



Enforcement Accomplishments Report

FY 1990





The FY1990 Enforcement Accomplishments Report was prepared by the Compliance Evaluation Branch within the Office of Enforcement. Information contained in the report was supplied by the EPA Regional Offices and Headquarters program offices.



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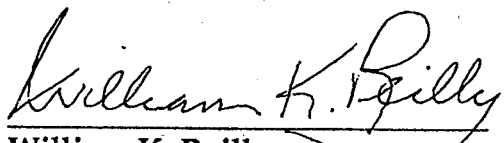


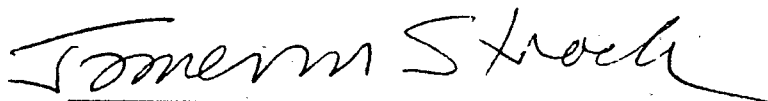
A Message from the Administrator and Assistant Administrator

1990 was the 20th anniversary of both Earth Day and the United States Environmental Protection Agency. It also was a record year for the Agency's enforcement of environmental laws. We are pleased by the symbolism — but not surprised by the coincidence — of these events. It reflects the growth and maturation of EPA's enforcement program and the high priority given to it by President Bush, the Agency and the American people.

By the end of the 1980's, the enforcement program had received a comprehensive range of administrative, civil and criminal enforcement authorities. As this Report illustrates in detail, the Programs and Regions employed them all with record frequency in 1990 to ensure compliance with environmental laws. During 1990, the Agency also developed a long-term strategy to make sure that Federal, State, and local enforcement programs will have the capacity to identify and resolve both media-specific and multi-media violations which present serious risks to the environment and public health. The Report also highlights the innovative enforcement activity in these new areas, such as geographic risk-based targeting and pollution prevention — areas which will be hallmarks of the Agency's enforcement focus throughout the decade.

We believe that this Report will play a useful role in describing our enforcement program to the public. We trust it also will serve an important ancillary purpose by sending the appropriate deterrent message to potential violators. That message is straightforward and demonstrable: This Administration is committed to a forceful and successful environmental enforcement program both now and in the future.


William K. Reilly
Administrator


James M. Strock
Assistant Administrator
for Enforcement



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II. FY 1990: Developing the Blueprint for Enhanced Enforcement

FY 1990 was another record year for enforcement, continuing the trend of the last three years. All-time highs were set for the number of civil (375) and criminal (65) referrals, as well as for the total level of assessed penalties. The foremost example of this record activity is the \$15 million civil penalty assessed in the Texas Eastern Pipeline case, the single largest penalty assessment in the Agency's history.

But good "numbers" are not the only reason that FY 1990 was a watershed year for the Agency's enforcement program. It also was the year the Agency defined and took the first steps to implement a new approach in environmental enforcement by the federal, state and local governments.

This approach is the result of two separate, interrelated, EPA FY 1990 initiatives: the Enforcement Four-Year Strategic Plan and the Enforcement in the 1990s Project. 1/ The former is a comprehensive statement of the major goals and objectives of future-oriented enforcement program which will drive the Agency's enforcement efforts. The latter is a set of analyses of, and specific recommendations to improve, six components of the enforcement process which will be integrated into the Agency's long-term planning process. 2/ Together, the Strategic Plan and the 1990s Project represent the Agency's blueprint for a successful enforcement program for the future.

The assumption underlying both the Strategic Plan and the 1990s Project is that as the regulated universe becomes larger and more complex, more sophisticated approaches are needed to obtain the maximum effect from each enforcement action to help meet the Agency's environmental goals and objectives. These approaches, which include more sophisticated decision making in developing regulations, setting enforcement priorities, using enforcement tools, and settling enforcement actions, will be flexible and will heavily rely upon the EPA Regions and States for effective implementation.

This enhanced enforcement approach envisions a greater emphasis over the next five years on the explicit selection of cases based on health and ecological risk. It will have both media-specific and cross-media components. The majority of enforcement efforts will continue to consist of the medium-specific priorities (i.e., air, water, toxics, etc.) which are identified annually and for which the programs undertake "timely and appropriate" enforcement response to resolve significant noncompliance. However, these program-specific priorities will also serve as the foundation for the development of targeted "special initiatives" to resolve environmental problems caused by specific pollutants or industries, or to protect sensitive geographic areas and ecological systems.

The enforcement approach arising out of the 4-Year Strategic Plan and the 1990s Project will be fully implemented over the next several years. However, a number of the specific elements either have previously been undertaken on a pilot basis (e.g., Regional multi-media enforcement pilots initiated in FY 1989) or involve the expanded and more systematic use of existing tools (e.g., environmental auditing, contractor listing). Therefore, the following sections, which summarize the major elements of the Agency's enhanced enforcement program, also will include examples of their use by the programs and Regions during FY 1990.

A. Strengthening the Institutional Voice

1. The Focal Point for Enforcement

Specific enforcement responsibilities will continue to be located in both the Regions and Headquarters program offices. However, the Office of Enforcement will serve as the Agency's national voice regarding the enforcement of environmental laws. Three specific management decisions were made in FY 1990 in support of this approach. First, the director of the criminal agent program of EPA's National Enforcement Investigations Center (NEIC), will move from Denver to Washington, D.C. in order



to coordinate more closely with EPA's other program offices. Second, the Offices of Federal Facilities Enforcement and the Office of Federal Activities were integrated in the Office of Enforcement. Third, a direct reporting relationship was established between the Assistant Administrator for Enforcement and the Agency's Regional Counsels.

2. The Enforceability of Regulations

Successful enforcement depends on regulations whose definitions, standards, and applicability to particular violations are clear. Enforcement becomes much more difficult where a regulation is vague in scope or content. The Office of Enforcement and the media compliance programs will play a greater role in the regulatory development process so as to ensure that regulations are enforceable from both a legal and practical perspective.

Enforceability assessments which describe how enforcement-related technical, logistical and legal concerns should be addressed in a proposed regulation and its implementation, will be developed for selected rules. The Agency also will identify a subset of proposed regulations for each program for pilot "field tests" to be conducted prior to final promulgation in order to identify potential weaknesses that could render the rule unenforceable if not corrected. 3/

B. Targeting Enforcement for Maximum Environmental Benefits

Targeted enforcement initiatives will focus enforcement action against specific areas with environmental problems. Targeting may involve either single media cases or cross media cases which cut across the traditional media-specific approach driven by regulations and federal statutory authorities. Some of the targeting criteria identified in the Strategic Plan include industries with poor compliance histories, and specific pollutants or sensitive geographic areas of concern, including ones which cross more than one Region or State.

Under a geographic approach, for example, Regions may identify all polluting facilities in a specific geographic area, inspect the facilities to determine their compliance with regulation or permit conditions, and take any necessary enforcement action to resolve noncompliance. In FY 1990, for example, Region V simultaneously filed lawsuits against Inland Steel Corp., Bethlehem Steel Corp., and Federated Metals Corp. in a coordinated effort to clean up pollution along the Grand Calumet River. The three suits involve violations of Federal water, hazardous waste, and clean air laws. Indeed, the Inland Steel complaint alleged violations in all three media and is the largest multi-media enforcement action ever undertaken by the Agency. 4/

Targeted initiatives also can be used to combat the risk associated with particular pollutants or categories of pollutants. In FY 1990, for example, five chlorofluorocarbon (CFC) enforcement actions were filed as part of the agency's ozone layer protection initiative. 5/ Similarly, the Agency began to develop a lead enforcement strategy which will be fully implemented during FY 1991. Finally, the RCRA Enforcement Program formed an enforcement targeting committee to advise on enforcement initiatives. EPA announced the first such initiative on February 22, 1991; the filing of 28 actions to enforce the land disposal restrictions of RCRA.

In order to facilitate targeting, the Agency began work in FY 1990 on a project to establish automated linkages among its various compliance and enforcement data bases. When completed next year, the Agency will be able to associate compliance and enforcement data from these systems according to corporate structure, industrial sector, pollutants, and/or geographic areas. In addition to the national databases containing compliance and enforcement information, the Agency's Toxic Release Inventory (TRI) and other ambient databases, once integrated, will further aid risk assessment and targeting.



C. Screening Violations and Potential Cases for Appropriate Enforcement Response

In FY 1990, as in previous years, the large majority of enforcement actions were handled administratively. This trend will continue in the future. However, the Agency must be able to consider the best enforcement response to violations — administrative, civil judicial, or criminal — especially when they pose significant health or environmental risk. This capability, which will facilitate more uniform case-handling across the Regions, also is needed when violations require complex technical or multi-media response, or involve potential precedents or large penalties.

During the last quarter of FY 1990, the Agency developed guidance by which each Region will develop a screening process to review violations for strategic value and their multi-media, innovative enforcement, and civil judicial and criminal enforcement potential. Not every violation will warrant scrutiny. Each program will determine what classes of violations should be subject to a screening process and each Region, working with the Office of Enforcement, will have the flexibility to develop its own specific screening mechanism. The "bottom line" for the use of these screening procedures is that the decision on the nature of the response and whether and how multi-media enforcement can be brought to bear on the nature of the injunctive relief should not rest solely with the program that conducted the inspection and identified the violation.

D. Creative Use of Enforcement Authorities

Over the several years, the Agency has used a number of techniques to expedite or enhance compliance. The 1990s Project has identified opportunities to use a number of techniques such as Alternative Dispute Resolution (ADR) and environmental auditing to expedite or enhance compliance. These techniques as well as other enforcement tools, will be used by the Regions and programs in order to "leverage" the environmental and deterrent effect of individual enforcement actions. 6/ Two approaches received special attention in FY 1990:

1. Pollution Prevention

Pollution prevention/waste minimization is at the top of the list of innovative approaches being pursued by EPA, and enforcement will be a major tool to encourage efforts in this area. A strong enforcement program in and of itself encourages pollution prevention by providing incentives for industry to find ways to reduce its potential liabilities and response costs. In addition to fostering an overall climate, the enforcement process can be used directly against noncompliers to promote pollution prevention.

In FY 1990, the Office of Enforcement developed a draft interim policy on including pollution prevention conditions in Agency settlements (the final interim policy will be issued early in FY 1991). When conducting negotiations, the Federal litigation team may consider whether there are opportunities to correct the violation through single or multi-media source reduction activities (e.g., reducing the source of emissions through changes in the industrial process or by production process input substitutions). Settlements can also be used to encourage the respondent to undertake additional pollution prevention activities not as directly related to the original violation (e.g., a commitment to phase out the use of a specific pollutant over an agreed-upon period).

A number of cases with cross-media pollution prevention conditions were negotiated in FY 1990. Three are illustrative as part of a TSCA consent order, Schering Berlin Polymers (formerly Sherex Polymers, Inc.) agreed to install a new filter system to reduce by 500,000 lbs. annually the amount of RCRA subtitle C hazardous waste that would otherwise have to be disposed of offsite. The 3-V Chemical Corp., also as part of a TSCA consent order, agreed to install a solvent recycling system that is



expected to reduce by 50 percent the point source emissions of 1,1,1-trichloroethane (an unregulated ozone-depleting substance) and dichloromethane (a suspected carcinogen). The Seekonk Lace Company agreed to a EPCRA consent order which included a provision to eliminate emissions by substituting a mechanical-based separation system for an acetone-based solvent one. 7/ These cases were in the vanguard of the Agency's strategy to use the enforcement process to enhance pollution prevention.

2. Contractor Listing

Contractor Listing authorities under the Clean Air Act and the Clean Water Act bar facilities that violate those statutes from receiving federally-funded contracts, loans or grants. Listing is mandatory for criminal violations and discretionary for civil violations of either Act. The Federal Acquisition Rule provides procedures for barring contractors from participating in Federal procurement based on offenses such as fraud or lack of performance integrity. Both sanctions are powerful deterrent tools to reinforce environmental compliance.

In FY 1990, the Agency conducted a comprehensive review of, and developed an action plan for, the contractor listing program in order to make it one of the centerpieces of an effective deterrence and enforcement program. Particular emphasis was placed on screening of cases to identify candidates for discretionary listing. 8/ The Agency also will make more use of suspension/debarment for violators of all environmental statutes, repeat violators, and multi-media violators.

E. Improving Relationships With Other Units of Government

The Agency must work more closely with all governmental bodies in the federal and international system — localities, States, other Federal regulatory agencies, and other nations — in order to successfully carry out its environmental goals and mission. The Agency's future enforcement program will include expanded joint planning and cooperation, both within the different levels of our own Federal system and with foreign governments, to more efficiently tackle persistent environmental problems.

1. Federal Regulatory Agencies

Other Federal regulatory agencies oversee many of the same types of industries and facilities as EPA. Working from the assumption that violations in one regulatory area may indicate the potential for violations in others, EPA will look for opportunities for cooperation with other federal agencies to advance mutual compliance objectives.

During FY 1990, EPA negotiated a Memorandum of Understanding (MOU) with the Occupational Safety and Health Administration (OSHA) covering the periodic exchange of information from each Agency's national compliance docket, cross-notification about possible violations discovered during either an OSHA or EPA facility inspection, and joint inspection activity in areas of mutual priority, e.g., petrochemical facilities and lead smelting operations. 9/

Also in FY 1990, EPA began supplying compliance information to the Securities and Exchange Commission (SEC) including PRP lists, respondent/defendant program docket information, and civil penalty data in support of SEC's review of Material Liabilities Disclosure Forms (10K forms). The SEC may, in turn, send EPA disclosure information that may help us focus on environmental liabilities reported to the SEC. The fact that EPA and the SEC are working in concert has been publicized throughout the regulated community, and should help ensure complete and accurate descriptions of environmental liabilities in the 10K submissions to the SEC.



2. States

The States play a fundamental role in the overall enforcement effort, and the necessity for close cooperation has never been more evident. EPA will involve the States even more fully in its strategy development and priority setting efforts, and work with them to enhance their own cross-media targeting, case screening, and criminal enforcement capabilities. This will require additional technical assistance, data sharing, and compliance training to States. EPA made its Basic Inspector Training Manual available to States during FY 1990, and several Regions have invited State inspectors to participate in the course. The Agency intends to do more information sharing with the States in the future.

Also required are the joint development of more sophisticated mechanisms for Regional and State oversight. Better oversight and evaluations depend on better quantitative and qualitative information about State enforcement activities as well as a stronger consensus on the appropriate Federal/State roles. During the last half of FY 1990, the Office of Enforcement and the Environmental Law Institute (ELI) conducted planning for a Federal/State Enforcement Colloquium, which was held November 29 - 30, 1990. The Colloquium brought together about 50 officials from EPA Congress, States, and environmental/citizens groups. The participants explored way to enhance enforcement activities among the various interests, and to build consensus around the 1990s Project recommendations.

3. Other Nations

As the world community comes to realize that pollution does not respect geographic boundaries, work must be coordinated to resolve the problems posed by issues such as global warming and the illegal importing and exporting of hazardous wastes and chemicals.

In FY 1990, EPA helped organize an International Enforcement Workshop, which was held in Utrecht, the Netherlands. The workshop included representatives from 14 countries and international organizations, and expanded on activities which the U.S. and Dutch environmental organizations have been conducting since 1985. The Workshop brought together government environmental enforcement officials from around the world to exchange ideas and strategies on improving domestic enforcement programs and enforcement of trans-boundary environmental accords. 10/

F. Effective Communications About the Enforcement Program

EPA must communicate effectively with the Congress, the media, the public, and the regulated community about our overall enforcement effort. This involves developing better ways of explaining environmental improvement and publicizing individual enforcement actions to enhance deterrence.

1. Measuring Enforcement Effectiveness

No single quantitative and qualitative measure of program performance can provide a comprehensive assessment of the enforcement program. Accurate measurement and assessment will require consideration of whether a suitable existing data collection system exists with established supporting baseline data; whether it is feasible to quantify deterrence benefits resulting from each discrete enforcement case; and whether it is practicable to capture the preventive impact of enforcement activities.

During FY 1990, EPA took initial steps to quantify the impact of enforcement initiatives. Working with the Office of Water and the Office of Mobile Sources, the Office of Enforcement developed final enforcement effectiveness case studies for the Clean Water Act National Municipal Policy and the Clean Air Act Lead Phasedown Program. The studies presented the environmental and economic benefits related to enforcement activities and other measures of effectiveness. 11/



This method of effectiveness analysis, while not without difficulties, is the type of results-oriented analysis envisioned by both the Strategy and the 1990s Project which, with refinement, will produce useful information about the impact of the Agency's enforcement efforts. As next steps, the Agency plans to develop useful indicators of compliance within targeted industries, the deterrent impact of penalties, and the use of pollution prevention activities.

2. Publicizing Enforcement Actions

Publicizing enforcement actions taken against violators magnifies the impact of the environmental gains achieved through those actions, and the Agency will develop an overall communications strategy to promote deterrence within the regulated community. This will involve disseminating information about specific enforcement actions, including the environmental benefits derived from that particular action. It will also involve communicating with both attentive publics and the public at large about the Agency's total enforcement program, processes and procedures.

During FY 1990, for example, The Agency produced and distributed two general descriptions of its enforcement efforts: Environmental Enforcement: A Citizen's Guide and The Public's Role in Environmental Enforcement. The former provided an overview of the enforcement process, while the latter publication encouraged citizen involvement by giving examples and illustrations of potentially non-compliant behavior which the general public can report to State and/or Federal officials. Both represent the type of communications outreach activity which the Agency will emphasize in the future.

G. Enforcement Training

Effective enforcement of environmental laws requires highly qualified legal and technical personnel, and the Agency's already substantial training effort, which includes the civil, criminal, and appellate two-week courses presented by the Attorney General's Advocacy Institute, the two-week criminal enforcement training program conducted at the Federal Law Enforcement Training Center in Glynco, Georgia, and the general and program-specific basis and advanced inspector training program, will continue to grow. All enforcement personnel will receive appropriate training to increase their effectiveness in the enforcement process. Over the next five years, the Agency will systematically train inspectors, technical case development officers, investigators, and prosecutors in all phases of enforcement, including introductory training in overall multi-media, multi-disciplinary enforcement.

During FY 1990, planning continued for the creation and development of the National Enforcement Training Institute as authorized by the Pollution Prosecution Act of 1990. The Agency began developing implementation options for the Institute concept, including curriculum development, the involvement of (and training opportunities afforded to) State and local government personnel, funding, faculty, facilities, and management. 12/

Conclusion

Vigorous environmental law enforcement is one of the nation's highest priorities. In some aspects, implementing the new approach will require establishing new mindsets and ways of conducting business, not only on the part of EPA and the States, but on the part of Congress, regulated industries, and the public as well. The result, however, will be a comprehensive risk-based approach to both media-specific and cross-media enforcement which will serve the overall environmental goals of the United States.

1/ For a discussion of these two initiatives, see James M. Strock, "EPA's Enforcement in the 1990s," Environmental Law Reporter, Volume XX, No 8, August 1990, pps. 10327 - 10332. The final Strategic Plan



was issued on October 17, 1990 and is available upon request. The 1990s Project is undergoing final review and will be available in February, 1991.

2/ The six analyses of the 1990s Project are: Enhancing Enforceability Considerations in Environmental Rulemaking; Compliance Incentives/Leverage; Innovative Enforcement; The Local Government's Role in Environmental Enforcement; Environment Management and Measures; and Strengthening the State/EPA Relationship for Environmental Enforcement.

3/ cf. the 1990s Project report on Enhancing Enforceability Considerations in Environmental Rulemaking for a complete analysis of this subject.

4/ cf. chapter IV for a summary of these cases and other FY 1990 cases.

5/ cf. chapter IV for a description of these cases

6/ cf. the individual reports on Innovative Enforcement, and Compliance Incentives/Leveraging for a comprehensive discussion of constraints, opportunities and benefits in the use of innovative enforcement tools, including: contractor listing, criminal enforcement, environmental auditing, pollution prevention, field citations, alternative dispute resolution, field citations, cooperation with citizens' and other non-governmental environmental organizations, environmental awards, and environmental education and technology transfer.

7/ cf. chapter IV for a more complete description of the original violations and the pollution prevention settlement conditions of these three cases

8/ cf. chapter IV for a summary of key FY 1990 listing cases suspension/debarment for violators of all environmental statutes, repeat violators, and multi-media violators.

9/ The EPA/OSHA MOU was formally signed by Administrator Reilly and former Labor Secretary Dole on November 26, 1990. Cf. Chapter V for a detailed discussion of the substance of the MOU.

10/ Cf. chapter V for a complete account of the substantive issues discussed at the Workshop. The Workshop is a model of the kind of international dialogue and cooperation on world environmental issues that will expand significantly in the future.

11/ Cf. Chapter V for a complete summary of the National Municipal Policy and Lead Phasedown Effectiveness Studies.

12/ Cf. Chapter V for a discussion of Agency training efforts.



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U.S. DEPARTMENT OF THE INTERIOR



III. Environmental Enforcement Activity

Federal Judicial and Administrative Enforcement Activity

Judicial Enforcement - Civil

During FY 1990, the Environmental Protection Agency (EPA) established a new all-time record for civil judicial enforcement by referring 375 cases to the Department of Justice (DOJ), surpassing the previous Agency record of 372 which was set in FY 1988, and the 364 cases that were referred to DOJ in FY 1989. Since FY 1988, 1,111 cases have been referred to DOJ, nearly one third of all civil cases referred since the Agency's creation (historical data are contained in the Appendix to this report). The federal Superfund program established a new high-water mark in FY 1990 with 157 civil judicial cases referred to DOJ.

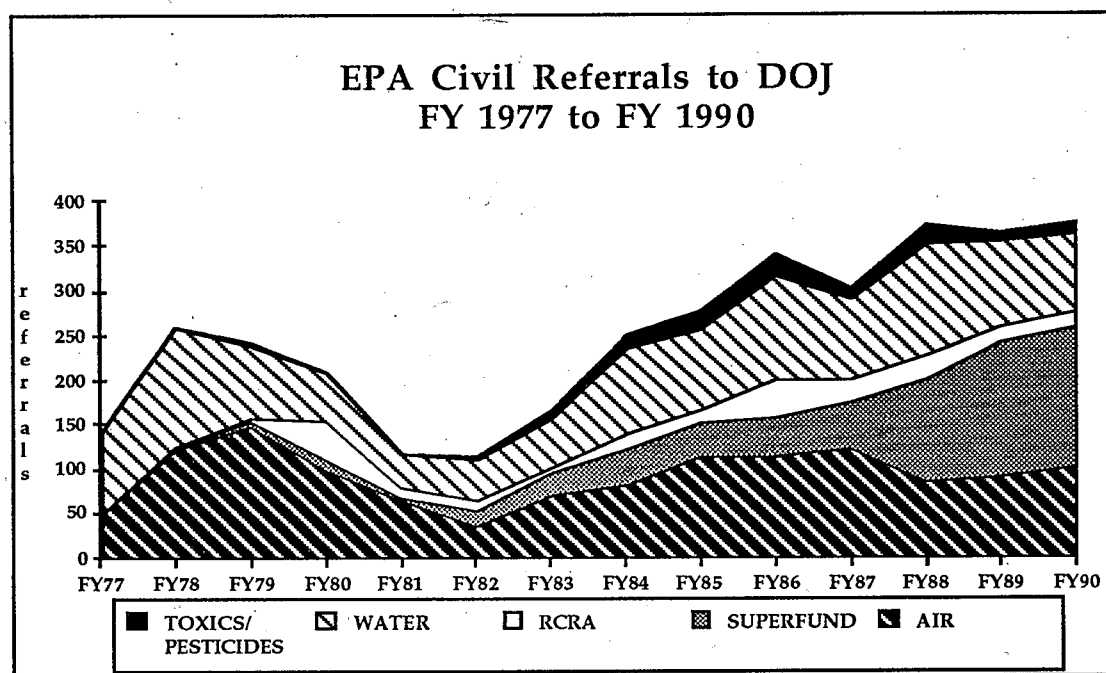


Illustration 1

Monitoring Judicial Consent Decrees

At the end of FY 1990, the Agency reported that 646 judicial consent decrees were in place and being monitored to ensure compliance with the provisions of the decrees, more than three times the number of five years ago. Where noncompliance with the terms and conditions of a decree is found, EPA may initiate proceedings with the court to compel the facility to live up to its agreement and seek penalties for such noncompliance. EPA initiated 32 actions to enforce consent decrees during FY 1990, twice the number that were initiated in FY 1989.



Judicial Enforcement - Criminal

In FY 1990, EPA's criminal enforcement program established new records by referring 65 cases to DOJ (the previous record was 60 in FY 1989), bringing charges against 100 defendants (the previous record was 98 in FY 1986), and the number of months of jail time to which defendants were sentenced with 745 months (the previous record was 456 months in FY 1987). FY 1990 saw continued integration of the criminal enforcement program into the Agency's regulatory programs, as well as greater recognition in the regulated community of EPA's willingness to pursue violations utilizing criminal enforcement authorities. As the following illustration indicates, criminal case referrals, numbers of defendants charged, and numbers of defendants convicted have increased over time. Since 1982, individuals have received prison sentences for committing environmental crimes totaling 181 years, and 643 years of probation have been imposed. Imposition of probation is an extremely effective part of the criminal program because in the event that an individual commits another crime (not limited to environmental crimes), the provisions of the probation normally call for the automatic imposition of a prison sentence that was suspended in lieu of probation.

During FY 1990, the President signed into law the Pollution Prosecution Act of 1990. The Act provides for a quadrupling by FY 1995 of the number of criminal program Special Agents and support personnel. The Act also authorized the creation of EPA's National Enforcement Training Institute which will provide support to the growing criminal program. Also during FY 1990, a number of management studies of the criminal program were completed, and work has begun to implement a program reorganization that calls for more centralized supervision of investigatory personnel.

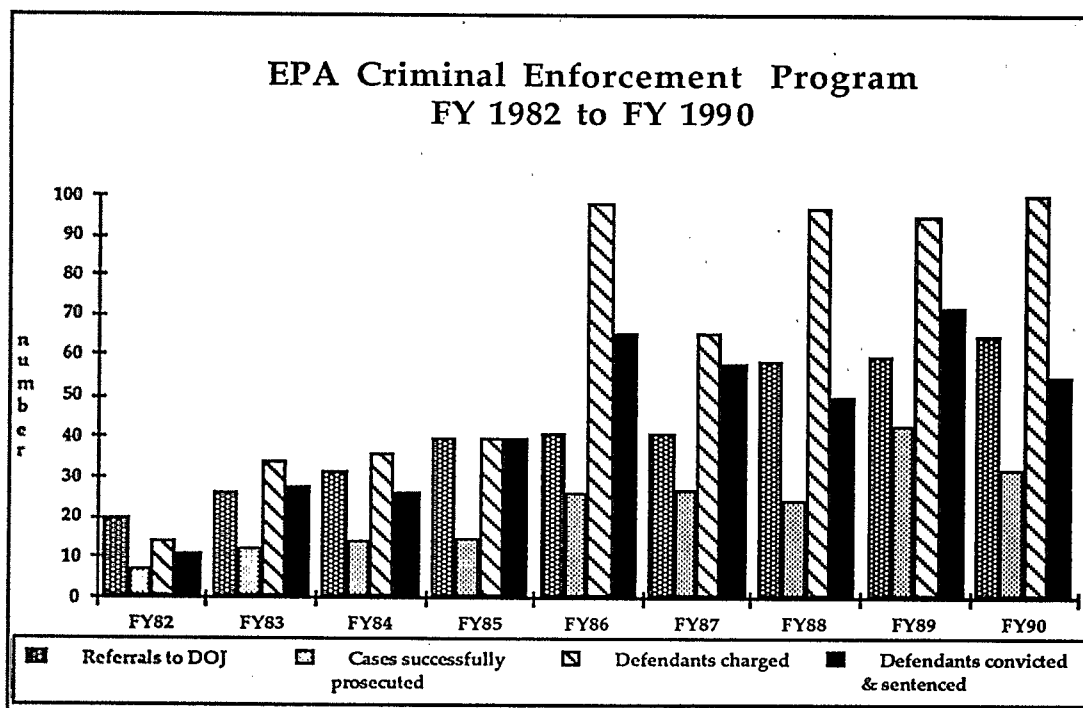


Illustration 2

Administrative Enforcement

EPA posted its second highest annual total for administrative enforcement activities in FY 1990 with 3,804 actions. The Agency record of 4,136 was set in FY 1989. The totals for FY 1990 demonstrate that although judicial actions (both civil and criminal) are crucial to EPA's overall success, and are

generally looked to as the chief indicator of the vitality of Agency enforcement efforts, other indicators need to be evaluated to assess EPA's effectiveness in enforcing environmental laws and regulations. Congress has given EPA expanded authority in recently enacted or reauthorized statutes to use administrative mechanisms to address violations and compel regulated facilities to achieve compliance. The FY 1990 figures indicate that EPA programs continue to make greater use of these effective and less resource intensive tools.

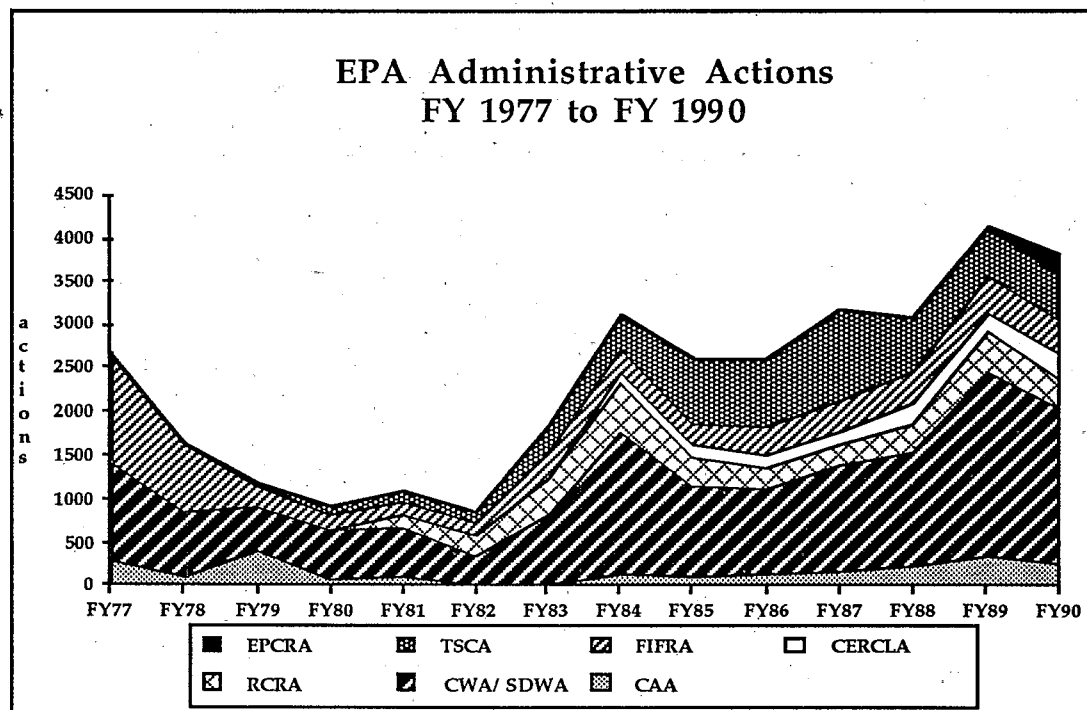


Illustration 3

Contractor Listing

In FY 1990, a record number of facilities were added to the EPA's List of Violating Facilities under the authorities provided to EPA by Clean Air Act Section 306 and Clean Water Act Section 508 to bar facilities that violate the clean air or clean water standards from receiving Federally funded contracts, grants or loans. Facilities owned or operated by persons who are convicted of violating Clean Air Act Section 113(c) or Clean Water Act Section 309(c) (and involved in the violations) are subject to automatic listing effective the date of the conviction (this is referred to as mandatory listing). Facilities which are mandatorily listed remain on the list until EPA determines that they have corrected the conditions which led to the violations. Twenty facilities were listed in FY 1990 based on criminal convictions — twice as many facilities as in any previous year. Four facilities were removed from the list in FY 1990, one after a removal hearing before a Case Examiner. Since FY 1986, 55 facilities have been placed on the mandatory list.

Facilities may also be listed at EPA's discretion upon the recommendation of certain EPA officials, a State Governor, or a member of the public based on continuing or recurring violations of the Clean Air Act or the Clean Water Act (this is referred to as discretionary listing). Facilities recommended for discretionary listing have a right to an informal administrative proceeding. Facilities listed under discretionary listing are removed after one year; or earlier if the Assistant Administrator determines that the conditions which gave rise to the discretionary listing have been corrected, or that the facility is on a plan that will result in compliance. In FY 1990, EPA proposed to list one facility



under its discretionary listing authority. Three pending discretionary listing actions were withdrawn by EPA after consent agreements were entered in the underlying civil enforcement cases.

Federal Penalty Assessments

In FY 1990, over \$61.3 million in civil penalties were assessed, an all-time record (\$38.5 million in civil judicial penalties and \$22.8 million in administrative penalties, both all-time records). Delaying or foregoing capital investment in pollution controls, as well as failure to provide resources for annual pollution control operating expenditures, can allow undeserved economic benefits to accrue to a regulated entity. As part of the effort to deter noncompliance, EPA's enforcement programs have developed penalty policies designed to assess penalties which recover any economic benefit that a noncomplying facility has realized, and assess additional penalties commensurate with the gravity of the violation(s). It should be noted that the FY 1990 record totals would still set a record without including the \$15 million penalty in the Texas Eastern Pipeline consent decree, the largest environmental penalty ever assessed. Since its creation, EPA has imposed over \$247.3 million in civil penalties (\$167.3 million with civil judicial actions and \$80 million with administrative actions).

In FY 1990, over \$8.8 million in Clean Air Act penalties were assessed (\$5.9 million for stationary source violations and \$2.9 million for mobile source violations); \$16.9 million in Clean Water Act penalties were assessed (\$12.4 million in civil judicial penalties and \$4.5 million in administrative penalties); over \$25.4 million in Toxic Substances Control Act penalties were assessed (\$15 million in civil judicial penalties and \$10.4 million in administrative penalties); and \$6.8 million in Resource Conservation and Recovery Act penalties were assessed (\$3.9 million in civil judicial penalties and \$2.9 million in administrative penalties). In FY 1990 there were at least three multi-media cases with RCRA counts for which penalties were assessed and credited to other media, and are not included in the RCRA total. The Federal Insecticide, Fungicide, and Rodenticide Act and Safe Drinking Water Act programs are largely delegated to the States; however, EPA assessed over \$587,000 and \$578,000 respectively, under these statutes. The Toxic Release Inventory program assessed nearly \$1.6 million. Over \$441,000 in Emergency Planning and Community Right-to-Know Act (EPCRA) sections 302-312 and CERCLA Section 104 penalties were assessed.

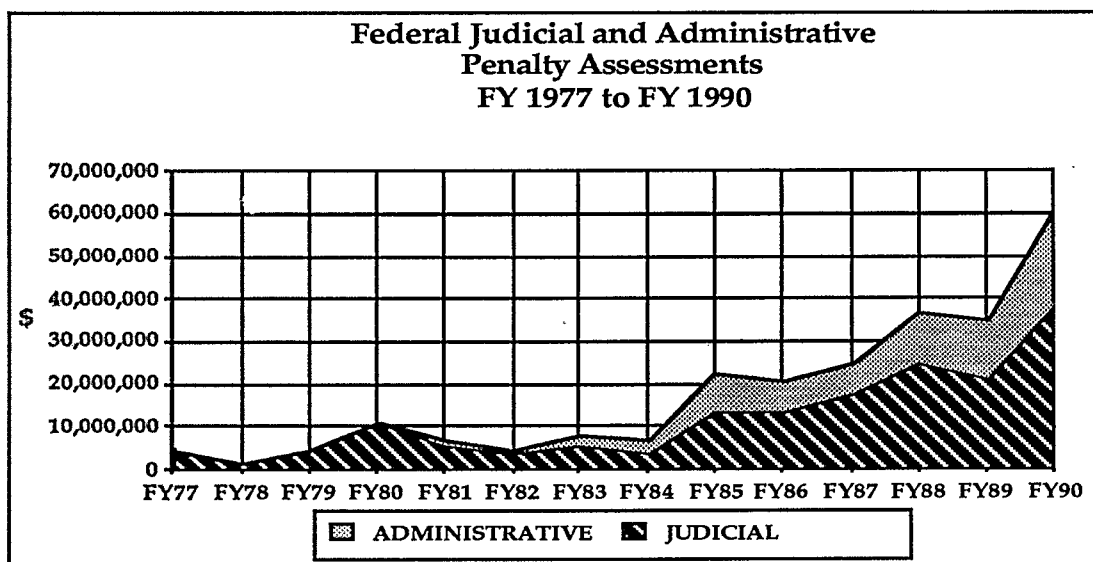
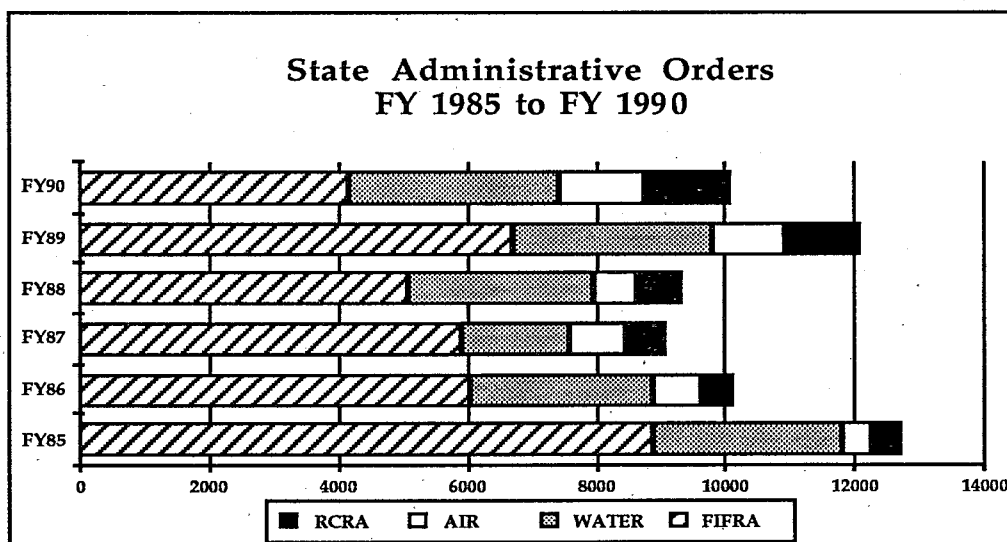
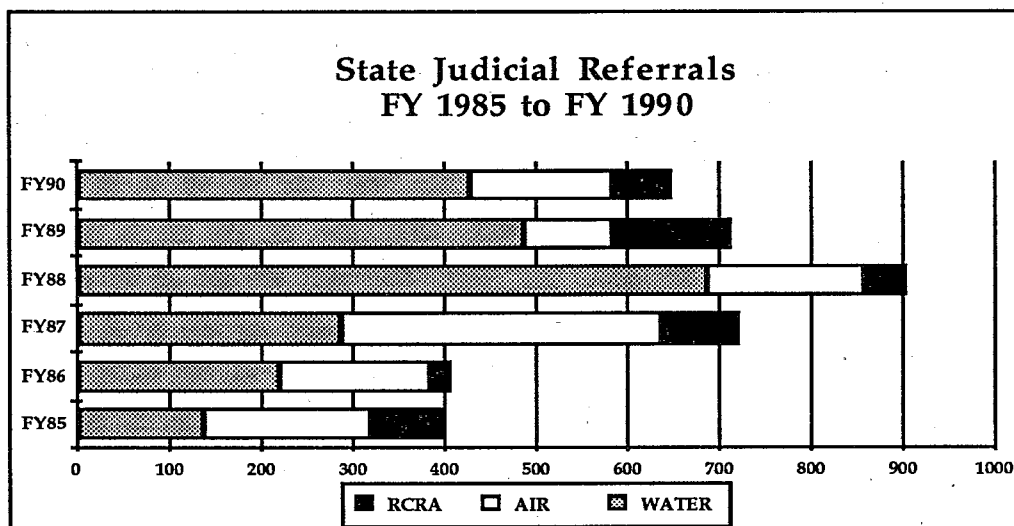


Illustration 4



State Judicial and Administrative Enforcement Activity

Several hundred thousand facilities are subject to environmental regulation, and the job of ensuring compliance and taking action to correct instances of noncompliance with federal laws is entrusted both to EPA and to the States through delegated or approved State programs. EPA and the States must rely on a partnership to get the job done, with State environmental agencies shouldering a significant share of the nation's environmental enforcement workload. In FY 1990, the States referred 649 civil cases to State Attorneys General and issued 10,105 administrative actions to violating facilities (in addition to the 4,145 administrative actions taken by States under FIFRA, 3,149 warning letters were issued).



Illustrations 5&6



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IV. Major Enforcement Litigation and Key Legal Precedents - Protecting Public Health and the Environment through Enforcement

During FY 1990, EPA's strong base enforcement program continued to obtain injunctive relief and significant penalties to correct priority violations in all media. In addition, the compliance programs undertook a number of targeted actions and used the settlement process to obtain additional environmental relief. The special initiatives undertaken in FY 1990 are indicative of the type of enforcement activity which will become the hallmark of the Agency's enforcement program in FY 1991 and beyond. This chapter provides highlights of major FY 1990 litigation which support media enforcement priorities and demonstrate innovative approaches in the enforcement process.

Clean Air Act Enforcement

The Clean Air Act program regulates the emission of both toxic and criteria pollutants from both stationary (factories, plants, utilities) and mobile (auto) sources. Stationary source air toxics litigation centered upon violations of the National Emissions Standards for Hazardous Air Pollutants (NESHAPS), especially those involving asbestos and benzene, while mobile source air toxics litigation emphasized violations of the lead phasedown rules, as well those involving fuel switching, volatility, and additives requirements. Enforcement of the National Ambient Air Quality Standards (NAAQS) for the criteria pollutants involved violations of regulations for volatile organic compounds (VOCs), sulfur dioxide and particulates.

Stationary Source Program

U.S. v. J.Y. Arnold and Associates, Inc.: On December 22, 1989, a consent decree resolved this Region IV Clean Air Act ("CAA") civil enforcement action against J.Y. Arnold and Associates, Inc. ("J.Y. Arnold") for alleged violations of the National Emission Standards for Hazardous Air Pollutants for asbestos ("Asbestos" NESHAP") during an asbestos

renovation project at the Adeth Jeshurun Synagogue in Louisville, Kentucky. In conjunction with the civil enforcement action brought against J.Y. Arnold, Region IV initiated proceedings to list J.Y. Arnold as a violating facility, pursuant to § 306 of the CAA and 40 C.F.R. Part 15. A hearing on the listing was held on May 2, 1989, which resulted in the presiding officer recommending listing J.Y. Arnold.

The consent decree requires J.Y. Arnold to train all of its asbestos abatement personnel in EPA-approved training courses. The consent decree further requires J.Y. Arnold to pay a civil penalty of \$17,500 and stipulated penalties for any violation of the consent decree. In addition, J.Y. Arnold must report directly to the Region on all demolition/renovation projects the company bids so the region can reference compliance by other contractors in the area.

