jersey Sierra Club filed an OPRA request for those reports and were told by NJDEP that they no longer issue them. We have issued our own report as a result showing the Christie Administration's record onsite inspections, enforcement actions, and investigations using data from the DEP and OPRA requests.

The Christie Administration deliberately held up reports from 2010-2012. On his last day at the NJDEP before retirement, Former Asst. Commissioner of the Compliance and Enforcement Office, Wolf Skacel released them. Otherwise, we believe they might have never come out. In the past, these reports were important because they highlighted a variety of activities in different regions like the Barnegat Bay, reported company activities as well as the Facilitated Settlement Programs, and provided a strategic plan for the Office. NJ Sierra Club staff developed their own report from the past three years, but had difficulty retrieving the data. They used the NJDEP database called "Dataminer" that experienced frequent time-out errors as well as filed an OPRA request for additional information.

#### Environmental Enforcement Drops Dramatically under Christie Administration

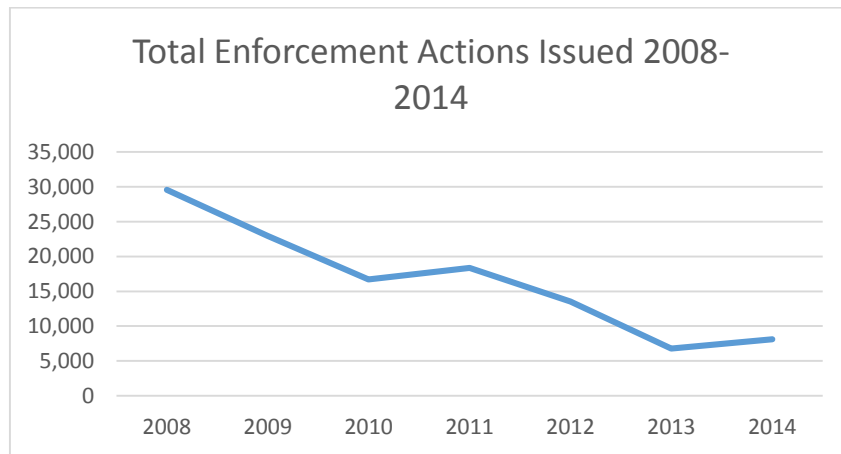
NJDEP has failed to release their Compliance and Enforcement Report for Fiscal Years 2013, 2014, and 2015 because they are hiding significant drops in oversight. The New Jersey Sierra Club filed an OPRA looking for these recent reports, but we were told by the NJDEP that they no longer complete them. The New Jersey Sierra Club then conducted our own report using DEP information on their Database and OPRA requests. We found DEP reported findings for site inspections and enforcement actions, which shows a very disturbing trend. The DEP also failed to publish data online for investigations, which we believe is because they did not complete them.

- Based on NJDEP's online database, **total enforcement actions issued dropped significantly by 77 percent from 2008 to 2013, falling from 29,579 to 6775.<sup>1</sup> In 2008, Lisa Jackson was the NJDEP Commissioner, which is why we had picked that date.**

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<sup>1</sup> See Table 1 Developed by New Jersey Sierra Club in Appendix.

**She left in 2009. Total enforcement actions climbed up slightly to 8,107 showing a 72 percent drop in 2014.**



According to the NJDEP, enforcement actions are considered the documents issued to violators that spell out the details of one or more alleged violations, any steps needed to correct them, any penalties, and the schedules for compliance and/or penalty payment.<sup>2</sup>

If polluters are let off the hook without being penalized, then the people of New Jersey are left to suffer. Offenders are more likely to do the right thing if they know they will get caught, but if there was a problem at a plant it isn't likely they will fix it without knowing there is a not penalty. If you don't put the "force" in enforcement, you end up with more pollution and environmental problems. As violations go under-reported and unchecked, you end up with more disasters, similar to what has happened in Newark with the lead contamination found in schools. Just because they aren't catching anyone, it doesn't mean violations are not happening.