As a result of J.Y. Arnold's performance of the conditions specified in the decree, Region IV has agreed to withdraw the listing recommendation for J.Y. Arnold. This is believed to be the first case in which an asbestos contractor was determined to be a violating facility pursuant to a listing hearing. Furthermore, under the terms of the Consent Decree, if J.Y. Arnold should violate the Decree, EPA can list J.Y. Arnold as a violating facility without needing to pursue any additional administrative proceedings.

In the Matter of Bethenergy Corporation: In March, 1989, Region II issued a \$120 Notice of Non compliance against Bethenergy Corporation (owner-Bethlehem Steel Corp.) for visible emissions violations at the waste heat stacks of its coke oven battery. The violations were documented using EPA's LIDAR system. During 1990, the company requested an accelerated decision seeking dismissal of this administrative case on the grounds that the state coke oven regulation was not part of the SIP. The Administrative Law Judge in a March, 1990 ruling denied Bethenergy's motion and granted EPA's cross-motion for accelerated decision. The decision was based narrowly on the facts of EPA's approval of the regulation in question. Bethenergy appealed the decision to the Administrator, who issued a ruling in June upholding EPA's interpretation, though with different reasoning. Bethenergy has appealed the decision to ask for reconsideration by the Second Circuit Court of Appeals.



U.S. v. Bingswanger Management Corp., et al.: Defendants in this Clean Air Act enforcement action agreed to pay a civil penalty of \$184,000, one of the largest penalties ever obtained in a case involving the National Emission Standard for Hazardous Air Pollutants for Asbestos (Asbestos NESHAP). The consent decree was entered May 22, 1990, resolving this enforcement action alleging violations of the notice and work practice standards of the Asbestos NESHAP during renovation of the Widener Building in Philadelphia, Pennsylvania. In addition, defendants agreed to implement several measures designed to prevent violations of the Asbestos NESHAP in the future, such as educational and training provisions and designation of an Asbestos Program Manager, responsible for ensuring the company complies with the NESHAP at all future projects.

U.S. v. Boise Cascade Corporation: Underscoring EPA's commitment to take enforcement measures before the start-up of operations, a June 28, 1990, consent decree resolved EPA's case against Boise Cascade for Clean Air Act violations at its pulp and paper mill in International Falls, Minnesota. The decree requires Boise to pay a \$350,000 civil penalty, the largest ever for failing to obtain a PSD/NSR permit. The case stemmed from Boise Cascade's failure to obtain a PSD and non-attainment New Source Review (NSR) permit before beginning construction on modifications to its mill. The alleged violations were discovered by a Region V inspector who observed the existence of pilings for a new paper machine and bleach plant.

EPA issued a notice of violation to Boise Cascade on November 1, 1988. Although the company stopped construction activities by the end of November, EPA made it clear that this would not absolve Boise Cascade from liability. EPA demanded that Boise Cascade obtain a construction permit before continuing the modification and pay a civil penalty. Boise Cascade obtained a valid permit from the State of Minnesota on June 12, 1989.

U.S. v. Conoco Pipeline, Inc.: On behalf of EPA, on February 28, 1989, the United States sued Conoco Pipeline, Inc. of Oklahoma City, Oklahoma for violations of the New Source Performance Standards regarding volatile organic compound storage tanks. The facility had failed to provide notification of construction, startup and refill. The case was filed on February 28, 1989. After

lengthy negotiations, the case was settled on January 10, 1990 for \$69,995 civil penalty. A consent decree was entered in the U.S. District Court for the Western District of Oklahoma on August 9, 1990, and the penalty amount was paid on September 7, 1990.

In the matter of Dakota Gasification Company: With extensive assistance and oversight by Region VIII, the Department of Energy (DOE), Dakota Gasification Company (DGC), formerly known as American Natural Gas (ANG), and the State of North Dakota reached a settlement agreement stemming from violations of permitted SO₂ emissions from PSD and NSPS emission points. The Consent Agreement, signed on August 14, 1990, specifies that DGC will pay \$35,000 for failing to comply with another Consent Agreement signed on April 27, 1989, which required submittal of a PSD permit application and a compliance schedule. This Consent Agreement also contains stipulated penalties of \$1,000,000, which will be suspended if certain milestones are met. Further, if the cost of specified control equipment is less than the original cost of \$65,183,000 proposed in a previous BACT analysis, DGC agrees to pay the State the difference in costs.

U.S. v. Fehr Brothers, Inc.: The largest settlement yet in enforcement of the rules to protect stratospheric ozone, involving the payment of a \$101,935 civil penalty, was filed June 29, 1990. The Department of Justice lodged the consent decree on behalf of EPA with Judge John F. Keenan of the United States District Court for the Southern District of New York.

The defendant, Fehr Brothers, Inc., cured its alleged wrongful importation of 153,600 kilograms of ozone-depleting Chlorofluorocarbon by purchasing consumption allowances from companies which had generated allowances through proper exportation.

U.S. v. General Dynamics: A court for the first time ruled that the contractor at a Government Owned - Contractor Operated ("GOCO") facility (General Dynamics Corp., Fort Worth, TX) is considered the operator as a matter of law. Because environmental statutes usually provide the Administrator with authority to pursue either owners or operators of violating facilities, General Dynamics and other contractors making use of government-owned facilities often argue that they are not operators and that they



exercise no independent judgment or responsibility (they claim they can only do what the government expressly orders them to do — an argument usually at odds with their contracts). Therefore, the argument goes, the government is both the owner and the operator, and EPA should seek to resolve the violations through administrative processes because the government cannot sue itself. The U.S. District Court for the Northern District of Texas issued an order on February 6, 1990, stating that General Dynamics is the operator of Air Force Plant No. 4, the only facility at which the F-16 fighter plane is made. In its one-page opinion, the court held that the U.S. was entitled to judgment as a matter of law regarding the defendant's status as operator of the facility, and entered partial judgment holding that General Dynamics was the operator of Plant No. 4. The General Dynamics order represents the first time a court has specifically ruled that the contractor at a GOCO facility is the operator and may hold significance for cases involving GOCO facilities where the contractor has claimed that it is an alter ego of the government exercising no independent judgment or authority. The case, filed in 1987, alleges that General Dynamics violated the Texas SIP VOC standards at three coating lines at Air Force Plant No. 4, where the company applies surface coatings to the F-16 fighter plane.

General Motors Corp. v. U.S.: The Supreme Court ruled that EPA can enforce air pollution control regulations even when a proposal to relax them is pending with EPA for approval. In a June 14, decision, the Court ruled that the four-month deadline for EPA to approve State Implementation Plans (SIPs) does not apply to EPA's review of revisions to such plans. Moreover, EPA's failure to act on proposed revisions within a "reasonable time" does not bar enforcement of the existing SIP. The appropriate remedy for unreasonable delay by EPA in reviewing a proposed revision is a lawsuit to compel EPA to act on the revision, or a request by the defendant in an enforcement action to reduce penalties.

This decision arose out of an enforcement action brought by EPA against General Motors for emissions of volatile organic compounds, a precursor of ground-level ozone, at its automobile assembly plant in Framingham, Massachusetts. Justice Blackmun wrote the opinion for a unanimous court.

In the matter of Hadson Power PSD Permit Review: Region III filed a Petition for Review requesting review of a PSD permit issued by the Commonwealth of Virginia to Hadson Power-11, Southampton Plant, Ultrasystems Development Corporation for the construction of a cogeneration plant consisting of two spreader-stoker coal-fired boilers. Hadson Power had filed three other applications for cogeneration plants similarly designed and expected to emit the same level of emissions in tons per year (TPY). Region III's opinion was that selective noncatalytic reduction processes involving the injection of ammonia or urea were economically feasible and that the technology (thermal de-NOx) had been applied to other fuel types of stoker boilers and to coal-fired circulating fluidized bed boilers. Region III believed that transfer of this technology was appropriate to coal-fired spreader stokers; that additional sulfur dioxide emission reductions were possible and more appropriate as a form of BACT; and that the control efficiency of the scrubber could be improved and the sulfur level in the coal reduced.

Agreement was reached in February, 1990 between Hadson Power, the Commonwealth of Virginia and EPA. The agreement enabled the Region to withdraw the appeal in February 1990 and resulted in a 276 TPY reduction in SO₂ emissions, which, over the 30-year life of this plant, means 8,280 tons less SO₂ in the atmosphere. The agreement also required a more complete BACT analysis in future Hadson Power applications and at least a 50% reduction in NO_x emissions from the proposed plants.

In the matter of Instant Web Inc.: On February 8, 1990, an order was issued to Instant Web, Inc. of Chanhassen, Minnesota, pursuant to § 167 of the Clean Air Act. This was the first such order to be issued in Region V and required that Instant Web immediately cease construction which was proceeding in violation of PSD regulations. Again, this action underscores the Region's resolve to insist that new or modified sources in attainment areas be equipped with the best pollution controls.

U.S. v. Lyon and Associates: On June 4, 1990, Judge Ramirez of the Eastern District of California approved a Consent Decree which imposed a civil penalty on three defendants who had violated the asbestos NESHAP. The defendants, Lyon and Associates, Fred B. Curtis, Inc., and George E. King Construction, were responsible for



the improper removal of friable asbestos roofing material from a building in Sacramento California. The violations had been discovered by the Sacramento Metropolitan Air Quality Management District ("the district"), but because the District was having difficulty obtaining a penalty from the defendants, it asked EPA for assistance. EPA and the District brought a joint enforcement action and shared the resulting \$65,000 civil penalty.

U.S. v. Louisiana-Pacific, Kremmling, CO and Louisiana-Pacific: These cases involved a national investigation into NSR/PSD Practices by Louisiana-Pacific Corporation for construction and operation without a PSD permit. As a result of Region VIII initiatives, SSCD has initiated an investigation into the New Source Review (NSR) practices of Louisiana-Pacific Corporation (LP). LP's Northern Waferboard Division, headquartered in Hayward, Wisconsin, has been operating two waferboard plants, both major stationary sources for CO and VOC, without obtaining required PSD permits in Colorado since 1984.

On June 26, 1990, Region VIII referred the two LP plants to DOJ for the PSD violations. In March 1990, Georgia reported that LP had recently constructed a waferboard plant that was permitted as a minor source by Georgia, but was operating as a major source. This information, in light of the similar way the Colorado plants were constructed and permitted, has raised the question of the existence of a corporate NSR/PSD permitting review for new LP plants. Region VIII contacted SSCD and suggested that SSCD coordinate and conduct a nationwide investigation into LP's permitting practices at the company's other VIII submitted to SSCD a memo which recommended a national strategy for evaluating LP's compliance new source review. The strategy includes a recommendation to develop Control Technique Guidance (CTG) for waferboard plants, and for the development of a standard multi-operational parameter matrix stack test protocol to be used at all waferboard plants.

U.S. v. Occidental Chemical Corp.: A consent decree was entered by the court on August 14, 1990, under which Occidental Chemical Corp. agreed to pay \$687,223 to resolve the firm's violations of the vinyl chloride NESHAP at their Pottstown, PA., facility, the largest penalty to date in a single vinyl chloride case. The decree, filed in

the U.S. District Court for the Eastern District of Pennsylvania, marks the first federal enforcement action in which a polyvinyl chloride manufacturer has agreed to install an enhanced recovery system and is also the first air case to require periodic environmental audits. In addition to the penalty, the decree specifies over \$3 million worth of injunctive relief including the periodic audits, the additional control equipment, and training.

Puerto Rican Cement Company, Inc., v. EPA: In early November, 1989, the U.S. Court of Appeals for the First Circuit upheld EPA's method of determining applicability under the PSD regulations. The case was the first to consider the netting of emissions, and EPA's requirement for comparison of actual emissions prior to modification with proposed allowable emissions after modification, for PSD applicability purposes. Although this was a defensive litigation, it has great significance for EPA's enforcement program.

U.S. v. Sid Richardson Carbon and Gasoline: Sid Richardson Carbon and Gasoline operates a carbon black plant in Addis, Louisiana, which manufactures carbon black by burning natural gas or fuel oil with reduced oxygen. Waste gas streams from the carbon black reactors contain large amounts of acetylene, which is a volatile organic compound (VOC). Studies have shown VOCs contribute to the formation of ozone in the lower atmosphere. Louisiana submitted a revision to the State Implementation Plan (SIP) that would exempt carbon black plants from controlling acetylene, which was finally disapproved by EPA in early 1990. Region VI forwarded a litigation report to the Department of Justice on December 31, 1986. A consent decree became effective on September 1, 1990, which ordered Sid Richardson to control the VOC emissions and pay a \$77,000 penalty, which was paid September 17, 1990. Region VI also assisted the State in issuing a PSD permit for construction of a flare system to destroy at least 90% of the acetylene.

U.S. v. Santa Fe Energy Company: Santa Fe Energy Company (SFEC) owns and operates an oil recovery facility near Bakersfield in Kern County, California. On March 22, 1990, EPA filed a complaint in the U.S. District Court for the Eastern District of California alleging that SFEC had violated the Clean Air Act and Prevention of Significant Deterioration (PSD) regulations by



failing to install continuous emissions monitoring systems (CEMS) for nitrogen oxides and oxygen on its steam generators. The CEMS were required by a PSD permit issued to the company by EPA. In a consent decree entered July 10, 1990, SFEC agreed to pay a civil penalty of \$201,000 and to comply with certain injunctive provisions. The penalty is among the largest EPA has collected nationwide for violations of PSD permitting requirements.

U.S. v. Stone Southwest Corporation: A Consent Decree, filed August 28, 1990, in the United States District Court for the District of Arizona, resolved EPA's lawsuit citing Stone Container Corporation ("Stone") with violations of the Clean Air Act. Stone manufactures newsprint and kraft linerboard at its paper mill in Snowflake, Arizona. A coal-fired boiler provides the mill's power. In its action, EPA alleged that Stone had violated New Source Performance Standards by failing to send quarterly excess emission reports to EPA over a 48 month period. Second, EPA alleged that Stone violated the sulfur dioxide (SO₂) emission limit contained in the Arizona State Implementation Plan. To resolve the matter, Stone agreed to pay a civil penalty of \$200,000. Stone also agreed to a Consent Decree which called for Stone to install a new scrubber for sulfur dioxide.

U.S. v. Stauffer Chemical Company (a division of Rhone-Poulenc Basic Chemicals Company): On August 1, 1990, the U.S. District Court for the District of Montana filed a consent decree concluding EPA's civil enforcement action against this elemental phosphorus plant in Silver Bow, Montana. EPA overfiled a State action which would have allowed the source to obtain a variance because the Region believed additional controls were necessary to protect the environment. After prolonged negotiations with the defendant, EPA was able to achieve a consent decree in accordance with which the defendant paid a penalty of \$100,000 and was required to install extensive controls.

U.S. v. Tzavah Urban Renewal Corp. et al.: This case resulted in the imposition of a total of \$555,000 in civil penalties, the largest amount ever assessed in a Clean Air Act enforcement action involving the National Emission Standard for Hazardous Air Pollutants for Asbestos (Asbestos NESHAP), 40 C.F.R. Part 61, Subpart M. The government alleged violations of both the notice and work practice standards of the asbestos NESHAP while defendants were renovating the

former Military Park Hotel in Newark, New Jersey. On July 25, 1990 a consent decree was entered as to defendants Tzavah Urban Renewal Corp., Harry K. Hampel, Datsun Investments, Pinros & Gar, Henry Roth, and Sol Mayer. These defendants agreed to pay a civil penalty of \$330,000. In addition, they agreed, with respect to all future demolition or renovation operations in which they are an owner or operator, to have an inspector with EPA-approved training do a complete building inventory for asbestos. On June 21, 1990 Judge Alfred J. Lechner, Jr. awarded the government \$225,000, the maximum civil penalty allowed under the Clean Air Act, as to the two remaining defendants, William Creer and Creer Industrial Corp., which had default judgments entered against them. In his Letter-Opinion, Judge Lechner determined the statutory maximum was appropriate because the defendants had acted in bad faith by refusing to respond to any actions filed in the case and their alleged violations "provided an enormous potential for danger and unknown injury to the public." The opinion was published at 696 F. Supp. 1013 (D.N.J. 1988), and the consent decree also received national recognition by being written up in the Wall Street Journal as a warning to real estate developers in dealing with renovations and demolitions, even when they contract out the actual work.

U.S. v. Wheeling-Pittsburgh Steel Corporation: EPA brought an action against Wheeling-Pittsburgh Steel Corporation for emissions of particulate matter at its steel galvanizing plant in Martins Ferry, Ohio. Under the terms of a consent decree entered on February 21, 1990, resolving the case, Wheeling-Pittsburgh must replace scrubbers on three galvanizing lines with one or more baghouses. The company must demonstrate compliance with the emission limits by April 15, 1991. In addition, the company is required to pay a civil penalty of \$220,000.

Clean Air Act Enforcement Mobile Source Program

U.S. v. Coastal Refining and Marketing: This case involves illegal lead rights. Coastal Refining and Marketing imported gasoline and claimed 29 million grams of lead rights. EPA issued a Notice of Violation on February 3, 1987, with a proposed penalty of \$1.1 million, alleging that the respondent could not make a claim for lead rights because the imported product was not



finished gasoline, rather, it was gasoline blendstock used to make gasoline. Suit was filed by EPA in the U.S. District Court for the Southern District of Texas on July 27, 1987. The Court agreed with EPA that the product was not gasoline, but ruled that the penalty provision of the Clean Air Act, § 211, was unconstitutional because it violated the separation of powers doctrine and respondent's Fifth amendment right of due process. EPA appealed to the U.S. Court of Appeals for the Fifth Circuit and the Solicitor General, Kenneth Starr, argued on behalf of EPA. The Court of Appeals overruled the District Court and found that § 211 of the Clean Air Act is constitutional, representing a major success for EPA. However, the Court of Appeals held that the product met the definition of gasoline as defined under the lead Phasedown regulations.

U.S. v. GEO-PLEX: EPA investigated GEO-PLEX Corporation for the marketing and sale of catalytic converters which provided virtually no emission control function and were advertised and labeled as "EPA Approved". No such approval, however, was sought nor is ever provided by EPA. GEO-PLEX also claimed that after installation of the device leaded gasoline could be used in the vehicle. EPA referred the case to the U.S. Attorney's office for prosecution. GEO-PLEX was enjoined from ever marketing a nonconforming catalytic converter device and a judgment was entered against the defendants for \$100,000. In December of 1989, the Court found the defendants, as officers of the corporation, to be personally liable for any violations of the Clean Air Act that occurred, representing a major enforcement success for EPA.

In the matter of Golden Gate Petroleum Company: In an important resolution of a lead Phasedown case, EPA recovered a civil penalty of \$1 million plus interest pursuant to a Consent Judgment entered on September 14, 1990. In addition to liability being imposed against the corporate defendants, liability was imposed against an individual who was the president and majority shareholder. This case involves an importer/refiner of gasoline who manufactured and imported gasoline containing excess lead. Approximately 50 million grams of excessive lead were introduced into the environment. The respondent also illegally created lead credits and misrepresented its lead usage to EPA.

Clean Water Act Enforcement

Clean Water Act (CWA) enforcement supports the National Pollutant Discharge Elimination System (NPDES) program, which is the permit program regulating both direct and indirect discharges to the nation's navigable waters. FY 1990 enforcement emphasized three priority areas: 1) continued compliance by publicly-owned treatment works (POTWs) under the National Municipal Policy (NMP); 2) continued enforcement against POTWs which failed to implement required pretreatment programs and industrial sources that failed to meet pretreatment requirements; and 3) enforcement against violations of priority pollutant permit limitations.

American Samoa Tuna Canneries: After years of challenging water quality-based effluent limits in their NPDES permits, two American Samoa-based tuna canneries recently agreed to undertake actions to achieve compliance with those limits, to pay penalties for past violations of those limits and to pay stipulated penalties if they fail to comply with deadlines and interim effluent limits established in their consent decrees. The agreements are the result of an innovative cooperative arrangement between the American Samoa Government (ASG), and EPA Region IX, which allowed American Samoa, a non-delegated state, to take the judicial action seeking penalties for non-compliance with American Samoa water quality standards, while EPA issued parallel administrative compliance orders, mirroring the injunctive provisions of the ASG consent decrees. The EPA orders were issued on June 18, and the ASG complaints and consent decrees were filed on June 20, 1990. On August 3, 1990, the American Samoa High Court signed the consent decrees and issued an opinion and order.

The canneries began institution of high-strength waste segregation and ocean disposal of their fish processing wastes which are high in nitrogen and phosphorus in August, as required by the compliance schedule. Intensive monitoring reports submitted to date by the canneries indicate a significant decrease of nutrients discharged to Pago Pago Harbor and, in general, compliance with the interim effluent limits.

In the matter of Crossville, TN: An administrative order was issued August 8, 1990, to the City of Crossville, TN, which operated a 2.3



MGD treatment plant that had a severe impact on aquatic organisms in the Obed River as well as causing discoloration, foam, and solids. The City improperly operated/maintained the plant and improperly handled/disposed of sludge. The City failed to enforce its pretreatment permits, resulting in a severe impact from Toulene, Zinc, Biological Oxygen Demand, Total Suspended Solids, Fecal Coliform, Chlorine, Ammonia, Settleable Solids, Dissolved Oxygen, and pH. The City had bypassed raw sewage, and the plant was hydraulically overloaded. The Order required stream remediation, collection system upgrade, and enforcement of the pretreatment program. The Order assessed a civil penalty of \$58,000.

In the matter of CSX Transportation: An administrative order was issued October 13, 1989, to CSX Railroad's Radnor Yard in Tennessee which generated oily wastewater from surface runoff and a subsurface drainage system. This wastewater impacted aquatic organisms in Brown's Creek and caused groundwater contamination. The Order required CSX to apply for an NPDES permit and remediate the contamination. The Order assessed a civil penalty of \$65,000.

U.S. v. Eagle-Picher Industries: EPA and the Department of Justice entered into the settlement of a Clean Water Act § 301 NPDES enforcement action against Eagle-Picher Industries, Inc., a battery and chemicals manufacturer located in Joplin, Missouri. Under the terms of the settlement, Eagle-Picher agreed to pay a civil penalty of \$1.5 million for its past violations. In addition to the penalty, the settlement requires Eagle-Picher to meet stringent interim discharge limitations, and to attain full compliance with its permit limitations and pretreatment requirements by December 15, 1990, or pay additional significant stipulated penalties. Eagle-Picher is also required to conduct a comprehensive environmental audit of the company's compliance with federal, state, and local environmental laws, and to correct any violations and certify compliance within a specified time period. The complaint filed in October of 1987, alleged discharges of heavy metals and other pollutants in violation of NPDES permit limits and violations of pretreatment requirements for discharges into the municipal sewer system.

U.S. v. City of El Paso: On August 21, 1990, a consent decree was entered by the U.S. District Court for the Western District of Texas resolving EPA's enforcement action against the City of El Paso, Texas. EPA's action was brought under the Clean Water Act for El Paso's failure to implement its approved pretreatment program. It was one of four major actions filed in early FY 1990 as part of the Pretreatment Enforcement Initiative. That Initiative consisted of approximately 61 Federal and State, administrative and judicial actions against municipalities for failing to comply with pretreatment implementation requirements. The consent decree requires the City of El Paso to identify its industrial users, issue permits to all significant and categorical industrial users, adequately monitor and inspect significant industrial users, modify the City's pretreatment program to address insufficiencies, provide regular reports to EPA on the City's implementation efforts and enforce its pretreatment program. In addition, the decree required the City to pay a civil penalty of \$395,000 for its past pretreatment violations. This is the largest penalty paid by a municipality, to date, for pretreatment violations. The enforcement action and compliance agreement with the City of El Paso (a City of 480,000 people and numerous industrial users, which discharges 50 million gallons of wastewater to the Rio River Basin per day) will result in a significant reduction of chemical discharges to the Rio Grande River Basin.

Hoffman Group v. EPA: A federal appeals court for the first time May 14 held that EPA may not be sued to obtain a court's opinion of the validity of a CWA Administrative Compliance Order or to enjoin EPA's enforcement of such an order. The U.S. Court of Appeals for the Seventh Circuit held that CWA Administrative Compliance Orders are not subject to pre-enforcement review. The appeals court concluded that Congress in the CWA intended that no judicial review of ACOs be available.

U.S. v. Louisiana-Pacific Corporation and Simpson Paper Company: Louisiana-Pacific Corporation ("L-P") and Simpson Paper Company ("Simpson") own and operate two pulp mills in northern California. On October 2, 1989 and July 3, 1990, the United States filed complaints against L-P and Simpson, respectively, for discharging pollutants from their pulp mills in violation of numerous conditions in their



National Pollutant Discharge Elimination System (NPDES) permits issued under the Clean Water Act, in particular those related to chronic toxicity limits. These limits require that the mills' effluents have no toxic effect in a sea urchin fertilization test when the effluents are diluted to predicted receiving water concentrations.

L-P and Simpson's mills are unique in that they have no treatment for their effluents. Under EPA effluent guidelines, pulp mills are normally required to install biological treatment systems to meet Best Practicable Control Technology (BPT) effluent limitations. EPA issued waivers of this requirement to L-P and Simpson pursuant to §301(m) of the Clean Water Act. EPA issued these waivers based on assurances from the mills that they would reduce and control effluent toxicity without biological treatment. EPA has filed these actions, in part, to remedy L-P and Simpson's failure to control effluent toxicity.

U.S. v. Menominee Paper Company: In July 1990, Menominee Paper Co. of Menominee, MI, pled guilty to a 10-count indictment on criminal misdemeanors under the Clean Water Act. Menominee Paper admitted that it knowingly underreported the amount of total suspended solids and other pollutants discharged in 1985 and 1986. In addition to the plea, the company agreed to make a public apology for its infractions in the form of a full-page advertisement in the local newspaper and to pay a \$100,000 criminal fine.

A related civil case was resolved simultaneously by a consent decree that requires Menominee Paper Co. and its parent company, Bell Packaging Corp., of Marion, IN, to pay the second highest civil penalty ever levied under the Clean Water Act -- \$2.1 million. Should the company fail to make the payment, John Bell Jr., chairman and chief stockholder of Menominee Paper Co., will be held personally liable. The decree also specifies that Menominee Paper must perform a comprehensive audit under all applicable environmental statutes including RCRA and EPCRA. EPA will choose the auditing firm, review and approve the audit report, and will require the company to remedy any problems identified.

In the matter of Nashville Metro: An administrative order was issued by the Tennessee State Commissioner on March 30, 1990, to

Nashville Metro which operates three treatment plants with a total average design capacity exceeding 137 MGD. The collection system has over 400 miles of combined storm and sanitary sewers, and 154 bypass points. In 1989 and 1990 Metro bypassed sewage in excess of 28 billion gallons, causing several fish kills. Metro had chronic violations of its NPDES permits for Biochemical Oxygen Demand, Total Suspended Solids, Fecal Coliform, Chlorine, Ammonia, Settleable Solids, Copper, and Nickel. The Order required expansion of the plant, abatement of the combined sewer problem, and remediation of effluent violations. The Order assessed a civil penalty in excess of \$200,000.

Ocean Dumping Ban Act of 1988 Consent Decrees:

In FY 1989 Region II finalized consent decrees with nine municipalities which dump sludge in the ocean, setting compliance schedules for such dumping to cease pursuant to the Ocean Dumping Ban Act of 1988. In FY 1990, four of these municipalities were found to be violating the decrees. Starting in May, at the Region's request, DOJ issued several demand letters to Nassau County, New York, requesting payment of stipulated penalties for such violations. During FY 1990, Nassau paid a total of \$1.8 million in such penalties of which half -- \$900,850 -- was paid to the U.S. and half to the State. Most importantly, the district court has affirmed the government's right to these penalties. Additional demand letters have been sent to Bergen County, Middlesex County and the Rahway Valley Utilities Authority for their violations.

U.S. and Pennsylvania v. Penntech Papers, Inc.:

Penntech Papers, Inc. owns and operates an integrated kraft pulp and paper mill located in Johnsonburg, Elk County, Pennsylvania. The complaint filed by the United States in this matter alleges that Penntech violated the Clean Water Act (CWA), by discharging pollutants from its mill into the Clairion River (a tributary of the Allegheny and Ohio Rivers) in excess of the limitations established in Penntech's National Pollution Discharge Elimination System (NPDES) permit. The illegal discharges from Penntech's mill have presented a potential for environmental harm and, because drinking water supplies are drawn downstream from the facility, potential harm to human health. The complaint also alleges that Penntech violated the Resource Conservation and Recovery Act (RCRA) by discharging corrosive hazardous



wastes into a 240-acre surface impoundment without obtaining a RCRA permit or submitting the reports related to these discharges. The consent decree requires Penntech to pay an up-front penalty of \$1,170,000 to the United States and Pennsylvania for its past violations of the CWA and RCRA. Penntech is also required to construct a wastewater treatment plant, to close the surface impoundment, and to pay stipulated penalties for future violations of its NPDES permit. Finally, the United States has obtained from Willamette Industries, Inc., the parent corporation of Penntech, a guarantee of performance of the consent decree. This is the first instance in which such a guarantee has been obtained in a CWA or RCRA enforcement action.

U.S. and Pennsylvania v. City of Philadelphia:

Philadelphia owns and operates a sewage treatment facility located in southwest Philadelphia ("the Southwest Plant") that discharges pollutants, pursuant to an NPDES Permit, into the Delaware River. The Southwest Plant treats approximately 200 million gallons of sewage per day, and provides service to approximately one million people. In its complaint the United States alleged that Philadelphia has violated the Clean Water Act (CWA), since 1984, and in particular the limitations established in its NPDES permit for the discharge of pollutants from the Southwest Plant. The water quality standards established for the segment of the Delaware River into which the Southwest Plant discharges have not been met, in part due to the illegal discharges from the Southwest Plant. The consent decree resolving this enforcement action requires Philadelphia to pay an up-front civil penalty of \$1.5 million. This is the largest civil penalty that the United States has collected from a municipality for violations of the CWA. The penalty is to be paid over a period of two years, 67% to the United States and 33% to Pennsylvania. The consent decree also requires Philadelphia to 1) rehabilitate five major components of the Southwest Plant; 2) retain an independent consultant to review the City's rehabilitation program and its operation and maintenance practices, and then develop an enforceable schedule of measures that the City will implement to insure long term compliance with its NPDES permit by January 1, 1991.

U. S. v. Shell Oil Company: On March 26, 1990, the United States District Court for the Northern District of California approved a consent decree

valued at over \$20 million. This consent decree settled claims arising out of a 1988 oil spill into a marsh and slough system and eventually into the San Francisco Bay Delta (the northern end of the San Francisco Bay system) from Shell's oil refining complex in Martinez, California. The settlement includes the largest recovery to date for natural resource damages from an oil spill (over \$12 million) and the largest penalty ever for violations of EPA's SPCC regulations (\$2 million). The settlement was the result of landmark cooperation between 16 public entities including federal, state and local parties.

On April 22 and 23, 1988, Shell spilled over 440,000 gallons of crude oil onto lands and into waters, including wetlands, when a pipe connection in an oil holding tank broke and oil escaped through a drainage valve that had been left open in violation of EPA's SPCC regulations. In an aggressive approach to SPCC enforcement, the Region alleged penalties of \$5,000 for each day that the drain was left open and for other SPCC violations. With the assistance of NEIC, the Region developed a case for several years of such violations and ultimately recovered a \$2 million penalty. The settlement also included \$50,000 in penalties for violations of Shell's NPDES permit.

The spilled oil caused substantial damage to the environment and natural resources of the San Francisco Bay Delta, killing many birds and mammals and destroying important wetlands habitat. As a result of the Region's efforts to bring the many public plaintiffs together in a joint enforcement action, the settlement was able to address these damages through a Memorandum of Agreement between the various trustee agencies. The consent decree also provided that between the time the decree was lodged and the time it was entered, all interest on the entire settlement amount of \$19,750,000 would be added to the trustee's fund to be used for natural resource restoration. The trustee agencies are now charged with using the trustees fund of over \$12 million to restore the damaged natural resources.

The settlement also included \$2,100,000 for penalties to the State of California, \$500,000 for local counties penalties, and \$3,512,000 for studies, damages, and cost recovery.

U.S. v. USX Corp. - Gary Works: The successful settlement of this case marks a turning point in the history of northwest Indiana's Grand



Calumet River. The July 1990 consent decree commits USX to a \$34.1 million package of environmental improvements and civil penalties. It is the second decree in which sediment cleanup has been obtained under the Clean Water Act and it is already influencing negotiations with similar industries throughout the Nation. USX, Lorain, OH, was the first decree of this type. It provides a framework for significant environmental improvements and cleanup at the USX plant and in the river.

In October 1988, the Government filed suit against USX Gary Works alleging numerous violations of its wastewater discharge permit. Region V further alleged that USX illegally discharged improperly treated wastewater directly into Lake Michigan and the Grand Calumet River. In September 1989, there was the potential for the Gary-Works to be "listed". If listed, Gary-Works would be banned from any grants, loans, or contracts with the United States. Instead, the company negotiated a precedent-setting agreement with the Government. The consent decree outlines more than 100 major compliance steps. Twenty-five million dollars will be spent to upgrade wastewater treatment equipment and related facilities. Another \$2.5 million will go towards investigating about 12 miles of contaminated sediments; and up to \$5 million more may be used to actually clean up approximately 500,000 cubic yards of sediments located in a 5-mile stretch near USX property. USX also will pay a \$1.6 million civil penalty.

Clearly, the USX settlement demonstrates that corporations must bear responsibility for the ecological damage caused by past violations. This message was communicated through the national media coverage the case garnered. The settlement also received praise from environmentalists concerned about the much-abused Grand Calumet River.

Wetlands Enforcement (§ 404)

Section 404 of the Clean Water Act regulates the discharge of dredge and fill material into navigable waters. Enforcement emphasizes redress for unpermitted discharges in environmentally sensitive areas and seeks restoration of or compensation for environmental damage.

U.S. v. A. B. Charpiot: A civil complaint was filed in U.S. District Court in Houston, Texas, on September 26, 1990, against A.B. Charpiot, David Charpiot, and Charpiot Marina seeking injunctive relief and civil penalties. Allegations include continued unauthorized filling of salt marsh for road construction, parking lot expansion, creation of minnow ponds, and disposal of excavated material. Four separate locations were involved in this activity on Bolivar Peninsula in Galveston County, Texas. This case supports the regional wetland enforcement priorities because it involves high quality wetlands, current violations by a repeat violator, and provides support to the Corps of Engineers' wetland enforcement effort. The publicity generated by this case (a press conference was held with the Department of Justice when it was filed) will serve as a deterrent to wetlands violations in an area with a high concentration of unauthorized activity.

U.S. v. Construction Industries: In the Construction Industries case, the Garabedian Brothers of Salem, New Hampshire, were alleged to have illegally filled 6.7 acres of forested and shrub wetlands adjacent to the Spicket River. Under the settlement, the defendants restored 6.1 acres of shrub and emergent wetland and paid a \$50,000 penalty.

In the matter of City of Dover, New Hampshire: Region I focused its wetland enforcement efforts on geographic areas of concern, particularly southeastern Massachusetts, the Merrimack River watershed in New Hampshire and Massachusetts, and metropolitan Hartford, Connecticut. For example, through administrative enforcement the Region addressed the illegal fill of wetlands adjacent to the Piscataqua River during construction of the Dover, New Hampshire Wastewater Treatment Plant. A compliance order required removal of fill and restoration of the wetland. A Class I penalty complaint proposed a \$25,000 penalty for the unpermitted activities. The parties, including the City of Dover, its consultants and construction contractors, agreed to pay the full \$25,000 penalty and completed the restoration. This was the first time the Region assessed a penalty in a wetlands case against a consulting engineer and construction contractors in addition to the owner/developer of the project.



U.S. v. Charles V. Hanson III: A civil complaint was filed in U.S. District Court in Beaumont, Texas, on September 26, 1990, against Charles Hansen seeking injunctive relief and civil penalties. Allegations include unauthorized construction of a rock jetty and repeated unpermitted filling activities in wetlands, failure to comply with a Clean Water Act restoration order, and failure to pay penalties assessed in that order. The wetlands involved were located near Keith Lake, Jefferson County, Texas. This case supports the regional wetland enforcement priorities because it involves high quality wetlands, current violations by a repeat violator, and provides support to the Corps of Engineers' wetland enforcement effort. The publicity generated by this case (a press conference was held with the Department of Justice when it was filed) will serve as a deterrent to wetlands violations in an area with a high concentration of unauthorized activity.

U.S. v. Hobbs - Dorchester, MD: On January 26, 1990, following a two week liability trial, a jury found S. Paul and Philip Hobbs liable on numerous counts of violating the CWA. The activities conducted by the Hobbsses involved draining, clearing and grading of approximately 100 acres of forested wetlands in the Chesapeake Bay Watershed for conversion to agricultural use. The loss of wetlands in the Chesapeake Bay is a widely recognized environmental problem and an enforcement priority for EPA. Following a separate penalty trial on May 21, 1990, District Court Judge Rebecca Smith ordered the Hobbsses to implement an extensive wetland restoration plan priced at over \$233,000 and required the Hobbsses to apply for §404 permits prior to conducting any further work on any of their wetland properties. This was a significant decision for the wetlands program. It was widely publicized and sent a strong deterrent signal in the Southeast Virginia area.

U.S. v. Kebert Construction Co. Crawford Co., PA: On October 18, 1989, U.S. District Court Judge Joseph P. Wilson ordered Kebert Construction Co. to restore a five acre wetland site and pay a \$5,000 penalty after Kebert Construction was found liable by jury for CWA violations. The Kebert liability trial was the first jury trial ever in an environmental civil court action.

U.S. v. Town of Manchester, Connecticut: In the Town of Manchester case, the government had filed a civil action to address the unpermitted

filling of approximately 4.5 acres of wetlands to construct a secondary wastewater treatment facility. Under the consent decree, the Town agreed to pay a \$300,000 penalty and restore approximately 1.5 acres of forested wetland. This is one of the highest penalties ever obtained by EPA in a wetlands case.

U.S. v. Marinus Van Leuzen: A civil complaint was filed in U.S. District Court in Houston, Texas, on September 26, 1990, against Marinus Van Leuzen and Ronald Hornbeck seeking injunctive relief and civil penalties. Allegations include unauthorized filling of an acre of salt marsh and residential improvements and violation of a Clean Water Act cease and desist order. The wetlands involved were located on Bolivar Peninsula in Galveston County, Texas. This case supports the regional wetland enforcement priorities because it involves high quality wetlands, current violations by a repeat violator, and provides support to the Corps of Engineers' wetland enforcement effort. The publicity generated by this case (a press conference was held with the Department of Justice when it was filed) will serve as a deterrent to wetlands violations in an area with a high concentration of unauthorized activity.

Safe Drinking Water Act (SDWA) Enforcement

Public Water Supply Program (PWSS)

Under the PWSS program, EPA has established drinking water standards (Maximum Contaminant Levels, or MCLs) for a variety of pollutants. FY 1990 Enforcement efforts emphasize violations of microbiological, turbidity, VOCs, and Total Trihalomethane (TTHM) standards.

Underground Injection Control Program (UIC)

The UIC program establishes a regulatory program for underground injection practices for five classes of wells. Enforcement priorities include violations at deep hazardous waste and commercial disposal wells (Class I); violations at oil and gas wells (Class II); using banned shallow disposal wells (Class IV); enforcing the hazardous waste restrictions promulgated under the Hazardous and Solid Waste Act (HSWA);



and enforcing against violations at injection wells for other than hazardous waste, mining, or oil and gas (Class V).

In the matter of Aerojet General Corp.: A Final Administrative Order on Consent was negotiated with Aerojet General Corp., Rancho Cordova, CA, and became effective on July 26, 1990. Under the terms of this order, Aerojet paid a \$30,000 penalty and will conduct an estimated \$2,000,000 waste migration assessment study. The negotiations were conducted in cooperation with the California Department of Health Services, which also issued a parallel State order, without penalty, to Aerojet. Aerojet operated two class IV injection wells to dispose of over 83 million gallons of hazardous waste and by-products generated from the production of rocket fuels. The wells were drilled to a depth of 1,564 feet and 1,703 feet, about 500 feet beneath an aquifer used for drinking water by some residents near the facility. The drinking water wells are being monitored and there has not been any indication of contamination.

U.S. v. Pioneer Exploration Co.: A record civil penalty of \$200,000 in an underground injection control case will be paid by an independent oil and gas production company under the terms of a consent decree lodged June 8 in a federal district court in Montana.

The Agency agreed to settle the case, filed in 1988 for violations of regulations governing underground injection control under The Safe Drinking Water Act. The case was brought against Pioneer Exploration Co. and the corporation's sole officer, director and shareholder, Younas Chaudhary.

The violations of the SDWA involve oil and gas production related activities in northeastern Montana. Under the terms of the decree, Pioneer agrees to cease underground injection activity, to plug and abandon five injection wells within two years of the entry of the decree, to plug and abandon four production wells within two years of entry of the decree unless the wells are returned to production, to pay stipulated penalties for violations of the decree, to report to EPA on a regular basis, as required by the applicable UIC regulations, and to pay a civil penalty of \$159,812 within 18 months of the entry of the decree, or \$200,000 plus interest at 10% annually over five years.

The settlement achieved in this case by the United States is based on the defendant's consistent violations of the SDWA over several years, including the use of wells that had failed to pass mechanical integrity tests, thereby potentially contaminating underground sources of drinking water, and conducting unlawful injection activities.

Pioneer is a small, independent, privately held oil and gas production company headquartered in Houston, Texas. The United States filed a civil complaint on December 12, 1988 against Pioneer, Delta Petroleum and State Energy for violations of the EPA administered UIC program for Montana. On January 29, the United States filed an amended complaint alleging additional claims against Pioneer and adding the company's sole officer, director and shareholder, Mr. Younas Chaudhary, as a defendant on an alter ego theory.

In the matter of Mobil Oil: On August 27, the Regional Administrator issued a final order on consent against Mobil Oil Corporation under the SDWA's UIC program. The order assessed a penalty of \$35,000, and requires Mobil to properly close and clean Class V wells at all service stations Mobil owns and operates in Nassau County, New York. The case arose out of violations documented at five such stations, but the consent order covers some 35 - 50 stations.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Enforcement (Superfund)

FY 1990 Superfund enforcement reflected the strategy laid out in the 1989 Superfund Management Review. The program used aggressive litigation and settlement negotiation efforts to secure site response by potentially responsible parties (PRPs) and to recapture previously expended Trust Fund revenues. As part of this approach, the program also increased its use of unilateral administrative orders, particularly for information and access, and for remedial design and remedial action (RD/RA).



U.S. v. ACC Chemical Company, Getty Chemical Company, et al., In the Matter of ACC Chemical Company, Getty Chemical Company, et al., and In The Matter of Quantum Chemical Company, Eastern District of Iowa (CERCLA and RCRA):

These administrative cases and the civil case represent a coordinated, multi-media effort to address the contamination at this Site. This CERCLA settlement relates to the groundwater operable unit at the Chemplex Site located in Clinton, Iowa. By the terms of the settlement, the settling defendants are required to remediate groundwater at the Site to health-based performance standards and to reimburse the United States for all past costs associated with the Site (approximately \$600,000) and all oversight costs associated with this Consent Decree. The settling defendants are ACC Chemical Company, Getty Chemical Company, Getty Oil, Skelly Oil, and Primerica Holdings, Inc. The property owner defendants are Quantum Chemical Company, the present lessor, and the city of Clinton, the present owner. The property owner defendants are included in the Decree for purposes of access. In addition, in December 1989, an Administrative Order on Consent pursuant to §104 and §122 of CERCLA was issued to ACC Chemical Company and Getty Chemical Company for an RI/FS for a second operable unit at the Site. In addition, a RCRA §3008(h) Corrective Action Order on Consent was issued to Quantum Chemical Company (the present lessor) covering the operating portion of the Site.

In the matter of Agricultural Supply, Inc.: This case supports EPA's efforts to take prompt enforcement action to gain access and information at Superfund sites. In June 1990, U.S. Magistrate Ayers approved EPA's warrant application to perform response actions at the Agricultural Supply, Inc., site in Marsing, Idaho. The site was formerly operated by an agricultural supplier. As a result of this operation, several types of agricultural products, including acids, fertilizers, pesticides and other hazardous substances, were left on site. When an exhaustive search failed to locate the site owner/operator, EPA obtained the warrant which provided for further investigation of the site and performance of required removal action, including spilled product, contaminated soil and the recycling of agricultural product.

In the Matter of Aluminum Company of America (ALCOA): An Administrative Order on Consent (AOC) pursuant to CERCLA § 106 was issued by

EPA to ALCOA on July 19, 1990. The Order addressed several separate environmental problems at and near ALCOA's Riverdale, Iowa, facility. The AOC calls for a sediment/soil investigation and feasibility study for on-site drainage ways and for PCB contamination in sediments in Mississippi River Pool #15. ALCOA will also be required to conduct fish sampling and analysis in Mississippi River Pool #15 to determine the need to continue the current fish advisories and to evaluate the risk to public health and the environment. ALCOA will also be required to carry out an investigation in regard to the contamination by PCBs and other VOCs in the vicinity of the 86" CHT line. If EPA determines that response actions are necessary after such investigation, ALCOA is required to submit a Removal Action Work Plan and, upon approval, implement such actions. In addition, for the purpose of identifying past releases of hazardous substances at the facility and the extent of contamination by such releases, ALCOA is required to perform a Facility Site Assessment. ALCOA is also required to perform an investigation into contamination caused by release from a perchloroethylene storage tank and must submit a Work Plan to implement removal actions relating to those releases. The dispute resolution section of the AOC includes an alternative dispute resolution (ADR) mechanism for specific issues, if a dispute arises which cannot be resolved at the Superfund Branch Chief level. This ADR mechanism involves non-binding mediation to attempt to resolve disputed matters. The mediator is to be a non-EPA/ALCOA employee whose sole purpose is to facilitate negotiations between EPA and ALCOA. Costs of mediation are to be shared equally by EPA and ALCOA. This AOC is an example of EPA using its administrative enforcement power to strengthen enforcement and increase responsible party work at Superfund sites.

U.S. v. Allied-Signal Inc.: On May 18, 1990, Allied-Signal agreed to clean up the Bendix Superfund site in Bridgewater Township, Pennsylvania. The consent decree requires the responsible parties to undertake remedial actions at the site, pay EPA its oversight costs, and uses innovative technologies in the remedial action. The settlement supports our preference for having responsible parties initiate cleanup activities.

Allied will pay the EPA \$750,000 in oversight costs and \$92,000 in past response costs. Bendix Flight Systems was a division of Allied



and had disposed of its industrial wastes at the site from the 1950's to the late 1970's. Volatile organic compounds had contaminated the soil and ground water in the area. The remedial activities at the site include soil extraction and aeration, on-site ground water pumping and treating, and treatment at each off-site residential wellhead.

AlSCO Anaconda: In 1990, EPA issued an order to ARCO and Harvard Industries to remove soils and sludge from the AlSCO Anaconda site in southern Ohio at an estimated cost of \$4 million. The wastes, contaminated with PCBs and FO19, are in surface impoundments, a sludge pit and lowland adjacent to the Tuscarawas River. The order is important because it requires Harvard Industries, a company claiming immunity due to bankruptcy, to assist in the cleanup.

In the matter of American Crossarm & Conduit: On June 1, 1990, Region X issued its first unilateral administrative order pursuant to §104(e) of CERCLA, requiring compliance with a request for entry in connection with the American Crossarm & Conduit site in Chehalis, Washington. EPA was undertaking a remedial investigation and feasibility study under CERCLA. When it was suspected that previous flooding at the site may have caused contaminants to migrate to adjacent property, EPA planned to perform soil and groundwater sampling on approximately 90 parcels of adjacent property. All but one property owner agreed on consent to EPA access. One owner refused to provide unconditional access to his property, insisting upon compensation. As a result, EPA issued the unilateral order, with which the owner complied. This case supports EPA efforts to take prompt enforcement action to gain access to conduct response activities.

U. S. v. American Greetings Corp.: Two settlements involving the Pristine Superfund Site in Reading, OH, one involving 39 settling PRPs and the other involving 72 de minimis PRPs were proposed for federal court approval on December 18, 1989. The decision allowing entry of the settlement is important because it does not further delay cleanup of the Pristine Superfund site. The 39 PRPs would finance and complete a cleanup at the site estimated to cost \$13.5 million dollars while the de minimis parties would pay \$3.048 million dollars into a trust fund for past and future cleanup costs. The decrees would also require payment of 90% of EPA's past costs, or about \$1.8 million dollars.

The 39 PRPs are required to perform remedial activities that include fencing off the site, decontaminating and demolishing site structures, conducting soil excavation and incineration, investigating the lower aquifer, constructing a protective cap, and treating discharges prior to off-site migration. Innovative technology is being used to remove the volatile organics in the soil and groundwater.

The state of Ohio objected to the entry of the Consent Decree between the United States and the Pristine defendants. Ohio claimed the decree did not expressly memorialize its rights as expressed in CERCLA §121. A hearing was held on September 9, 1990, at which time the court stated that CERCLA clearly provided for Ohio's rights in regard to the settlement between the United States and Pristine; therefore the decree itself need not have explicit language regarding the state's rights.

In the Matter of Arkla Pipeline Station, Hunnewell, KN: A Consent Order was signed with Arkla, Inc., operator of a gas pipeline system, providing for carrying out a removal action at a former pit at the Hunnewell Compressor Station site which was contaminated with volatile organics and, to a lesser degree, PCBs (the latter in the range of 25-30 ppm). The Order also provides for investigation and characterization of the entire compressor station facility by Arkla after the removal at the pit is completed. This case is part of the Region VII pipeline enforcement initiative.

U.S. v. AVX: A press conference was held September 4, 1990, in Region I to announce a settlement in principle for \$66 million between plaintiffs EPA, the Commonwealth of Massachusetts, and NOAA and defendant AVX Corp., one of the five defendants in the government's suit for natural resource damages and response costs at the New Bedford harbor Superfund site in New Bedford, Massachusetts. The settlement is one of the largest by a single defendant in the history of the Superfund program.

AVX Corp. owned and operated a capacitor manufacturing plant on the harbor for 26 years and is responsible for a majority of the PCB contamination that the plaintiffs seek to remedy. EPA and DOJ hope to make the settlement final in the next month. In December 1990, the plaintiffs lodged a settlement with two other



defendants, Aerovox Inc. and Belleville Industries Inc. for \$12.6 million. The plaintiffs continue to pursue negotiations with the two remaining defendants, Cornell-Dubilier Electronics Corp. and its former parent, Federal Pacific Electric Co.

U.S. v. Beazer East, Inc., South Cavalcade Superfund Site: This case is important because it supports EPA's effort to increase responsible party work at Superfund sites and uses innovative technology to clean-up pollution at the site. This site was originally a wood preserving facility. EPA and Beazer East, Inc., signed a Consent Decree, lodged in Federal District Court on July 30, 1990, to remediate contamination problems at the South Cavalcade Site in Houston, Texas. The agreement under Sections 106 and 107 of CERCLA requires remediation of creosote contaminated soil through the use of soil washing. Additionally, the agreement restores ninety-six percent of the Superfund monies expended at the Site to the Fund with de minimis settlements still pending for the remainder. Remediation of soil contamination will reduce the risk of exposure by contact to approximately 150 persons employed at businesses operating at the Site.

U.S. v. Bell Petroleum Services: This decision is significant because it strengthens EPA's ability to make remedial decisions that EPA deems will ensure the protection of human health and the environment. On March 8, 1990, the United States District Court for the Western District of Texas granted the United State's motion for summary judgment for response costs incurred at the Chromium I Superfund Site in Odessa, Texas.

The court found that alternative water supplies were not inconsistent with the NCP nor did it find EPA's indirect costs or legal fees were inconsistent. In doing so, the court stated EPA's decision to use an alternative water supply was not arbitrary or capricious. The court also rejected the argument that EPA could not recover its response costs because it had not sufficiently documented the costs. The court held that the cost regulations required only that the costs be documented by activity (e.g., RI/FS) and not by specific tasks within each activity.

In the matter of Big D Campground: On March 27, 1990, a unilateral order was issued to Olin Chemical Co. for the Big D Campground in Ashtabula County, OH, which will cost the company an estimated \$39 million. The order

supports EPA's efforts under its UAO initiative issued in February 1990 to compel responsible party action at Superfund sites. The order requires that Olin, the only generator, clean up halogenated solvents, caustics, bulk toluene diisocyanate and oily substances that were disposed of in a gravel quarry near the campground 2.5 miles from Lake Erie.

EPA estimates as many as 5,000 drums are buried in the landfill. The remedy involves incineration of the contents of a 1.2 acre landfill and a groundwater removal system. The unilateral order is significant because Olin was allowed to use a total contaminant, risk-based cleanup level instead of the traditional contaminant concentration based cleanup levels. The order allows flexibility for cleanup to a total risk exposure of 10 to the minus 6 for any number of chemicals found at a given sampling location within the landfill, and is specific enough to make the tasks enforceable. The order is being complied with and preliminary field work started in Fall of 1990.

U.S. v. Bliss (Syntex), et. al.: This settlement is the largest mixed work agreement in the Agency's history. The case involves 28 dioxin sites in eastern Missouri which became contaminated as a result of application of dioxin-contaminated waste oil to parking lots, roads and horse arenas in the early 1970's. This case has been in litigation for several years and partial summary judgment was obtained against Independent Petrochemical Corporation, Russell Martin Bliss, Jerry-Russell Bliss, Inc., Northeastern Pharmaceutical Company, Edwin Michaels and John Lee in 1985. In 1988, the government filed a motion for partial summary judgment against two of the Syntex defendants, Syntex Agribusiness and Syntex (USA). Settlement negotiations with the Syntex defendants have been ongoing for quite some time on a dual track with very aggressive litigation.

A Consent Decree with the Syntex defendants, the State of Missouri and the federal government was entered with the Court on December 31, 1990. The Consent Decree calls for Syntex to construct an incinerator capable of burning dioxin-contaminated soils from all the sites in the litigation. The incinerator will be located at the Times Beach Site. In addition, Syntex must cleanup the Times Beach Site. Syntex must also accept and burn all the contaminated soil from the other 27 sites in the



litigation. Syntex must also pay the government \$10 million in past costs. The State of Missouri will provide access to Syntex since the state will be the property owner. The state will also reimburse the United States for its cost share at the four NPL sites. The federal government is required to arrange for the transportation of the dioxin-contaminated soils from the other sites to the Times Beach Site. Region VII is presently in the process of initiating negotiations with several parties who are owners/operators of the sites where soil and other dioxin-contaminated material have not been previously excavated. Agreements will either require the property owner to excavate the materials themselves and store it until such time as it can be burned in the incinerator or to pay the government for the excavation and transportation to the Times Beach Site.

During the Public Comment Period on the Consent Decree, many comments were received. In addition, the cities of Eureka and Fenton, Missouri, attempted to prevent the execution of the Consent Decree by filing a Motion for Intervention in the six year old case shortly before the Decree was lodged with the Court. The Motion for Intervention was disposed of by the Court in a timely manner with the Court stating that the cities of Eureka and Fenton had adequate opportunity to comment on the actions required by the Consent Decree and that their Motion to Intervene was too late. The cities of Eureka and Fenton have also filed a Citizens' Suit regarding the actions to be undertaken by all parties to the Decree. This Consent Decree represents a comprehensive settlement to the dioxin problem in eastern Missouri using a permanent destruction technology, and it is the largest mixed work agreement in the Agency's history. The estimated costs of this cleanup are \$190-210 million.

U.S. v. Bourdeaudhui: This case is significant in being the first case brought by the United States which alleges that dental wastes are hazardous substances under CERCLA. It was brought in an effort to ensure that such substances are handled properly in the future. On July 12, 1990, the court entered a consent decree in United States v. Bourdeaudhui, representing settlement with all remaining defendants in the amount of \$200,000. Bourdeaudhui involved a removal action at two related sites in Willington, Connecticut, contaminated by the improper handling of waste dental amalgam. The settling parties included

site owners/operators and generators (dental supply companies). In total, EPA will have recovered \$429,000 of its \$710,000 in response costs through both administrative and civil settlements.

In the matter of the Bunker Hill Site, Kellogg, Idaho: On May 3, 1990, EPA initiated a judicial action for penalties and injunctive relief against one of this site's Potentially Responsible Parties (PRPs), Bunker Hill Limited Partnership, for that company's failure to respond to an information request pursuant to §104(e) of CERCLA. The Bunker Limited Partnership is a potentially responsible party at the Bunker Hill Superfund Site, one of the largest Superfund sites in the country and measuring 21 square miles within the Silver Valley of northern Idaho. The complaint seeks an injunction ordering Bunker Limited to submit the information and documents EPA requested. It also seeks to have the court impose civil penalties for Bunker Limited's failure to respond to the information request. On June 1, 1990, EPA entered into an administrative order on consent with eight of the Bunker Hill PRPs, whereby they agreed to pay EPA \$3.18 million to conduct a residential area removal action, involving removal and replacement of lead contaminated soil from residential yards. The removal is required to limit children's exposure to lead, a well-known neurotoxin harmful to children. The lead contamination was caused by the Bunker Hill mining and smelting complex and covers some 21 square miles. EPA had earlier issued a unilateral order to the PRPs ordering them to do the work, with the option of entering into a settlement agreement to pay EPA's costs of performing the work. The agreement was the first Superfund "cashout" by Region X and is significant because it is the first time parties have agreed to pay EPA for removal work before it was performed. The final payment under the agreement was received by EPA in August 1990.

U.S. v. Cannons Engineering: The First Circuit affirmed the District Court's entry of two consent decrees. This case sends a message to the PRP community that challenges to Superfund settlements will not be favored by the courts. In recent months, challenges to the entry of CERCLA settlements by non-settlers have become more numerous and have resulted in the delayed implementation of site cleanups. This significant victory in the United States Court of Appeals should help discourage future challenges at other Superfund sites. Prior to proposing these decrees,



EPA had entered into administrative de minimis settlements with 300 PRPs. EPA then entered into the Major Party Decree (MP) and the De Minimis Contribution Decree (DMC) at issue in this case. Under the MP Decree, 47 major PRPs agreed to perform the remedy at three of the four Cannons Engineering Corporation Superfund Sites, and to pay approximately \$16 million in past costs. Under the DMC Decree, 12 de minimis PRPs agreed to settle their claims, plus pay a penalty of 100% of their volumetric shares that was imposed for refusing to join the original administrative de minimis settlements. Six non-settling PRPs objected to entry of the Decrees. These non-settlers had been eligible to join the administrative de minimis settlements and the DMC Decree, but had rejected the government's offers.

In affirming the District Court's decision entering both decrees, the First Circuit held, inter alia, that: (1) PRPs identified by EPA as de minimis were not entitled to participate in the major party decree and thus could not "pick and choose which settlements they might prefer to join;" (2) the government's use of escalating settlement offers, which rewarded PRPs who settled sooner rather than later, was fair and consistent with CERCLA's goal of expediting hazardous waste cleanups; (3) EPA could use waste volume to determine comparative fault and exercise flexibility in allocating liability; and (4) the decrees did not favor the major parties over the de minimis parties because the major parties assumed the open-ended risk of performing the cleanup at three of the Sites.

U.S. v. Carolina Transformer Co.: In this case, the defendants failed without sufficient cause to comply with an EPA administrative order issued under CERCLA § 106. The court held that the defendants were responsible for three times EPA's past and future response costs. As with the Parsons decision, the case is an important indicator of EPA's enforcement effort and its willingness to seek stiff penalties against responsible parties who do not adequately respond to an administrative order. On November 13, 1989, The U.S. District Court for the Eastern District of North Carolina found the defendants liable for treble damages under CERCLA §107(c)(3) for failure to comply with the terms of an Administrative Order issued to the defendants pursuant to CERCLA §106.

The Carolina Transformer PCB site encompasses about five acres of land in Cumberland County near the headwaters of an unnamed tributary of the Cape Fear River. The defendants, who were in the business of repairing electrical transformers and selling rebuilt transformers from about 1959 to 1984, caused PCB contamination at the site. EPA issued the §106 order in 1984, and after the defendants refused to comply, EPA initiated its removal action. The Agency filed later filed its complaint seeking recovery of costs incurred by the United States in responding to the site and treble damages for failure to comply with the 106 order. The court found the defendants jointly and severally liable for three times EPA's response costs, including those costs incurred and those to be incurred by the government during clean up.

U.S. v. Chromalloy American Corp., et al. Odessa II Superfund Site: This site was formerly a tool manufacturing facility in Odessa, Texas. On June 28, 1990, a Consent Decree was signed under § 106 of CERCLA requiring the responsible parties to perform remedial design and remedial action. Hexavalent chromium has been detected in groundwater used as a source of drinking water. The concentration of chromium in the groundwater exceeds drinking water standards. Remediation under the Consent Decree will result in provision of an alternate water supply and source remediation by electrochemical treatment. The Site is characterized by two plumes of groundwater contamination. Divisible harm was established and applied for liability purposes. Savings to the Fund as a result of establishing divisible liability are expected to total \$4.7 million.

City Industries Site: The City Industries site is located on approximately one acre of land in Winter Park, Florida. In 1977, City Industries, Inc. developed into a recycling and transfer facility for hazardous wastes. Due to inadequate plant practices and intentional dumping, soil and groundwater at the site became contaminated. In May 1984, EPA conducted a removal action in which it heat treated 1,670 tons of contaminated soil and removed an additional 190 cubic yards for contaminated soil.

The selected remedy was to pump and treat contaminated groundwater on-site and then discharge the groundwater to a publicly-owned treatment works (POTW). The ROD also selected a contingency alternative in the event that



POTW does not agree to accept the discharge. The alternative would require on-site treatment of the groundwater and a surface discharge into a nearby drainage canal. Special Notice Letters for RD/RA were issued to approximately 200 PRPs for the purpose of negotiating a settlement for the PRPs to finance or perform the RD/RA at the City Industries site. Because of the prior history of negotiations with these PRPs to reimburse EPA for past costs from a removal action the site, the PRPs were readily able to organize a steering committee that represents approximately 175 of the PRPs. EPA has manifests showing the volume of wastes disposed of at the site by each PRP. None of the PRPs are responsible for a substantial amount for the contamination.

As a result of the number of PRPs, and the volumetric contribution breakdown, the strong consensus of the PRPs was that they were willing to finance rather than perform the RD/RA. The Region agreed that under the circumstances of this case it would be more cost effective and efficient if EPA performed the RD/RA. This is the first "RD/RA" Consent Decree in the country wherein the Defendants will fund rather than perform the cleanup of the site. The consent Decree was structured so that EPA was assured for 100% non-interrupted funding of the RA. Two of the vehicles for accomplishing this purpose were a private "Custody Account" set up and funded by the Defendants and an EPA "Special Account" which will be funded by the "Custody Account." The Consent Decree also contains provisions and formulas which allow over one hundred Defendants to elect to "cashout" as de minimis Defendants or to share the continued liabilities and obligations of the Non-De-Minimis Defendants.

U.S. v. Clean Harbors of Natick: This decision reinforces EPA's ability to take swift enforcement action under CERCLA and precludes PRPs from delaying compliance with an EPA order. On July 12, 1990, the Defendants' Motion for Temporary Restraining Order and Preliminary Injunction seeking to enjoin enforcement of EPA's administrative order issued under §106(a) of CERCLA was denied in the United States District Court for the District of New Hampshire. The United States had previously filed a CERCLA §107 action against defendants Interex Corporation and Ethan Allen for the Keefe Environmental Services Site in Epping, New Hampshire. Following an unsuccessful negotiations period, the U.S. issued the §106(a)

order on June 12, 1990. The Magistrate found that granting the motion for injunctive relief would result in pre-enforcement review, which is not appropriate in the CERCLA context. The Magistrate stated that the movant can attack the §106(a) order in a later judicial proceeding (if brought to enforce the order) and if "the movants' basis for attacking the §106(a) order are valid now, they will be valid then."

Colorado v. Idarado Mining Co.: The Superfund law does not create an explicit right to injunctive relief for the States, a federal appeals court ruled October 11, 1990. The United States Court of Appeals for the Tenth Circuit issued an opinion which vacated two injunctions granted to the State of Colorado for activities on the Idarado mining site, located between the towns of Telluride and Ouray in southwestern Colorado. These injunctions, granted by Judge Carrigan in the District Court for the District of Colorado on Feb. 22, 1989, imposed a modified State cleanup plan on the defendants and required them to pay the permanent relocation costs of tenants on the property.

The United States filed a friend-of-the-court brief seeking to overturn the District Court's ruling. The court agreed with the United States' argument that the State was not entitled to injunctive relief under CERCLA §121(e)(2).

U.S. v. Conrail, Sealand, Ltd. Site, Mt. Pleasant, DE: Fourteen defendants agreed to reimburse the government \$1.3 million for past response costs as part of a consent decree entered Jan. 30, 1990, by the U.S. District Court for the District of Delaware. EPA retains the right under the decree to bring suit against any and all the PRPs for recovery of any and all costs incurred after Dec. 31, 1988. The settling defendants include: The Washington Post Co., Globe Newspaper Co., The Times Journal Co./Army Times, Conrail, Philadelphia Gas Works, and the Public Service Electric and Gas Co.

U.S. v. Cordova Chemical Co.: A unilateral administrative order was issued on March 12, 1990, to begin site remediation at the Ott/Story/Cordova Facility in North Muskegon, Michigan. The order, which applies to all defendants jointly and severally, is for implementation of an operable unit to intercept and treat contaminated groundwater discharging into a nearby creek. The point of discharge into



the creek is within 2/10ths of a mile from a residential area. The operable unit will abate some of the principal threats of contaminations via contact with the contaminated surface water and inhalation of volatile organics.

In the Matter of Custom Industrial Services, Inc.; U.S. v. Alcan Foil Products, et al.; and U.S. v. Robinson Industries, Inc., et al.: The Custom Industrial Services Site in Shelby County, Kentucky is comprised of three distinct parcels of property. The now-defunct operator of the Site used the three properties in its solvent reclamation business from 1974 until 1988, when the Site was abandoned with approximately 2000 drums of hazardous waste. At the request of the Commonwealth of Kentucky, EPA conducted an emergency removal action at the Site beginning in January 1989. EPA identified 236 PRPs at the Site from documentation recovered from the operator, from state RCRA records, from responses to EPA information request letters, and from interviews. From such records, EPA prepared a volumetric ranking of hazardous waste sent to the Site by generators since 1975. In January 1990, EPA entered into an Administrative order on Consent with the landowner of the Simpsonville Warehouse (one of the three parcels of property comprising the Site), the landowner's lessee and one generator, for the conduct of the removal action at the portion of the Site, thereby saving the Agency approximately \$200,000. The remaining case was referred to the Department of Justice in March 1990 for collection of the 1.6 million in costs incurred by the United States at the Site. In January 1991, EPA executed a de minimis Administrative Order on Consent with all 199 eligible de minimis generators at the Site. Under this administrative settlement, the United States will recover \$418,945 or 26% of the total costs. Approval of the de minimis settlement is currently before the Department of Justice, as required in CERCLA Section 122(q)(4). In January 1991, after several months of negotiation between the remaining PRPs and EPA, EPA also executed a Consent Decree with 34 parties, including large generators, operators, landowners, a broker and a transporter, for the recovery of \$821,550 (including interest) or approximately 50% of the costs incurred at the Site. EPA simultaneously executed a Consent Decree with the three parties associated with the Simpsonville Warehouse portion of the Site for the collection of \$223,481 (including interest) or approximately 14% of the total costs. The two Consent Decrees are currently

before the Department of Justice for review and filing. EPA and the Department of Justice intend to pursue the only two recalcitrant PRPs for the remaining 10% of the costs incurred at the Site.

In the matter of the Denver Toluene Site: Severely contaminated groundwater and soil underlay the surface at the Unocal Petrochemical Distribution Center facility in Denver, as well as the land to the north and west of the facility. A Unilateral Administrative Order was issued to Unocal Corporation in December 1988, to install recovery wells designed to recover the contaminated groundwater for treatment, and construct an on-site treatment plant designed to treat and clean the ground water to EPA Drinking Water Standards. Unocal Corporation continues to recover and treat contaminated groundwater from the Site under oversight of EPA. Plans are currently underway to address the contaminated soils at the Unocal facility in the near future. It is estimated that it will cost the PRPs approximately \$10 million to complete cleanup of the site. On June 12, 1990, EPA issued a demand for a portion of the past costs incurred, in the amount of \$265,687.18. On August 6, 1990, EPA received full payment from the PRPs. August 22, 1990, EPA issued a second demand letter for the remainder of the past costs in the amount of \$98,007.69. EPA has yet to hear from the PRPs regarding the second demand for payment.

U.S. v. Distler: In this case, a successor corporation that had acquired substantially all of its predecessor's assets was held liable for the predecessor's improper disposal of hazardous substances. The case supports our overall strategy to recover our response costs from liable and viable parties. Based on the decision, similarly positioned responsible parties may be more inclined to settle rather than to litigate their liability.

EPA brought a CERCLA §107 action against the successor corporation for response costs incurred in cleaning up two hazardous waste sites in Jefferson County and Hardin County, Kentucky. The district court held that CERCLA's remedial purpose required that responsible parties, not the taxpayer, pay for hazardous waste cleanups. It noted that CERCLA requires the development of a federal common law to supplement CERCLA liability for successor corporations. The case is significant because the court found the successor liable under CERCLA based on the substantial continuity theory which is a less rigorous



standard of corporate liability. It is the second CERCLA case to use this theory.

An important point is the way the court framed the issue of liability: "The issue is...one of [CERCLA law]: does a manufacturer's responsibility for its [hazardous waste] survive a change in ownership, where the manufacturing business, as such, maintains its identity and continues to operate as before...." Under this broad liability scheme, the court had no difficulty in finding the successor corporation liable in this instance because the successor had operated out of the same physical facilities as its predecessor, had produced the same product line, had held itself out to the public as the same company, had retained the same operating assets and had succeeded to all liabilities necessary for a smooth transition of ownership.

U.S. vs. Dupont, et.al. (Lorentz Barrel & Drum):

On July 6, 1990, the United States District Court for the District of California approved a settlement valued at \$6 million with eleven (11) companies for the Lorentz Barrel and Drum Superfund site. The settlement was jointly negotiated by EPA and the Department of Justice and requires the companies to design, construct and operate a ground water extraction and treatment system to clean up contaminated ground water at the site. Lorentz Barrel and Drum was a drum recycling facility that operated for approximately forty years until 1987 when it was closed permanently by the State of California. Drums containing chemical residues were sent to the site for refurbishing and resale. Operations at the site resulted in the contamination of soil and ground water with industrial solvents, pesticides, PCBs, and other hazardous substances. The potentially responsible parties (PRPs) who participated in the settlement are generators of hazardous wastes who shipped drums to the site.

U.S.v. Fairchild Industries, Inc.: Fairchild Industries and Cumberland Cement & Supply Co. agreed to pay \$1.7 million under the terms of a consent decree for the Limestone Road Site in Cumberland, Md. entered February 28, 1990, by the U.S. District Court for the District of Maryland. The decree settles certain of the government's claims under §106 and §107 of CERCLA. The State of Maryland is also a party to this decree. Maryland had successfully opposed entry of an earlier consent decree between the U.S. and Fairchild and Cumberland Cement on the grounds that the decree did not explicitly

provide the state with the review and comment authority provided in CERCLA §121(f). The United States and the State retain actions against Fairchild, Cumberland and four other PRPs for the recovery of costs incurred prior to the entry of the consent decree.

U.S. v. Fleet Factors: In this case, a secured creditor was held liable under CERCLA because it participated in the financial and operational management of the facility. The case supports EPA's priority of recovering costs from responsible parties and notifies lenders that they should act prudently in the first instance when making loans to third parties and also upon discovering contamination of the collateral.

In the case, a factoring arrangement was set up between the defendant creditor and Swainsboro Print Works (SPW), a print clothing facility. Fleet Factors advanced funds while retaining a security interest in SPW's accounts receivable. It stopped the advances when SPW's debt exceeded its collateral, but continued to collect funds under the accounts and eventually foreclosed on some of SPW's inventory and equipment. Fleet required SPW to seek approval before shipping goods, determined when employees should be laid off, established prices for excess inventory, received and processed tax forms and supervised the activity of the office administrator.

The court found Fleet liable under CERCLA §107(a)(2) as an owner or operator of the facility at the time the hazardous substances were disposed. In doing so, the court stated a secured creditor is liable "if its involvement with the management of the facility is sufficiently broad to support the inference that it could affect hazardous waste disposal decisions if it so chose." Although the courts holding was broad, on the facts of the case it was clear that Fleet Factors was participating in the management of the facility.

The court's holding is significant because it has expanded EPA's ability to seek reimbursement for response costs. The case notifies secured creditors that they must be prudent and responsible in their lending activities with third parties.

U.S. v. French Limited, French Limited Superfund Site: This site was formerly a commercial waste disposal facility. A Consent Decree under §§106



and 107 of CERCLA was entered into Federal Court on March 7, 1990. However, so as not to wait for the long term remedy to alleviate the primary threats posed by the site, actions were taken under an Administrative Order on Consent to build a floodwall and move offsite contamination back on site. These actions eliminated the threat of exposure to some 250 families living in the Riverdale subdivision of Crosby, Texas.

Fulton Terminals: In September Region II and 59 PRPs for this New York site signed a consent decree pursuant to which the PRPs will implement EPA's selected remedy for the Site and reimburse EPA \$500,000, a portion of EPA's past costs. The settlers are also obliged to pay EPA's oversight costs up to and including the first two years of operation of the groundwater pump-and-treat system specified in the ROD. EPA may, in the future, seek the unreimbursed portion of its past costs from the non-settling PRPs, and may also seek any RD/RA oversight costs not covered by the consent decree from the non-settlers or certain of the settling defendants. This is another example of Region II's application of the Agency's Settlement Incentives/Disincentives guidance. This case is also noteworthy for the speed with which the consent decree was negotiated. The decree was signed by the PRPs only three months after issuance of the notice letter for the RD/RA, and only three weeks after the broad terms of the settlement were agreed upon.

In the Matter of General Electric (CERCLA/EPCRA): In June 1990, EPA issued an EPCRA/CERCLA penalty policy. The following case was based on the policy and supports our national priority of ensuring that failure to report releases of toxic or hazardous substances will result in swift and harsh penalties against the non-notifier.

The case is significant for a number of reasons. First, it is the first major case from our June "coast to coast" EPCRA-CERCLA filing initiative to be settled. Second, it represents a very modest reduction in the proposed \$100,000 penalty. Third, given the small quantity of material released, the penalty helps to underscore the importance of timely reporting of toxic or hazardous chemical releases and spills to EPA and our state and local response agencies.

On August 9, 1990, the EPA signed a consent agreement and final order with General Electric Company. The company was cited for failure to report to federal, state, and local agencies the release of hazardous substances into the environment. Under CERCLA §103 and EPCRA §304, facilities that accidentally release hazardous substances into the environment above a certain quantity must report the release. General Electric had released between 5-8 pounds of PCB-based cooling liquid and failed to report its occurrence. This failure resulted in General Electric paying a penalty of \$90,000.

Gonic Drum Dump Site Removal Cost Recovery Trial: This litigation demonstrated that Region I will pursue removal cost recovery cases to closure and will pursue parties who fail to respond to discovery in CERCLA cases. The Region also obtained a precedential ruling that a trustee of a real estate trust may be personally liable for the actions of the trust if state law provides no limitation on the liability of such trustees. In August, 1990, EPA and the Department of Justice conducted a trial seeking recovery of costs expended at the Gonic Drum Dump Site in Gonic, New Hampshire. Aggressive prosecution of the government's liability claims had previously resulted in findings of liability against all defendants. In June, 1990, the government obtained a default judgment against William Burns, the operator of the Site, for his refusal to cooperate with discovery and his failure to appear at the hearing on the motion for default judgment. In August, 1990, the government won a motion for summary judgment establishing liability for the remaining two PRPs, the Gonic Realty Trust and its trustee. The Region expects a ruling on costs at any time.

U.S. v. Gurley Refining Co., Gurley Pits Superfund Site: This was the site of a waste oil refining facility. EPA issued a Unilateral Administrative Order under §106 of CERCLA to responsible parties for the Gurley Pits Site in West Memphis, Arkansas. The Order, effective January 5, 1990 requires the responsible parties to implement a remedy solidifying refinery wastes and redepositing it into a RCRA vault and treating surface water. Litigation is proceeding on a prior complaint filed under §107 for cost recovery, and the responsible parties have failed to comply with the Order. Issuance of the Order follows EPA policy for aggressive enforcement to expedite action and establish liability.



Iron Mountain Mine: On April 9, 1990, Rhone-Poulenc Basic Chemicals agreed to comply with Region IV's March 25, 1990 unilateral Administrative order (UAO) to construct the \$5 million Upper Spring Creek Diversion component of the Iron Mountain Mine interim remedial action. EPA issued the UAO to Rhone-Poulenc and other PRPs at Iron Mountain after EPA failed to receive a good faith offer to its January 26, 1990 General Notice and draft consent decree. ICI Americas, Inc. under an agreement with Rhone-Poulenc, commenced construction of the diversion in July of this year, and is expected to be completed by December 31, 1990, weather permitting.

On August 31, 1990, EPA issued a letter to Rhone-Poulenc which activated provisions of EPA's order 89-18, issued on August 15, 1989, requiring treatment of acid mine drainage releases from portions of the Iron Mountain site during the upcoming critical fishery conditions of the 1990-91 wet season. ICI Americas, Inc., on behalf of Rhone-Poulenc, agreed to comply with the order. Reactivation of the treatment plant and operation of the plant in compliance with the order is expected to cost approximately \$1 million this year.

U.S. v. Johns-Manville Sales Corporation: The amount of civil penalty and costs in this settlement informs the regulated community that the Agency does not ignore consent decree violations, and will make the PRPs reimburse the Government's for the costs incurred in prosecution. On September 13, 1990, a U.S. district court judge signed a stipulation and order of dismissal that resolved the United States' first lawsuit against a PRP for violating a consent decree under CERCLA §109(c). The United States alleged that Manville was liable for a civil penalty because it violated the RD/RA consent decree. The action also contained a CERCLA claim for reimbursement of the costs of enforcing the consent decree. According to the terms of the settlement, Manville was required to pay a \$95,000 civil penalty and \$70,000 in response costs, totaling \$165,000.

In the matter of I. Jones Recycling Site: On October 25, 1989, EPA signed a *de minimis* administrative settlement under which 139 PRPs at the I. Jones' Clinton Street site in Fort Wayne, IN, paid more than \$2.17 million into Superfund. This is EPA's first settlement that recovers money to resolve potential liability for statutory

penalties for noncompliance with a unilateral removal order. Of the total, \$1,888,326 reimbursed EPA for a portion of its \$3.3 million response costs and \$283,712 was the settlement of potential liability for penalties. EPA had performed the first phases of removal activity at the site in 1986 and 1987 while it analyzed site records to identify generator PRPs at the abandoned RCRA facility.

In July 1988, EPA issued a unilateral order for completion of the removal to about 300 PRPs. Among other things, this order required removal of contaminated soil and tank sludge and decontamination of buildings and debris. More than 125 PRPs complied with the order and completed the removal in August 1989 at a cost of more than \$5 million. Some who settled had not initially complied with the unilateral order, requiring them to resolve their potential penalty liability before settlement. EPA is about to propose another administrative settlement to non-de minimis parties to try to recover more of its response costs. EPA also signed an administrative consent order with 31 PRPs in November 1989 for a smaller removal action at a related I. Jones facility on Covington Road in Fort Wayne. At that site, EPA brought suit and won access in December 1989.

U. S. v. Kayser-Roth Corp.: In this case, a parent corporation that had exerted practical total influence and control over its subsidiary was held liable as an operator for the subsidiary's release of hazardous substances. This case is important not only because it supports our enforcement effort, but because it requires parent corporations to ensure that an actively controlled subsidiary is operating in an environmentally responsible manner. Otherwise, the parent will also be responsible for the subsidiary's actions.

In October, 1989, Region I won a judgment in district court for all past and future remedial costs against Kayser-Roth based on its ownership and control of Stamina Mills. The First Circuit on August 2, 1990 affirmed the district court's decision that Kayser-Roth Corporation exercised almost total control over its wholly owned subsidiary, and therefore was an "operator" under § CERCLA 107(a)(4) at the time of a 1979 spill of trichloroethylene (TCE) at the Stamina Mills textile plant in Forrestdale, Rhode Island.

The court rejected Kayser-Roth's argument that a parent corporation cannot be held liable as



an operator under CERCLA, and held that Kayser-Roth was liable based on a direct liability theory under CERCLA. The Court stated that mere complete ownership and a general authority or ability to control were insufficient to hold a parent liable, requiring instead active participation in the activities of the subsidiary. Moreover, the Court noted that even though indicia of ability to control decisions about hazardous waste are indicative of the type of control necessary to hold a parent liable, they are not essential assuming other indicia of pervasive control are present. The court also pointed out Kayser-Roth could not use a third party defense because: (1) Kayser-Roth was an operator at the time of the spill; and (2) the third party was in contractual relationship with the corporation. In addition, the court stated that CERCLA is a strict liability statute and therefore Kayser-Roth's assertion of blamelessness in causing the TCE spill was irrelevant.

The First Circuit's decision bolsters EPA's enforcement effort by finding Kayser Corporation directly liable as an operator under CERCLA in a precedent setting case on parent liability.

Kellogg Deering Site Settlement: Region I negotiated a consent decree for remedial design and remedial action and the payment of past and future oversight costs with four potentially responsible parties at the Kellogg Deering Well Field Site in Norwalk, Connecticut. Under the terms of the agreement, the parties will implement the second operable unit Record of Decision for the Site which calls for a source control remedy consisting of soil vapor extraction and a management of migration remedy that requires pumping and treating groundwater until it reaches drinking water standards. The dollar value of the agreement is estimated to be \$10,800,000.

U.S. v. Koppers: In this instance, a responsible party was penalized for not complying in a timely manner with an Administrative Order on Consent issued in 1986. The consent decree was one of the first CERCLA settlements incorporating penalties for noncompliance with a §106 consent order. The penalties support our national enforcement effort by showing EPA's diligence in ensuring that responsible parties comply with the terms of our agreements. The Koppers Company, Inc. agreed to pay \$1,050,000 in response and oversight costs, and \$50,000 in

stipulated penalties, in a CERCLA §106 and §107 consent decree entered August 16, 1990 in the U.S. District Court for the Eastern District of California.

The decree resolves costs incurred at the Koppers-Oroville, California NPL site through March 31, 1988, but preserves EPA's right to seek response and oversight costs incurred after that date. Koppers also agreed to pay \$50,000 stipulated penalties for reports not timely submitted under a §106 administrative order on consent.

U.S. v. Laskin: The United States filed its motion for entry of a consent decree in the second of three cases concerning the Laskin/Poplar Oil NPL site in Jefferson, Ohio. The settlement provides reimbursement of \$1.38 million in past response costs, the first \$350,000 in future oversight costs to be incurred by EPA, and oversight costs that exceed \$1.75 million. A complaint to recover amounts not included under the consent decree was filed October 19, 1990 against about 50 PRPs.

"Laskin II" was filed on March 19, with the lodging of a Consent Decree for RD/RA with 158 settling PRPs. Public comment was noticed in the Federal Register on April 2. Twenty-seven of the settling parties agreed to implement RD/RA and pay a portion of past and future response costs.

The site remedy consists of construction of a ground water diversion trench, thermal treatment of certain materials, and consolidation and capping of other contaminated soils. Site maintenance costs estimated to be as much as \$2.4 million will also be the responsibility of the settling defendants. 129 of the settling parties are de minimis generators who are "cashing out" by paying a volumetric share of cleanup costs, plus a premium, to the United States and to settling defendants.

The site owners, Mr. and Mrs. Alvin Laskin, are settling by agreeing to provide access to the site and to place certain restrictions on alienation of their property, the Laskin/Poplar Oil NPL site. The settling parties are funding relocation of the Laskins, who have agreed to the demolition of their home located on the site.

U.S. v. Liquid Disposal, Inc.: A December 1989 consent decree required 41 settling defendants to carry out an estimated \$22.4 million cleanup at the Liquid Disposal Inc. (LDI) Site in Utica, MI



(in the U.S. v. BASF civil action). In addition, the consent decree requires establishment of a \$1.5 million trust fund for future remedial work. The defendants also must pay EPA's oversight costs, and reimburse the Government for a portion of its past costs. The consent decree also includes a settlement with 495 de minimis defendants.

Under the terms of the BASF consent decree, the United States recovered \$1.96 million, which is only part of the LDI site costs. In December 1989, EPA offered a second de minimis settlement to eligible potentially responsible parties (PRPs). Approximately 115 PRPs signed this \$1.1 million consent decree (U.S. v. A. N. Reitzloff, et al.) to be applied to costs incurred at the LDI Site. The Reitzloff consent decree was entered by the court on August 30, 1990.

In U.S. v. Ivey, the United States took further action to recover costs and filed a complaint against the former LDI president, a Canadian resident; the vice president of LDI; two Canadian corporations as owners and operators; and nine corporations who were generator/transporters of waste. On September 9, 1990, a partial consent decree resolving the liability of three de minimis generator defendants was lodged with about \$600,000 to be applied to past costs. The Canadian defendants filed a motion to dismiss for lack of personal jurisdiction, which was denied by the court on August 13, 1990. The court held that although CERCLA does not expressly provide for service of process over defendants from a foreign country, the defendants had sufficient contacts with the State of Michigan to confer jurisdiction under the Michigan long-arm statute.