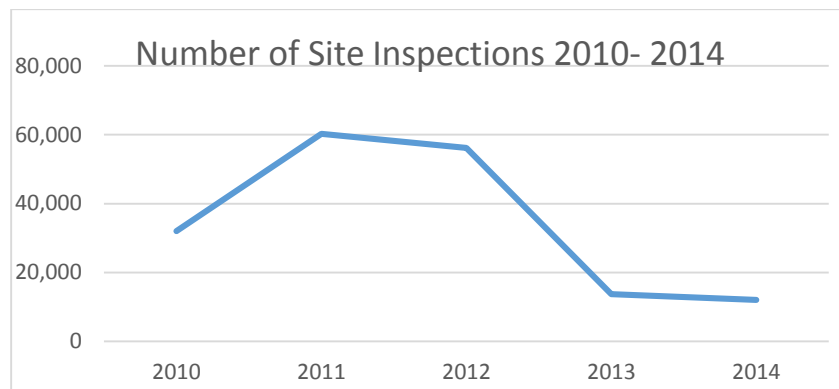
- The programs traditionally reported on in the Enforcement and Compliance reports include: Air, Community Right to Know, County Environmental Health Act, Program Discharge Prevention, Containment and Countermeasures, Hazardous Waste, Land Use, Pesticide Control, Radiation Protection, Site Remediation Program, Solid Waste, Toxic Catastrophe Protection Act, Underground Storage Tanks, Water Supply, and Water Quality. However, since they have failed to release the report, recent information onsite inspections and enforcement actions must be retrieved on their database. In addition, the number of investigations for all categories were completely missing.
- For Air, enforcement actions dropped from 1,236 in 2004 to 953 in 2014. Land Use fell from 671 to 243 in the same ten-year period. Pesticides had 586 enforcement actions in 2004 and that dropped to 178 in 2014. Solid Waste had the biggest drop from 1084 to 374. Water Quality also dropped from 817 to 421. The only increase was found in Water Supply which saw an increase from 285 in 2004 to 2,269 in 2014.<sup>3</sup>

<sup>2</sup> Previous DEP Enforcement and Compliance Report, pg. 5

<http://nj.gov/dep/enforcement/cehighlightsfy2010.pdf>

<sup>3</sup> See Table 2 Developed by New Jersey Sierra Club in Appendix.

Site inspections have seen an 80 percent drop since Christie has been in office from 2011 to 2014, falling from 60,234 to 11,991. It climbed up slightly to 8,107 showing a 72 percent drop in 2014.<sup>4</sup>



Site Inspections are defined by the NJDEP as compliance evaluations conducted through site visits. The most common example is the physical inspection of a facility ensuring compliance with rules, permits or approvals from the department.<sup>5</sup>

Fewer enforcement actions in wetlands may mean more destruction of wetlands and more flooding. In hazardous waste, less enforcement and site inspections may mean more toxic sites later. There may be more chemicals that put people's health at risk in our drinking water for decades without being analyzed. Without enforcement of the solid waste program we may see more illegal dumping.

- **Before Christie came to office, in 2006, the number of site inspections peaked at 34,188, however in 2014 that number fell to its lowest amount on record 11,991.** The numbers increased after Hurricane Sandy, but dropped in 2013 and 2014. This increase could have resulted because of Hurricane Sandy.<sup>6</sup>

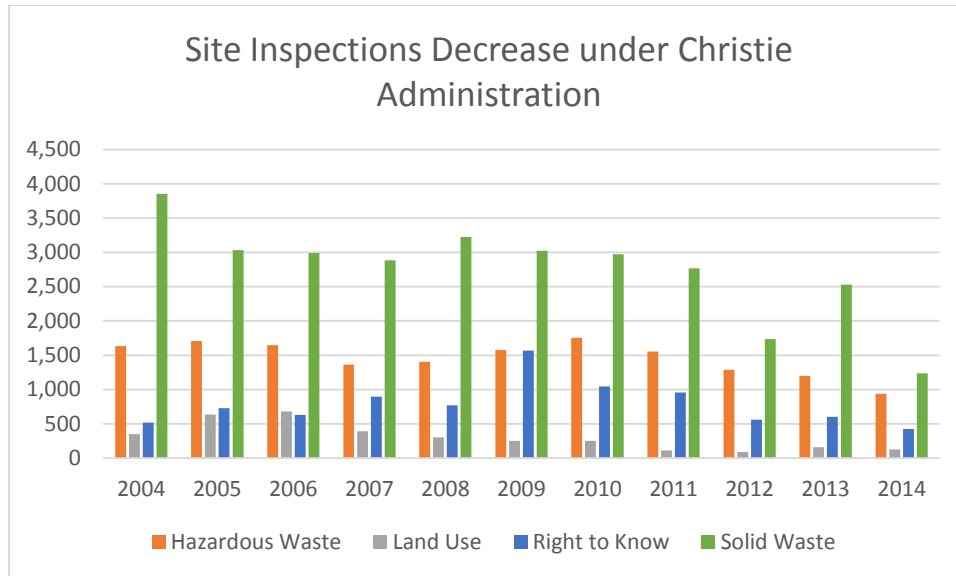
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<sup>4</sup> See Table 1 Developed by New Jersey Sierra Club in Appendix.