Lone Pine: On March 5, 1990, the New Jersey District Court entered the \$40 million Lone Pine remedial consent decree which had been lodged in August, 1989. Seventeen PRP non-settlers had opposed the settlement when it was lodged by commenting, then by moving the court for intervention (granted over the government's opposition), and by briefs and oral arguments attempting to persuade the court that the settlement was "unfair" to them and should be rejected. The court found their claims "meritless." Because they failed to settle, EPA sued these 17 companies in October, 1989, for approximately \$4.9 million in response costs not recovered in the settlement. By the end of FY1990, 16 of those firms had concluded a second round settlement in principle, providing for

payment of \$4.4 million.

U.S. v. Mattiace et al.: This settlement has precedential value since the insurers for one of the defendants agreed to pay more in settlement costs than the stated policy limits of that defendant's general liability insurance coverage. On September 28, 1990, EPA referred a consent decree settling this case. The case arose out of a 1982 spill of methyl ethyl ketone (MEK). EPA had issued administrative removal orders to five PRPs, none of which complied with them. EPA performed the removal, incurring nearly \$1 million in costs. The settlement, which followed some two years of extensive discovery and motion practice, provides that the PRPs will pay \$1.7 million. Of this, about \$1.35 million is cost recovery (the figure includes interest), and a further \$350,000 in penalties.

U. S. v. Sidney Mathis, et al.: In this instance, property owners refused access to EPA or its designated representative and precluded the completion of planned response activities at a hazardous waste site. The court granted the EPA's request for access. The decision supports our initiative to take prompt enforcement action against recalcitrant parties and provides an example of EPA taking immediate action to initiate response activities. On December 29, 1989, the U.S. District Court for the Northern District of Georgia granted the government's Motion for an Immediate Order in Aid of Access, pursuant to CERCLA § 104(e)(5).

The defendants are property owners of part of the South Marble Top Road Landfill Site in Walker County, Georgia. They repeatedly refused attempts by EPA's designated representative to negotiate access agreements and refused to respond to EPA's subsequent attempts to negotiate. After the attempts failed, the government filed its motion. The order gave EPA and its representative unimpeded access to the defendants' property to conduct a Remedial Investigation and Feasibility Study and any subsequent remedial measures. The order also enjoins the defendants from obstructing or interfering with EPA's activities at the site.

U.S. v. R.W. Meyer, Inc.: The case supports EPA's effort to recover all response costs from responsible parties. The decision should encourage PRPs to undertake remedial activities at more Superfund sites because of EPA's success in recovering all its response costs from PRPs.



On November 20, 1989, the Sixth Circuit affirmed the district court's grant of summary judgment in favor of the United States on the issue of costs in the case of United States v. Northern Plating Company. The appellant, R.W. Meyer, challenged the decision on four grounds: (1) indirect costs of the government are not recoverable under CERCLA; (2) prejudgment interest should not apply retroactively; (3) the defendants were not jointly and severally liable under CERCLA; and (4) numerous issues of material fact remained.

The appeals court stated that "indirect costs are part and parcel of all costs of the removal action [and]...are attributable to [a] cleanup site in that they represent the portion of EPA's overhead expenses that supported the government's response action on Meyer's property." The court also stated that no manifest injustice would result by applying SARA retroactively in this instance, that the harm was indivisible and therefore joint and several liability was appropriate, and that the appellant had failed to raise any genuine issues of material fact.

On March 3, 1990, the Supreme Court denied R.W.Meyer's petition for certiorari, and stated it would not consider a dispute concerning the federal government's right to recover the "indirect costs" of running a Superfund site when it sues responsible parties.

In the matter of Midwest Solvent Recovery, et al.: In December 1989 administrative orders were issued to PRPs for the Midco I and the Midco II sites in Gary, IN, mandating compliance with RODs, which required groundwater and soil clean up at the former solvent recycling and disposal sites. Because the PRPs did not comply with the orders, EPA filed an amended complaint in January 1990. An October 1990 court ruling enhances the likelihood that the orders will be upheld. If the case goes to trial as scheduled in May 1991, it will be one of the Nation's first to test EPA's interpretation of issues such as record review, liability and costs.

Mid-State Disposal, Inc.: A March 1990 consent decree required PRPs to perform the Remedial Design/Remedial Action, estimated to cost \$19 million, and to pay EPA and the State of Wisconsin for oversight costs. The cleanup work will be performed by generators Weyerhaeuser Co., Felker Brothers Corp., Steel-King Industries,

Inc., and owner/ operator Mid-State Disposal, Inc. at the Mid-State Disposal NPL Site. A May 1990 court decision reaffirmed the decree by denying Wick Building Systems, Inc., and the Central Wisconsin Communities motions to intervene, vacate, and reconsider the decree. The decision is favorable to EPA because it limits challenges to negotiated consent decrees and postponement of cleanup. The 4 settling defendants will install soil and clay caps over 3 waste disposal units, construct an alternate water supply for residents surrounding the site, collect leachate, monitor ground- and surface water, and collect, vent, monitor and flare landfill gas. Past costs of \$1.25 million were not resolved in this decree; the Agency reserves the right to seek these past costs from non-settling parties.

In the matter of Monsanto, et al., Motco Superfund Site: This site was originally a purported recycling facility for styrene tars and where large quantities of hazardous substances were placed in impoundments. After negotiations with the Potentially Responsible Parties stalled on issues concerning apportionment of liability for the groundwater operable unit, the EPA issued a Unilateral Administrative Order under §106(a) of CERCLA to responsible parties. The order required that an engineering design for the source-control remedy be formulated. The responsible parties are complying with the order, thereby avoiding further delays to implement the remedy. Implementation of the remedy will result in the recovery of contaminated groundwater and treatment. Contaminated groundwater beneath the site poses a threat of contamination to a drinking water source. Contamination at this site near La Marque, Texas, results from twenty years of recycling and storage operations contributing to releases of organic pollutants, metals and PCBs.

U.S. v. Harold Murtha: The consent decree, which was lodged with the U.S. District Court for the District of Connecticut on February 20, 1990, supports EPA's effort to have responsible parties either perform or pay for response actions. In this instance, EPA will be reimbursed for past costs and the agreement will also fund remedial activities. This Consent Decree requires the defendants to pay \$5.375 million as reimbursement for past and future costs at the Beacon Heights Landfill Superfund Site, Beacon Falls, Connecticut, and Laurel Park, Inc. Superfund Site, Naugatuck, Connecticut.



The settlement involves a payment by the Murtha entities of half their combined total net worth, estimated to be approximately \$10.8 million. The settlement also includes a number of non-monetary obligations on the part of the defendants, including providing full and unrestricted access to both sites, cooperating in obtaining all permits necessary for the performance of remedial actions, and a dismissal of claims against the United States Government entities. The primary environmental problem at the sites are contamination of groundwater and surface water by leachate flow. The planned remedial actions consist generally of constructing an impermeable cap and collecting and treating the leachate.

In the matter of National Pin Service: On September 14, 1990, EPA issued a Unilateral Administrative Order under §106 (a) of CERCLA to the former operators and the current owner of the National Pin Service Site in Wilson County, North Carolina. The Order requires the Respondents will conduct the emergency removal action at the site. The removal action will entail restricting access to the site, conducting an inventory and disposing of all drummed hazardous material, and sampling and excavating surrounding soils.

National Pin Service was a business which manufactured blowing equipment on the site. The facility closed in November 1989. The site contains two lagoons of unknown purpose and numerous drums and container labeled as containing various chemicals, most of which are believed by the On-Scene Coordinator to be solvents. The North Carolina Department of Health and Natural Resources attempted over a period of two years to have the operator and owner of the property assess the contamination at the site and perform drum disposal and soil remediation. After failure to obtain compliance with its Orders, the State requested EPA assistance in August 1990. EPA and the State conducted a site inspection on August 29, 1990, and observed that the site was unsecured, abandoned, and contained numerous potentially explosive, highly flammable and otherwise dangerous hazardous materials.

In the Matter of Natural Gas Pipeline Company of America, Inc.: Region VII began an enforcement initiative in FY 1990 to address PCB contamination at natural gas pipeline compressor stations. Nearly all major natural gas pipelines

in the United States cross Region VII. The Region has developed a multi-media approach to addressing contamination at natural gas pipeline compressor stations. The TSCA, RCRA, and CERCLA programs have all been involved in review of investigations and recommending appropriate responses. In the case of Natural Gas Pipeline Company of America (NGPCA), Region VII entered a CERCLA Consent Order with the company to do site investigations at all 17 of their compressor stations in Region VII. As a result of the investigations PCB contamination was discovered at four of the compressor stations. With the help of the TSCA program, clean-up plans were developed to address the contamination, and to date four CERCLA removal consent orders have been agreed to by the company.

U.S. v. Northside Sanitary Landfill: This case is the first judicial action under CERCLA §122 enforcing an administrative subpoena. In the case, EPA issued an information request through the use of its administrative subpoena power in §122 of CERCLA. The defendants refused to comply and EPA brought a judicial action to compel compliance. The decision supports EPA's initiative to enforce information requests when responsible parties do not respond or inadequately respond to EPA requests for information. Information gathering is one of most important aspects of initiating an enforcement action.

On January 29, 1990, the court adopted the magistrate's recommendation in this CERCLA §122 subpoena enforcement action to enforce a subpoena seeking financial information from the Bankerts, owners of the Northside Sanitary Landfill, a 160 acre site. The magistrate had recommended that the subpoena be upheld and that the owners turn over the requested information. The court ordered the parties to comply within ten days. The court also agreed with the United States' position that since the original subpoena was issued in 1986, the parties should be required to furnish up-to-date information, not to stop with the actual dates on the subpoena.

U.S. v. Occidental Chemical Corp. (S-AREA): On September 12, 1990, EPA Region II lodged with the court a Stipulation that would amend the 1985 Judgment for the S-Area. Besides being a very large settlement, the agreement includes the use of innovative technology to enhance the



remedial measures. The settlement provides for environmental benefits of the contaminated area through the use of remedial technology. The new drinking water plant is an example of the benefits the impact this decision will have on the local community.

The Stipulation implements the Judgment's provisions for the selection of remedies using Requisite Remedial Technology (RRT) to address contamination from the S-area landfill. The S-area landfill site is approximately eight acres in size and is located on the Occidental Chemical Corporation (OCC) main plant property in Niagara Falls, New York. The S-area is adjacent to both the Niagara River and the City of Niagara Falls Drinking Water Treatment Plant. OCC disposed of approximately 63,000 tons of hazardous chemical processing wastes into the S-area from 1947-1961; other wastes were disposed there by OCC until 1975.

The RRT remedies in this Stipulation and its Appendices will expand the planned Containment System for the historic landfill, institute Overburden and Bedrock RRT systems using hydraulic controls and extraction wells that will contain and collect non-aqueous phase liquids and aqueous phase liquids (NAPL and APL) for incineration and treatment, and construct a new Drinking Water Plant.

This settlement will result in the remediation of the dioxin and other contamination in the vicinity of the S-area and the City Drinking Water Plant in Niagara Falls to levels which satisfy the requirements of both governmental entities. The total cost of the entire remediation is approximately \$117 million.

O'Connor Co. Site Settlement: In July of 1990, Central Maine Power Company (CMP) entered into a settlement valued at upwards of \$16,000,000 involving the cleanup of the O'Connor Co. Superfund Site in Augusta, Maine. Pursuant to the consent decree embodying the settlement, CMP, one of four potentially responsible parties identified in connection with the Site, has agreed to conduct the entire remedial design and remedial action at the Site and to reimburse 100% of the United States' future oversight costs. The settlement thus provides for recovery from a single party of approximately 94% of the United States' total past and estimated future costs. Moreover, under

the terms of the consent decree, CMP has agreed to initiate remedial design activities upon lodging, rather than entry, of the decree. The PCB-contaminated site had been operated since the early 1950's as a salvage yard for irreparable transformers, capacitors and other electrical equipment. The selected remedy called for in the September 1989 Record of Decision involves the treatment of PCBs by an innovative solvent extraction technology.

U.S. v Ottati & Goss: Federal courts may reject an EPA-chosen remedy for cleaning up a Superfund site and can impose their own choice of remedy under some circumstances, the U.S. Court of Appeals for the First Circuit held April 4, 1990, in a narrow ruling. The court's holding applies where the United States seeks an injunction based on equitable standard to impose the Agency's selection of a remedy without having first issued a formal Agency remedial decision or unilateral administrative order to require responsible parties to clean up. Federal courts are not limited to the administrative record in reviewing the remedy selection under such circumstances, the court held. This ruling applies to only a few pending cases in the county and should not affect record review in most cases.

The court's opinion affirmed in part, vacated in part and remanded for further proceedings the district court's 1988 injunctive orders in *U.S. v. Ottati & Goss*, See, *U.S. v. Ottati & Goss*, 694 F. Supp. 977 (D.N.H. 1988). The court declined to change most of the components of the judicially-ordered remedy in Ottati because a review of the record in the court below showed the district court-fashioned remedial action was not "clearly erroneous."

The First Circuit ruled for the first time that ordinarily EPA should be awarded indirect costs. The court also held that district courts may impose sanctions in instances of governmental misconduct. The appellate court stated it "simply could not determine" in the Ottati record what the United States may have done to warrant sanctions and remanded the sanctions matter for reconsideration.

U.S. v. James Parsons: In this case, the defendants failed without sufficient cause to comply with an EPA administrative order issued under CERCLA §106. The court upheld the imposition of punitive damages in 1989 and recently awarded a specific dollar amount. The case is important



because of its impact on responsible parties. Parties will be much more willing to adequately respond to an EPA administrative order rather than face potential treble damages.

On March 6, 1990, the United States District Court in the Northern District of Georgia granted plaintiff's motion for partial summary judgment for response costs in the amount of \$753,391. The court also found seven of the eight defendants jointly and severally liable for three times that amount, or \$2,260,173 for failing to comply with a CERCLA §106 Administrative Order. This is the first case in which a court has awarded the government a specific dollar amount for treble damages.

In a related case and the first jury trial of its type, the purchaser of a building holding drums containing hazardous waste was held liable May 15 for punitive treble damages under the Superfund law by a federal district court in Georgia. Judge Harold Murphy of the U.S. District Court for the Northern District of Georgia directed a verdict against P. Douglas Morrison, holding that the defendant had insufficient reason to fail to comply with an administrative cleanup order issued by the Environmental Protection Agency under §106 of the Comprehensive Environmental Response, Compensation, and Liability Act. Morrison, along with other defendants previously found liable, must pay three times what the government spent in cleanup costs. EPA and DOJ have appealed the judge's ruling in the matter of what constitutes treble damages. The judge held that EPA's response costs are included as one-third of the total amount. The Government's position is that the treble damages are in addition to the response costs.

In the Matter of Peru Mining Company: This is a cost recovery case relating to the Cherokee County, Kansas Mining Site which arose as a result of the dissolution of Peru Mining Company in a Delaware Chancery Court. EPA had filed a proof of claim against Peru Mining Company in the Chancery Court of Newcastle County, Delaware for its costs relating to the Galena sub-site of the Cherokee County, Kansas Sites. On September 6, 1990, EPA received a check for \$242,410 which was the payment to EPA in distribution of the remaining corporate assets of Peru Mining Company. This amount is in excess of 95% of the company's assets. No release was given other than for the amount received.

Picillo Site Summary Judgment (U.S. v. American Cyanamid Co. and Rohm & Haas Co.): The United States won a motion for summary judgment establishing liability based on collateral estoppel in the CERCLA cost recovery case regarding the Picillo Superfund Site in Rhode Island. On May 31, 1990, the federal district court in Rhode Island held that American Cyanamid Company and Rohm & Haas Company were liable for approximately \$3,500,000 in past costs plus future cleanup costs.

The Region believes this was the first Superfund case establishing liability on a theory of offensive collateral estoppel. The court accepted the government's argument that liability could be established without trial based on the fact that defendants had been found liable in an earlier CERCLA lawsuit filed by the State of Rhode Island for its costs incurred at the Site. The court noted that its ruling was not unfair to the defendants, as they had every opportunity and incentive to fully and fairly defend their liability under CERCLA in the prior suit, and that precluding the U.S. from relying on collateral estoppel would defeat the public policies EPA serves in allocating its limited resources to pursue Superfund cases.

As Superfund litigation brought by states, PRPs, and insurance companies increases, the Picillo decision establishes an important precedent for EPA to pursue judgments based on CERCLA cases filed by states and private parties.

In the matter of Priority Finishing: This administrative settlement concerned the Putnam Fire and Chemical Spill Site in Putnam, Connecticut. The Region entered a CERCLA §122(h) agreement that required the Priority Finishing Corporation to pay \$920,000 into the Fund. Priority was an owner and operator of the Site at the time of disposal of hazardous substances. Coupled with an earlier payment of \$30,000 from Dimension Sailcloth, Inc., another operator at the Site, EPA recovered 83% of the total response costs of approximately \$1,100,000, including prejudgment interest.

U.S. v. Providence Journal: The settlement in this case sends an important signal to the regulated community that the United States will compromise little if any of its recoverable costs where defendants choose not to negotiate until the eleventh hour, thereby making it much more



costly for PRPs to litigate than to settle. On March 26, 1990, the day trial was to begin, the government reached a settlement with all defendants in United States v. The Providence Journal. The United States will receive \$374,000 from the Providence Journal Company and \$20,000 from two other defendants. This represents an aggregate recovery of 100% of actual response costs, and represents recovery of approximately 95% of total costs inclusive of interest (\$415,000). The original cost of performing the removal action was approximately \$175,000. The remainder of the response costs represent enforcement and litigation costs.

U.S. v. A.N. Reitzloff Co., et al.: This case provides a good incentive to responsible parties to enter into settlement early with EPA. Parties who waited to settle this case received less favorable terms than those responsible parties who came forward early. The result supports EPA's national effort to recover response costs from de minimis parties.

On August 30, 1990, Judge Friedman of the U.S. District Court for the Eastern District of Michigan entered the second de minimis consent decree addressing the liability of 115 additional de minimis defendants for the cleanup of contamination at the Liquid Disposal Superfund Site in Utica, Michigan. In addition to the 200% premium payment required of all de minimis settlors, an additional payment of 100% of their volumetric share was required from those settlors who elected not to join in first round settlement.

In the matter of Resource Conservation and Recovery of America, Inc.: An administrative settlement was signed April 3 at the Department of Justice for the Davis Farm site, located in Chatsworth, Georgia. Under the settlement, the Army, the Navy, the Department of Energy, and the Tennessee Valley Authority will reimburse the Superfund for a total of \$164,605.92 in costs incurred by EPA in conducting a removal action at the Davis Farm site. The United States is pursuing private parties for the balance of the response costs and has already settled with several of the private parties. Under the various settlements, EPA will have recovered approximately 82 per cent of the \$799,195 incurred in the removal action and associated enforcement costs.

U.S. v. Rohm & Haas Co., et al.: The case supports the Superfund Management Review

recommendations to encourage responsible parties to enter into settlements and allows EPA to partially recover response costs. The decision provides a clear incentive to responsible parties to enter into settlements because of the protection against third party claims they can receive under SARA.

On September 14, 1990 a the United States District Judge of the District of New Jersey dismissed all cross-claims and counter-claims against ten PRPs who entered into a \$3 million dollar de minimis consent decree with EPA regarding the Lipari Landfill. The judge ruled that the ten settling parties are protected from further third-party claims of contribution by § 122(g) of CERCLA.

The Lipari Landfill, a six acre landfill in Gloucester County, New Jersey, is the number one site on the National Priorities List. The de minimis settlement required the settlors to pay the United States approximately \$2,586,000 to partially reimburse the federal government's response costs. Two nonsettlers requested that the New Jersey District Court reject the de minimis settlement. On September 29, 1989, the court entered the decree, determining the settlement was fair, adequate, and reasonable, and consistent with the Constitution and the mandate of Congress. The court reasoned that the settlors were protected from contribution claims for those "covered matters" in the settlement.

U.S. v. Royal Hardage, et al., Hardage Superfund Site: This case involves a former commercial disposal site in Oklahoma. Phase II of the trial resulted in a ruling by the U.S. District Judge reinforcing the Agency's authority to hold transporters arranging for disposal of waste liable under CERCLA. Also affirmed by the Judge's ruling was authority to recover all costs, including indirect costs, incurred by the EPA for response actions. Finally, the Judge ruled in favor of the Potentially Responsible Party remedy requiring partial removal followed by off-site incineration of the extracted wastes and groundwater remedial action to prevent the influx of contaminated groundwater to a nearby stream. The site, located in Criner, Oklahoma is contaminated by pesticides, chlorinated solvents, metals and PCB oils as result of waste disposal at the site.

Schalk v. Reilly: Based on the decision in this case, PRPs are more likely to enter into a consent



decree requiring potentially controversial remedial measures. The result in this case also supports SARA's codification of no pre-implementation judicial review for selected remedial measures at Superfund sites.

On April 24, 1990, the Seventh Circuit affirmed the district court's dismissal of two citizen suits that challenged remedies selected for six Superfund sites in Indiana. The district court had approved a consent decree in August 1985 for the remedies, finding that numerous public meetings were held prior to the decree's approval and that the decree was fair, adequate, reasonable, and appropriate. The decree required remedial measures be taken in two steps: (1) a removal action involving surface excavation and capping of abandoned dump sites, and (2) the burning of hazardous wastes in a trash-fired incinerator.

Schalk filed a lawsuit in December of 1987 and Frey filed a lawsuit in February 1988. Both parties sought judicial review of the decree entered between the U.S. and Westinghouse, specifically the proposed remedial action involving the incineration of PCBs. The plaintiffs argued that §113(h) of SARA was not retroactive to a consent decree entered in 1985, and that they were not challenging the decree, but merely asking for procedural requirements.

In rejecting their arguments, the Seventh Circuit stated that: (1) their lawsuits were filed after SARA's enactment; (2) SARA codified an established rule of no pre-implementation review; and (3) the plaintiffs were challenging the proposed remedy. The court pointed to CERCLA 113(h) which states that "No Federal court shall have jurisdiction...to review any challenges to removal or remedial action...except" in certain circumstances. The citizen suit exception allows an action alleging that the removal or remedial action taken under [§104] or secured under [§106] violated a requirement of the chapter.

U.S. v. Sharon Steel: The settlement supports the Superfund Management Review recommendation to have responsible parties undertake remedial activities at Superfund sites and to have EPA recover its response costs from responsible parties.

On August 21, 1990, EPA and Sharon Steel entered into the largest bankruptcy settlement ever at a Superfund Site. Sharon Steel agreed to

pay at least \$22 million toward the cleanup of two sites near Salt Lake City. Sharon Steel is the current owner of a milling facility at the Sharon Steel Midvale Tailing Superfund site. EPA has already expended about \$5 million for cleanup of the Tailings site. Under the agreement, EPA has permanent access to the site. Additionally, Sharon Steel agreed to dismiss claims against any government parties.

The remedial action plan for the milling facility is scheduled for completion in October 1990, and a final cleanup plan for residential areas was due by September 1990. The soils surrounding the residences have been contaminated with arsenic, lead, and cadmium. Arsenic has also contaminated the ground water in the area.

U.S. v. Sheller-Globe Corporation, et al.: In August 1990, the court lodged a consent decree signed by 41 PRPs for the Auto Ion, Inc. Superfund site in Kalamazoo, MI. The decree requires the PRPs to carry out soil remediation at an estimated cost of \$3.4 million. The PRPs also must pay for response and other costs in connection with the cleanup. The facility, formerly an electrical power plant used by the City of Kalamazoo and Consumers Power, Inc., was used primarily by Auto Ion, Inc. to remove heavy metals from chrome and cyanide plating waste. About 120,000 gallons of liquid plating wastes and sludge, in addition to arsenic, were left there when Auto Ion ceased operations.

U.S. v. E.H. Schilling & Son, et al.: This is the first Superfund remedy case in the country ever nominated for ADR. An October 1990 consent decree outlined an estimated \$11 million remedial action to be performed at the E.H. Schilling Landfill near Ironton, OH. The agreement calls for PRPs Ashland Chemical Co., Aristech Chemical Corp., and Dow Chemical Co. to install a slurry wall around the perimeter of the landfill, place of a cap on its surface, reinforce the earthen dam and install an onsite liquid and leachate extraction and treatment system. The PRPs agreed to pay all past costs, all costs of implementing the clean up, and all oversight costs in excess of the first \$236,000.

Between 1969 and 1980, the landfill accepted commercial and industrial solids, liquids and sludge, including polystyrene, polyurethane, polyethylene, phenol, acetone, ceramic foam, oil and petroleum pitch, which



eventually contaminated the soil. Contaminants identified at the site include arsenic, benzene, benzol (a) pyrene and 1,2-dichlorethane. The case was nominated for alternative dispute resolution (ADR) in 1989 after a cost allocation controversy arose between the PRPs. A cost recovery action against two nonsettling PRPs for the initial oversight costs is being evaluated.

Solid State Circuits Site: On August 10, 1990, EPA referred to the Department of Justice for lodging a Consent Decree for Remedial Design/Remedial Action at the Solid State Circuits Site in Republic, MO. The Site consists of a former printed circuit board plant where waste trichloroethylene contaminates groundwater that is the source of the municipal water supply. The remedy calls for pumping and treating contaminated groundwater, then discharging to a publicly-owned treatment works for further treatment and discharge pursuant to a NPDES permit. The State of Missouri is a party to the Consent Decree. Submittals from and oversight of the PRP will be handled primarily by the Missouri Department of Natural Resources, as the lead agency. Also, the Consent Decree provides a unique financing mechanism for the estimated \$7.4 million remedy in which the sole PRP, not otherwise able to pay for the remedy, can arrange private financing to meet its liabilities. The PRP, with a net worth estimated at \$3 million with environmental liabilities and \$6 million without, is allowed to sell its assets to an unrelated third party with such purchaser not becoming bound to the Consent Decree, provided a trust for performance of the remedy is funded in the amount of \$8.8 million. The PRP does not own any Site property. The PRP's parent corporation, not a party to the Consent Decree, will fund the trust with loans to be paid from proceeds from the asset sale, and the PRP will cease all business except to perform its obligations under the Consent Decree.

Sullivan's Ledge Site Settlement: In September, 1990, the Region obtained agreement to a consent decree from 14 PRPs for RD/RA performance and reimbursement of past costs and oversight costs regarding the First Operable Unit at the Sullivan's Ledge Site in New Bedford, Massachusetts. Under the consent decree, the settling PRPs are required to implement the remedial design and remedial action, with the limitation that the settling PRPs' obligations will terminate after thirty years of operation and maintenance. The present worth value of

these activities is estimated at \$10,500,000. In addition, the settling PRPs agreed to reimburse 100% of the United States' oversight costs for the first five years of the remedy and 50% thereafter, up to a cap of \$1,500,000, and to reimburse the United States for \$620,000 in past costs. In total, the package represents recovery of \$12,370,000, or 77.8% of total site response costs. The Region anticipates filing a cost recovery action against nine non-settlers for the remaining response costs.

U.S. v. Rasmussen, et. al., Livingston County Michigan: This case filed in Federal District court in January 1988 involved an action for cost recovery for removal activities under CERCLA. The defendants included site owners Gloria F. Rasmussen and Clara C. Rasmussen; Homer S. Rasmussen, the operator during its period as a landfill; Alfred E. Pearson, who disposed of hazardous substances at the site; and the companies that arranged for hazardous waste disposal, which included Chrysler Corp., Ford Motor Co., and Hoover Universal, Inc. EPA incurred the costs performing an immediate removal.

Because of the environmental threat, the Rasmussen site was placed on the National Priorities List on September 8, 1983. EPA began removal at the site on October 31, 1984, using Superfund money. About 3,000 drums and 250 cubic yards of contaminated soils from the Rasmussen landfill were taken to an approved hazardous waste landfill. This response action ended in January 1985. The 1990 consent decree required Ford and Chrysler to reimburse the United States for \$530,000; Hoover settled for \$295,838 November 18, 1989. Other settlements should be completed in the near future.

In December 1988, EPA determined another removal action would expedite site clean-up and the development of options for the feasibility study. On July 12, 1989, 11 PRPs signed a consent order specifying the work to be done to complete the cleanup. The PRPs removed waste, contaminated soil, and about 650 drums from the site from December 1989 through February 1990. The proposed final remediation plan was released for public comment August 31, 1990.

In the matter of Tennessee Chemical Company. Prospective Purchaser Agreement: On September 20, 1990, EPA and Boliden Intergrade, A.G., signed a prospective purchaser agreement for the bankrupt Tennessee Chemical Company (TCC)



facility in Copperhill, TN. Boliden Intergrade, A.G., a Swedish company, will spend some \$21 million over the next 10 years on environmental and plant improvements. The company agreed to continue operation of the two wastewater treatment plants protecting the Ocoee river from contaminated water runoff. The firm will implement an environmental improvement program at an estimated cost of \$8 million, which would include reforestation, wastewater treatment plant upgrades, installation of new sedimentation traps, and remediation of contaminated soil. In addition, the company will construct a new sulfur burner at the facility at an estimated cost of \$13 million.

The September 20, agreement was required because a six month interim agreement negotiated in March of 1990 was about to expire. The U.S. Bankruptcy Court had approved the interim agreement, which was in the nature of a prospective purchaser agreement. Under that agreement, Boliden agreed, among other things, to operate all environmental control equipment; comply with all environmental statutes, regulations, permits, and orders; conduct an abbreviated environmental site investigation; and to be liable for all violations of law, and for all environmental harm it causes during its period of operations. Most notable was Boliden's agreement to operate the facility's wastewater treatment plant, thus avoiding some 4.5 million gallons per day of uncontrolled inactive mine runoff discharge if TCC were to abandon the facility. TCC was on the verge of shutdown in March 1990, and the interim agreement averted an expected plant shutdown by the Bankruptcy Court.

The September 1990 agreement also provides for: reimbursement to EPA of \$180,000 for past response costs, compliance with all applicable state and federal environmental requirements, cleanup of several existing chemical and fuel oil spills, and voluntary reforestation on unpurchased land. Boliden will not be held liable for contamination at the Copperhill site that occurred before the company assumed operation of the facility on March 20, 1990. The company will be liable for any contamination resulting from their operation of the facility.

Recent releases of sulfur dioxide by Tennessee Chemical Company are being addressed by EPA in separate enforcement

proceedings. One such release, which occurred on August 16, 1990 during the negotiations period for the September 1990 agreement, necessitated the issuance of a CERCLA 106 Unilateral Administrative Order in response to significant off-site harm caused to human health and the environment by releases of sulfur dioxide and sulfur trioxide from the plant. This marks the first time that Region IV has used a CERCLA 106 Unilateral Administrative Order to cease significant releases of hazardous substances during Tennessee Chemical's operations. In response to the August 16, 1990, release, within a very short timeframe, the Region conducted a Chemical Process Safety Audit and a Clean Air Act compliance inspection of the plant. The area was also surveyed for vegetative and health effects by the Environmental Services Division (ESD) and the Agency for Toxic Substances and Disease Registry (ATSDR). These produced recommendations that were invaluable to the successful negotiation of the prospective purchaser agreement. The combined Audit and Inspection allowed the Agency to determine a complete outline of plant and process improvements that are needed to minimize future releases of hazardous substances.

The Tennessee Chemical prospective purchaser agreement is an example of EPA's ability to enter into agreements with private parties for site remediation. Without this agreement, the responsible party would have potentially slipped into bankruptcy and EPA would have been required to remediate the site.

U.S. v. Thomas Solvents: The case supports our enforcement effort and is nationally significant for two reasons. First, the court upheld EPA's request for recovery of all response costs. Second, the court found that EPA's actions at the site would be reviewed based on the administrative record using an arbitrary and capricious standard.

On September 24, 1990, the U.S. District Court for the Western District of Michigan granted the government's motion for partial summary judgment on response costs. The case involves actions by EPA and the state of Michigan to clean up and contain the spread of hazardous substances discovered in the Verona Well Field and surrounding areas. The substances had allegedly been released by defendants on three nearby properties and had penetrated the soil, entered the ground water, and contaminated a number of wells at the Verona Well Field.



The Well Field serves as a public water supply for about 35,000 residents and businesses of Battle Creek, Michigan. EPA's costs at the time of trial exceeded \$4.5 million dollars. The court granted EPA's request for summary judgment on certain response costs valued at \$877,704.78.

In holding for the United States, the court determined that the government does not have to prove the reasonableness of its response action. Instead, it is up to the defendants to prove that the action was arbitrary and capricious. The court went on to say that the fact that the selected response was not effective does not imply that its selection was arbitrary and capricious. The court also held that EPA could recover its indirect costs at the site for those expenses attributable to overhead.

In a related matter, the court granted the government's motion for a ruling as to the appropriate standard and scope of review of agency action. The court determined that §113 of CERCLA applies to response actions taken by the agency as opposed to the argument that it applies only to the selected response action. In addition, the court held that any response action should be reviewed on the basis of the administrative record under an arbitrary and capricious standard, and absent a showing of manifest injustice, §113 of SARA will apply retroactively.

In the Matter of 3M Company, Columbia, Missouri: 3M Company (3M) entered into a §3008(h) Administrative Order on Consent (AOC) with EPA on September 26, 1990. Pursuant to the AOC, 3M has agreed to perform a RCRA Facility Investigation and a Corrective Measures Study for its facility located in Columbia, Missouri. In addition to traditional requirements in a §3008(h) Order, EPA negotiated to have 3M model VOC air releases which emanated from facility manufacturing process units. 3M voluntarily agreed (outside of AOC) to reduce VOC emissions by approximately 90% by the summer of 1992. 3M also agreed to provide EPA with annual progress/status reports setting forth the progress it made during the reporting period, and what steps it intends to take during each following reporting period in reducing air emissions.

U.S. v. Tri-State Mint (CERCLA/EPCRA): The government pursued two separate Tri-State Mint enforcement actions that involved the dumping, by the Tri-State Mint, of hazardous chemicals in

an industrial park in Sioux Falls. This posed an acute threat to the inhabitants of Sioux Falls due to the potential impact on the city's drinking water supply. This case was also pursued under EPCRA.

Tri-State Mint A Avenue - civil administrative order. This site involved the dumping of cyanide solutions with heavy metals onto soils behind a facility known as Tri-State Mint A Avenue, which is located in Sioux Falls, South Dakota. The contamination posed a threat to the Big Sioux aquifer, the drinking water source for the City of Sioux Falls. The PRPs completed clean-up of the site pursuant to a Unilateral Order issued on January 3, 1990. The PRPs will be billed in the 1st quarter of FY 91 for costs incurred pursuant to the Unilateral Order.

Tri-State Mint Fire - civil administrative order. This site involved plating solutions, acids, and oxidizers from the Tri-State Mint A Avenue facility. The incident took place on September 2, 1989. The contamination was contained within the facility. Clean-up at the site was accomplished by the PRP pursuant to an Administrative Order on Consent issued on November 7, 1989. The PRPs will be billed in the 1st quarter of FY 91 for costs incurred pursuant to the Administrative Order.

U. S. v. Union Research Co., Inc.: The Union Research decision notifies PRPs that it is in their best interest to settle with EPA now rather than later withstand a time consuming and costly judicial action. On October 9, 1990 the United States District Court for the District of Maine affirmed a magistrate's decision limiting discovery in a CERCLA cost recovery action. In the case, EPA was seeking response costs from two non-settling defendants after settlements were reached with other defendants.

The defendants, Union and Esposito, sought to discover information relating to the reasonableness of certain response costs that the government received as the result of the prior consent decrees. On September 6, 1990, court denied their discovery request. The court stated that the nonsettling parties should have brought to the court's attention any concerns about the consent decree's fairness during the thirty day public comment period. In forgoing this opportunity, the defendants lost their chance to contest the fairness of the decree.



The court also ruled that if a settlor pays less than its fair share of liability, a non-settlor is liable for the difference. Therefore, the non-settlor's liability is reduced by the amount of settlement and not by the equitable shares. The court reasoned that to hold otherwise would require the government to litigate with the non-settlers matters the government thought resolved in the settlement process. The holding is significant because it highlights the benefits of a PRP/EPA settlement and encourages recalcitrant PRPs to settle.

In the matter of U.S. Testing, Inc.: On April 24, 1990, EPA suspended U.S. Testing Inc., a major participant in EPA's Contract Laboratory Program with 22 branch laboratories nationwide, from receiving future federal contracts and EPA assistance awards. The complaint initiated by Region X's Suspension and Debarment team alleged that U.S. Testing's laboratories in Richland, WA and Hoboken, NJ submitted unreliable and falsified data to EPA. Some of the practices alleged to have taken place included: Analyzing samples after the holding times were exceeded and then back dating the tests; pH readings and PCB/pesticide standards and analyses were reported as having been analyzed using automated equipment which the laboratory did not have; improper sample movement and chain of custody records resulting in the inability to accurately trace samples; and improper calibration of equipment resulting in inaccurate data being reported as valid.

In the matter of Vandale Junkyard: On March 5, 1990, an administrative subpoena under CERCLA was used for the first time to determine if a PRPs remedial investigation and feasibility study (RI/FS) met the terms of an administrative consent order or should be discontinued. Activities by the PRPs and their contractor indicated a pattern of failing to comply with substantive requirements of the 1987 order, failing to complete tasks on time, and endangering workers and EPA representatives. Although the PRPs objected, a deposition was taken on April 26, 1990. Deposition information supported EPA's determination to discontinue the PRPs' authority to conduct the RI/FS, effective August 16, 1990.

Wells G & H Site Settlement: In September 1990, Region I finalized a settlement for the Wells G & H Superfund site in Woburn, Massachusetts. The settlement requires four potentially responsible parties identified in connection with four

contaminated properties within the Site to conduct the entire RD/RA at these properties for the first operable unit and pay a large portion of the government's past costs at the Site and reimburse all future oversight costs. A smaller set of the settling parties has also agreed to perform a remedial investigation/feasibility study for the next phase of the Site cleanup. The total value of this settlement is approximately \$69,450,000.

This complex settlement is noteworthy in several respects: it involved agreement by a small number of PRPs to a very large settlement, utilized a Non-binding Preliminary Allocation of Responsibility (NBAR) to allocate responsibilities among landowners, provides for initiation of the remedy as well as the RI/FS at the time of lodging of the Decree, and was negotiated in a very short time frame given the complexities of the case.

The settlement provides for the first phase of cleanup of one of the most publicly visible sites on the National Priorities List. This Site has experienced intense public scrutiny over the last decade because of the high incidence of childhood leukemia in the area surrounding Wells G & H which involved the public drinking water supply for the City of Woburn, Massachusetts.

York Oil Mixed Funding Settlement: In September 1990, EPA forwarded to DOJ a signed consent decree for RD/RA at the York Oil site in New York. The decree is the Region's first mixed funding settlement under §122(b)(1) of CERCLA. It provides for the RD/RA work to be carried out by the Aluminum Company of America (Alcoa); for reimbursement by Alcoa of \$795,000 in EPA past costs; and for payment by the U.S. Army and Air Force of \$1,875,000 towards the cost of future work and \$636,846 for past costs. Alcoa has been pre-authorized to apply for reimbursement of 48% of its RD/RA costs from EPA, among the highest pre-authorization levels yet approved by the Agency. EPA intends to seek recovery of its share of the costs from other PRPs.

Superfund Information Request Enforcement Initiative

Enforcement of information requests, to ensure prompt and accurate reporting of essential data, is important to the integrity of EPA's



enforcement programs. Several cases were filed as a part of a national CERCLA §104(e) information request initiative.

U. S. v. Crown Roll Leaf (CERCLA/RCRA): In a case reported in FY 1989's Enforcement Accomplishments Report, a federal court in New Jersey assessed a penalty of \$142,000 against Crown Roll Leaf Co., Inc. for failing to respond to an information request. The court awarded \$63,000 for the CERCLA §104(e) violation, and \$79,000 for the RCRA §3007 violation. The Third Circuit affirmed without a written opinion on October 12, 1989 and the U.S. Supreme Court on January 22, 1990 denied the petitioner's request for certiorari to overturn that judgment. The case is important because it upholds EPA ability to seek stiff penalties against responsible parties who fail to respond or inadequately respond to information requests.

U. S. v. Denzer & Schafer X-Ray Co.: The complaint seeks an injunction ordering Defendant Denzer & Schafer X-Ray Co., Inc., to supply the requested information, and civil penalties for the company's failure to respond to EPA's request. The defendant failed to comply with Region II's request for information at the Lone Pine Landfill and at the Denzer & Schafer site, both of which are on the NPL.

U. S. v. John Lesofski: The complaint in this case seeks to compel compliance with Region II's request for information and seeks penalties for noncompliance with the Request. Lesofski is believed to have handled, transported, and disposed of hazardous substances at the Lang property NPL site in New Jersey.

U. S. v. Madison Disposal Service, Inc.: The complaint in this case seeks an injunction ordering Madison Disposal Service, Inc. to supply the requested information and civil penalties for the Defendant's failure to respond to a §104(e) letter. Madison Disposal is a garbage hauler that is believed to have information regarding the transportation to and disposal of hazardous substances at the Lone Pine Landfill site in New Jersey.

Access Litigation

Andor Chemical Site: On February 5, 1990, the U.S. District Court for the Western District of New York issued an Order granting EPA access to the Andor Chemical site in Bradford, New York,

to allow the Agency to carry out a removal action. The Order also excluded the owner and operator of the site from the property until EPA's response actions are finished. The complaint was filed against the owner and operator of the chemical repackaging company, Roman Dreywood. Mr. Dreywood also used the site as a residence.

White Chemical Section i Site: On September 28, 1990, EPA issued a unilateral order to the White Chemical Corp. of Newark, New Jersey, and its owner, James White, requiring them to provide access to the site, and cease work at and vacate the premises immediately. This was a chemical manufacturing facility with some 9000 drums on site, many containing hazardous and reactive materials, and many of which were leaking or in unacceptable condition. Anticipating non-compliance, EPA made a referral to DOJ for a civil action seeking a temporary restraining order (TRO). Before such an action could be filed, White, which was in bankruptcy, challenged EPA's order in the bankruptcy court. The bankruptcy judge issued an order, pending the district court's review, requiring White to comply with EPA's administrative order. The district court, on October 23, 1990, ratified the bankruptcy court's action and issued a preliminary injunction. White has since vacated the premises, and the removal action is underway. It is estimated to cost \$18 million.

Genazale Plating Site: On October 13, 1989, the U.S. District Court for the Eastern District Court of New York granted EPA a preliminary injunction in the Genazale Plating case directing the site owner to grant access to EPA and its representatives. The decision, issued after a hearing, is very favorable regarding EPA's access authority.

Federal Facilities - Superfund/RCRA

In the matter of Buck's War Surplus Superfund Site, U.S. Department of Defense: On June 20, 1990, EPA issued a Notice of Potential Liability to the Defense Logistics Agency (DLA) and requested that the Department of Defense (DOD) assume responsibility for removal response actions at the Buck's War Surplus site. The Buck's War Surplus site is a privately-run military surplus operation located in Las Vegas, Nevada. EPA initiated a removal action at the request of state and county agencies. The site contained almost 4000 highly corroded containers of military reagents. Estimated cleanup costs



were \$1 million. On September 26, 1990, EPA successfully negotiated an Administrative Consent Order with DLA. As part of the order, DLA transported and disposed of drums from the site. In October 1990, DLA reimbursed EPA for over \$600,000 in response costs incurred at the site. To date, Region IX has had 11 CERCLA removal actions involving hazardous substances that originated as military surplus items sold at Defense Department auctions. Over the past three and a half years, Region IX has responded to nine hazardous military surplus sites at a cost of over \$1.6 million.

In the matter of Dyess Air Force Base (UST): A Complaint and Notice of Non-Compliance under the Underground Storage Tank requirements was issued to Dyess Air Force Base, Abilene, Texas. The facility was discovering failed (leaking) tanks, but it was not conducting further investigations of the extent of contamination and possible corrective actions. The contaminants consist primarily of used oils, fuels, solvents, and pesticides. Discussions are underway to attempt to obtain a Federal Facility Compliance Agreement.

In the matter of Iowa Army Ammunition Plant: On September 20, 1990, the Department of the Army and EPA completed negotiations on a Federal Facility Compliance Agreement for Removal Actions, Remedial Investigation/Feasibility Studies (RI/FS), Remedial Action selection and Remedial Design/Remedial Actions for all releases at the Iowa Army Ammunition Site, near Middleton, IA. The 19,000 acre site has soil and groundwater contaminated with RDX, TNB, DNT, and TNT, among other hazardous substances. The project costs are to be fully funded by the Department of the Army, but will not be known until completion of the RI/FS.

In the matter of NASA - White Sands Test Facility: This facility, located near Las Cruces, New Mexico, had releases of hazardous wastes. A corrective action order under RCRA was successfully negotiated and issued to this facility on December 12, 1989, and was the first such order in the nation issued to NASA. The action will require the facility to investigate the extent of contamination at the facility, with special emphasis on identifying the preferred pathways of migration and extent of groundwater contamination within the fractured bed rock beneath, acting as the uppermost saturated zone in the vicinity of the facility. Upon completion

of the RCRA Facility Investigation and Corrective Measures Studies, the appropriate corrective measures will be implemented.

In the matter of Tinker Air Force Base: A Complaint and Notice of Non-Compliance under the Underground Storage Tank requirements was issued to Tinker Air Force Base, Oklahoma City, Oklahoma. In the process of a joint inspection with the Oklahoma Corporation Commission, it was learned that when the Base discovered a failed tank through a tank tightness test, Tinker failed to conduct further investigations to determine the extent of the contamination and possible corrective actions. Discussions are underway to attempt to obtain a Federal Facility Compliance Agreement.

In the matter of the U.S. Coast Guard, Kodiak: EPA negotiated a comprehensive §3008(h) corrective action order with this facility. This is the first such order signed by the Coast Guard in the nation and it has been used as a model by the Office of Federal Activities for other Coast Guard facilities across the United States. Contamination problems at this large base involve numerous locations where hazardous waste constituents have been released from past waste handling practices. These releases threaten nearby salmon streams.

Letterkenney Army Depot: Region III's Federal Facility Superfund Program successfully assessed a \$10,000 penalty against Letterkenney Army depot for violations of the terms of their Superfund Interagency Agreement. This fine for failure to submit certain primary documents under the agreement is the first penalty ever assessed against another federal agency by EPA.

Marine Corps Settlements: On September 28, 1990, four Marine Corps bases in Southern California signed Federal Facility Compliance Agreements (FFCAs) with EPA Region IX. The four facilities are the Marine Corps Logistics Base, Yermo and Nebo Annexes, located in San Bernardino County, and the Tustin and El Toro Marine Corps Air Stations located in Orange County. The actions were taken to remedy violations of the Resource Conservation and Recovery Act (RCRA) that resulted from the facilities' long-standing failure to properly treat, store and dispose of their hazardous wastes. The agreements resolved Notices of Noncompliance (NONs) issued during the spring and summer of 1990 which listed multiple violations of RCRA



noted during the 1990 inspections. Many were repeat violations that had been cited during inspections in 1988 and 1989.

In accordance with the compliance schedules established under the agreements, the facilities will correct all outstanding violations of RCRA, conduct inventories to identify all the hazardous wastes they generate, and develop a waste minimization plan to determine the procedures needed to reduce the volume and toxicity of those wastes. Since these facilities had a history of noncompliance with the RCRA hazardous waste regulations, Region 9 was pleased to have the full cooperation of the Marine Corps in negotiating these FFCAs. When fully implemented, they will contribute significantly to the protection of the health and environment of all who live and work on and in the vicinity of the four bases.

SUBBASE Bangor: On January 29, 1990, the U.S. Navy, the Washington State Department of Ecology, and the EPA entered into a CERCLA §120 Agreement to perform comprehensive studies and remedial actions to address public health and environmental threats from the base, in accordance with the procedures specified in the National Contingency Plan. This is the first such Agreement with the Department of Defense in this region to include hazardous sites not listed on the National Priorities List and is the first such Agreement with the U.S. Navy in Region X. In keeping with EPA's "bias for action," the Agreement calls for completing 10 Remedial Investigations and Feasibility Studies within 48 months after the January 29th effective date of the Agreement.

Region IX Agreements: In FY 1990, Region IX negotiated an unprecedented 12 Federal Facility Agreements under CERCLA with various DOD installations listed on the National Priorities List. Agreements were signed with Riverbank Army Ammunition Depot, March Air Force Base, Edwards Air Force Base, Fort Ord (Army), George Air Force Base, Travis Air Force Base, Treasure Island Naval Station (Hunters Point Annex), Camp Pendleton Marine Corps Base, El Toro Marine Corps Air Station, Luke Air Force Base, Williams Air Force Base, and Barstow Marine Corps Base. These agreements extend the reach of EPA oversight, particularly in the area of removal response, and include as signatories the California Department of Health Services and Regional Water Quality Control Boards for

California installations and the Arizona Department of Environmental Quality and the Arizona Department of Water Resources for Arizona installations.

In the matter of U.S. Department of the Army, Cornhusker Army Ammunition Plant, Hall County, Nebraska: In April 1990, the Department of the Army, the State of Nebraska, and EPA completed negotiation of a CERCLA § 120 Federal Facility Compliance Agreement for the Cornhusker Army Ammunition Plant (CAAP). CAAP was constructed in 1942, and was used for the production of conventional munitions and ammonium nitrate fertilizer. The facility has been in inactive status since 1973 and currently no explosives are produced or stored at CAAP. In 1987 and 1988, approximately 40,000 tons of explosives-contaminated soils from site surface impoundments were incinerated on-site, pursuant to an earlier Federal Facility Compliance Agreement. Groundwater contamination originating on-site adversely affected residential drinking water supply wells in Grand Island, Nebraska. CAAP was listed on the National Priorities List in 1987. The Federal Facility Compliance Agreement requires the Army to conduct a remedial investigation and feasibility study, including possible identification of operable units, pertaining to soil, surface water and ground water contamination, and to conduct the remedial action(s) selected for the site. The project costs are currently estimated at \$14.8 million.

In the matter of U.S. Department of the Army, Weldon Springs Ordnance Works: On August 7, 1990, the Missouri Department of Natural Resources, the Department of the Army, and EPA completed negotiation of the Federal Facility Compliance Agreement for Removal Actions, Remedial Investigation/Feasibility Studies, Remedial Action selection and Remedial Design/Remedial Actions for all releases at the Weldon Springs Ordnance Works Site, St. Charles County, MO. The 17,000 acre site has soil and groundwater contaminated with TNT, DNT and lead, among other hazardous substances. The project costs, currently estimated at \$26.5 million, are to be fully funded by Department of the Army.

In the matter of U.S. Department of Energy, St. Louis Airport Sites, St. Louis, Missouri: In June 1990, the Department of Energy (DOE) and EPA completed negotiation of a CERCLA §120 Federal Facility Compliance Agreement for various sites,



which are collectively referred to as the St. Louis Airport Sites. These sites are generally located near Lambert-St. Louis International Airport, in St. Louis, MO. The sites are contaminated with wastes related to uranium ore processing activities conducted for the Manhattan Engineer District, and subsequently the Atomic Energy Commission. The Federal Facility Compliance Agreement requires DOE to conduct a Remedial Investigation and feasibility study for these sites and to conduct the selected remedial action(s). The estimated project costs are \$800 million.

In the matter of U.S. Department of Energy, Mound Plant: In August 1990, EPA and DOE entered into a two-party Federal Facility Agreement under CERCLA § 120 for DOE's Mound Plant in Miamisburg, OH. The costs of cleaning up the Mound site may reach \$800 million. Mound produced detonators for the nuclear weapons program. Environmental hazards discovered at the site include a leaking landfill and the migration of plutonium wastes off-site.

The terms of the agreement specify that DOE will conduct an RI/FS and will implement the RD/RA following the selection of a remedy. As in other Federal facility cases, EPA successfully concluded a Superfund agreement at Mound well before the statutory deadline of 180 days after the completion of an RI/FS.

In the matter of U.S. Department of Energy, Feed Materials Production Center, Fernald, OH: An interagency agreement with the U.S. Department of Energy (DOE) for the cleanup of the Feed Materials Production Center (FMPC) in Fernald, OH, became effective June 29, 1990. DOE's five-year cleanup plan projects \$2 billion in expenditures through 1996. DOE permanently stopped production at FMPC October 1, 1990, but 750 production workers are being retrained as field technicians for the cleanup. The 1,250-acre FMPC is primarily a uranium metals processing facility that makes products for the U.S. nuclear weapons program. The Hanford, WA, plant and Fernald will be models for the cleanup of 17 other DOE nuclear installations and other government and privately owned nuclear activity sites.

The agreement requires DOE to conduct four removal actions more quickly address critical areas before a final comprehensive cleanup is performed. EPA will oversee removal actions that DOE must perform, specifically: removing contaminated ground water from under FMPC

buildings; stabilizing and reducing radon emissions tanks containing radioactive residues from the Manhattan Project; collecting contaminated storm-water runoff from the waste pit areas; and intercepting the contaminated ground-water plume in the off-site Paddy's Run area before it reaches the Great Miami River.

To simplify this comprehensive cleanup, the site has been divided into five separate units. For each unit, DOE will complete the investigation and the study of contamination and implement the selected remedy according to the schedule set by the five separate decision documents.

The agreement ensures that DOE will quickly clean up the facility in a way that is most protective of human health and the environment.

Resource Conservation and Recovery Act (RCRA) Enforcement

The RCRA enforcement program supports a comprehensive regulatory and corrective action program to ensure the safe treatment, storage, and disposal of hazardous wastes. In FY 1990 the program reflected the continued transition from enforcing interim status requirements to enforcing requirements in permits and closure plans, requiring and enforcing corrective action in permits and orders, and enforcing the hazardous waste export and land disposal restriction regulations. In particular, the RCRA enforcement program launched a major initiative to enforce the land disposal restrictions (LDR) provisions under RCRA. The LDR initiative resulted in eight judicial cases filed by EPA and the Department of Justice.

American Mining Congress v. EPA: In a decision upholding EPA's jurisdiction under the Resource Conservation and Recovery Act, a federal appeals court held July 10, 1990, that EPA did not exceed its statutory authority in regulating certain metal smelting residues as "solid wastes" under RCRA even where such residues "may at some time in the future be reclaimed" via return to the original process generating those residues.

The decision, by the U.S. Court of Appeals for the D.C. Circuit, clearly supports EPA's position that recyclable materials may be "discarded" and thus within RCRA's jurisdiction.



The Court explicitly stated that "potential reuse" of a material does not preclude Subtitle C regulation as a "solid waste."

The decision extends the D.C. Circuit's June 26 decision in API v. EPA, which also upheld EPA's authority to regulate recyclable material under RCRA, signaling an important clarification in the court's approach to recycling issues.

In the matter of AVCO Textron Lycoming: In one of the first export cases under the Resource Conservation and Recovery Act, Region I filed an administrative complaint April 4, 1990, against AVCO Corp. Textron Lycoming. The complaint, involving one of the larger administrative penalties sought under RCRA, alleged a number of violations of the RCRA export rules. EPA seeks a penalty of \$254,000. The export regulations require prior consent from the receiving country before hazardous wastes are exported. EPA claims that AVCO failed to get consent for exports that exceeded quantities specified in an original consent, thereby exporting several hundred shipments without consent. Additionally, EPA alleges that several other export and manifest requirements were violated.

U.S. and the State of Louisiana v. Browning-Ferris Industries - Chemical Services, Inc., and CECOS International, Inc.: A consent decree was entered in the U.S. District Court for the Western District of Louisiana, on August 16, 1990 involving these Browning-Ferris subsidiaries which operate a facility in Lake Charles, Louisiana that handles hazardous wastes. A number of violations and environmental problems were discovered as a result of a joint EPA/NEIC/LaDEQ inspection in 1987. In addition to paying \$1.55 million in civil penalties for the violations, the settlement included an environmental audit of the facility's operating procedures and interim measures to address environmental releases at the facility. The civil penalties will be equally divided with the State of Louisiana. Also included was withdrawal of the RCRA permit appeal, subject to agreed modifications.

U.S. v. Browning Ferris Industries: In September 1990, Region II concluded a settlement with Browning Ferris Industries (BFI) providing for payment of \$600,000 in penalties and treble damages, plus approximately \$60,000 in past costs, for its violation of an administrative order requiring it to install stainless steel cased

monitoring wells at the South Brunswick Landfill site in New Jersey. BFI had challenged the order in District Court and the U.S. Court of Appeals for the Second Circuit, claiming that EPA's choice of stainless steel (as opposed to PVC plastic) was arbitrary and capricious, and that EPA was precluded from issuing the order at all since the remedial work at the site was carried out pursuant to an earlier RCRA §7003 consent order. BFI lost that challenge, and will comply with EPA's CERCLA monitoring order in addition to paying penalties, treble damages and past costs. This will be one of the first treble damage settlements.

In the matter of Cannon Craft Company: This action addresses a severe violation of land disposal ban and significant deviation from the regulations. Cannon Craft Company in Sulphur Springs, Texas, manufactures finished wooden louver blinds. An administrative civil complaint was filed on September 28, 1990, under RCRA with a proposed penalty of \$818,700, demanding compliance with regulations. Allegations included disposal and storage of hazardous waste without a permit, land disposal of restricted hazardous waste, failure to make a hazardous waste determination, no contingency plan, no personnel training, and poor container management. EPA alleges that the facility was generating hazardous wastes, including spent solvents, and was disposing of it by pouring it on the ground.

In the matter of Cardell Cabinets, Inc.: Cardell Cabinets in San Antonio, Texas, manufactures wooden cabinets. An administrative civil complaint was issued on September 28, 1990, under RCRA with a proposed penalty of \$774,065, demanding compliance with regulations. Allegations included violations of requirements for generators of hazardous waste (including spent solvents), storage of hazardous wastes without a permit, and disposal of hazardous wastes by allowing open drainage from the facility onto the ground in violation of the land disposal restrictions.

U.S. v. Chemical Waste Management, Inc.: A consent decree lodged in September, 1990 and approved by the Court in November, 1990, provides that Chemical Waste Management, Inc. (CWM) must pay a \$750,000 penalty for RCRA violations at its Vickery, OH, facility. EPA sued CWM in 1988 for failure to either apply for a permit or submit a closure plan for five surface



impoundments by November 8, 1985, the statutory loss of interim status (LOIS) deadline. EPA's lawsuit also sought stipulated penalties for two failures by CWM to submit timely and adequate ground water monitoring reports under a prior agreement. In addition to the penalty, the settlement dismisses CWM's counterclaim and establishes deadlines for submitting closure plans for the surface impoundments. EPA and CWM also agreed to a deadline by which CWM must close an enormous sludge pile.

U.S. v. Conservation Chemical of Illinois (CCCI):

The United States obtained summary judgment on liability and favorable rulings in all other pending motions in this RCRA LOIS case, one of the first such cases filed (in 1986). The Government named the corporation and the president/chief stockholder as defendants. Summary judgment was previously granted against the president, who was involved in the facility's operations and a 90 percent shareholder. The court found that the company president was also liable as the "operator."

The court reaffirmed EPA's authority to enforce RCRA in authorized states and ruled that earlier activities may be included in RCRA liability. Finally, the court ruled that CCCI had lost interim status by admittedly failing to certify compliance with groundwater monitoring and financial responsibility requirements.

U.S. v. Clean Harbors of Cleveland: In August, 1990, an action was filed against Clean Harbors of Cleveland, Inc. (formerly Chem Clear Inc.), which owns and operates a facility for the treatment of industrial wastewater and sludge. The complaint filed in this matter cited violations of interim status standards applicable to hazardous waste treatment, storage and disposal facilities, and non-compliance with a consent decree and final order issued against Chem Clear on March 4, 1985 for violations of interim status standards. The complaint also included a claim for corrective action at the facility.

As a result of this action, a consent decree was entered into by the parties. The consent decree required payment of a civil penalty of \$60,000 and corrective action regarding release of approximately 2, 500-3,000 gallons of chromic acid from a tank on the facility. The penalty agreed to in the consent decree is in addition to an earlier administrative penalty of \$45,000.

Moreover, the consent decree provides for conduct of environmentally beneficial projects, including a favorable injunctive settlement requiring remedial work including a broad array of sampling and analysis activities at the entire facility. If these activities result in detection of certain levels of contamination, cleanup of soil and groundwater are required. Defendant's obligations to conduct investigations and, where necessary, perform remedial work, include areas of the site and hazardous constituents unrelated to the chromic acid spill.

U.S. v. Copperweld Steel Co.: Copperweld Steel Co. will pay a \$110,000 RCRA civil penalty and perform a RCRA closure of its surface impoundment, waste pile, and landfills under a consent decree entered May 14, 1990, in Federal District court in Ohio. Copperweld's Warren, Ohio, plant manufactures steel and steel alloys through the electric arc furnace (EAF) process. The consent decree requires correction of RCRA violations in Copperweld's treatment, storage and disposal of EAF dust and other hazardous wastes. The government claims that these occurred in the Warren plant's container storage area, EAF baghouse, unpermitted waste pile, and land disposal facilities. Copperweld further is required to establish financial assurance for post-closure care.

In the matter of CP Chemicals: EPA issued an Administrative Order to CP Chemicals for the continued use of its hazardous waste surface impoundments (Lagoons 1-3) for a limited time beyond the statutory date for Loss of Interim Status. The Administrative Order also cited numerous violations revealed during an EPA inspection. A Consent Agreement and Final Order has been agreed to between EPA and CP Chemicals that includes \$242,500 in penalties, which is the largest administrative settlement to date in Region IV.

U.S. v. Escambia Treating Co. Inc. et al.: On December 20, 1990, the United States District Court for the Northern District of Florida entered a partial consent decree in the Escambia Treating Company case. This RCRA civil action initiated by Region IV concerns an alleged scheme to insulate the assets of a regional wood treating enterprise from its environmental liabilities, carried out by the controlling shareholder through a corporate reorganization and leveraged buy-out using an employee stock ownership plan. The complaint alleged



violations at each of the four Escambia Treating facilities related to closure, post-closure care, groundwater monitoring and assessment, and loss of interim status, as well as claims for corrective action and claims under the Florida Fraudulent Conveyances Statute. The defendants included Escambia Treating Company, Inc. and its parent and successor corporations, the individual shareholder who initiated the scheme (Soule Jr.) and his parents.

The consent decree settles all claims against the corporate defendants, now under new management, and it requires them to undertake corrective action and compliance with the regulatory requirements. The Soule Srs. were recently dismissed without prejudice. EPA is pursuing its claims for penalties and other relief against Soule Jr. The authorized RCRA programs of three non-party states will participate in the review and approval of plans and permit applications submitted under the decree. As part of the consent decree negotiations, EPA entered into Memoranda of Understanding with the states of Florida, Georgia and Mississippi, detailing the roles of the states and EPA in review of documents, dispute resolution and enforcement.

In a related action filed in 1987, the present ESOP trustees sued Soule Jr., alleging that he had fraudulently overvalued the stock sold to the ESOP by failing to factor into its price the environmental cleanup liabilities of the business. On September 7, 1990, after a four week trial, a jury found that Soule Jr. had committed fraud under the federal securities laws and state law and had breached his fiduciary duties as a trustee of the ESOP. The jury ordered Soule Jr. to pay \$2.29 million in compensatory damages and \$100,000 in punitive damages. By year-end, the trial judge had not yet ruled on pending opposing motions to enter and to set aside the verdict. Under the EPA consent decree, any funds recovered by the companies from Soule Jr. will be placed in escrow accounts set aside for the RCRA cleanups. Following an investigation in which EPA cooperated, on September 21, 1990, the Department of Labor filed suit against Soule Jr. for violations of the Employee Retirement Income Security Act, based on his actions as a trustee of the ESOP in connection with the leveraged buy-out and corporate reorganization. It is alleged that Soule Jr. breached his fiduciary duties and defrauded the ESOP by failing to disclose RCRA liabilities in the buy-out and by

acting to insulate himself from environmental liability at the expense of the ESOP.

U.S. v. Environmental Waste Control: On October 31, 1990, the United States Court of Appeals for the Seventh Circuit affirmed in all respects the district court's order assessing \$2.778 million in civil penalties, the highest RCRA civil judicial penalty ever assessed by a court. This case was originally filed as part of the Agency's loss of interim status initiative to enforce the groundwater monitoring and financial responsibility provisions of RCRA. In affirming the district court, the Seventh Circuit also permanently enjoined operation of the landfill and ordered corrective action, rejected the company's "good faith" defense, and rejected its claim of reliance on allegedly erroneous statements by the RCRA hotline.

In the matter of General Electric Company: General Electric Company's West Burlington, Iowa, operations include painting and degreasing processes which generated halogenated and non-halogenated spent solvents. In September 1990, EPA's Region VII office and GE entered an Administrative Order on Consent pursuant to § 3008(h) of RCRA requiring GE to conduct a RCRA Facility Investigation (RFI) and Corrective Measures Study (CMS). This Order is particularly significant because it is one of the first in the Nation to provide for third-party mediation pursuant to EPA "Final Guidance on Use of Alternative Dispute Resolution Techniques in Enforcement Actions" (August 14, 1987) to resolve additional work disputes. Virgin solvents were stored in 55-gallon drums and a 350-gallon above-ground tank; spent solvents were stored in 55-gallon drums. Operations at the facility resulted in releases of hazardous wastes or hazardous waste constituents to the soil and groundwater at its former West Burlington, Iowa switchboard and switch-gear manufacturing facility. Sampling and soil excavation was conducted during closure of the hazardous waste container storage area in 1986. Further soil and hydrogeologic investigations were conducted in late 1986 and in 1987. A phase III hydrogeologic investigation is currently in progress.

In the matter of Gilbert & Bennett Manufacturing Company: In July, 1990, Region I filed an administrative enforcement action against the Gilbert and Bennett Manufacturing Company of Georgetown, Connecticut. This administrative action includes one of the largest RCRA penalty



assessments in the Region. The complaint seeks a penalty of \$587,114 for the operation of hazardous waste surface impoundments between November 1985 and August 1987 without a permit or interim status, the operation of a hazardous waste container storage facility from October 1989 until January 1990 without a permit or interim status, the failure to implement a groundwater monitoring program from November 1981 until January 1989, the failure to determine the groundwater concentrations of all of the required parameters for each quarter of required groundwater monitoring during 1989, and several additional base RCRA program violations. The Gilbert and Bennett Company manufactured metal wire fence from November 1980 until July 1989 when the company ceased all manufacturing operations and commenced a facility wide cleanup. During operation, Gilbert and Bennett generated several RCRA hazardous wastes, including waste acids, waste alkalis, solvent waste, lead skimming waste, and metal hydroxide sludge.

In the matter of IBM Corporation - Manassas, VA:

On March 1, 1989, EPA and IBM entered into a Consent Order pursuant to §3008(h) of RCRA. Under the terms of this Consent Order, IBM was required to complete an onsite and offsite investigation of the nature and extent of the contamination emanating from its facility and to conduct a study which evaluated various cleanup alternatives. IBM completed this investigation and submitted to EPA for approval a Corrective Measure Study (CMS) which evaluated four Corrective Measure Alternatives (CMAs) for contaminant remediation. Based on the final EPA approved CMS, EPA prepared a RCRA Record of Decision (ROD), signed by the Regional Administrator in July, 1990, that provides EPA's rationale for the selection of the CMA. The selected CMA addresses onsite and offsite groundwater contamination as well as onsite source remediation. This is the first RCRA ROD written in the country.

In the matter of Walt Disney, Inc.: As part of an administrative enforcement initiative aimed at a group of California generators who improperly shipped hazardous wastes to facilities in Wyoming and Utah, Region VIII initiated an administrative enforcement action against the Walt Disney Company for improper disposal of spent solvents and other hazardous wastes. This action resulted in a settlement that included a civil penalty of \$550,000, plus an environmental

audit of all domestic facilities of the corporation, and an environmental training program. The penalty obtained as a result of this action is eight times larger than any previous administrative penalty collected by Region VIII under any statute.

U.S. v. ILCO, et al.: On December 10, 1990, more than two years after the case went to trial, the U.S. District Court for the Northern District of Alabama issued its decision in United States v. ILCO, et al. This action includes claims under the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), against ILCO (a.k.a. Interstate Lead Company) a secondary lead smelter located in Leeds, Alabama. The court found that ILCO had violated numerous provisions of RCRA. Significantly, the court found that the furnace blast slag generated by ILCO is EP toxic for lead, and therefore a hazardous waste under RCRA. The court also found that the sampling method employed by ILCO to test the slag is not appropriate under the RCRA regulations.

The court also found that ILCO had discharged pollutants in violation of its NPDES permit on at least 340 occasions, and that ILCO had discharged pollutants without a permit on at least 194 occasions. Accordingly, the court found ILCO, as well as its president Diego Maffei, liable for civil penalties and injunctive relief. However, the court has not yet ruled on the penalties. The court also found ILCO and Maffei liable under CERCLA for response costs incurred by the United States in responding to an ILCO disposal site.

U.S. v. Lacks, Industries, Inc.: A federal court in Michigan ordered an electroplater to pay \$250,000 in civil penalties and implement a closure plan under RCRA for the firm's seepage lagoons. The June 22 decision by the U.S. District Court for the Western District of Michigan involved Lacks Industries, Inc., an electroplater that plated plastic automobile parts at its Saranac, Michigan, facility.

Judge Gibson found that Lacks disposed of metal hydroxides rinse water in unlined seepage lagoons throughout the 1970s and continuing through February 1982. Lacks failed to notify EPA as a hazardous waste handler in 1980 or submit a Part A permit application for its



facility under the Resource Conservation and Recovery Act. The firm never received interim status, failed to comply with the ground water monitoring and financial responsibility requirements of RCRA, and did not submit a Part B application. Finally, Lacks' discharges to the seepage lagoon, violated the terms of its NPDES permit, which prohibited discharge of rinse water into ground water after February 1981.

U.S. v. LaCled Steel: In July, 1990, the complaint was filed in this RCRA section 3008(a) action. This action concerns the LaCled Steel facility in Alton, Illinois which generates K061 electric arc furnace (baghouse) dust from its steel production. Although this case is the third civil judicial case seeking to enforce the land disposal restrictions requirements, it is the first case to involve primarily LDR violations. The alleged LDR violations include failure to perform adequate waste analysis, failure to keep proper records, and unlawful land disposal.

U.S. v. Marine Shale Processors: In June, 1990, the United States filed a multimedia civil judicial action against Marine Shale Processors, Inc. (MSP) of St. Mary's Parish, Louisiana pursuant to RCRA and the Clean Water Act. In this action, the United States alleges that MSP is a "sham recycler" that has been improperly operating without a RCRA permit. In addition, the United States alleges that MSP violated the Land Disposal Restrictions requirements by placing waste that exceeded treatment standards on the ground at its facility in Louisiana. MSP, the largest burner of hazardous waste in the country, claims not to operate an incinerator but to run an exempt recycling operation that burns hazardous waste in order to recover the fuel value in the waste and produce a product that it claims to market as "aggregate" or fill material.

U.S. v. Master Metals, Inc.: A consent decree requiring Master Metals, Inc. to close specified treatment, storage, and disposal units was entered in January 1990. EPA alleged that Master Metals had lost its interim status (temporary authority) to legally operate all units except for certain container storage areas that were not subject to loss-of-interim-status provisions. The settlement also required Master Metals (which emerged from bankruptcy in 1988) to pay a \$20,000 civil penalty, comply with RCRA operating and management requirements, prepare closure plans for the entire facility, maintain financial assurance and obtain financial liability

coverage. The decree also required Master Metals to stop using all operating hazardous waste units, to remove all waste from the units and to close them if proper financial liability coverage was not obtained within 180 days.

On July 9, 1990, Master Metals filed a motion requesting an additional six months to comply, claiming it was impossible to obtain coverage. On August 29, 1990, EPA petitioned the court to enforce the decree and hold Master Metals in contempt. The Government supported its motion with affidavits about the availability of liability coverage and documentation of continuing violations of the decree. Master Metals opposed the Government's motion on October 5, 1990. Additional pleadings were filed by both parties. Following a status conference on February 4, 1991, the Court agreed to issue an order requiring the defendant to obtain the required liability coverage or close. Stipulated penalties for the consent decree violations are still being evaluated.

In the matter of Penberthy Electromelt International, Inc.: On June 7, 1990, EPA obtained an administrative warrant for entry into the Penberthy Electromelt International, Inc. facility in Seattle, Washington, for the purpose of determining the need for corrective action at the facility. The owner/operator had submitted a RCRA Part B permit application for the storage and treatment of hazardous waste. The treatment involved thermal treatment units that use electric current to raise temperatures to the desired level, with the purported effect of destroying hazardous wastes. A warrant was required because of the owner's refusal to allow access to the building housing the thermal treatment units during routine inspection.

U.S. v. Sanders Lead Company: On October 18, 1989, a complaint was filed against Sanders Lead Company, a secondary lead smelter located in Troy, Alabama. The Complaint seeks civil penalties and injunctive relief for numerous violations of RCRA, as well as corrective action. The alleged violations include illegal operation of at least seven land disposal units for up to two years after the facility had lost interim status to operate those units. Alleged violations also include discharge of acidic waste into a surface impoundment in violation of the RCRA land disposal restrictions, and other miscellaneous regulatory violations. The action also seeks corrective action to address the release of lead



and other heavy metals into the environment from the facility. The case is currently in discovery, and is set for trial on September 3, 1991.

U.S. v. Solvents Recovery Service of New England et al. (RCRA/CERCLA): In July, 1990, a civil judicial action was filed against Solvents Recovery Service of New England, Inc. (SRSNE) for violations of SRSNE's hazardous waste permits, for violations of RCRA's Land Disposal Restrictions, and for cost recovery for EPA-funded cleanup activities being performed under CERCLA authority. At the same time, the United States filed a motion to enforce a consent decree entered between SRSNE and the United States in 1983. SRSNE is a RCRA-permitted hazardous waste treatment and storage facility located in Southington, Connecticut. Since 1955, it has accepted waste solvents from numerous generators, at first distilling them and reselling them to generators, later blending them into a hazardous waste fuel for resale. The Complaint seeks civil penalties for the RCRA violations; \$777,000 in past response costs under CERCLA; the recovery of all future costs to be incurred in cleaning up the site; the revocation of SRSNE's authority to operate a hazardous waste management facility; and the closure of the facility in accordance with an approved closure plan. The motion to enforce the consent decree seeks penalties for violations of the decree and the rebuilding of a groundwater recovery system which SRSNE was required to build and operate. Discovery is presently underway.

U. S. v. United Technologies Corporation: In September, 1990, a civil judicial suit was filed against United Technologies Corporation (UTC), a major government contractor which manufactures aircraft engines and parts. The suit alleges over one hundred violations of RCRA at six different UTC facilities in Connecticut. The government is seeking injunctive relief and a civil penalty. Despite numerous EPA administrative actions in recent years, the government alleges the company has failed to comply with RCRA's requirements for storage and handling of hazardous wastes. The case is notable in that it combines RCRA violations at various facilities into a single lawsuit. The environmental benefit to be achieved by proceeding in this manner is that, rather than simply curing isolated violations at a particular plant, a major corporation is being forced to improve its overall environmental management practices across a

wider spectrum of its facilities. As part of any settlement, the government will be seeking a multi-facility, multi-media audit. The audit would seek to detect any additional environmental compliance problems and suggest improvements in operating procedures to prevent future compliance problems.

U.S. v. Vineland Chemical Co., Inc.: In the second largest penalty award of its kind, a federal district court in New Jersey April 30 ordered the Vineland Chemical Co. and its owners to pay \$1,223,000 in civil penalties for violating federal hazardous waste management laws. Criticizing the bad faith of the defendants, Judge John F. Gerry of the U.S. District Court for the District of New Jersey ordered penalties of \$1,000 per day for each of the 1,233 days of violations of the Loss of Interim Status provisions of the Resource Conservation and Recovery Act.

Toxic Substances Control Act (TSCA) Enforcement

TSCA enforcement responds to violations of regulations for both new (pre-manufacturing notification) and existing chemicals. In FY 1990, asbestos enforcement emphasized compliance with the recently enacted Asbestos Hazardous and Emergency Response Act (AHERA). PCB enforcement centered upon violations involving permitted disposal sites or intermediate handlers and brokers. Significant attention also was devoted to ensuring the proper cleanup of PCB-contaminated natural gas pipelines (e.g., the landmark Texas Eastern case, see below).

U.S. v. Boliden Metech: A final decision of the Administrator affirmed convincingly the Initial Decision of the Administrative Law Judge that Boliden had a duty to assure that material and oil containing PCBs did not enter the environment. Significant defenses raised by Boliden were also rejected, including the contention that government inspectors illegally searched the perimeter of the Boliden property in violation of the 29th Amendment to the Constitution "right to privacy" and that EPA needed to collect "statistically representative" samples in order to prove violations of the PCB storage and disposal violations. The final decision holds that EPA evidence of contamination in a number of scrap metal piles was sufficient evidence to prove that illegal PCB disposal had taken place. A \$32,000 fine was



imposed.

To obtain full site decontamination, a complaint was filed in Federal District Court. The Region aggressively pursued settlement of the judicial action against Boliden Metech during FY 1990, and by the end of the fiscal year reached a settlement in principle. This case is significant because of its technical complexities concerning shredder fluff and analytical methodologies. Successful settlement of this complex case will result in a comprehensive environmental cleanup of PCB contamination at Boliden Metech's Rhode Island site. The terms of the settlement raise a complicated international export issue which required coordination with foreign contacts and the Agency's International Affairs Office.

In the Matter of Celotex Corp.: In a strong precedent for increasing penalties for prior knowledge of regulatory requirements and bad attitude, Administrative Law Judge Yost April 12 fined Celotex Corp. \$31,900 for PCB violations at their Peoria, Illinois, facility. Region V successfully presented a prima facie case concerning the failure of Celotex to maintain annual inventory records, visual inspections of transformers for leaks and improper marking and storage of PCBs. A total penalty of \$45,550 was proposed.

While Judge Yost rejected EPA's attempt to use a prior PCB settlement as evidence of a "history of prior violations" to increase the penalty by 50 percent, he did agree with Region V to raise the fine by 10 percent because Celotex had knowledge of the PCB regulations, failed to provide certain documents the inspector requested and failed to correct certain violations identified by the inspector.

U.S. v. Chemical Waste Management: Region V and Chemical Waste Management (CWM) Chemical Services, Inc. signed a consent agreement and consent order calling for payment of a \$3.75 million civil penalty for violating the PCB disposal requirements of TSCA. The \$3.75 Million penalty is the largest administrative penalty ever imposed on a single facility in EPA's history. The complaint was based on a review of CWM's operating records, the company's own internal investigation, and inspections by NEIC and Region V. This case is significant because it involves violations of the PCB disposal and permit requirements of the regulations. Violations of these requirements by commercial storage or disposal operators are the highest

priority of the PCB enforcement program and maximum penalties will be sought.

In the matter of DSM Resins, Inc.: Region II has continued its active enforcement of TSCA Import and PMN requirements. In September the Region issued an administrative complaint to DSM Resins, Inc., citing violations of §5 and §13, and proposing a penalty of \$2.3 million. DSM is a subsidiary of a large Dutch-based chemical conglomerate. After Region II inspected the firm's import operations, the company "self-confessed" to many violations including failure to file pre-manufacturing notifications prior to importation and failure to submit notices of commencement of import immediately after import. The complaint also cites instances of failure to certify or improper certifications to the Customs Service at the times of importation.

In the matter of General Electric: Regions III, V, VI, and X issued five administrative complaints against General Electric for violating the disposal requirements for PCBs under TSCA. EPA proposed to assess a total civil penalty of \$4,057,275 for operating a solvent distillation system without a permit in the above regions. These cases are significant because they involve violations of the PCB disposal and permit requirements of the regulations. Settlement discussions and motions are pending. Violations of these requirements by commercial storage or disposal operators are the highest priority of the PCB enforcement program and maximum penalties will be sought.

In the Matter of General Industrial Insulation, Inc. (AHERA): In July 1990, EPA and General Industrial Insulation, Inc. (GII), an asbestos contractor in Benicia, California agreed on an \$8500 settlement of an enforcement action that was brought against GII under the Toxic Substances Control Act's asbestos-in-schools rule, the Asbestos Hazard Emergency Response Act (AHERA). The complaint charged GII with failure to properly collect sufficient air clearance samples after an asbestos removal project at a school district. Under AHERA, asbestos contractors are required to follow prescribed abatement procedures designed to protect the environment and the health and well-being of school occupants and abatement workers.

In the matter of P. D. George: This administrative enforcement action was brought pursuant to the Toxic Substances Control Act



(TSCA), 15 U.S.C. 2601 *et seq.* In March of 1989, EPA filed an administrative complaint against the P. D. George Company. The Complaint stated that EPA had reason to believe that PDG violated TSCA by: manufacturing nine chemical substances prior to submitting a premanufacture notification (PMN) to EPA, and by failing to properly report a Notice of Commencement (NOC) for a chemical substance in accordance with the applicable regulations.

TSCA §5 and regulations promulgated thereunder require a person intending to manufacture a new chemical substance for commercial purposes to submit to EPA a premanufacture notice (PMN) at least 90 days prior to the first such manufacture. The failure to comply with these requirements is a violation of TSCA §15(1)(B).

The Respondent has filed the appropriate TSCA §5 notices (premanufacture notices (PMNs), polymer exemption applications, etc.) for all 9 substances. All chemicals completed the TSCA review without imposition of a §5(e) or 5(f) order. Further, the Respondent has corrected all of the notices of commencement for these 9 substances. The March 16, 1989, administrative complaint proposed a gravity based penalty of \$1,909,000 for these violations. During the course of negotiations PDG was able to demonstrate to EPA's satisfaction that 8 of the 9 chemicals were eligible for application of the polymer exemption rule. Therefore, the proposed gravity-based penalty was revised to equal \$1,261,000.

On October 2, 1990 the Chief Judicial Officer ratified a Consent Agreement that requires P.D. George to: pay a \$527,850 penalty; recover and incinerate buried drums of paint wastes and resins; and conduct a TSCA 5 and 8 Audit to identify and correct reporting violations under these statutory provisions. P.D. George intends to spend more than \$200,000 to recover and incinerate the buried drums of paint wastes and resins, and an additional \$210,000 to conduct the TSCA §5 and §8 Audit. Stipulated penalties will accrue for those violations identified, reported, and corrected under the Audit.

In the matter of Hall-Kimbrell (AHERA): This administrative complaint was filed for over \$1 million. The company failed to properly conduct inspections and write asbestos management plans for Local Education Agencies. Since Hall-Kimbrell is one of the largest companies in this

business, this action should send a clear message to other contractors that EPA is serious about enforcing the AHERA. Hall-Kimbrell has offered the Region a proposed settlement which would be on a global basis for all ten regions. Region VIII is currently working with headquarters and the other nine regions to reach an agreement for a national settlement.

In the Matter of Halocarbon Products Co.: The first TSCA administrative complaint has been filed involving a known fatality from a chemical release subject to the substantial risk reporting provision of the statute. An administrative complaint was filed seeking a penalty of \$175,000 against Halocarbon Products Corporation of Hackensack, NJ.

The complaint charges Halocarbon with violating the substantial risk reporting provision of §8(e) of TSCA. Halocarbon failed to submit information to EPA regarding the human health effects of a chemical mixture that killed one employee and seriously injured another as the result of an accidental release of the substance in February 1989.

EPA read about the death and inspected the company in March 1989 and discovered that Halocarbon had never submitted the required §8(e) substantial risk information on the chemical mixture to the Agency. EPA is seeking the statutory maximum of \$25,000 per day for each business day that Halocarbon failed to file the §8(e) report.

In the matter of Monsanto: This administrative enforcement action was brought pursuant to the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.* On or about October 15, 1981, Monsanto obtained a copy of a draft report of a two-year chronic toxicity and carcinogenicity study of Santogard PVI in the rat (hereinafter referred to as the "study"). The information contained in the draft study indicated a dose-related increase in the number of female rats with benign liver tumors. On July 1, 1986, Monsanto submitted the final report of the study to EPA as a "For Your Information" submission.

On August 4, 1989, the Office of Compliance Monitoring filed a \$ 253,200 complaint against the Monsanto Company alleging that Monsanto had failed to report the study in a timely manner. EPA alleged that the study was TSCA 8(e) toxicological data and the Respondent was



required to have submitted the study within 15 working days of its receipt. On January 3, 1990 the Chief Judicial Officer approved a Consent Agreement in which Monsanto was required to pay \$196,230 and conduct an extensive TSCA §8(e) audit. Studies submitted under the audit were subject to stipulated penalties. In August of 1990, Monsanto completed its TSCA §8(e) audit and paid an additional \$648,000 in stipulated penalties.

In the Matter of Nippon Paint (America) Corp. and PPG Industries, Inc.: EPA issued a civil administrative Complaint charging Nippon Paint (America) Corporation and PPG Industries with import and/or domestic manufacture of seventeen chemicals not on the TSCA inventory of existing chemical substances. On July 24, 1990, the Chief Judicial Officer approved a Consent Agreement and Consent Order settling the TSCA §5 and §13 administrative enforcement action against Nippon Paint (America) Corporation and PPG Industries. Under terms of the settlement, Nippon and PPG are jointly and severally liable for a civil penalty of \$360,000 for import and domestic manufacture of 17 chemical substances before completion of the PMN review period or without timely submission of a notice of commencement.

In the matter of Rollins: In 1988, Region II issued an administrative complaint to Rollins Environmental Services, Inc., for violation of the regulations governing PCB disposal. The complaint sought a penalty of \$25,000 for Rollins' failure to properly incinerate PCB-contaminated rinsate. Rollins declined to settle, and in 1989 the Region filed a motion for accelerated decision on the issue of liability, which was granted by the Administrative Law Judge (ALJ).

The parties were ordered to confer to attempt a penalty settlement, but when this proved unsuccessful, the ALJ took briefs and heard oral argument on the penalty issue. In July the ALJ issued a decision awarding no penalty, finding the regulations and the penalty policy ambiguous. The Region appealed this decision, and the Agency's Judicial Officer ruled in September essentially reversing the earlier ALJ decision, and awarded a \$20,000 penalty, which he increased to \$25,000 in light of Rollins' history of past violations.