<sup>5</sup> Previous DEP Enforcement and Compliance Report, pg. 5

<http://nj.gov/dep/enforcement/cehighlightsfy2010.pdf>

<sup>6</sup> See Table 1 Developed by New Jersey Sierra Club in Appendix.



- **The biggest drop in inspections by categories was in Land Use by 86 percent from 2006-2012.**
- **Right to Know decreased by 72% between 2009-2014**
- **Solid Waste decreased by 67 percent from 2004-2014 and Hazardous Waste by 45 percent between 2005-2014.<sup>7</sup>**

What is even more concerning is the amount of violations that could be occurring based on the tons of fracking waste coming into New Jersey. The Site Remediation Professionals program was also privatized in 2009 so those records have decreased. With the underground storage tanks also being privatized, it may mean more oil pollution in our groundwater.

Investigations as defined by the DEP as compliance evaluations or applicability determinations at known or unknown sites that are characterized by their unplanned nature. The most common example is a response to a citizen complaint.<sup>8</sup>

- **Between 2005 to 2011, investigations dropped by 10,226. We are concerned that investigations could have plummeted to zero in 2013 and 2014, given the NJDEP has not reported on them.<sup>9</sup>**

<sup>7</sup> See Table 3 Developed by New Jersey Sierra Club in Appendix.

<sup>8</sup> Previous DEP Enforcement and Compliance Report, pg. 5

<http://nj.gov/dep/enforcement/cehighlightsfy2010.pdf>

<sup>9</sup> See Table 1 Developed by New Jersey Sierra Club in Appendix.



If the NJDEP are no longer reporting on investigations, they might not be conducting them at all. Investigations are important because they respond to citizen complaints who are usually the first to be aware of an environmental problem. When the regulated entities are less inspected, investigated and issued violations it can lead to more pollution and disasters because people at these facilities tend to get lax.

Under the Christie Administration, in the DEP Transformation if you report a violation you do not necessarily get an enforcement action or fine. If you do you get cited, you can use the money to fix the problem even if you created it. They also allow alternative compliance such as planting trees instead of fixing the problem. In recent years DEP has issued a Notice of Violation to sites for accepting waste that exceeding their limits, but without new information we don't even know who is receiving violations.

New Jersey still does not do proper monitoring after it rains and only tests beaches on Monday with equipment that takes three days to get results instead of updated equipment that could give results in a few hours. This could be impacted thousands of people who recreate and swim on our beaches and bays, but do not know that there is a dangerous level of bacteria.

Fines collected at the NJDEP have also dropped significantly. Between 2008 fines collected and 2016 fines estimated: air pollution dropped by 86 percent, wetlands by 58 percent, hazardous waste by 32 percent, laboratory by 63 percent, parks management by 59 percent, pesticide control by 70 percent, Radiation Protection by 32 percent, and Community Right to Know went from \$60,000 to \$0.<sup>10</sup>

There are real consequences to weakening enforcement that will affect public health, safety and the environment and have real impacts for the people of New Jersey. Our concern is that with the DEP not releasing their own report and withholding information, then the public cannot hold the DEP accountable for their decline in enforcement.

## Appendix:

### Table 1:

<sup>10</sup> See Table 4 Developed by New Jersey Sierra Club in Appendix.

**Total Actions for NJDEP Compliance and Enforcement 2003-2014**

<b>Year</b>	<b>Number of Site Inspections</b>	<b>Total Enforcement Actions Issued</b>	<b>Number of Investigations</b>	<b>Administration, based on fiscal year</b>
<b>2003</b>	23,197	12,039	17,525	MC GREEVEY
<b>2004</b>	26,738	12,373	17,614	MC GREEVEY
<b>2005</b>	33,796	15,705	21,467	MC GREEVEY/CODEY
<b>2006</b>	34,188	16,294	18,396	CODEY/ CORZINE
<b>2007</b>	28,327	15,483	13,723	CORZINE
<b>2008</b>	27,689	29,579	8,561	CORZINE
<b>2009</b>	31,341	22,947	4,741	CORZINE
<b>2010</b>	31,998	16,722	13,375	CORZINE/CHRISTIE
<b>2011</b>	60,234	18,360	11,241	CHRISTIE
<b>2012</b>	56,230	13,555	11,947	CHRISTIE
<b>2013</b>	13,735	6,775	Not Available**	CHRISTIE
<b>2014</b>	11,991	8,107	Not Available**	CHRISTIE
<b>Percentage Changed Before Christie</b>	<b>2003-2009:</b> 35% increase	<b>2003-2009:</b> 90% increase	<b>2003-2009:</b> 73% decrease	
<b>During Christie</b>	<b>2011-2014:</b> 80 % drop; <b>2009-2014:</b> 61% drop	<b>2008-2013:</b> 77% drop; <b>2008-2014:</b> 72% drop	Not available for recent years.	
Citations:	<b>Data between 2013 and 2014 was taken from <a href="#">Data Miner</a></b>	<b>Data between 2003 to 2012 were taken from previous <a href="#">Enforcement and Compliance Reports</a>.</b>	<b>** According to Art Zanfini at the NJDEP, there is no information available for investigations and</b>	