In the matter of Sherex Polymers, Inc.: On January 5, 1990, EPA filed a civil administrative Complaint against Sherex Polymers, Inc.

(Sherex). The Complaint charged Sherex with failing to submit a premanufacture notice (PMN) to EPA at least 90 days prior to manufacturing, on 84 separate occasions, a new chemical substance, as required by TSCA §5(a)(1)(A) and 40 CFR Part 720. EPA proposed, in the Complaint, a Gravity-Based Penalty (GBP) of \$840,000. On January 30, 1990, the Chief Judicial Officer signed the Consent Order assessing a civil penalty of \$252,000.

The GBP was adjusted downward by 50% to reflect Sherex's prompt self-confession of the violations to EPA. This resulted in an adjusted proposed penalty of \$420,000. For purposes of settlement, consistent with other similar TSCA §5 settlements, EPA further reduced the adjusted proposed penalty by 15% for taking all steps reasonably expected by EPA to mitigate the violations. EPA reduced the civil penalty in this case by an additional 5% (\$42,000), to \$252,000, in consideration of Respondent implementing a pollution prevention project at its Lakeland, Florida facility. Respondent agreed to complete all design and construction work within 12 months of receipt of the executed Consent Agreement, and that it would replace the existing filtration and recycling system by the end of this period. The pollution prevention project generally consists of replacing an existing filter system on a dimer fatty acid production unit at the Sherex Polymers Lakeland, Florida facility. The project shall result in waste reduction of at least 500,000 pounds of filter cake annually and increase the recovery of reusable fatty acid material by over 250,000 pounds annually (based on current production volumes and laboratory studies of the equipment). Respondent stipulated that the total cost of the pollution prevention project would exceed \$525,000. Respondent submitted to EPA a written interim status report within six months of its receipt of the executed Consent Order. The latest cost estimate is that the project would cost approximately \$700,000. Respondent shall submit a final status report within one month of the commencement of active operations of the new filtration system, that is, no more than 13 months after receipt of the executed Consent Order.

In the matter of Standard Scrap Metal, Inc.: A recent decision involving Region V's case against Standard Scrap Metal, Inc. strengthens EPA's enforcement capability concerning PCB spills. Prior to February 17, 1978, PCBs spills were considered "in service," and not regulated unless



they were removed from the site. Based on this interpretation, Region V lost its case against Standard Scrap Metal, who claimed that PCBs found in soil on its property were spilled prior to 1978. Region V appealed the case. On August 2, 1990, the Chief Judicial Officer ruled that the prior interpretation of the regulations was applicable solely to landfills or disposal sites, and that a facility does not become a disposal site or landfill merely because PCBs have been spilled on it. Thus, the disposal site exemption for PCB spills which occurred prior to 1978 was not available to Standard Scrap Metal. Under this ruling, respondents can no longer rely on the occurrence date of PCB spills to avoid PCB cleanup responsibility.

In the matter of Leonard Strandley, Purdy, Washington: Administrative Law Judge Greene issued an Order on October 31, 1989, which assessed a penalty of \$103,500 against the respondent, Leonard Strandley. The Order resulted from a Complaint dated November 15, 1984 -- and amended January 19, 1988 -- which had been before the ALJ for several years. This case alleged PCB disposal, storage, marking, and recordkeeping violations associated with Mr. Strandley's (now defunct) scrapping and oil recycling operations at the Purdy, Washington site. The Order acknowledged EPA's desire to structure the penalty assessment to support the cleanup of the Purdy, Washington site, which is currently being cleaned up under CERCLA, and permanently remitted all but \$5,000 of the assessed penalty on the condition that the Respondent document that an amount equaling at least the remitted amount had been expended towards cleanup of the site.

In the matter of 3-V Chemical Corporation: This administrative enforcement action was brought pursuant to the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.* Beginning in August of 1987, 3-V Chemical voluntarily self-disclosed the violations which were the subject of the complaint. The Respondent had discovered that they had: on multiple occasions, imported a chemical substance in violation of TSCA §§5 and 13; failed to submit a letter of intent to test a substance as required by two separate §4 regulations; and failed to supply a notice of export under TSCA §12(b) for an export of a substance that was the subject of a TSCA §4 rule.

TSCA §5 and regulations promulgated thereunder require a person intending to manufacture (includes import) a new chemical substance for commercial purposes to submit to EPA a premanufacture notice (PMN) at least 90 days prior to the first such manufacture. EPA alleged in its complaint that 3-V had failed to submit a PMN in compliance with TSCA §5. The failure to comply with these requirements is a violation of TSCA §15(1)(B). Regulations implementing TSCA §13 requires that importers certify whether the imported substances are subject to, and are in compliance with, TSCA or that the imported substance is not subject to TSCA. EPA alleged in its complaint that 3-V had failed to properly certify the TSCA status of its importations. The failure to comply with the import certification requirements is a violation of TSCA §15(3)(B).

After self-disclosing these violations to EPA, the Respondent took all steps reasonably expected to mitigate and correct the violations. On July 21, 1989, EPA issued an administrative complaint which calculated a gravity based penalty of \$150,000.

On August 7th the Chief Judicial Officer approved a Consent Agreement in the Matter of 3-V Chemical Company. The Consent Agreement requires the Respondent to pay a \$30,000 penalty and implement an environmentally beneficial program. Although the enforcement action against 3-V was for violations of TSCA §4, 5, and 13, 3-V has agreed to purchase and install a solvent recycling system that is intended to reduce by more than 50 percent its emissions of an unregulated ozone depleting substance (1,1,1-trichloroethane) and a probable human carcinogen (dichloromethane). Emissions of these substances are not prohibited or restricted by current Federal law. Further, 3-V has agreed to implement a leak and detection program for fugitive emissions of these two solvents, and will report annually on their pollution prevention efforts.

U.S. v. Texas Eastern Transmission Corporation: In October 1989, the District Court for the Eastern District of Texas entered a Consent Decree in settlement of a civil action by the United States charging Texas Eastern with the illegal disposal of PCBs and other hazardous wastes at 89 natural gas pipeline compressor sites in 14 states. The violations involve TSCA, CERCLA and RCRA. In the settlement, Texas Eastern agreed to pay a



civil penalty of \$15,000,000 dollars. This is the largest fine ever collected by the United States for any environmental violation. In addition, Texas Eastern agreed to decontaminate the spilled PCBs and chemicals at a cost estimated to exceed \$500,000,000 dollars. Texas Eastern will also pay EPA more than \$18,000,000 for oversight costs including the services of a contractor who will work for EPA to supervise site operations and and sampling data. The cleanup program is expected to take more than 7 years.

Following entry of the Consent Decree, the Commonwealth of Pennsylvania appealed the settlement to the Fifth Circuit Court of Appeals, charging that state interests in ensuring cleanup were not adequately considered and that they were entitled to intervene in the suit, as a matter of right. This contention was rejected by the Court on February 13, 1991.

U.S. v. Transwestern Pipeline Co.: This company operates a number of compressor stations on an interstate pipeline. Region VI has successfully negotiated with the company for the first regional consent decree under TSCA to address polychlorinated biphenyl (PCB) contamination of a natural gas pipeline and associated compressor stations. The consent decree was filed June 13, 1990, in the U.S. District Court in New Mexico. The consent decree provides for assessment of the extent of the PCB contamination and cleanup standards for soil and equipment contamination. The cleanup costs are estimated at \$60 million. The consent decree requires that the company provide an oversight contractor for use by EPA to determine compliance with the consent decree. Additionally, a penalty of \$375,000 was collected.

The consent decree was negotiated so that the interests of the State of New Mexico were protected. The New Mexico Environmental Improvement Division, the U.S. Bureau of Land Management, and the New Mexico State Land Office were involved in the negotiations as much as possible, and they were kept informed of all progress toward the completion of the negotiations. The Navajo and Laguna Indians were informed of the results of the negotiations. The consent decree reserves the rights of all other environmental statutes so that if violations of other laws are found during the cleanup, that program may take any action necessary. This has been important for the RCRA program, in that RCRA constituents have been found in the ground

water at one of the sites. The TSCA program has been keeping the RCRA program informed of all information concerning the contamination.

In the Matter of Union Camp Corporation: On December 5, 1989, EPA filed a civil administrative Complaint against Union Camp Corporation alleging violations of the TSCA §5 premanufacture notification (PMN) regulations and proposing a penalty of \$285,000. The case was settled on May 29, 1990, by Consent Agreement and Consent Order the terms of which provided for payment of a \$106,000 penalty, submission of revised company policy and procedures for PMN compliance, and development and implementation of a five-year program of annual day-long TSCA New Chemical Compliance Meetings for employees having responsibility for compliance with the PMN requirements of TSCA.

In the matter of Union Electric Company: This case is an example of how Region VII used administrative enforcement under TSCA to obtain environmentally beneficial expenditures to dispose of PCBs. In 1983, EPA Region VII issued an approval to the Union Electric Company (UE), St. Louis, Missouri, to dispose of its own PCB oils in a high efficiency boiler. In 1988 and 1989, Region VII inspected the boiler facility and discovered violations of the UE approval. Two administrative complaints were issued. The upfront civil penalty obtained was \$79,500. In the settlement, UE agrees to disposal of its 173 remaining askerol transformers containing 22,000 gallons of askerol oil by March 1992. UE provided financial assurance for the closure of its Labadie PCB burn facility in accordance with a closure plan submitted.

In addition, the approval granted UE in 1983, which contained no expiration date was modified to include, among other things, an expiration date of March 1995. By the time the approval expires, UE will have incinerated 750,000 gallons of PCB oil in addition to the amounts already destroyed. This would include oil from 25,000 PCB and PCB-contaminated transformers at an estimated cost of \$4.5 million. The deferred portion of the penalty was \$150,000.

In the matter of Upjohn: A complaint was issued against the Upjohn Company of Kalamazoo, Michigan on July 10, 1989, alleging one count of submitting a chemical to the original TSCA inventory, even though the company never



manufactured the chemical, and four counts of manufacturing new chemical substances without going through the PMN process. The proposed penalty was \$771,000. Upjohn voluntarily disclosed the alleged violations in a meeting held at Upjohn's request. EPA and Upjohn agreed to settle the case with Upjohn paying a \$400,000 penalty.

In the matter of Velsicol: EPA initiated an administrative enforcement action against Velsicol on July 17, 1990. EPA alleged that Velsicol failed to maintain all of the records required under 40 CFR Part 720.78 to support the PMN that was submitted for one chemical, manufactured another chemical on two separate occasions prior to the end of the PMN review period, and used and distributed the last chemical on one occasion prior to the end of the PMN review period. The complaint proposed \$51,000 and collected the full amount. Although this company is headquartered in Region V, Velsicol's corporate officials contacted EPA's Headquarters directly in order to process their concerns about the manufacture of the chemicals. EPA's Headquarters conferred with the Regional staff and jointly processed the case which resulted in a collection of the full penalty.

In the matter of Worthen Industries, Inc.: On December 10, 1986, an EPA/NEIC inspector lawfully inspected Respondent's Nashua, New Hampshire facility to review Respondent's compliance with TSCA §5 and §8. On March 16, 1989, EPA filed a civil administrative complaint against Worthen Industries, Inc. seeking a civil penalty in the amount of \$3,429,500 for failing to properly submit PMNs and NOCs for the chemical substances. Based upon records and information submitted by Worthen subsequent to the issuance of the Complaint, EPA concluded that certain chemical substances were manufactured, processed and distributed in commerce as indirect food additives for the time period alleged in the Complaint. Thus, these chemical substances were not subject to the PMN requirements of TSCA §5. The Agency amended the complaint and reduced the total proposed penalty to \$175,000. During settlement negotiations EPA agreed to reduce the proposed civil penalty by 15% to \$148,750. The 15% reduction reflected the cooperation and good faith demonstrated by Worthen in addressing the alleged violations and in negotiating this Consent Agreement, and Worthen's good faith willingness to conduct an annual educational

program on the TSCA §5 and §8 requirements. On May 14, 1990, the Chief Judicial Officer signed the Consent Order assessing the \$148,750 civil penalty and providing for the TSCA educational program.

Federal Facilities - TSCA

In the matter of U.S. Department of Energy, Bonneville Power Administration: A Memorandum of Agreement was signed on March 22, 1990, between EPA Region X and the U.S. Department of Energy, Bonneville Power Administration, Portland, Oregon, to address extensive PCB contamination at four major substations along the Pacific Northwest/Pacific Southwest Electric Intertie in Oregon. All PCB equipment at the substations will be disposed of and PCB contamination at the substations will be characterized and cleaned up. The Agreement will result in the disposal of approximately one-fourth of all PCB Capacitors in the BPA system.

In the matter of U.S. Navy, Naval Underwater Warfare Engineering Station, Indian Island, Washington: A Memorandum of Agreement (MOA) was signed on December 1, 1989, between EPA Region X and the U.S. Department of the Navy, Naval Sea Systems Command, to bring the Navy into compliance at the Naval Undersea Warfare Engineering Station, Indian Island, Washington. The MOA arose from an enforcement action against the Navy concerning the illegal use of PCB-contaminated mine cable. (This cable is used to tether undersea mines; however, such use is not currently authorized under the PCB Regulations and provides direct introduction of PCBs into the environment.) The Agreement provided for the elimination of all PCB-contaminated mine cable at the Indian Island facility and documentation of the disposal of the mine cable. In addition, the Department of the Navy agreed to enter into discussions with EPA Headquarters to develop a program to identify all PCB-contaminated mine cable presently in use by the Navy throughout the world and to bring the use of such cable into compliance with the PCB Regulations.

In the matter of U.S. Dept. of Transportation, Coast Guard Support Center, Kodiak, Alaska: A Memorandum of Agreement (MOA) was signed on November 27, 1989, between EPA Region X and the U.S. Department of Transportation, United States Coast Guard. The MOA resolved two enforcement actions which alleged that the



Coast Guard illegally distributed PCBs in commerce and improperly disposed of PCBs by allowing PCBs to leak from in-service equipment. The Agreement provides for total remediation of extensive PCB contamination throughout the U.S. Coast Guard Support Center Kodiak in Kodiak, Alaska. The contamination occurred primarily as a result of equipment leakage in the electrical distribution system at the Support Center. The distribution system has been sold to the local electrical utility, Kodiak Electric Association. The Agreement provides for the proper disposal of all electrical equipment regulated under TSCA.

Emergency Planning and Community Right-to-Know Act (EPCRA) Enforcement

Under EPCRA § 313 (Toxic Release Inventory), subject manufacturing facilities must provide EPA with annual data on total emissions of toxic chemicals by environmental media. FY 1990 Enforcement efforts were taken against nonreporters, as well as late and incorrect reporters. Other provisions of EPCRA require the reporting of accidental releases of toxic chemicals to State and local emergency response offices.

In the Matter of All Regions Chemical Labs, Inc.: The Administrative Law Judge's decision in this case supports EPA's prompt enforcement for violations of CERCLA §103 and EPCRA §304 reporting requirements. The case is significant because it is the first time a penalty has been assessed for failure to report a release of a chemical under both CERCLA and EPCRA.

On December 1, 1989, Administrative Law Judge Henry B. Frazier assessed the first CERCLA §103 and EPCRA 304 penalty for failure to report the accidental release of hazardous substances into the environment. An Interlocutory Order granting Complainant's Motion for Partial Accelerated Decision was issued in this case on May 3, 1989. The ALJ stated that the notification requirements of CERCLA § 103 and EPCRA § 304, while similar in their purpose to protect the public and the environment in the event of hazardous chemical releases, are separate and independent requirements. Therefore, each notification requirement must be met by the responsible party.

The ALJ noted that the defendant had failed to notify the National Response Center

immediately upon the release or the Local Emergency Planning Committee and the State Emergency Response Commission as soon as practicable after the release and provide written follow-up emergency notice.. The fact that the local fire department was on the scene soon after the release in no way diminished the requirement that the person in charge at the site notify the NRC. The ALJ assessed the defendant \$20,000 under CERCLA §103 and \$69,840 under EPCRA §304. On July 2, 1990, Chief Judicial Officer Ronald McCallum affirmed the decision of the presiding officer assessing civil penalties of \$89,840 against All Regions Chemical Labs.

In the Matter of The Boeing Company, Seattle, Washington: The Boeing Company Plant 2 facility in Seattle, Washington, was selected for an EPCRA inspection based upon discrepancies in Toxic Release Inventory reporting. The company had reported to the local air pollution control agency for releases of trichloroethylene but did not apparently report that chemical to EPA. The inspection revealed that the company had filed a corrected Form R reporting for trichloroethylene, but that the company had not reported for five other chemicals. The records which the company utilized in preparing the reporting were not sufficient or comprehensive enough to firmly establish that other chemicals should have been reported. A Civil Complaint proposing a penalty of \$85,000 was issued to the company on August 6, 1990. The company did not generally contest the facts of the complaint and proposed as part of the settlement three projects as Environmentally Beneficial Expenditures (EBEs): solvent recovery, de-ionization and decontamination of chromium wastewater, and reduction of paint booth sludge and waste disposal. The final assessed penalty was \$72,250 with \$29,750 of that amount to be suspended conditional on successful completion of the EBEs.

In the Matter of BP Oil Company: In April 1990, Region II completed a consent order with the BP Oil company for release notification violations at its Paulsboro, New Jersey facility. The agreement provided for payment of \$102,000 in penalties, a record at that time.

In the Matter of Champion International Corporation: Through a coordinated effort of the Maine Department of Environmental Protection, the Maine State Emergency Response Commission, and Region I, an EPCRA administrative complaint was issued against



Champion International Corporation of Bucksport, Maine for failing to make timely notifications following a chlorine release. Information provided by the Maine agencies was used to establish the violations alleged in the complaint. In settlement of the action, Champion agreed to pay a \$12,000 penalty and provide \$5,000 worth of computer hardware and software enhancements to the Hancock County Emergency Management Agency's computerized response and contingency planning capabilities.

In the Matter of Citrus Hill Mfg. Co. Frost Proof.

EL: Region IV issued an administrative complaint in response to a spill which was not properly reported and exceeded the reportable quantity (RQ) for ammonia. The case was part of a headquarters initiative to emphasize the importance of timely and accurate reporting under §103 of CERCLA and §§304(a), (b) and (c) of the Emergency Planning and Community Right to Know Act (EPCRA). The RQ for ammonia is 100 lbs. and the quantity reportedly spilled by Citrus Hill was 300 lbs. There was no known negative impact to the offsite population or environment.

The parties have discussed a settlement which considers numerous mitigating factors, e.g., Citrus Hill's demonstration of responsible corporate involvement with its surrounding community through educational seminars and outreach programs. A penalty of \$15,000 was paid along with several environmentally beneficial expenditures, (e.g., donation of a chlorine repair kit to the local emergency response team).

In the matter of Columbia Corrugated Box, Portland, Oregon:

Columbia Corrugated Box is the corporate parent of Packaging Resources, a manufacturer of foam insulation and packaging material. An analysis of information provided by the company revealed that the facility failed to file required Toxic Release Inventory reports for Dichloromethane for reporting years 1987 and 1988 and for an isocyanate resin for 1987. A Civil Complaint proposing a penalty of \$51,000 was issued to Columbia Corrugated on May 5, 1990. Following receipt of the complaint, Columbia Corrugated produced additional documentation which was not available during the inspection. This new information indicated that, contrary to the information produced at the inspection, the company did not meet the reporting thresholds for two of the three counts listed in the complaint. In mitigation of the penalty for the

remaining violation, the company proposed Environmentally Beneficial Expenditures (EBEs) in the form of equipment and process chemical changes to avoid use of CFC materials. Further, the company made another equipment change which greatly reduced the amount of solvent used in the manufacture of the foam packaging. A settlement agreement was signed on August 22, 1990, providing an assessed penalty of \$14,450 but with a further reduction to \$10,200 on completion of the EBEs.

In the Matter of Eutectics Metals Co.: A fire at a gold recovery facility located in Roanoke, Texas necessitated the evacuation of nearby residents, and triggered an investigation. It was found that the facility had not given proper inventory reports under EPCRA. The facility settled the case for payments of a \$30,000 penalty to EPA, and payments of \$4,000 each to the Denton County and Tarrant County Local Emergency Planning Committees and a payment of \$2,000 to a local fire department for use in local EPCRA programs.

In the Matter of Hercules, Inc. Brunswick, GA:

The complaint assesses a \$15,000 penalty for failure of the facility to properly report a spill event in accordance with the requirements of §103 of CERCLA. This case is part of a headquarters initiative to bolster the importance of timely and accurate reporting of spills. The facility failed to timely and accurately report a spill involving 1220 lbs. of sodium hydroxide, a "hazardous substance" as defined under Section 101(14) of CERCLA.

In the Matter of Kemira, Inc. Savannah, GA., (EPCRA/CWA/CAA):

A complaint was filed seeking to enforce against this facility's long history of failure to submit material safety data sheets (MSDSs) on propane and No. 2 fuel or to include propane and No. 2 fuel on the list of chemicals stored at the facility. In accordance with EPCRA regulations, the facility should have begun reporting in October 1987 and continue submissions each March 1 for every year thereafter. The facility's first MSDS report was submitted in March 1990.

An investigation also revealed other violations under EPCRA §304 and were combined with previous CERCLA §103 violations, resulting in one of the highest penalties (\$355,000) assessed by Region IV to any single facility. The complaint will cite Clean Water



and Air violations and represents another example of the Region's multi-media enforcement initiative.

In the Matter of Seekonk Lace: Seekonk Lace was the Region I's first EPCRA settlement providing for environmentally beneficial expenditures by a company. As part of the \$15,000 settlement of this \$25,000 § 313 case, the respondent agreed to spend approximately \$95,000 to convert an acetone-based solvent system used in lace production at its Rhode Island facility to a mechanical system which used no solvents. The use of the toxic chemical acetone was completely eliminated.

In the Matter of Wyman-Gordon Company, Inc.: On September 28, 1990, Region I initiated one of the largest enforcement actions brought to date under EPCRA. This action, which combined for the first time in the Region both the §313 and 302-312 components of the program, proposed total penalties of \$478,000 against the Wyman-Gordon Company of North Grafton, Massachusetts. The Region coordinated inspections between the two EPCRA programs, resulting in the development of a joint complaint which comprehensively addressed all violations of EPCRA at this facility, including failure to file Toxic Release Inventory forms and failure to submit chemical inventory information to local and state authorities.

Federal Insecticide, Fungicide, & Rodenticide Act (FIFRA) Enforcement

FIFRA establishes a federal registration program for new and existing pesticides and gives the States enforcement primacy for violations involving pesticide misuse. FY 1990 enforcement efforts centered upon violations of suspension/cancellation requirements; product mislabeling; sale of unregistered pesticides; and violations of import-export requirements. The pesticide program also took enforcement action against significant violations involving pesticide misuse upon referral from States.

In the Matter of Gotham Chemical: Region I issued a major administrative complaint in FY 1990 against Gotham Chemical of Stamford, Connecticut for sale and distribution of disinfectants which were misbranded and adulterated and about which the company made claims that substantially differed from those

accepted as part of the pesticides' registration. This case was referred to the Region from the State of Connecticut. Proposed penalties in this action are \$45,400.

In the Matter of Safer, Inc.: Region I successfully settled its case against Safer, Inc. of Wellesley, MA in FY 1990. For several years, Safer has made safety claims for its products in violation of the FIFRA regulations, despite a notice of warning issued by EPA Headquarters. The final assessed penalty was \$10,000. The settlement included an environmentally beneficial expenditure of \$70,000 for production and distribution of a pamphlet about the safe use of pesticides by homeowners.

Pesticide Export Enforcement Initiative: EPA issued complaints charging nine companies with unlawful export of pesticides. The charges included export of pesticides labeled only in English to foreign countries in which English is not an official language, failure to obtain a statement from the foreign purchaser acknowledging that the pesticide was not registered for use in the United States, and failure to label pesticides "Not Registered for Use in the United States of America".

The companies charged in these complaints are Dow Chemical Company, Shield-Brite Corporation, Mobay Corporation, Exxon Chemical Americas, Rohm and Haas Bayport, Inc., Chevron Chemical Company, NL Industries, Inc., Sandoz Crop Protection, and Monsanto Chemical Corporation. Following is the outcome for 5 of the 9 cases:

In the Matter of Chevron Chemical Company: On July 16, 1990, a Consent Agreement and Consent Order was issued settling the pesticide export case against Chevron. Based on evidence presented by EPA of violations not alleged in the civil administrative Complaint, Chevron paid a penalty of \$72,000, representing 100% of the proposed penalty for the original counts, in addition to counts discovered after the filing of the Complaint. Chevron also revised its internal operating procedures for pesticide exports after review by its Label Task Force formed as a result of this case.

In the Matter of Dow Chemical Company: On May 15, 1990, a Consent Agreement and Consent Order was issued by which Dow agreed to pay 100% of the proposed penalty of \$22,400.



In the Matter of Exxon Chemical Americas: On May 14, 1990, a Consent Agreement and Consent Order was issued by which Exxon agreed to pay 100% of the proposed penalty of \$36,400.

In the Matter of Mobay Corporation: On July 25, 1990, a Consent Agreement and Consent Order was issued settling the pesticide export case filed against Mobay Corporation. Mobay paid a civil administrative penalty of \$97,840 to settle the case.

In the Matter of Rohm & Haas Company: On September 11, 1990, the Chief Judicial Officer issued a Consent order settling the civil administrative proceeding filed against Rohm & Haas for violations of the pesticide export regulations. Both Rohm & Haas Company and BASF Corporation were parties to the settlement agreement as a result of the contractual arrangement between the companies. BASF was the exporter of record for most of the shipments noted in the complaint, and so, took an active role in the settlement negotiations. The companies agreed to pay \$19,200 in settlement.

Criminal Enforcement - All Statutes

U.S. v. Auten (CWA): The owner of a Florida used tire business was sentenced July 25 to a three year period of probation for unlawfully dumping thousands of tires into the West Palm Beach Canal. John C. Auten of West Palm Beach, Florida was also ordered to pay the South Florida Water Management District restitution in the amount of \$16,829.88 for the cost of removing tires from the canal. In addition, as a consequence of Auten's conviction for violating the CWA, Auten's business, Caroline Tires, Inc., is on the List of Violating Facilities and is ineligible for federally funded contracts, grants, or loans.

As further punishment, Auten was ordered to perform 300 hours of environmentally-related community service. As part of his community service, the court ordered Auten to assist the Water Management District in removing the illegally dumped tires from canal banks. This was a joint FBI-EPA Criminal Investigation. The Palm Beach County Sheriff's Department also assisted in the investigation.

U. S. v. John Borowski and Borjohn Optical Technology, Inc. (CWA): On May 23, 1990, a federal jury convicted Borjohn Optical Technology, Inc. and its president, John Borowski,

of illegally discharging toxic metals and dangerous chemicals into the sewer system and endangering company employees in the process. At the sentencing on October 7, 1990, Mr. Borowski received 26 months in prison, to be followed by two years of probation, and a \$400,000 fine. Borjohn Optical was fined \$50,000 and was ordered to make a lump sum payment of \$15,500 for medical bills for two employees. As a consequence of the conviction, Borjohn Optical is on the List of Violating Facilities and is ineligible for federally funded contracts, grants, or loans. This is the first time that an individual or a corporation has been convicted of knowing endangerment under the Clean Water Act. The defendants ordered workers to discharge nickel plating and nitric acid solutions containing illegal concentrations of nickel and illegally low pH into the sewer system in Burlington, Massachusetts which is tied into the Massachusetts Water Resource Authority's treatment plant, which in turn discharges into Boston Harbor.

During the illegal disposals, the employees were exposed to toxic levels of nickel, nitric acid, and nitrogen dioxide. Exposure to nitric acid and its fumes may result in serious burns and life-threatening respiratory tract damage. Exposure to nickel may result in severe skin disease, asthma, and an increased risk of cancer. The illegal discharges stemmed from Borjohn's metal finishing operation, in which the company plated various metals, including nickel, onto Bradley Fighting Vehicle elevation mirrors, M-1 tank mirrors, and Cruise Missile folding mirrors.

U.S. v. Robert Coble and Raymond Brittain (CWA): A former water pollution plant supervisor was sentenced March 27, 1990 to a 5-year term of imprisonment, with all but 4 months suspended, and was placed on 5 years probation. Robert Coble pled guilty on January 24 to one felony false statement count for filing false discharge monitoring reports and one misdemeanor count under the Water Act for discharges in violation of a National Pollutant Discharge Elimination System permit.

Coble, former Water Pollution Control Plant Supervisor of the City of Enid, Oklahoma, and Raymond T. Brittain, former Superintendent of Public Utilities (and Coble's supervisor) were charged on December 12, 1989, by a 48-count indictment with falsifying discharge monitoring



reports and illegal bypassing of the sewage treatment plant. Brittain was convicted by a jury on 18 counts of false statements and two counts of CWA violations. He was sentenced on March 31, 1990 to one year imprisonment on each of the 20 counts, to be served concurrently, and ordered to pay a special assessment on each count totaling \$950.

The violations occurred before amendments to the Clean Water Act made these violations felonies, and prior to the applicability of the Federal Sentencing Guidelines for individuals.

U.S. v. Thomas Capozziello (CAA): On December 15, 1989, following a two-week trial, the jury returned guilty verdicts against Capozziello and his company, Bridgeport Wrecking, for violating federal NESHAPs standards relating to the removal and handling of asbestos from buildings that are being demolished. The case stemmed from a citizen's complaint in connection with the fall 1986 demolition of the Knudsen Dairy in North Haven, Connecticut.

On March 16, 1990, Thomas Capozziello, president of Bridgeport Wrecking Company, Inc., was sentenced to one year in prison, all but three months suspended, three years probation, and a \$10,000 fine. His company was sentenced to pay a \$40,000 fine. The three months to be served by Capozziello represented the longest prison term in New England for a violation of the Clean Air Act. As a consequence of the conviction, Bridgeport Wrecking Company of Bridgeport, Connecticut, is on the List of Violating Facilities and is ineligible for federally funded contracts, grants, or loans.

U.S. v. Chemical Commodities, Inc. (RCRA): On January 5, 1990, Chemical Commodities, Inc. (CCI), a Kansas corporation which is in the chemical brokering business, entered a plea of guilty to unlawfully disposing of a hazardous waste in violation of 42 U.S.C. S 6928(d)(2)(A) (RCRA). On May 18, 1990, the U.S. District Court for the District of Kansas imposed a sentence of five years probation and special conditions, including liquidation, cessation of business except to the extent necessary to liquidate, and completion of clean-up operations at three CCI locations in compliance with an approved closure plan. Clean-up of the sites, including disposal of all hazardous and radioactive wastes, is to be performed under the direction and supervision of an independent supervising contractor to be selected by EPA. The company also was sentenced

to pay a \$500,000 fine, which was suspended upon condition that the company fulfills its obligations under the sentencing order.

The conviction of the company was a result of a criminal investigation which revealed that in the fall of 1988, Jerald Gershon, President and owner of Chemical Commodities, Inc., ordered several employees to destroy 40,000 ampules of methyl bromide. The employees destroyed the ampules by grinding them in a small peanut grinder. The liquid methyl bromide volatilized into gas and escaped into the air and the crushed glass ampules were placed in a local landfill.

U.S. v. Crittenden Conversion Corporation (RCRA): On March 20, 1990, an information and a plea agreement was filed in U.S. District Court, Seattle, Washington, charging the Crittenden Conversion Corporation with a one-count RCRA felony violation (transporting hazardous waste without a manifest). As part of the plea agreement, Crittenden agreed to enter a guilty plea to the charge and pay a fine of \$25,000, plus full restitution to the Washington State Department of Ecology for the clean-up, storage, and disposal of 21 drums of material that had been abandoned by the company in a wooded area of Preston, Washington. This cost is estimated to be approximately \$18,000. On March 20, 1990, Crittenden pled guilty to the one count and was sentenced on May 3, 1990 to the agreed penalties under the plea agreement.

U.S. v. Fisher RPM Electric Motors, Inc. and Rodney R. Fisher (CWA): On February 8, 1990, in Portland, Oregon, Rodney R. Fisher was sentenced to 3 months of imprisonment, 3 years probation and fined \$2,500 by U.S. District Court Judge Malcolm F. March. Fisher pled guilty on December 4, 1989, to one count of unlawful disposal of motor cleaning solvents into an adjacent stream, a misdemeanor under the Clean Water Act. This plea was the result of a plea bargain agreement which stipulated that all remaining felony counts against Rodney R. Fisher and Fisher RPM would be dismissed after sentencing. As a consequence of the conviction, Fisher RPM Electric Motors, Inc., of Portland, Oregon, is on the List of Violating Facilities and is ineligible for federally funded contracts, grants, or loans.

U.S. v. J&J Investments (SDWA): In the first criminal case brought under the underground injection well provisions of the Safe Drinking



Water Act, a federal court Aug. 27, 1990, sentenced a Michigan partnership to pay a fine of \$13,429. J & J Investments pled guilty to one count of submitting false information to the government.

U.S. v. Inman & Associates (TSCA): U.S. District Court Judge Hayden W. Head, in the Southern District of Texas, fined a South Carolina firm and a former employee for failure to report a spill of polychlorinated biphenyls and illegal disposal. Inman & Associates, Inc., a South Carolina firm, was sentenced to three years probation and fined \$80,000 for failure to report the spill, caused by its former employee, John McMichen. McMichen, the former Inman employee, received a \$5,000 fine.

The court suspended \$40,000 of the fine against the company, but said that the firm's failure to make any of three installment payments could be grounds for revocation of probation and execution of the entire fine. Inman & Associates pleaded guilty January 25, 1990 to a violation of the Comprehensive Environmental Response, Compensation, and Liability Act for its failure to notify the appropriate U.S. agency of the spill. On the same date, McMichen also pleaded guilty to the 1987 disposal of PCBs at the Corpus Christi Naval Air Station in violation of the Toxics Substances Control Act. The sentencing guidelines were inapplicable as the violation occurred prior to November 1, 1987.

U.S. v. Stephen L. Johnson and Country Estates Investment, Inc. (CWA): In December 1988, the Federal Grand Jury impaneled for the United States District Court for the Western District of Missouri indicted Stephen L. Johnson, a local Springfield, Missouri, developer, and Johnson's companies, Country Estates Investment, Inc. doing business as Colony Cove Mobile Home Park for one felony count violation of the Clean Water Act. Johnson was charged with the knowing discharge of pollutants from a point source into navigable waters of the United States in violation of the National Pollution Discharge Elimination System as a result of a November 2, 1988, incident in which the mobile home park built and operated by Johnson and his companies had a spill from the mobile home park's sewage lagoon, located in southeast Springfield, Missouri. The spill, consisting of an estimated 750,000 gallons of effluent from the sewage lagoon, resulted when Johnson used a bulldozer to cut a beam holding the lagoon and allowing the

sewage to flow into a stream leading into Lake Springfield.

On April 11, 1989, following the January 3 entry of a plea of guilty to the felony charge, a United States Magistrate applied the Sentencing Guidelines for the first time to a conviction under the Clean Water Act, and sentenced Stephen L. Johnson to serve five months in prison and to pay a fine of \$2,500; the corporation was sentenced to pay a fine of \$35,000. Johnson subsequently appealed his conviction and sentence under application of the Guidelines. The United States Circuit Court of Appeals for the Eighth Circuit entered its order September 21, 1990, rejecting Johnson's appeal and sustaining the sentence of the United States District Court. In November, 1991, Johnson began serving his sentence of confinement at the Fort Scott, Kansas, Southeast Regional Correction Center.

U.S. v. Jones (CWA): A Wall Street trader pleaded guilty on May 25, 1990 to violating the CWA and was sentenced to pay \$2 million, the largest monetary penalty ever assessed against an individual in an environmental case. Paul Tudor Jones II was charged by a one-count information with negligent discharge of pollutants in a case that involved the illegal filling of 86 acres of wetlands on the Eastern Shore of the Chesapeake Bay. William B. Ellin, Jones's project manager for development of the site, also was charged with six counts of knowingly violating the CWA, and one count of violating the Rivers and Harbors Act. Mr. Ellin was convicted on January 5, 1991, of five felony charges (4 counts of filling without a permit and one count of violating the Rivers and Harbors Act). He will be sentenced on April 15, 1991.

The size of the filled wetlands makes this the largest area ever involved in a Federal criminal environmental enforcement case. Jones was sentenced to 18 months probation, to pay a \$1,000,000 fine, to pay \$1,000,000 in restitution, to completely restore the damage to his property, and to record a conservation easement to protect 2,500 acres of his property from future development. As a consequence of the conviction, Tudor Investment Corporation of New York, NY, is on the List of Violating Facilities and is ineligible for federally funded contracts, grants, or loans.

The case is also notable because the Department of Justice agreed with Mr. Jones to



the payment of the \$1 million for restitution to be held in trust by the National Fish and Wildlife Foundation, to be used in the acquisition, restoration, and management of neighboring wetlands and endangered species habitat in the nearby Blackwater National Wildlife Refuge. The National Fish and Wildlife Foundation is a private conservation organization established by Congress in 1984 to benefit the programs of the U.S. Fish and Wildlife Service.

U.S. v. Konstandt Labs (FIFRA): On April 10, 1990, Konstandt Laboratories, Inc., and its owner, Felix Konstandt, were sentenced for knowingly providing false and fictitious test results to Sigma Coatings, Inc., which had been required by EPA to provide data about its marine coating products. The lab falsified 19 separate results-of-analysis reports. The company was fined \$100,000 under the Alternative Fines Act, for a violation of 18 U.S.C. § 1001. Felix Konstandt was fined \$1,000, sentenced to one year probation, and given a 30-day prison term, to be served under house arrest or in a "halfway house," for violation of FIFRA.

In 1987, EPA issued a "data call-in" to Sigma Coatings, Inc., manufacturer of marine coating products containing anti-foulants, which are pesticides registered by EPA under FIFRA. Sigma entered into a contract with Konstandt Labs to perform the studies required by the data call-in. During September 1987, Konstandt Labs and its owner knowingly provided false and fictitious test results to Sigma, which in turn provided the false information to EPA.

U.S. v. John Meighan and U.S. v. David Cohen (RCRA): Two former owners of a Baltimore precious metal recycler were sentenced February 28, 1990 to prison terms of three years and 33 months, respectively, for violating the Resource Conservation and Recovery Act. The site also has been subject to a Superfund cleanup financed by a potentially responsible party.

John Meighan, who received a three-year sentence, was former owner of Capitol Assay Laboratories, and pled guilty on December 11, 1989, to one count of illegal treatment, storage, and disposal of hazardous waste. David Cohen was sentenced to 33 months for an identical charge, to which he had pled guilty on December 14, 1989. Cohen had owned the facility prior to selling it to Meighan. Neither defendant was sentenced under the Sentencing Guidelines, as the

violations to which they pled guilty occurred prior to November 1, 1987.

U.S. v. Angelo Paccione and Anthony Vulpis (RCRA): On Oct. 3, 1990 two owners of private carting companies were sentenced in the Southern District of New York to 12 years and seven months in prison for dumping thousands of tons of medical waste, asbestos and other hazardous materials in an illegal landfill on Staten Island. Judge Constance Baker Motley, called the case "one of the largest and most serious frauds ever prosecuted in the United States involving environmental damage."

The defendants, Angelo Paccione and Anthony Vulpis, were convicted on June 8, 1989, after a three-month trial, of RICO violations for running an illegal landfill on more than 70 acres. Evidence at the trial showed that the land was used as a dump for 500,000 tons of waste materials that included garbage, asbestos and medical and infectious waste. The land fill bordered housing and wetlands, including a state-designated white heron rookery. Cleanup has been estimated at \$15 million.

Judge Motley said she increased the sentences because of the size of the fraud and because Mr. Paccione and Mr. Vulpis had not fulfilled an agreement to pay \$22 million in fines, forfeitures and penalties within 90 days of their convictions. A third defendant, John McDonald, who was convicted with Mr. Paccione of having unlawfully collected, transported and stored infectious medical waste, was sentenced to one year in prison. These convictions resulted from a joint investigation of the New York Office of Criminal Investigations, New York Department of Sanitation, and the FBI.

U.S. v. Martha C. Rose Chemicals Co. (TSCA/CWA): In October of 1989, five corporate officers and/or employees of the now defunct Martha C. Rose Chemicals Co. in Holden, Missouri, entered pleas of guilty to conspiracy to defraud the EPA and other charges. They were sentenced in the District of Missouri in the spring of 1990. Sentencing ranged from probation to two years imprisonment and a \$10,000 fine for this pre-sentencing guidelines case.

These five defendants joined a sixth defendant who had previously pled guilty to conspiracy and to falsifying records. The six defendants were indicted after a lengthy



investigation into the treatment, transportation, handling and storage of PCBs at the Martha C. Rose Chemicals Co. The defendants were indicted for conspiracy to defraud the EPA, falsifying records required by TSCA, falsifying NPDES records and improper storage of PCB transformers. The Martha C. Rose Chemicals Co. went bankrupt and abandoned the site, requiring a \$20 to \$30 million Superfund cleanup. These convictions were a result of an exhaustive EPA and FBI criminal investigation.

U.S. v. Sherman Smith (R&HA): On January 2, 1990, Sherman Smith was sentenced to 30 days imprisonment, one year probation and a \$2,000 fine as a consequence of his August 18, 1989 guilty plea to one misdemeanor count for violating the Rivers and Harbor Act. Smith is the owner of Seawall Construction Company of Seattle. The case arose out of Smith's practice of engaging in the unpermitted pumping of oil contaminated wastewaters into Puget Sound from the tow tugboats and barges operated by his company. Smith had been issued repeated warnings and citations by the U.S. Coast Guard and State of Washington Department of Ecology concerning this unlawful activity. Smith's refusal to comply prompted the U.S. Attorneys Office to file a complaint and to obtain an arrest warrant, in lieu of proceeding by way of a summons for Smith, when he repeated the wrongdoing on March 31, 1989.

U.S. v. Speech (RCRA): On September 27, 1990 the former president of a California company that operated mobile wastewater treatment units was convicted by a federal jury in Los Angeles of four counts of illegal transportation of a hazardous waste and eleven counts of illegal storage of hazardous wastes. Michael Robert Speech had been president of ENV, Inc., at Rancho Dominguez, California from 1973 to 1988. He operated mobile wastewater treatment units which generated F006 sludges at electroplating shops in Southern California. In 1986, Speech entered into an agreement with the operators of Monarch Milling, an incomplete silver smelter at Austin, Nevada to recover chromium from the wastes.

The defendant began shipping drums of F006 waste and corrosive waste to Monarch Milling in September 1986, thereby saving himself the costs of disposal while violating RCRA.

Speech and his vice president for operations, Charles E. Welch, were indicted on June 21, 1990. Welch pleaded guilty in July 1990 to one RCRA count of illegal storage and one RCRA count of illegal transportation. Welch was sentenced on October 15, 1990 to three years probation and a \$15,000 fine; Speech was sentenced on December 3, 1990 to 6 months imprisonment, 3 years probation, a \$28,000 fine, and 300 hours of community service.