	and OPRA requests.		OPRA request did not provide them.	
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**Table 2:**

**Enforcement Actions By Category**

	Air	Hazardous Waste	HW-UST	Land Use	Pesticides	Solid Waste	Water Quality	Water Supply
<b>2004</b>	<b>1236</b>	<b>343</b>	<b>Unavailable</b>	<b>671</b>	<b>586</b>	<b>1084</b>	<b>817</b>	<b>285</b>
<b>2014</b>	<b>953</b>	<b>262</b>	<b>1,054</b>	<b>243</b>	<b>178</b>	<b>374</b>	<b>421</b>	<b>2,269</b>

**Table 3:**

**Site Inspections by Category**

	Air	Hazardous Waste	Land Use	Pesticides	Right to Know	Solid Waste	Water Quality	Water Supply
<b>2004</b>	<b>777</b>	<b>1,634</b>	<b>350</b>	<b>543</b>	<b>517</b>	<b>3,853</b>	<b>3,356</b>	<b>1,565</b>
<b>2005</b>	<b>822</b>	<b>1,709</b>	<b>634</b>	<b>602</b>	<b>727</b>	<b>3,031</b>	<b>3,178</b>	<b>1,434</b>
<b>2006</b>	<b>922</b>	<b>1,648</b>	<b>682</b>	<b>577</b>	<b>628</b>	<b>2,989</b>	<b>3,870</b>	<b>1,315</b>
<b>2007</b>	<b>869</b>	<b>1,361</b>	<b>391</b>	<b>551</b>	<b>894</b>	<b>2,883</b>	<b>3,826</b>	<b>1,225</b>
<b>2008</b>	<b>779</b>	<b>1,403</b>	<b>302</b>	<b>371</b>	<b>770</b>	<b>3,224</b>	<b>3,716</b>	<b>1,292</b>
<b>2009</b>	<b>692</b>	<b>1,576</b>	<b>253</b>	<b>326</b>	<b>1,566</b>	<b>3,023</b>	<b>3,199</b>	<b>1,232</b>
<b>2010</b>	<b>648</b>	<b>1,754</b>	<b>250</b>	<b>458</b>	<b>1,047</b>	<b>2,973</b>	<b>3,156</b>	<b>1,295</b>

201 1	843	1555	114	528	957	2767	3580	1256
201 2	574	1,288	91	356	559	1,735	3,462	1,295
201 3	510	1,201	161	484	604	2,527	3,362	1,682
201 4	564	938	124	355	423	1,237	3,123	1,664

**Table 4:**

**Fines Collected in USD in 2008 and Est. Issued in 2016**

	<b>Air Pollution</b>	<b>Wetlands</b>	<b>Hazardous Waste</b>	<b>Laboratory</b>	<b>Parks Management</b>
<b>\$ Fines Collected 2008</b>	<b>\$7,373,000</b>	<b>\$603,000</b>	<b>\$668,000</b>	<b>\$82,000</b>	<b>\$123,000</b>
<b>\$ Fines Issued 2016</b>	<b>\$1,000,000</b>	<b>\$250,000</b>	<b>\$450,000</b>	<b>\$30,000</b>	<b>\$50,000</b>

**Table 4 Cont.?**

	<b>Pesticide Control</b>	<b>Radiation Protection</b>	<b>Community Right to Know</b>
<b>\$ Fines Collected 2008</b>	<b>\$85,000</b>	<b>\$164,000</b>	<b>\$60,000</b>
<b>\$ Fines Issued 2016</b>	<b>\$25,000</b>	<b>\$110,000</b>	<b>\$0</b>

Table 4 charts were taken from prior budget reports.