U.S. v. Wells Metal Finishing, Inc. (CWA): The owner of a Lowell, MA, metal-finishing firm was sentenced to 15 months in prison March 22, 1990 for dumping cyanide and zinc into Lowell's sewer system. It was the longest jail term ever handed out in for a pretreatment violation. John Wells, of Dunstable, the owner of Wells Metal Finishing, Inc., was found guilty in December 1989 of 19 counts of violating the CWA, dumping wastes between 1987 and February of 1989. The city of Lowell reportedly spent \$60,000 on cleanup. Judge David Nelson of the U.S. District Court for the District of Massachusetts fined Wells \$60,000, saying: "This is not just another white-collar crime, but rather this is an extremely serious case which could have had devastating environmental consequences." Assistant U.S. Attorney Richard Welch tried the case. As a consequence of the conviction, Wells Metal Finishing, Inc., of Lowell, MA, was placed on the List of Violating Facilities and is ineligible for federally funded contracts, grants, or loans.

U.S. v. Bert Michael Willard (CERCLA): On July 31, 1990, Bert Willard entered a guilty plea to one count of violating CERCLA notification requirements (42 U.S.C. 9603(b)) as a result of an investigation into the dumping of hazardous waste, asbestos, and electrical devices (capacitors) containing polychlorinated biphenyls (PCBs), at a site in Maple Valley, Washington. The dump site along a dirt road was discovered on May 18, 1990 by an off-duty police officer. Among the items found at the site were a number of large capacitors containing PCBs, numerous bottles of flammable or corrosive chemicals, and what has been estimated to be over one thousand pounds of asbestos including pipe wrappings, ropes, gaskets, and paper-like sheets. On January 16, 1991, Mr. Willard was sentenced to 5 years probation, 6 months of "home detention," 200 hours community service, and \$15,000 in restitution.



Contractor Listing

Under the Clean Air Act (CAA) 306 and the Clean Water Act (CWA) 508, EPA has authority to prevent facilities that violate Federal water pollution and air pollution standards from receiving Federally funded contracts, grants or loans, by placing the facility on the List of Violating Facilities. Facilities owned or operated by persons who are convicted of violating air standards under CAA 113(c) or water standards under CWA 309(c) (and involved in the violations) are "automatically" listed, effective the date of the conviction (referred to as mandatory listing). Facilities which are mandatorily listed remain on the List until EPA determines that they have corrected the conditions which led to the violations.

Facilities may also be listed, at the discretion of the Assistant Administrator (OE), upon the recommendation of certain EPA officials, a State Governor, or a member of the public (referred to as discretionary listing). A facility may be recommended for listing if there are continuing or recurring violations of the CAA or the Clean Water Act after one or more enforcement actions have been brought against the facility by EPA or a state enforcement agency. Facilities recommended for discretionary listing have a right to an informal administrative proceeding. Facilities listed under discretionary listing may be removed from the List automatically after one year, unless the basis for listing was a criminal conviction in a state court or a court order in a civil enforcement action. They may be removed from the List at any time if the Assistant Administrator determines that the facility has corrected the conditions which gave rise to the listing or that the facility is on a plan that will result in compliance.

Two significant Contractor Listing cases in FY 1990 were Valmont Industries Inc. and Big Apple Wrecking Corporation. The Assistant Administrator's decision in the Valmont removal case established the principle that the company's poor attitude toward compliance with environmental standards can be the condition which led to a criminal conviction and therefore the condition which needs to be corrected before a facility will be removed from the List. Big Apple Wrecking Corporation was the first discretionary listing action brought against a construction and demolition company. In this case the Agency applied its interpretation of the

definition of "facility", ie. that the facility of a construction company is the business address of the company — not the building or demolition site where the violation occurred.

Big Apple Wrecking Corporation: In a discretionary listing action against Big Apple Wrecking Corporation of Bronx, New York, Big Apple filed a motion in the United States District Court (D.Conn.) to enjoin the EPA from introducing evidence in the listing proceeding of alleged violations of the Asbestos NESHAP by Big Apple at Naugatuck, Connecticut in 1986. The same violations had been alleged in a civil complaint filed in the District Court and the civil action had been settled by a consent decree entered by Judge Burns.

Big Apple argued that the consent decree prohibits EPA from using the circumstances of the Naugatuck demolition project as evidence of a record of continuing or recurring noncompliance in the subsequent listing proceeding. Judge Burns denied Big Apple's motion on two grounds: (1) She found that Big Apple had failed to establish that introduction of evidence of the Naugatuck violations in the listing proceeding would cause irreparable harm or that Big Apple did not have an adequate remedy at law for the alleged harm that would occur if the case examiner were to rule against Big Apple in the listing proceeding. U.S. v. Big Apple Wrecking Corp., Civ.No. N-86218EBB, slip opinion at 4 (D.Conn., Oct. 20, 1989). (2) Judge Burns further found that "Even if Big Apple could demonstrate irreparable harm, it has not demonstrated a likelihood of success on the merits." Ibid. She agreed with the findings and logic of the case examiner's ruling on Big Apple's motion to dismiss, finding that the new violations, alleged to have occurred in New York following the lodging of the consent decree in the District Court for Connecticut, gave EPA cause to initiate a listing proceeding and that the alleged violations underlying the earlier consent decree are admissible in the listing proceeding. Slip opinion at 6. Following a hearing on October 24 – 25, 1989, the case examiner issued a decision on January 1, 1990, that Big Apple should be listed. Big Apple has appealed this decision to the EPA General Counsel.

Valmont Industries, Inc.: When EPA did not issue a determination on Valmont's request to remove it from the EPA List of Violating Facilities within the forty-five day period prescribed by the regulations, the company filed suit against EPA



in the U.S. District Court for Nebraska, seeking a temporary restraining order, a preliminary injunction and a permanent injunction. On January 9, 1990, the District Court ordered EPA to remove Valmont from the List immediately, pending further order of the court following the completion of the removal proceeding and EPA's final order. The Agency issued the Assistant Administrator's initial decision in this matter on January 12, 1990. The Assistant Administrator determined that the condition requiring correction was both the company's noncompliance with permit requirements and the "corporate attitude, culture and organization" which supported concealment of violations. He further determined that Valmont had not demonstrated that it had corrected the corporate attitude and therefore denied its removal request.

The case examiner's decision, issued on June 5, 1990, adopted the principles set forth in the Assistant Administrator's determination, as follows:

"[T]he condition giving rise to the conviction in this matter was Valmont's attitude toward its environmental obligations, which elevated the importance of the appearance of compliance over the importance of accurate and truthful environmental monitoring and reporting.... Valmont intentionally tampered with pollutant monitoring methods... and knowingly made a material false statement in at least one Discharge Monitoring Report... These were crimes of deception.. Valmont's corporate attitude led to the tampering and falsification, and was the condition giving rise to the conviction."

Case Examiner's Decision, at 15-16. Thus, this case established the principle that the corporate attitude toward environmental obligations may be all or part of the condition which led to violations and therefore the condition which needs to be corrected. Nevertheless, the case examiner concluded, on the facts in this case, that the condition had been corrected — that Valmont had demonstrated by the preponderance of evidence introduced at the removal hearing that, since its criminal conviction, Valmont had changed its corporate attitude toward its environmental obligations.

Update

An update is necessary to Page 30 of the EPA Enforcement Accomplishments Report: FY 1989, which references the settlement of a civil judicial enforcement action filed in May 1989, under the Resource Conservation and Recovery Act against Envirote Corporation of Thomaston, CT. In a Magistrate's recommended ruling, sent to the U.S. District Court for the District of Connecticut on April 4, 1991, the Magistrate recommended vacating the consent decree between the United States and Envirote, ordering the United States to reimburse the penalty assessed under the agreement, and further recommended directing EPA to correct the FY 1989 Accomplishments Report. At press time, the Agency is planning to file objections to this ruling.



V. Building and Maintaining a Strong National Enforcement Program

Program Development

National Enforcement Training Institute

On February 26, 1990, Senate Bill 2176, the Pollution Prosecution Act of 1990, was introduced in Congress. Section 204 of the Act mandates that the Administrator shall, as soon as practicable but no later than September 30, 1991, establish within the Office of Enforcement the National Enforcement Training Institute to train Federal, State, and local personnel in the enforcement of the Nation's environmental laws. The Act was signed into law by President Bush on November 16, 1990, as Title II of H.R. 3338.

The Program Development and Training Branch (PDTB) in the Office of Enforcement has begun work to comply with the Act, and to that end has been working with the National Enforcement Investigations Center (NEIC) concerning major aspects of the Institute including: curriculum development; the relationship of this training to employees' career paths; the development of State and local government training delivery systems; funding; faculty; and management. (For further information contact the Office of Enforcement's Office of Compliance Analysis and Program Operations)

Inspector Training and Development

The Agency evaluated progress and developed two reports on implementation of the inspector training requirements under EPA Order 3500.1. This assessment came midway in the phased, three-year (FY 1989 to FY 1991) implementation plan for the Order. The next deadline for training experienced inspectors (those hired prior to June 1988) is October 1, 1991. The first report, Building the Enforcement Infrastructure: Compliance Inspector Training, analyzed accomplishments from the perspective of the Compliance Programs. A second report, Report on Regional Status of Compliance Inspector Training, analyzed the data from a Regional perspective. The reports revealed important accomplishments such as the one-year national effort (4/89-4/90) by the Regions to deliver Basic Inspector Training to hundreds of inspectors and supervisors. (For further information contact OCAPO)

Basic Negotiations Skills Training

During FY 1990, the Basic Negotiations Skills course became mandatory for all new attorneys within one year of their arrival at EPA. Because of the new requirement, and a large number of new program enforcement personnel, the course was offered 12 times and approximately 390 students were trained. Negotiations training was also provided to the States of Oregon and Montana and will be offered in early 1991 in Alaska and Connecticut. In an effort to expand the instructor base, the Program Development and Training Branch (PDTB) developed and presented a "train the trainers" course which will be offered at least once each year. (For further information contact OCAPO)

Penalty Calculation Model Training (BEN and ABEL)

The Program Development and Training Branch (PDTB) presented training on the BEN and ABEL computer model for calculating penalties to six Regions and the State of Connecticut. The seven courses trained a total of 204 enforcement personnel from EPA, the Department of Justice (DOJ), and 14 States. In addition to training, PDTB responded to over 600 inquiries regarding the BEN and ABEL models and penalty issues. Inquiries were received from enforcement personnel at EPA, DOJ, other Federal agencies, 20 States, and the United Kingdom. (For further information contact OCAPO)



National Reports on FY 1990 EPA and State Performance

Timely and Appropriate Enforcement Response

The Timely and Appropriate Enforcement Response concept seeks to establish predictable enforcement responses by both EPA and the States, with each media program defining target timeframes for the timely escalation of enforcement responses. Tracking of timeframes commences on the date the violation is detected through to the date when formal enforcement action is initiated. The programs have also defined what constitutes an appropriate formal enforcement response based on the nature of the violation, including defining when the imposition of penalties or other sanctions is appropriate. Each year OE compiles an end-of-year report which summarizes the performance by each of the media programs. The report for FY 1990 will be available in March 1991.

Management improvements planned for each of the programs and new legislative authorities (e.g., the Clean Air Act Amendments of 1990) should help the programs make further gains this year and next. (For further information contact OCAPO)

Federal Penalty Practices

Each year, EPA produces a comprehensive analysis of the financial penalties EPA obtained from violators of environmental laws. The report contains an Agency-wide overview for each program and compares annual performance with historical trends. The FY 1990 report will be available in March 1991. (For further information contact OCAPO)

Summary of State-by-State Enforcement Activity for EPA and the States

Each year, EPA assembles an end-of-year report which summarizes quantitative indicators of EPA and State enforcement activities on a State-by-State basis. The FY 1990 report is scheduled for publication in March 1991. (For further information contact OCAPO)

Enforcement Effectiveness Case Studies

The Office of Enforcement, working with the Surface Water and Air Mobile Sources Programs, developed a summary report of the health and environmental benefits of EPA and State enforcement strategies over a 2-4 year period for: 1) the Mobile Source Lead Phasedown Program – a program to reduce lead in gasoline; and 2) the National Municipal Policy (NMP) – an enforcement initiative to improve compliance by publicly-owned wastewater treatment plants. The NMP report reveals that a strong enforcement program achieved significant environmental benefits, and the Lead Phasedown Study suggests that a strong enforcement program created deterrence, reflected by a sharp decline in the frequency of new violations, after EPA began carefully auditing company records.

The Lead Phasedown study included as a measure of results the quantification of health effects and monetary benefits associated with the reduction in lead levels resulting from the Agency's enforcement actions. Estimated benefits include the removal of 150 million grams of lead from gasoline production in the form of lead rights retired by the end of 1987. This reduction represents \$40 million worth of direct health benefits (1983 dollars).

In the case of the National Municipal Policy, measures included estimates of the reduction in toxic and conventional pollutant loadings associated with the shift of facilities in the NMP universe to secondary and/or advanced wastewater treatment. Based on these shifts, EPA estimates removal of an additional 2.325 million lbs/day of conventional pollutants and removal of an additional 15,000 lbs/day of toxic pollutants. (For further information contact OCAPO, the Office of Mobile Sources for Lead Phasedown, and the Office of Water Enforcement and Permits for NMP)



Intergovernmental/International Enforcement Activities

Occupational Safety and Health Administration (OSHA) Memorandum of Understanding (MOU)

During the last half of FY 1990, EPA and the Occupational Safety and Health Administration (OSHA), negotiated a Memorandum of Understanding (MOU) which was formally signed by Administrator William Reilly and former Labor Secretary Elizabeth Dole on November 23, 1990. The purpose of the MOU was to enhance the protection of the public, workers, and the environment from violations at facilities subject to both EPA and OSHA jurisdiction. The MOU provides for coordinated action in three areas: detecting violations, exchanging compliance information, and enforcement training. EPA and OSHA will develop an annual workplan to implement the MOU and to identify specific areas of coordinated activity for each fiscal year.

First, OSHA and EPA inspectors will cross-refer potential violations discovered during the course of routine compliance inspections. The two agencies will also look for opportunities to target for joint inspections in mutual priority categories of facilities, such as petrochemical plants or secondary lead smelters, which may be in violation of both workplace and environmental standards. Any resulting enforcement actions may incorporate both EPA and OSHA counts.

Second, EPA will provide OSHA with information from its national compliance/enforcement data bases (e.g., past violations, enforcement actions, penalty assessments) and the Toxic Release Inventory (TRI) which may help OSHA with its own compliance targeting strategies. In return, OSHA will provide EPA with compliance and worker exposure data from its data base in support of specific EPA enforcement actions or targeting strategies.

Third, EPA and OSHA inspectors and other compliance personnel will be given the opportunity to participate in relevant components of each Agency's enforcement training program. The personnel from both agencies will benefit from receiving a general understanding of, and familiarity with, each others' programs and also receive training in specific areas of mutual enforcement activity. (For further information contact OCAPO)

Securities and Exchange Commission (SEC)/EPA Cooperative Arrangement

The Securities and Exchange Commission (SEC) and EPA have enhanced cooperative efforts to ensure accurate company disclosure of environmental liabilities to investors. In FY 1990, EPA expanded the information exchanged and began to implement a system of quarterly reports to the SEC. The quarterly reports now include: Potentially Responsible Parties at Superfund sites; pending and concluded cases for RCRA and CERCLA enforcement; enforcement penalties from civil judicial cases; concluded criminal cases; and companies barred under contractor listing. The SEC has been using the data for targeting their reviews. In addition, based upon this information as well as selected cooperative reviews of disclosure statements with EPA, the SEC has sent comment letters to companies requesting that filings be amended. (For further information contact OCAPO)

The First International Enforcement Workshop on the Environment

On May 8-10, 1990 the first International Enforcement Workshop was held in Utrecht, the Netherlands, jointly sponsored by the U.S. Environmental Protection Agency and the Netherlands Ministry of Housing, Physical Planning and Environment. It has heralded a new era of international cooperation in environmental enforcement. The Workshop participants, which included senior government environmental policy and enforcement officials from fourteen nations and two international organizations, uniformly recommended that there be a follow up conference with broader sponsorship and participation. Further, these leaders, coming from each region of the globe came away with a



commitment to strengthen local resolve to improve domestic and international enforcement programs in regional as well as global exchanges.

The Workshop was designed to share experiences in environmental enforcement, to gain new insights into how current programs can be improved, to create an international network of experts who can continue to share and learn from each other's experiences, to raise the level of interest in environmental enforcement, both within and among nations, and to explore ways to enhance international cooperation in enforcement.

It addressed four themes: 1) domestic enforcement strategies and management systems, 2) intergovernmental relationships, 3) international transboundary enforcement concerns related to import and export of hazardous wastes and pesticides, and 4) implementation of international accords such as the Montreal Protocol and Ocean Dumping Conventions.

Published Workshop Proceedings include papers from over thirty distinguished authors, from over ten nations on the elements of a successful enforcement program, both on domestic and international issues. Copies of the Proceedings were widely disseminated throughout the U.S. to State and local environmental and law enforcement officials and also to other nations. (For further information contact OCAPO)

Clean Air Act

Clarification of EPA NESHAP Policy - Nonfriable ACM

On February 23, 1990, OE-Air, and the Stationary Source Compliance Division (SSCD) issued a reference memorandum clarifying the requirements of the Asbestos NESHAP regarding nonfriable asbestos containing material (ACM), such as floor tile, roofing materials, packing and gaskets. The memorandum states that these normally nonfriable ACM should be removed before demolition only if they are in poor condition and are friable. If these materials are subjected to sanding, grinding, or abrading as part of demolition or renovation, then they must be handled in accordance with NESHAP. If a building is demolished by burning, all ACM must be removed prior to demolition. (For further information contact the Office of Air and Radiation's Stationary Source Compliance Division (SSCD))

A Guide To the Asbestos NESHAP As Revised October 1990

Revisions to the Asbestos NESHAP were promulgated in October 1990. This document incorporates the revisions to the existing Asbestos NESHAP in an easy to read format which promotes understanding of the regulation by the States and the regulated community. (For further information contact SSCD)

Field Guide: Reporting And Recording Requirements For Waste Disposal

This is a guide to help the regulated community comply with the new reporting and recordkeeping requirements of the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP). The specific responsibilities of waste generators, transporters and waste disposal site operators are addressed, as well as detailed explanations of how to complete the new forms accurately and efficiently. (For further information contact SSCD)

Stratospheric Ozone Protection Program Compliance Actions

The first enforcement actions for violations of the Stratospheric Ozone Rule were taken during 1990. The Stratospheric Ozone Rule implements the provisions of the Montreal Protocol on Substances that Deplete the Stratospheric Ozone Layer. Enforcement actions were completed in five cases involving firms which imported chlorofluorocarbons without the required allowances. In addition to paying



penalties for the violations, all violators obtained allowances that they should have had prior to making their illegal importations. (For further information contact SSCD)

Asbestos NESHAP Compilation

In September 1990, a compilation of all effective NESHAP applicability determinations was completed by SSCD. The draft "blue book" has been sent to all EPA Regional NESHAP coordinators for their use in planning and enforcing the asbestos regulations at demolition and renovation sites. The final computer diskettes containing the contents of each blue book is also being transmitted to each Regional office, and will be used to update the compilation on a quarterly basis. (For further information contact SSCD)

Compliance Monitoring Strategy for Radionuclide NESHAPs

On July 31, 1990, SSCD issued this document which designed to introduce the Regional Offices to these new NESHAPs, and to establish the roles of Headquarters and the Regions in implementing and monitoring compliance with these standards. The strategy also outlines the Agency's targets for inspection. (For further information contact SSCD)

Compliance Monitoring Strategy

SSCD issued this guidance on March 31, 1988. Based on Regional and State concerns, the Compliance Monitoring Strategy (CMS) is being revised in FY 1990-1991 for implementation in FY 1992. The revised CMS provides at once a more flexible and systematic approach for determining State inspection commitments. This strategy recommends the development of a comprehensive inspection plan that identifies all sources committed to be inspected by the State agency during their fiscal year, and the subsequent evaluation of the commitments by the Regional Office at the end of the year.

The first year of CMS implementation has demonstrated that a closer coordination and exchange between the Region and State is possible by encouraging flexibility in determining the Inspection Plan for the following year. This and other lessons learned from the implementation of CMS have been used to revise and subsequently strengthen the Strategy. This coordination and open negotiation is encouraged and strengthened under the revised CMS.

The revised CMS will require additional reporting activities and responsibilities. However it is justified in the interest of developing the most environmentally effective inspection program in a given State, and as a basis for more open and informal planning and negotiation between the State and EPA. This will in turn build a stronger State-Federal partnership. (For further information contact SSCD)

Air Toxic Initiative Status Report

Administrator Reilly's meeting with the CEOs from nine companies in August 1989, marked the beginning of the Air Toxic Initiative in which EPA worked with companies to reduce emissions from toxic air sources. On one level EPA has worked in cooperation with CEO companies to develop individual voluntary emission reduction plans on which they will submit annual progress reports to EPA. In October 1990, the companies submitted their first annual progress report on the voluntary reduction plans to OAQPS.

On another level of the Air Toxic Initiative, EPA contacted companies, other than CEO companies to update their toxic emissions information. From these additional companies, two facilities were visited by the National Enforcement Investigation Center for a multi-media investigation.

Modeled after the National Air Toxic Initiative with CEO companies, Region II and Region VI have begun air toxic reduction programs. The Regional program targeted facilities other than those addressed by the National Initiative. Region VI, in cooperation with the Texas Air Control Board, and



the Texas Water Commission is working with five Texas facilities to develop voluntary toxic reduction plans for their particular facilities. In addition, the Region is working with the Louisiana Department of Environmental Quality to develop voluntary toxic reduction plans for two companies in Louisiana. (For further information contact SSCD)

CFC Enforcement Initiative

On June 28 and 29, 1990, the United States filed five civil judicial enforcement actions under the authority of the Rule to Protect the Stratospheric Ozone, 40 C.F.R. Part 82 (the Rule). These actions, the first to enforce provisions of the Rule, which went into effect on July 1, 1989, all alleged importation of chlorofluorocarbons (CFCs) by persons who did not hold the consumption allowances the Rule requires importers to obtain prior to importing specified ozone-depleting chemicals. All five defendants were able to obtain unexpended consumption allowances before June 30, 1990, thereby averting any damage to the stratospheric ozone layer that could have resulted from their actions, and insuring that the United States complied with its national annual CFC consumption limit as established by an international agreement, the Montreal Protocol on Substances that Deplete the Ozone Layer. (For further information contact SSCD)

Guidance on Non-friable Asbestos

EPA's air enforcement and policy offices issued a guidance in February 1990 which clarified an issue that had been dividing the regulated community and the enforcement staff across the nation. The decision stated that asbestos fibers in four types of non-friable asbestos, floor tile, roofing felt, packings and gaskets, are so well bound in the vinyl, bituminous or asphaltic binder, that, under normal conditions, they need not be removed from buildings before demolition or renovation operations. This is not the case with friable (crumbly) and other forms of non-friable asbestos that readily become friable during demolition, like cement-asbestos. The policy further stated that occasionally these four types of asbestos must be handled in accordance with the asbestos NESHAP regulations when the floor tile or other material has become friable due to age or weathering, or when these materials are sanded, ground, burned or otherwise abraded during removal. It is asserted that these removal techniques will definitely render friable the materials and will cause dangerous levels of asbestos fibers to become airborne. (For further information contact SSCD)

Guidance on Inclusion of CERCLA §103(a) Counts in Asbestos NESHAP Cases

On June 5, 1990, the Air Enforcement Division and the Superfund Enforcement Division jointly issued guidance on adding CERCLA counts to asbestos NESHAP cases. Regions are encouraged to scrutinize cases alleging violations of the NESHAP disposal requirements for determination of whether CERCLA reporting violations also exist. The guidance underscores the growing commitment to cross-media enforcement. (For further information contact SSCD)

Stratospheric Ozone Civil Penalty Policy

On November 24, 1989, the Air Enforcement Division (AED) issued Appendix VIII to the Clean Air Act Stationary Source Civil Penalty Policy, the Stratospheric Ozone Penalty Policy. AED amended this policy on April 2, 1990, to insure the assessment of a significant penalty even against defendants who manufacture or import small amounts in violation.

Unique aspects of the Rule to Protect the Stratospheric Ozone, 40 C.F.R. Part 82 (the Rule), prompted AED to adopt a unique approach to assessing penalties. The Rule allocated annual production and consumption allowances to persons who manufactured or imported chlorofluorocarbons (CFCs) in 1986 in amounts equal to the kilograms of their activities in that year. Allowance holders are free to trade their allowances to other persons, but such transfers are valid only if authorized by EPA. The manufacture of each kilogram of CFC requires the expenditure of one kilogram of production allowances



and one kilogram of consumption allowances that the manufacturer must possess at the time of manufacture. The importation of each kilogram of CFC requires the expenditure of one kilogram of consumption allowances that the importer must have in his possession at the time of importation. Allowances left unexpended at the end of each twelve-month control period do not carry over to the next. Each kilogram of CFC manufactured or imported in excess of allowances held is a separate violation, exposing the violator to potential statutory maximum penalties of \$25,000 for each kilogram.

AED established a flexible economic benefit rule of thumb which the Agency linked to the actual cost of an allowance on the open market. The gravity component reflects AED's desire both to protect the integrity of the Rule and to encourage violators to act quickly to remove the potential environmental harm resulting from their violations. (For further information contact OE-Air or SSCD)

Documenting Penalty Calculations and Justifications in EPA Settlement Agreements

On August 9, 1990, Assistant Administrator for Enforcement James M. Strock issued a memorandum initiating a uniform system for documenting penalty calculations and explaining how they are consistent with the applicable penalty policy in all EPA enforcement actions. The memorandum requires EPA attorneys to document how the proposed penalty is calculated and how it is consistent with the applicable penalty policy in the document initiating the enforcement action, the memorandum recommending EPA management concurrence in a proposed settlement, and any time during the course of the enforcement action that the bottom line penalty changes due to new information or circumstances. This required documentation must be kept in both the OE case file and the Office of Regional Counsel case file. (For further information contact OE-Air)

Use of Stipulated Penalties in EPA Settlement Agreements

On January 24, 1990, Assistant Administrator for Enforcement James M. Strock issued a memorandum on the use of stipulated penalties in EPA settlement agreements. The memorandum discusses the types of consent agreement requirements which should have stipulated penalties, the appropriate level of those stipulated penalties, and the enforcement and collection of stipulated penalties provisions. Significant stipulated penalties helps to assure that companies meet the important environmental obligations which they assume in settlement of EPA enforcement actions. (For further information contact OE-Air)

Wood-Fired Boiler Initiative

During FY 1990, Region I completed a survey of wood-fired boilers used to generate electricity in New Hampshire. In total, seven facilities were inspected. Each facility was found to be in violation of its Temporary Permit issued by the State of New Hampshire for the purpose of limiting each facility to minor source status. These violations led the Region to issue six Notices of Violation and a Notice of Noncompliance. In addition, as a result of this effort, the Region initiated and settled in principle a civil judicial referral against one of the facilities for a penalty of \$99,999.

This effort raised awareness in two areas. One, both industry and the state agency will focus more attention on emission limits contained in permits. A minor source permit will not be issued to a facility unless it can truly comply with the permit limits. Second, each facility has increased its efforts towards controlling air emissions. One source spent nearly \$700,000 to modify its small boilers in order to lower carbon monoxide emissions. (For further information contact Region I-Air)

Connecticut Rule Effectiveness Study

In FY 1990, Region I concluded its rule effectiveness study in the State of Connecticut on the miscellaneous metal parts and products (MMP&P) source category. The study evaluated the present compliance of sources subject to the MMP&P regulation, identified specific implementation problems



with the regulation, and addressed specific state agency program activities which affected how well the MMP&P regulation was enforced.

The major features of the study included a preliminary review of 290 source files, the issuance of 235 EPA Section 114 Reporting Requirements, compliance inspections of 37 sources which revealed 22 violating sources, various EPA and state enforcement actions taken against the violators, and a post file review.

Of the 22 sources found in violation, eight have been classified as "Significant Violators." EPA issued NOVs to six of these "Significant Violators," while the State issued NOVs to the other two. Six of the "Significant Violators" are now in compliance with the MMP&P regulation; the other two sources are under review by the State for SIP Revisions. The State issued NOVs to most of the other violating sources as well. In addition to the NOVs issued, EPA issued eight Administrative Orders to sources that did not respond to EPA's Section 114 Reporting Requirements.

EPA conducted a post file review at the State. The post file review revealed that there was a difference of interpretation between EPA and the State regarding applicability determinations. The State's less stringent interpretation resulted in the State determining several sources not to be subject to the MMP&P regulation which should have been. The post file review also indicated that the State inspectors were not getting maximum coating usage data from many sources, but rather average coating usage data which resulted in erroneous applicability determinations. Lastly, the post file review revealed that the State did not inspect minor (Class B) sources frequently enough to update compliance statuses and classification changes.

The adoption of a new MMP&P regulation by the State of Connecticut on November 1, 1989 corrected the applicability determination problems that the State was having. In addition, the State promised to devise an inspection targeting program in FY 1991 to ensure frequent inspections of minor (Class B) sources. These two corrective actions should improve the effectiveness of the MMP&P regulation appreciatively. (For further information contact Region I-Air)

The Pine Ridge Indian Reservation Asbestos Cleanup Cooperative Effort

This effort involved a unique cooperative effort for remediation resulting from an innovative and non-traditional approach to remediation problems on reservations where there are limited resources. In a meeting at the Pine Ridge Reservation with EPA, BIA, and the tribe regarding the Red Shirt Table asbestos site, it was decided that the tribe and BIA would put together a plan to collectively clean-up the site. Actual BIA and tribal costs are well below standard contractor costs. BIA agreed to provide the cleanup personnel, on-site training for these personnel, and equipment. The tribe agreed to provide additional cleanup personnel and equipment. In addition, the tribal environmental program will provide trained personnel to supervise the project. The Indian Health Service (IHS) will conduct medical monitoring for the BIA and tribal cleanup personnel. (For further information contact Region VIII-Air)

California South Coast Air Quality Management District Settlement with Lockheed Aerospace

One of most newsworthy and significant state/local air enforcement actions was announced in March 1990 by the South Coast Air Quality Management District. This concerned a settlement with Lockheed Aerospace which involved a cash penalty of \$1,000,000 plus a commitment from the corporation to spend additional large sums to upgrade their air pollution control program in order to resolve numerous VOC emissions and permitting violations and to meet District requirements. Lockheed was one of several companies which had been included in the cooperative aerospace rule effectiveness study conducted jointly by local air pollution control agencies, the California Air Resources Board, and by Region IX. Most of the violations involved failures by the company to maintain required records as well as utilize compliant coatings and solvents. The amount of the penalty, however, was not the only



significant feature of the settlement. Lockheed also agreed to consolidate and centralize all coating and solvent dispensing functions into state-of-the-art central dispensing stations at each of their affected plants in the South Coast. Implementation of this agreement has resulted in a program to computerize all recordkeeping functions, and to include bar-codes on each container of coating or solvents brought into their facilities.

The Lockheed case provides a very visible example of progress being made in the assessment of meaningful penalties by local agencies as a deterrent to violations as well as in the incorporation of state-of-the-art requirements as settlement conditions. (For further information contact Region IX-Air)

Clean Air Act - Mobile Sources

Motor Vehicle Emissions Recalls

EPA's recall testing program continued effectively to enforce Federal emission requirements in FY 1990. Since the beginning of recall activity, a total of 40 million vehicles have been recalled. Thirty million of those vehicles were recalled as a direct result of EPA investigations conducted at laboratories in Springfield, VA, and Ann Arbor, MI. The motor vehicle emission recall program continues to play an important role in EPA's enforcement efforts. During FY 1990, EPA investigations resulted in 12 recalls involving four manufacturers and a total of 1.6 million recalled vehicles. In addition, 480,000 vehicles were recalled voluntarily by manufacturers prior to EPA testing.

For the first time, EPA conducted motor vehicle enforcement testing in a high altitude area (Denver, Colorado). This high-altitude program conducted by EPA, in coordination with the Colorado Department of Health (CDH), was initiated to ensure vehicles in high altitude areas comply with Federal emission standards. Under EPA's direction, CDH tested 22 engine families representing 3.6 million vehicles. The new testing program resulted in 1 of the above 12 recalls and we expect 5 more recalls are expected as a result of this program. (For further information contact the Office of Mobile Sources)

Mobile Source Selective Enforcement Auditing

EPA's Selective Enforcement Auditing (SEA) program consists of production-line emission testing of new light-duty vehicles and heavy-duty engines. Less than 200 individual vehicle tests conducted during SEA's induced manufacturers to voluntarily perform over 20,000 vehicle emission tests in order to assure that their product conformed with standards and avoid enforcement sanctions.

EPA heavy-duty engine audits focused on engines that manufacturers claimed achieve family emission limits (FELs) below the standard, and as a result emission credits for future use under tighter standards were generated. Also as a result of these audits, the agency revoked a manufacturer's certificate of conformity for an engine family because the engine configuration would not meet emission standards. The certificate was re-issued when modifications to the engine were completed by the manufacturer and the newly-configured engines demonstrated conformance with standards. The manufacturer agreed to recall all previously-produced engines of the configuration that failed the audit. (For further information contact the Office of Mobile Sources)

Mobile Source Imports Program

In FY 1990, EPA continued implementation and enforcement of the new Imports program under Title II of the Clean Air Act. This program, implemented on July 1, 1988, permits only independent commercial importers that possess an appropriate certificate of conformity from EPA to import nonconforming vehicles. The importers are responsible for meeting EPA emission requirements for all nonconforming vehicles which are imported, and EPA's policy calls for will pursue civil penalties against importers found in violation. (For further information contact the Office of Mobile Sources)



Clean Water Act

NPDES Pretreatment Workshops

The Office of Water Enforcement and Permits (OWEP) developed and implemented two series of workshops in FY 1990 for individuals responsible for enforcing the requirements related to the wastewater Pretreatment Program. These workshops were designed to familiarize the pretreatment personnel with existing statutory and regulatory requirements, as well as with current Agency policies and guidance regarding the Pretreatment Program. They include the City Attorney's and Enforcement Response Plan workshops. The City Attorney's workshop is designed to encourage and facilitate the participation by the local municipal attorney in enforcing the requirements mandated by the federal regulations and State or local laws, by outlining attorney's role in the process. In addition, attorneys are briefed on effective enforcement strategies and given examples of actual administrative and judicial proceedings. In FY 1990, City Attorney Workshops were conducted in Annapolis, MD, Mahwah, NJ, Salem, MA, Madison, WI, Boulder, CO, and Park City UT, with over 200 participating city attorneys.

The Enforcement Response Plan workshop was designed to familiarize pretreatment personnel with the requirements established in the Domestic Sewage Study regulation for developing an enforcement response plan. During the workshop, the current regulatory requirements are explained and the Agency's guidance is discussed in detail. In FY 1990, Enforcement Response Plan workshops were conducted in Portland, ME, Salt Lake City, UT, San Jose, CA, Nashville, TN, Parsippany, NJ, Philadelphia, PA, and Columbus, OH, with over 300 pretreatment officials participating. (For further information contact OWEP)

Initiation of Municipal Water Pollution Prevention (MWPP) Program

EPA and the States are launching a new national program aimed at identifying potential problems at POTWs and applying pollution prevention strategies. The program applies the Agency's pollution prevention "hierarchy" to municipalities. Thus, the focus of the program is to provide an early warning system to prompt activities to reduce flow and loadings, ensure environmentally sensitive treatment and the beneficial reuse of sludge, and to expand facilities if necessary. The Office of Water has involved EPA's Regional office and States in developing a fully cooperative program. (For further information contact OWEP)

Coastal Texas Wetlands Initiative

On September 26, 1990, the Department of Justice filed, on behalf of EPA Region VI, three suits against (1) Marinus Van Leuzen and Ronald Neal Hornbeck of Galveston, Texas; (2) A. B. Charpiot and David Charpiot of Crystal Beach, Texas, and (3) Charles Hanson, III of Port Arthur, Texas, for violating Section 404 of the Clean Water Act (CWA). The suits, filed in the Southern and Eastern Districts of Texas, allege that each of the individuals filled or instructed employees to fill federally protected wetlands without receiving a permit from the Army Corps of Engineers (Corps) as required by the CWA. In each case, the wetlands filled were coastal salt marsh wetlands which buffer coastlines during storms, are among the most valuable wetland systems (serving as spawning areas for variety of fish and wildlife), and are located in an area in which the potential for filling is substantial. The filing of these suit was announced by the Assistant Attorney General for the Environment and Natural Resources as indicative of the major environmental priority the United States placed on the protection of wetlands in coastal Texas and nationwide. (For further information contact OE-Water)

Publication of Final Rule for APA Administrative Penalties

On June 12, 1990, EPA published in the Federal Register the final rule for assessing Class II administrative penalties under the Clean Water Act. The final rule was developed in response to the new administrative enforcement authorities under the 1987 Clean Water Act amendments. The CWA amendments provided for Class I administrative penalties not to exceed \$25,000 and Class II penalties



not to exceed \$125,000. The Agency must follow the Administrative Procedures Act (APA) when assessing Class II civil penalties. Promulgation of the final rule provides procedures to ensure effective use of Regional resources for administrative hearings on proposed Class II administrative penalties. (For further information contact OE-Water)

Chesapeake Bay Compliance and Enforcement Initiative

In December 1989 EPA Administrator Reilly assumed the Chair of the Chesapeake Executive Council, a creation of the Chesapeake Bay agreement of 1987. Administrator Reilly announced two goals on this occasion: 1) to reduce by half the number of Clean Water Act significant non-compliers that discharge to the Bay watershed by the end of 1990 and 2) to completely eliminate non-compliance by federal facilities that discharge in the Bay watershed.

To attain these goals, EPA launched the "Chesapeake Bay Compliance and Enforcement Initiative". A major component of the Initiative has been increased enforcement against dischargers in the Bay watershed. Through September 1990, the Bay States of Maryland, Pennsylvania, and Virginia and EPA Region III had taken fifty enforcement actions as part of the Initiative. Two of those actions were U.S. v. Bethlehem Steel Corporation, Sparrows Point, Maryland, and U.S. v. District of Columbia. In the suit against Bethlehem Steel the United States alleges that Bethlehem discharged reportable quantities of hazardous substances (sulfuric acid and ferric chloride) to the Patapsco River on three occasions. In its enforcement action against D.C., the United States has alleged that the District violated its NPDES permit on numerous occasions. These alleged violations include several instances of discharges of untreated sewage to the Potomac River.

At the end of FY 1990, NPDES significant noncompliance was reduced from 8.3% at the start of the initiative to 4.6%, and the number of federal facilities in noncompliance with at least one environmental program was reduced from 37 to 13. (For further information contact Region III-Water)

Development of Oil Pollution Act Enforcement Provisions

The Water Division of the Office of Enforcement was closely involved with advising congressional staff and other Agency offices on the enforcement provisions of the Oil Pollution Act of 1990, which was signed into law on August 18, 1990. The new bill revamps Section 311 of the Clean Water Act -- the oil spill provision -- by dramatically increasing penalties, giving EPA new authority to assess civil penalties administratively, and broadening the Agency's authority to issue and enforce clean-up orders. Elsewhere the law establishes the government's right to seek damages for harm occurring to natural resources, and significantly improves the United States' financial ability to clean up a spill itself. The Office of Enforcement is heading an Agency workgroup that is developing enforcement policies and procedures to implement the new law during FY 1991. (For further information contact OE-Water)

Outreach on Clean Water Act Citizens Suits

The Office of Enforcement, together with the Department of Justice, began meeting with outside attorneys involved in citizen enforcement suits under Section 505 of the Clean Water Act in an effort to better communicate regarding our respective efforts against non-compliers. The CWA provides both EPA and DOJ with a role in reviewing proposed citizen settlements, and the agencies have actively participated in a number of citizen enforcement cases before the courts.

As a result of this interaction, a number of significant legal and policy issues have arisen between the government and citizen litigants. As a means of improving communication and cooperation between the agencies and the citizens suit bar, the Assistant Administrator for Enforcement and the Assistant Attorney General for Environment and Natural Resources met with representatives of leading citizen plaintiff groups, such as the New Jersey Public Interest Research Group and the Natural Resources Defense Council, as well as defense counsel.



EPA and the Department will continue to meet with the citizen suit bar in FY 1991 to advance the goals of the Clean Water Act and other environmental laws, such as the Community-Right-To-Know Act (EPCRA), which have important citizen suit provisions. (For further information contact OE-Water)

Administrative Order Tracking Guidance for UIC and PWSS Program

On August 23, 1990, the Office of Drinking Water (ODW) and the Office of Enforcement (OE) issued guidance entitled "Tracking Compliance with Administrative Orders in the PWSS and UIC Programs." The Regional Drinking Water/Groundwater Protection Branches are responsible for tracking compliance with all Federal administrative orders. The guidance is designed to supplement existing PWSS and UIC guidance on administrative order tracking and follow up activities. Tracking active orders, Regional response to violations of administrative orders, and closing out administrative orders are the three issues addressed by the guidance. (For further information contact OE-Water)

Ocean Pollution Enforcement Conference

The Office of Enforcement and the National Association of Attorneys General (NAAG) co-sponsored a National Coastal Pollution Enforcement Conference on October 16-18 in Newport, Rhode Island. The conference brought together representatives from state environmental regulatory agencies, twenty-nine attorneys general offices, EPA, the Department of Justice, the Coast Guard, the Federal Bureau of Investigation, and the National Oceanographic and Atmospheric Administration.

As a result of the conference, three specific needs were identified and commitments made to address those needs: 1) the publication and distribution of a directory of federal, state, and local coastal enforcement officials, 2) the sharing of information (including decisions, briefs, complaints, etc.), and 3) the development of generic manuals to assist attorneys general and their key staff and federal prosecutors in preparing for and in responding to oil spill incidents in a coastal environment. Each of these projects were completed during the fiscal year. (For further information contact OE-Water)

Boston Harbor Cleanup

EPA's six-year enforcement case effort to clean up Boston Harbor continued during FY 1990 with a focus on the two major portions of the cleanup which remain to be fully addressed, long-term sludge management and combined sewer overflows (CSOs). After a four-year process of facilities planning and environmental review, in November, 1989, the Massachusetts Water Resources Authority (Authority) sited the various sludge management facilities needed for the harbor cleanup. These facilities are needed to ensure that the current environmentally damaging practice of dumping sludge into Boston Harbor is ended. However, in the face of local opposition to the proposed residuals landfill, political obstacles have been placed in the Authority's path in its attempts to acquire the landfill site. EPA has sought the assistance of the federal court to help ensure that the Authority is able to acquire all sites needed for its cleanup programs.

With respect to the CSOs, the Authority's final facilities plan was issued in September, 1990. It adopts the approach of eliminating most CSO overflows by constructing extensive deep tunnel and near surface storage systems. This plan will be a significant step in addressing the raw sewage discharges now occurring whenever it rains in and around Boston Harbor. (For further information contact Region I-Water)

South Essex Sewerage District

Local political efforts and leadership this past year avoided the need for a trial in EPA's Clean Water Act enforcement case against the South Essex Sewerage District in Salem, Massachusetts. A state law limiting fees and taxes was preventing the District from constructing a federally required secondary treatment plant. Rather than try the issue whether the federal court could order treatment plant construction notwithstanding the state law restrictions, local officials agreed to seek legislative



overrides of the limitations. They were successful in doing so, and construction of the secondary treatment plant now can move forward. The plant will help to address the longstanding serious pollution problems in Salem Harbor. (For further information contact Region I-Water)

Casco Bay, Maine

EPA and the State of Maine began joint enforcement efforts to restore Casco Bay. The State and Region I coordinated their resources and efforts to bring both state and federal action against communities discharging pollutants from combined sewer overflows (CSOs) into Casco Bay. The State took the lead against the City of Portland, while EPA filed a civil action against the City of South Portland for discharging untreated contaminants from its CSO discharges. Increased significance was added to these enforcement actions as the President this past spring designated Casco Bay to the National Estuary Program because of the importance of this ecological resource. The South Portland case was the first case ever brought by EPA against a community where the relief sought is primarily the correction of combined sewer overflows. Portland and South Portland will be required to coordinate their planning efforts to insure a geographic solution is recommended and implemented. The long term benefits of these actions will be the restoration and preservation of Casco Bay. (For further information contact Region I-Water)

Region II Enforcement Leveraging Initiative

Region II has initiated a pilot program to provide unidentified Categorical Users (CIUs) of Publicly Owned Treatment Works (POTWs) having flows of less than 5 MGD, with a window of opportunity to voluntarily report their noncompliance. The window closed on June 20, 1990, after having been open for 60 days. During the 60 day pilot period, many POTWs and industries contacted the Region II office to determine whether they were subject to the leveraging mechanism. Of those, 20 previously unregulated industrial facilities identified themselves as being (or potentially being) subject to categorical standards. File reviews and inspections of these 20 facilities are now in process.

In return for their cooperation during the 60 day grace period, these newly identified CIUs will be assessed only economic benefit penalties and a standard \$2000 gravity penalty. In addition to paying such penalties, they will also commit to Consent Decrees specifying schedules and reporting requirements for reaching compliance with Categorical Standards. In addition, based on responses to the letter informing POTWs of the pilot period, the Region is also issuing §308 letters to two POTWs suspected of concealing the true status of the industries in their respective jurisdictions. (For further information contact Region II-Water)

Region IX Innovative Pretreatment Performance Evaluation (PPEI)

The Region has developed an innovative and expanded Pretreatment Compliance Inspection (PCI) evaluation which the Region Calls Pretreatment Performance Evaluation Inspection (PPEI) which may be more effective in determining the compliance status of industrial users and POTWs, facilitating enforcement action. The Region has already used the PPEI in the City of Los Angeles, Burbank, Orange County, San Diego, Phoenix, Livermore, Milbrae, Central Marin, Burlingame, Palo Alto, Sunnyvale, Watsonsville, Monterey, Serra, Encina, Aliso, and Yuma. This is a creative concept which may continue to generate additional enforcement action from PPEIs conducted in FY 1990. (For further information contact Region IX-Water)

Wetlands Enforcement

Region III Wetlands Program Interagency Agreements

To address concerns about the large number of wetlands violators in Region III, the Region entered into Interagency Agreements (IAGs) with the Fish and Wildlife Service (FWS) field offices in



State College, PA, Annapolis, MD and White Marsh, VA. EPA funds each FWS field office with a \$50,000 allotment to provide an increased level of technical staffing and case development support.

The staff assistance provided through the FWS IAGs has further enabled Region III to enter into Field Level Memoranda of Agreement (FLMOAs) with the Philadelphia and Baltimore Districts of the Army Corps of Engineers (COE). Under the FLMOAs, which are burden sharing agreements, EPA and the COE agree that one of the two agencies will serve as the lead enforcement agency in certain specified counties within their jointly administered jurisdictional areas. The procedural framework established by the FLMOAs strengthens existing wetland enforcement capabilities by reducing each agency's geographic coverage area and eliminating duplication of effort. (For further information contact Region III-Water)

Region X Wetlands Cooperative Enforcement Procedures with the Corps of Engineers

In FY 1990, the Region X Wetlands Protection Program developed cooperative enforcement procedures with all Corps of Engineer District Offices. These procedures center on quarterly enforcement meetings with each District to review progress toward resolution of cases and to select the lead agency for newly discovered cases. The Region has clearly communicated the types of cases for which EPA would like to assume the lead, pursuant to the EPA/Army MOA on §404 Enforcement. The Districts have been referring cases and sharing information on those cases. (For further information contact Region X-Water)

Resource Conservation and Recovery Act

State Hazardous Waste Enforcement and Compliance Monitoring Requirements

OWPE is revising the enforcement and compliance monitoring requirements States must meet in order to maintain or become authorized under RCRA. At the end of FY 1989 EPA met with state representatives to obtain their input into the development of this rule. During FY 1990, OWPE considered state comments received during those meetings and internal comments received during Red Border review and completed the preamble and proposed regulatory language. OWPE expects publish the proposed rule in the near future. (For further information contact the Office of Waste Programs Enforcement - RCRA Enforcement Division (OWPE-RED))

RCRA 3008(h) Case Development Workshop

In February 1990, OWPE completed presentation of the RCRA 3008(h) Case Development Workshop (Administrative Records Course) in all Regions. The workshop focused on the development of the administrative record for consent and unilateral 3008(h) orders. This workshop will be presented again upon request. (For further information contact OWPE-RED)

Land Disposal Restrictions Third-Third Training

In the summer of 1990, OWPE sponsored enforcement training in the LDR Third-third requirements to all Regions. This training initiative was a joint effort with the office of solid waste. (For further information contact OWPE-RED)

Land Disposal Restrictions DOE Satellite Training

In July 1990, OWPE co-sponsored a Satellite Teleconference with DOE on the LDR requirements and implementation. Over 1000 people attended the teleconference. (For further information contact OWPE-RED)



LDR Interactive Video

OWPE began the production of the first Interactive Video in the Agency. This Interactive Video is designed to cover all LDR requirements and provides the audience an opportunity to interact with the computer during the course. This project is scheduled to be completed in early FY 1991. (For further information contact OWPE-RED)

Hazardous Waste Incinerator Enforcement Strategy

In April 1990, OWPE issued an Enforcement Strategy to the Regions and States on how to conduct an inspection at an incinerator facility and how the violations should be classified. (For further information contact OWPE-RED)

Air Emission – Accelerate Rule Training

On June 21, 1990, EPA published the First Phase of the Air Emission Rule. OWPE, OSW and OAQPS started the training initiative on this rule in August 1990. This training covers the requirements of the new RCRA rule and the Benzene rule. This training will be provided to all Regions and it is scheduled to be completed in March 1991. (For further information contact OWPE-RED)

Mining Waste Guidance Document

The Mining Waste Guidance was issued March 26, 1990. The purpose of the guidance was to assist Regions in planning enforcement activity related to two final rules; September 1, 1989, and January 23, 1990. These rules subjected most mineral processing waste that was previously excluded pursuant to the Bevill amendments to Subtitle C management. This guidance provides background material on mining wastes under RCRA and a discussion of potential generators, and identifies enforcement activities in both unauthorized and authorized States. (For further information contact OWPE-RED)

RCRA Implementation Study

During FY 1990, OSWER, in conjunction with OE, formed a subcommittee as part of the RCRA Implementation Study (RIS) to evaluate the RCRA Subtitle C Compliance Monitoring and Enforcement Program. A primary recommendation in the RIS regarding compliance and enforcement emphasizes undertaking more targeted enforcement and enhancing deterrence efforts. In order to achieve those goals EPA (in conjunction with the States and DOJ) has begun or plans to initiate the following: (1) targeting compliance monitoring and enforcement efforts; (2) greater emphasis on hazardous waste generators and non-notifiers; (3) seeking higher judicial and administrative penalties and strengthening criminal enforcement; and (4) working with the media to spotlight enforcement actions in order to strengthen deterrence. (For further information contact OWPE-RED or OE-RCRA)

Model Order Development

An OWPE-led workgroup is in the process of revising the model order for Section 3008(h) and developing a model 3008(a) order to streamline EPA and State initiated actions. A workgroup for developing the Section 3008(h) model order has been established. Suggested revisions to the 3008(h) order include the following sections: public involvement, closure/post-closure, stipulated penalties, financial responsibility, and dispute resolution. (For further information contact OWPE-RED or OE-RCRA)

Enforcement Training for Regulation Writers

OWPE has developed course materials for training for regulation writers. A pilot training course will be offered in early 1991. The purpose of the training is to increase the regulation writers' awareness



of the enforceability and implementability of new regulations during the development process. (For further information contact OWPE-RED)

Revised Civil Penalty Policy

One of the primary recommendations in the RIS is to seek higher penalties in enforcement actions. During FY 1990, OWPE in conjunction with OE drafted a revised civil penalty policy. In October 1990, OSWER/OE issued the revised civil penalty policy which establishes a multi-day penalty requirement.

OWPE, in conjunction with OE, is developing a training course for the Regions on the revised RCRA Civil Penalty Policy. The training courses will begin being offered to the Regions by the end of January 1991. (For further information contact OWPE-RED or OE-RCRA)

RIP-Flex Initiatives

The RIP-Flex process was initiated in FY 1989. It is designed to allow trade-offs from the national RCRA priorities in order to address Region and State-specific environmental priorities. During FY 1990, Regions I, III, VI, IX and X participated in the RIP-Flex process. The types of Regional/State investments and initiatives included a broad range of activities. Some of the major initiatives included increased corrective action; enforcement at generators and non-notifiers; land ban enforcement; hazardous waste exports; pollution prevention and inspections at closed or non-regulated facilities. The areas of disinvestments primarily focused on deletion of inspections at environmentally non-significant TSDFs. In general the RIP-Flex process has been successfully implemented by the Regions. Benefits have been gained in the areas of compliance monitoring, enforcement and corrective. (For further information contact OWPE-RED)

West Virginia Field Citations - RCRA

The Field Citation Program implemented by the West Virginia Department of Natural Resources in cooperation with EPA Region III resulted in the collection of \$58,872 from 28 companies in FY 1990. The Field Citation Program stems from a 1989 Region III Merit project which received seed money from EPA Headquarters. The program is designed as follows: a RCRA inspector identifies a violation and prepares a Notice of Violation which is forwarded to the State Assessment Officer who reviews it and sends a penalty assessment based on a published penalty matrix to the alleged violator. The alleged violator has 30 days to pay the fine or request an informal hearing. (For further information contact Region III- RCRA)

Region III UST Leak Detection Enforcement Compliance Initiative

The Office of Underground Storage Tanks began a national initiative to build State enforcement capabilities to provide state and EPA programs with increased enforcement activities and visibility among the regulated community. Region III provided the District of Columbia UST program leak detection enforcement compliance initiative. The District has completed enforcement of EPA's leak detection requirements for the oldest tanks in D.C.'s regulated community. This initiative improved D.C.'s UST enforcement process and provided EPA with enforcement referrals which were developed into the first in the nation Federal lead actions under RCRA Section 9006. This initiative will be expanded to all Region III states for phase-in of leak detection requirements over the next four years. (For further information contact Region III)

Region III UST Corrective Action Pilot Project

In FY 1990, Region III initiated a project to improve the state LUST corrective action process. Under this pilot project, the Region worked with Maryland and Delaware to understand their procedures for evaluating and approving corrective action proposals and overseeing their



implementation. Based on the information collected, a number of process improvements were proposed and implemented in each state. Examples of these projects include: file review to streamline the filing process and accurately assess the status of sites in the enforcement and corrective action process, and development of a Consultant's Day to provide all the state requirements for corrective action to consultants working in their states. Because of the success of this pilot project, the Agency has decided to implement corrective action improvement projects in at least one state in each Region and to encourage as many states as possible to hold Consultant's Day during FY 1991. (For further information contact Region III)

Superfund

FY 1990 was a year of significant progress in the Superfund enforcement program. The Agency built on the successes of previous years and the significant accomplishments of FY 1990 strengthened the infrastructure of EPA's CERCLA enforcement program. EPA directed a strong enforcement effort by maximizing private party response actions, targeting efforts through enforcement initiatives, clearly articulating program goals, and developing enforcement policy.

Much of EPA's direction in Superfund enforcement came from EPA Administrator William K. Reilly's review of the Superfund program. The review, commonly referred to as the "90-Day Study" emphasized an "enforcement first" strategy and makes 10 recommendations for Superfund enforcement. The Superfund enforcement program has followed through on all recommendations and EPA's effort in this program has produced a large number of quality documents designed to establish and implement Agency policy for Superfund enforcement. These documents focus on streamlining the enforcement process and promoting national consistency. The substantial output has resulted in a more effective, fair, and efficient Superfund enforcement program.

Section 106 of CERCLA: Strategy, Model Orders, and Guidance

The 90-Day Study recommends that EPA increase its use of unilateral orders under §106 of CERCLA. EPA has worked hard to implement this recommendation. On February 14, 1990, EPA issued a strategy for promoting the use of unilateral orders under §106 of CERCLA. The strategy encourages EPA's Regional offices to use unilateral orders in the absence of a timely settlement. The strategy also established the Agency's numerical and program goals for unilateral orders. The strategy promoted a uniform and consistent use of unilateral orders and implemented the Administrators recommendation that EPA encourage the timely, routine, and predictable use of unilateral orders. (For more information contact OWPE CERCLA Enforcement Division (CED).)

On March 30, 1990, EPA issued a model unilateral order for remedial design and remedial action (RD/RA). The model assists EPA's Regional offices when they seek to compel private party response. Unilateral administrative orders are a powerful enforcement tool available to EPA. When settlement negotiations break down, a unilateral order to compel the response action can expedite private party cleanup. The model order of March 30, 1990 gives EPA's Regional office a standard order that encourages swift response actions for RD/RA and promotes a uniform approach among the Regional offices. (For more information contact OE Superfund or OWPE - CED)

On March 3, 1990, EPA issued a guidance on the use of unilateral orders under §106 of CERCLA. The guidance established EPA's policy on unilateral orders for RD/RA and encourages EPA's Regional offices to issue UAOs in cases where EPA is unable to reach a timely settlement with PRPs. The guidance answers many technical questions about compelling PRPs to perform RD/DA and promotes a nationally consistent approach for securing private party cleanups. (For more information contact OE Superfund or OWPE - CED.)



Remedial Investigations and Feasibility Studies: Model Orders, Oversight Guidance, and Program Evaluations

The 90-Day Study encourages the enforcement program to strengthen its efforts to effectively oversee PRP-lead RI/FS. EPA has fully implemented this recommendation. In FY 1989 EPA issued the Model Statement of Work for a Remedial Investigation and Feasibility Study and then followed through on this document with the Model Administrative Order on Consent for Remedial Investigation and Feasibility Study, issued on January 30, 1990. The model order assists the Regional offices in reaching settlements with PRPs for this phase of the remedial process and promotes national consistency in EPA's efforts to secure high quality, timely records of decision.

EPA also compared PRP-lead and Fund-lead remedial investigations and feasibility studies. EPA presented the findings of the comparative analysis to Congress in June of 1990. EPA is in the process of implementing several steps that will strengthen the RI/FS program. (For more information contact OE Superfund or OWPE - CED.)

Searches for Potentially Responsible Parties, and Information Requests

The 90-Day Study emphasizes effective information collection and information exchange to promote PRP participation in the CERCLA settlement process. EPA followed through on this recommendation by training Regional personnel, contractor support staff and state enforcement personnel in PRP search procedures.

To encourage PRPs to respond to EPA's information requests under §104(e) of CERCLA in a timely and thorough manner, EPA issued the model consent decree for information requests under §104(e) and also issued guidance on March 1, 1990 on releasing information to PRPs. The model consent decree supports EPA's §104(e) enforcement initiative and assists EPA's Regional offices in enforcing requests for information under §104(e). The guidance encourages the Regional offices to share information with PRPs, where the exchange of information would promote settlement. (For more information contact OE Superfund or OWPE - CED.)

Specialized Categories of Potentially Responsible Parties

On December 12, 1989, EPA published the "Interim Municipal Settlement Policy." The policy establishes EPA's enforcement approach in cases where a city may have obligations under CERCLA. During the process of developing the policy, EPA held three large public meetings and solicited the views of all interested groups. The policy recognizes the unique circumstances that cities often face while at the same time reinforcing the obligations of cities under Superfund. The policy exemplifies the substantial benefits of full coordination and cooperation of all interested parties in the development of Agency policy.

On December 20, 1989, EPA issued "Methodologies for Implementation of CERCLA Section 122(g)(1)(A) De-Minimis Waste Contributor Settlements." This guidance explains how to develop and evaluate de minimis settlement proposals and agreements. The guidance will assist the Agency as well as private parties in developing settlements for persons who have made only a minimal contribution (by amount and toxicity) of hazardous substances at a site. (For more information contact OE Superfund or OWPE - CED.)

Program Integration

A major theme of the 90-Day Study is an aggressive, well planned and tightly coordinated system for moving sites to completed remediation. The integrated timeline, issued on June 11, 1990, identifies the key decision points in the cleanup process and EPA's goal for the amount of time required for each phase of a cleanup. The integrated timeline identifies potential points in the cleanup process



that are vulnerable to delays and encourages an aggressive use of deadline management for speeding the cleanup process.

On October 12, 1990, EPA issued the "Pre-Referral Negotiation Procedures for Superfund Enforcement Cases." This guidance promotes a nationally consistent process for pre-referral settlement negotiations under CERCLA. The purpose of the document is to quicken the pace of achieving settlements and to establish a consistent settlement decision-making process. (For more information contact OE Superfund.)

EPCRA/CERCLA §103 Enforcement Accomplishments

OSWER has responsibility for enforcing the Emergency Planning and Community Right-to-know Act (EPCRA), and section 103 of CERCLA. In FY 1990, the CERCLA/EPCRA enforcement program made many significant new strides. In early FY 1990, EPA held the first nationwide EPCRA enforcement planning meeting in Denver. This meeting brought together staff from both the program offices and their attorney counterparts to discuss the direction of the enforcement program.

During FY 1990, the Regions issued 31 administrative complaints with proposed penalties in excess of \$2.7 million. The number of complaints issued in FY 1990 represents a 180% increase over the output of the previous year. FY 1990 also saw the EPCRA/CERCLA 103 program conduct a nationwide enforcement initiative in which every Region participated. Four Regions issued their first administrative complaints during this initiative. During the June 25-28th initiative, EPA issued administrative complaints against 23 companies for penalties totaling \$1,974,880.

EPA finalized seven settlements under this program, including the first \$100,000+ settlement and another for \$90,000. A number of other FY 1990 cases are settled in principle, but consent agreements and final orders have not yet been issued. Of the \$351,550 collected during FY1990, \$137,000 was deposited into the Superfund and \$214,550 into the U.S. Treasury.

The EPCRA/CERCLA §103 enforcement program received a number of favorable decisions from Administrative Law Judges (ALJ). In All Regions Labs, Inc. the ALJ levied a penalty of \$89,840 for All Regions' failure to provide emergency notification as required under CERCLA §103 and EPCRA 304. The company appealed to the U.S. District Court. This will be the program's first judicial action.

In FY 1990 EPA developed a number of enforcement support documents including model enforcement pleadings, a penalty policy, inspection targeting data, and an enforcement reference manual. (For further information contact OWPE - CED.)

Model Enforcement Pleadings

The Agency developed this set of documents to aid the Regional enforcement efforts by supplying a model administrative complaint for violations of CERCLA §103 and EPCRA §§302-312. Other models included in the package were a model consent agreement and final order, a model subpoena, and a model transmittal letter. (For further information contact OE Superfund or OWPE - CED.)

Final Penalty Policy for §302, 303, 304, 311, and 312 of the EPCRA and §103 of the CERCLA

The policy governs penalty calculations in administrative enforcement actions for violations of EPCRA §§302-312 and CERCLA §103. (For further information contact OE Superfund or OWPE - CED.)



Enforcement Reference Manual for EPCRA §302-313 and CERCLA §103

This document provides a consolidated source of information and previously issued guidance materials to assist Agency enforcement personnel in their efforts to enforce the provisions of EPCRA and CERCLA 103. (For more information contact OE Superfund or OWPE - CED.)

Interim Municipal Settlement Policy

On December 6, 1989, the Office of Solid Waste and Emergency Response issued this settlement policy for municipalities or municipal wastes under §122 of CERCLA. The purpose of the policy is to provide a consistent Agency-wide approach for addressing municipalities and municipal wastes in the Superfund process. It also addresses how private parties and certain kinds of commercial, institutional, or industrial wastes will be handled in the settlement process as well. (For more information contact OE Superfund or OWPE - CED.)

Methodologies for Implementation of CERCLA §122(g)(1)(A) De-Minimis Waste Contributor Settlements

This directive was finalized on December 20, 1989 and is designed to provide practical assistance in the evaluation and development of de minimis contributor settlements. The purpose of the directive is to increase the use and effectiveness of such settlements. The document reviews the definition of a de minimis waste contributor, eligibility and characteristics, the objectives of a settlement, and evaluation of the proposals. (For further information contact OE Superfund or OWPE - CED.)

Model Administrative Order on Consent for Remedial Investigation/Feasibility Study

In January 1990, EPA developed this model order to improve the quality of the RI/FS conducted by potentially responsible parties by laying out in detail what is expected during the RI/FS process. The model is intended to promote consistency among EPA Regions and cut down on the time involved in preparing for settlement negotiations. (For further information contact OE Superfund or OWPE - CED.)

Multi-Media Settlements of Enforcement Claims

On February 6, 1990, EPA distributed this guidance that supports EPA's policy disfavoring judicial and administrative settlements of enforcement cases involving multi-media releases. The guidance details the "diligent inquiry" which must be performed at the Regional level prior to a referral of the proposed settlement to Headquarters. (For further information contact OE Superfund or OWPE - CED.)

Releasing Information to PRPs at CERCLA Sites

On March 13, 1990, EPA provided guidance on the release of information to PRPs at CERCLA sites. The goal of the directive was to facilitate settlements between EPA and PRPs. For PRPs to coalesce into a negotiating group and to participate in settlement negotiations, they must have information about the site and other PRPs. This can help the agency achieve goals of expediting cleanups, encourage PRPs to undertake or finance cleanups, and avoid unnecessary litigation. (For further information contact OE Superfund or OWPE - CED.)

Guidance on CERCLA §106(a) Unilateral Administrative Orders for Remedial Design/Remedial Actions

On March 7, 1990 EPA set out in a memorandum general principles governing the Agency's unilateral administrative order authority for remedial designs and remedial actions under Section 106 of



CERCLA. The guidance is a comprehensive document detailing among other things, the legal aspects of an order, the potential recipients of an order, and the procedures for issuing an order. (For further information contact OE Superfund or OWPE - CED.)

Integrated Timeline for Superfund Site Management

On June 11, 1990, EPA developed a strategy to conduct an aggressive, well planned, and tightly coordinated system for moving Superfund sites to completed remediation. The timeline identifies the critical decision points and sets goals for the amount of time it should take to get from one step to the next. This integrated site management framework should enhance EPA's ability to cleanup Superfund sites. (For further information contact OE Superfund or OWPE - CED.)

Pre-Referral Negotiation Procedures for Superfund Enforcement Cases

On October 12, 1990, EPA set forth procedures governing the pre-referral settlement negotiation process for CERCLA. The objectives of the developed procedures are to quicken the pace of achieving settlements, improve the quality of settlements, and establish a regular settlement decision making process nationwide. (For further information contact OE Superfund or OWPE - CED.)

Model Consent Decree for CERCLA §104(e) Information Request Enforcement Actions

To further support EPA's §104 enforcement initiative the Agency developed this model consent decree on August 29, 1990. The model should strengthen the Agency priority of obtaining information from responsible parties and help to streamline the enforcement process. (For further information contact OE Superfund or OWPE - CED.)

Superfund Federal Facilities Agreements

In FY 1990 the Superfund Federal Facilities program completed negotiations and signed Interagency Agreements (IAGs) with the remainder of their federal facilities. Five IAGs were signed by year's end. The facilities were Aberdeen Proving Ground, Tobyhanna Army Depot, Defense General Supply Center, and Naval Air Development Center. Region III is now the first Region in the nation to have signed IAGs with all their federal facilities on the NPL. This represents a significant first step in the NPL clean-up process. These facilities now have the formal mechanism in place to move through the federal clean-up process. (For further information contact Region III-CERCLA)

Toxic Substances Control Act

Revised Enforcement Response Policy for the TSCA §6 Polychlorinated-Biphenyls (PCBs) Rule

In 1980, EPA issued interim guidance for determining penalties for violating the PCB rules. In the 10 years that the Agency operated under that guidance, numerous rules were issued, and amendments, interpretations, and revisions to the original guidance were developed. Enforcement policies were updated. On April 9, the Agency issued a new penalty policy which substantially revised the old one. The new policy (1) raises the circumstance levels for certain types of violations based on environmental risk, (2) reduces the threshold levels of PCBs in the extent matrix for disposal violations, (3) assesses penalties for each violation of the 40 CFR part 761 instead of for the broader violation of its subparts, and (4) defines "separate location" for purposes of determining separate violations. The new policy generally increases penalties to deter violations, but also includes a reduction for voluntary disclosure. (For further information contact the Office of Pesticides and Toxic Substances Office of Compliance Monitoring (OCM))



Compliance Monitoring Strategy for the TSCA §6 Hexavalent Chromium Rule

EPA issued a compliance monitoring strategy to ensure compliance with the TSCA §6 rule prohibiting the distribution and use of hexavalent chromium in comfort cooling towers. The rule also specifies labeling and recordkeeping requirements for Cr+6-based water treatment chemicals. The compliance monitoring strategy focuses EPA's enforcement efforts on identifying: 1) distribution violations; 2) labeling violations; 3) reporting failures; 4) recordkeeping violations 5) use violations and 6) export notification violations. Additionally, the strategy instructs Regional Offices how to identify potential non-reporters and distributors. (For further information contact OCM)

Enforcement Response Policy for Asbestos Abatement Projects Worker Protection Rule

EPA issued an enforcement response policy to establish the enforcement procedures and civil penalty schedules that EPA will use in response to violations of the Asbestos Abatement Projects Worker Protection Rule by public employees subject to it. The policy addresses violations of the monitoring, regulated areas, work practices, personal protection, communication of hazards, and notification provisions of the Rule. In keeping with the Agency's increasing emphasis on risk-based approaches to enforcement, the policy is structured to encourage early disclosure. (For further information contact OCM)

TSCA §8(e) Initiative

In December, 1989, EPA launched the TSCA §8(e) Outreach and Enforcement Initiative consisting of letters to individual companies emphasizing the importance EPA places on TSCA §8(e) substantial risk information and urging the companies to review compliance with section 8(e)'s reporting provisions. The Initiative also involves field inspections and TSCA §11 subpoenas issued to targeted companies to investigate section 8(e) compliance, the issuance of Notices of Noncompliance to companies for certain first-time section 8(e) violations, and the filing of civil administrative complaints for late reporting and failure of civil administrative complaints for late reporting and failure to report substantial risk information under TSCA §8(e). Many of the activities and investigations involved in the Initiative are still ongoing and will continue throughout the next Fiscal Year. (For further information contact OCM)

Region VIII State Coordination on the Toxics Release Inventory

On September 27, 1990, EPA awarded Colorado a grant for \$96,620 for FY 1991 to improve the quality of the Toxic Release Inventory database for Colorado. The State Health Department will develop a multimedia workgroup to review TRI submissions by county. They will involve RCRA, NPDES, UST and Emergency Planning permit writers and inspectors. The goal will be to identify companies which failed to report under TRI, as well as additional chemicals omitted by companies which did report. This information will be shared with EPA Region VIII and will be used to select inspection targets from among these potential non-reporters. EPA and the State will determine what followup actions are appropriate for the remaining potential non-reporters. (For further information contact Region VIII Air and Toxics Division)

Federal Insecticide, Fungicide, and Rodenticide Act

Compliance Monitoring Strategies

EPA issued compliance monitoring strategies to ensure compliance with pesticide cancellations and conditional registrations that became effective in FY 1990. These included strategies for the cancellation of non-wood uses of inorganic arsenicals, aldicarb, mercury, and EBDC. In addition, EPA also issued a compliance monitoring strategy to ensure compliance with pesticide cancellations due to the



non-payment of fees. (For further information, contact OCM.)

FIFRA Enforcement Response Policy

On July 24, 1990, EPA published a notice of availability in the Federal Register (55 FR 30032) for the revised Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA ERP), which was issued on July 2, 1990. The FIFRA ERP supersedes the previous FIFRA Civil Penalty Assessment Guidelines published in the Federal Register on July 31, 1974 (39 FR 27711); the 1983 Level of Action Policy published as section 2 of Chapter 5 of the FIFRA Compliance/Enforcement Guidance Manual; the June 8, 1981 Guidance for the Enforcement of the Child-Resistant Packaging Regulation; the June 11, 1981 FIFRA Enforcement Policy - Interim Penalty Guidelines; and the civil assessment matrix of the February 10, 1986 FIFRA Section 7(c) Enforcement Response Policy (the rest of this policy remains in effect). The FIFRA ERP sets forth the procedures and criteria that will be used to determine the appropriate enforcement response for violations of FIFRA. It is designed to provide fair and equitable treatment of the regulated community by ensuring that similar enforcement responses and comparable penalty assessments will be made for comparable violations, and to provide for swift resolution of environmental problems by deterring future violations of FIFRA by the respondent, as well as other members of the regulated community. (For further information, contact OCM.)

FIFRA Compliance Program Policy Compendium

EPA issued two compliance program policies during FY 1990. FIFRA Compliance Program Policy No. 12.6, entitled "Enclosed Cab Use for Pesticide Application", was issued on October 8, 1990, and the expiration date for the FIFRA Compliance Program Policy No. 12.7, entitled "Interim Enforcement of the Label Improvement Program for Pesticides Applied Through Irrigation Systems (Chemigation)", was extended on 06/20/90. (For further information, contact OCM.)

Laboratory Data Integrity Program

During FY 1990, the Laboratory Data Integrity Assurance Division conducted 79 laboratory inspections and 338 studies were audited for compliance with the EPA's Good Laboratory Practice regulations under the Federal Insecticide, Fungicide and Rodenticide Act and Toxic Substances Control Act. (For further information contact OCM)

FIFRA Export Enforcement Initiative

During FY 1990 EPA initiated a compliance monitoring program for the enforcement of the export provisions of FIFRA and EPA's Export Policy. Twenty-six establishments were targeted for inspection to determine their compliance with FIFRA and the Export Policy. The inspections revealed substantial noncompliance with FIFRA and the Export Policy. As a result, EPA issued civil administrative complaints against nine companies. The companies were charged with violating the provisions of FIFRA, including the exportation of unregistered pesticides without first obtaining a statement from the foreign purchaser acknowledging that the pesticide was not registered for use in the United States, lack of the required bilingual labeling when exporting products to a country whose principal language does not include English, and lack of the statement "Not Registered for Use in the United States of America" on the labels. (For further information contact OCM)

Pollution Prevention Settlement Initiative

In recent years, the Agency has made a concerted effort to incorporate pollution prevention activities into enforcement-related activities. After a civil administrative action (complaint) has been issued against a company, a company may be able to mitigate the proposed penalty through the implementation of pollution prevention projects, or "environmentally beneficial expenditures". For example, a pollution prevention project could take one or more of the following forms: (1) an internal environmental audit of the company's compliance status with TSCA, which includes finding and



promptly correcting violations; (2) expenditures to reduce the emission of an EPCRA section 313 chemical and (3) TSCA training courses for company employees and/or TSCA compliance seminars for customers.

Both Headquarters and the Regions believe that pollution prevention projects are an important approach in settlement of cases. Companies are encouraged to explore and maximize innovative pollution prevention projects with EPA and to identify and profit from opportunities for prevention. (For further information contact OCM)



VI. Media Specific Enforcement Performance and Regional Accomplishments

A. The Strategic Targeted Activities for Results System (STARS)

EPA uses the Strategic Targeted Activities for Results System (STARS), to ensure that EPA and State managers identify the highest priority environmental problems and establish accountability for resolving those problems. For enforcement, EPA and the States have identified a core group of management indicators to track progress in each media including inspections, compliance rates, identifying and resolving significant noncompliance (SNC), and numbers of civil and criminal case referrals and administrative orders. During the Agency's annual operating guidance development process, media compliance and enforcement programs identify categories of violations determined to be the most environmentally significant (*i.e.*, SNC), and at the beginning of each fiscal year, EPA and the States establish joint commitments to address the SNC's during the year. The following program summaries indicate EPA and state progress in resolving SNC over the past several years.

Clean Air Act - Stationary Sources

The air enforcement program has defined SNC as a violation of SIP requirements in areas not attaining primary ambient air quality for the pollutant for which the source is in violation, violations of NSPS regardless of location, and violations of NESHAPs. Also included are violations of PSD and nonattainment new source review requirements. Beginning in FY 1990, the air enforcement program implemented a new method of tracking SNC's which puts greater focus on Timely and Appropriate enforcement response and on resolving SNC's discovered throughout the year.

At the start of FY1990, EPA and the States identified 458 violating facilities as SNC's, and throughout the year an additional 537 SNCs were identified. At years end, 584 SNC's were either brought into compliance, subject to an enforceable compliance schedule, or were subject to a formal enforcement action.

Clean Air Act - Mobile Sources

The Office of Mobile Sources (OMS) enforces the fuels, anti-tampering, emissions warranty and related provisions of Title II of the Clean Air Act. OMS also enforces the provisions of the Clean Air Act related to new and in-use motor vehicles to assure conformity with Federal emission requirements. FY 1990 marked the implementation of innovative methods and equipment to streamline EPA's inspection procedures for the fuel volatility program, further establishing EPA's enforcement presence in this area. In addition, enforcement against lead Phasedown violations continued to require significant attention by EPA.

EPA enforcement also focused in a new area of tampering -- high performance modifications to vehicles. EPA also concentrates its enforcement efforts on testing new motor vehicles and engines on the production line, testing and recall of in-use motor vehicles, and monitoring the importation and modification of nonconforming motor vehicles.

In FY 1990, EPA issued 276 Notices of Violation (NOV) with proposed penalties of over \$21 million. Of these, the largest number of NOV's were issued for aftermarket catalytic converter cases where 129 NOV's were issued involving proposed penalties of \$1,584,000. The largest proposed penalties were generated by the issuance of 13 NOV's for lead Phasedown cases that proposed penalties of over \$17 million. EPA issued 87 NOV's for fuel volatility violations with \$653,712 in proposed penalties. The fuel volatility program's impact is distributed across all gasoline-powered vehicles, including the higher-emitting older vehicles. While all of the data from the 1990 summer season have not yet been analyzed, it is likely the program has effected a 14% reduction in the levels of VOC



emissions from mobile sources, representing approximately 400,000 tons of hydrocarbons that would otherwise have been emitted.

The motor vehicle emission recall program continues to play an important role in EPA's enforcement efforts. During FY 1990, EPA investigations resulted in 12 recalls involving 4 manufacturers and a total of 1.6 million recalled passenger cars and light-duty trucks. In addition, 480,000 vehicles were recalled voluntarily by manufacturers prior to EPA testing. Also in FY 1990, in cooperation with the state of Colorado, EPA initiated vehicle compliance testing at high altitudes. Approximately 200 tests were conducted resulting in six engine families identified as recall candidates.

Clean Water Act Enforcement - NPDES Exceptions Report

The NPDES enforcement program has defined SNC to include violations of effluent limits, reporting requirements, and/or violations of formal enforcement actions. Unlike the other Agency enforcement programs, the NPDES program does not track SNC against a "fixed base" of SNC that is established at the beginning of the year, rather, the program tracks SNCs on a quarterly "exceptions list" that identifies those facilities that have been in SNC for two or more quarters without returning to compliance or being addressed by a formal enforcement action.

During FY 1990, 448 facilities were reported on the SNC exceptions list including 201 facilities that were unaddressed from the previous year and 247 facilities that appeared on the list for the first time during the year. Of the 448 facilities on the exceptions list, 256 returned to compliance by the end of the year, 134 were subject to a formal enforcement action, and 58 facilities remained to be addressed during the upcoming year.

Safe Drinking Water Act Enforcement

The Public Water System Supervision (PWSS) program identifies systems in significant noncompliance for violations of the microbiological, turbidity, and total trihalomethane requirements on a quarterly basis and tracks the actions taken against them. Those not returned to compliance or addressed within six months are placed on the headquarters-maintained exceptions list and State and federal action against these is tracked. In FY 1990, 472 new SNCs were identified of which 173 returned to compliance, 97 had enforcement actions taken against them, and 186 became new exceptions. Of these new exceptions and the 411 carried over from FY 1989, Regions and States addressed a total of 251.

The Underground Injection Control program tracks on an exceptions basis Class I, II, III, and V wells that failed mechanical integrity, exceeded injection pressure, or received unpermitted injection material. The exceptions list tracks wells that have been in SNC for more than two consecutive quarters without being addressed by a formal enforcement action.

Resource Conservation and Recovery Act Enforcement

SNC's identified during FY 1990 were those TSD facilities that were classified as High Priority Violators according to the revised Enforcement Response Policy. In FY 1990, the program tracked a "snapshot" of SNC's in STARS. This data may not be directly comparable to previous years when the significant noncompliance measure tracked the number of SNCs pending at the end-of-year, the number with initial action, those on acceptable schedules, and the number of SNC's returned to compliance. In FY 1990, the program identified 817 TSDFs as SNCs, and at the end of the year 677 had been addressed by a formal enforcement action.

Superfund Enforcement

FY 1990 was an exceptional year for the Superfund enforcement program. The estimated work value of the 283 settlements reached in FY 1990 for all types of response activities totaled \$1.3 billion - the largest dollar value of cleanup work in enforcement settlements since the passage of SARA in FY 1987 and more than double the value of settlements reached in FY 1988. Furthermore, more than 50% of remedial response actions initiated in FY 1990 were conducted by PRPs. The Agency increased the level of Superfund judicial enforcement activity in FY 1990 with 157 civil cases referred to DOJ primarily seeking injunctive relief for hazardous waste cleanup by responsible parties, recovery from responsible parties of public money spent on site cleanup, or site access to perform investigation or cleanup work. Remedial Action Consent Decrees were completed for 60 sites with a total value of \$730.6 million compared to 49 sites valued at \$620.5 million in FY 1989. Under Section 107, the Agency referred 79 cases seeking recovery of past costs valued at \$184.5 million. In FY 1990, the program also substantially increased the level of administrative enforcement activity by issuing 270 administrative orders including 44 Remedial Unilateral Administrative Orders with which PRPs have complied valued at \$357 million, compared to 23 such actions for a total of \$181.6 million in FY 1989.

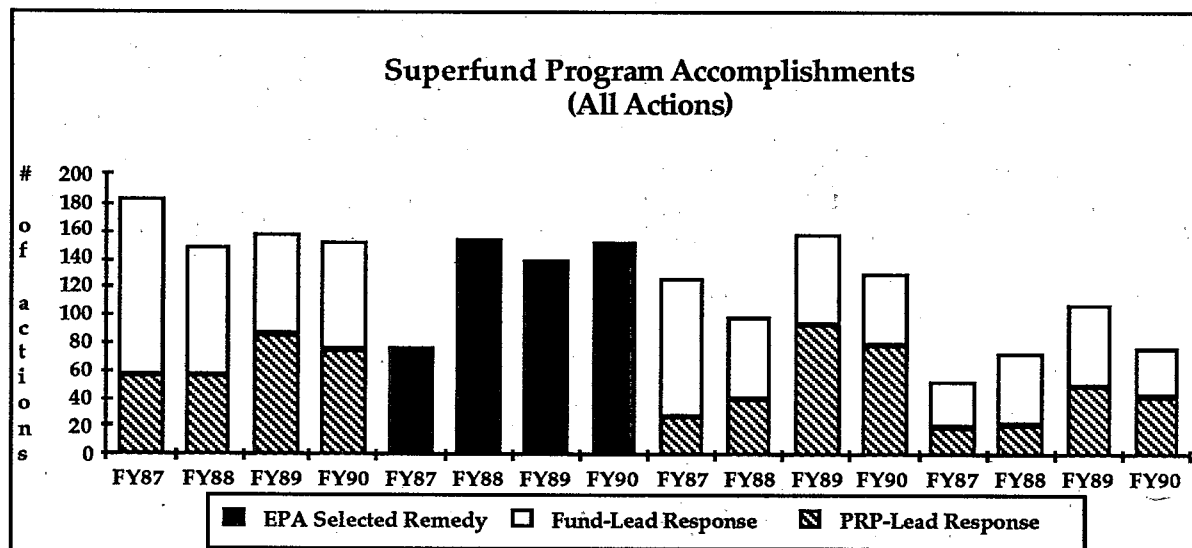
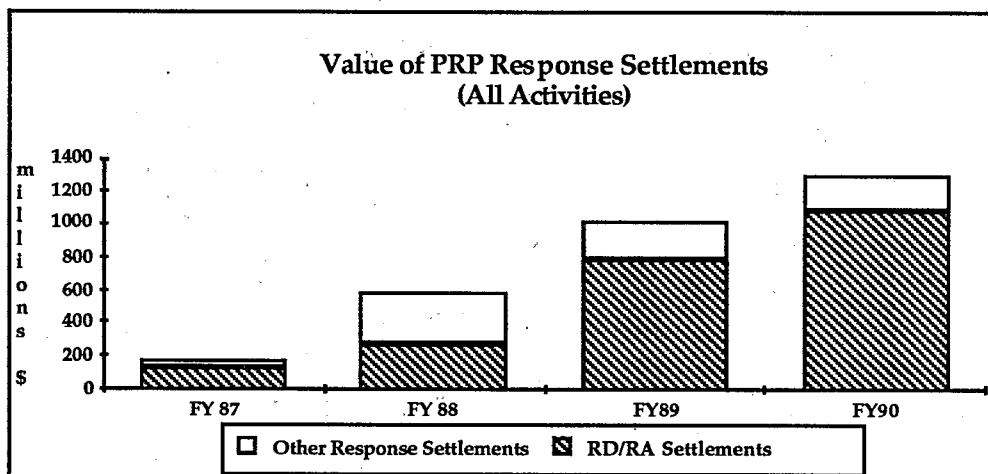


Illustration 7 & 8



Toxic Substances Control Act Enforcement

Significant noncompliance under TSCA is defined as any administrative civil complaint (or equivalent) with a proposed penalty of at least \$25,000 (new for FY 1990). The TSCA violations include PCB disposal, manufacturing, processing, distribution, storage, record-keeping or marking; Asbestos-in-schools; AHERA; import certification and recordkeeping; testing and premanufacturing notification.

Of the 960 potentially SNC cases in the Beginning of Year (BOY) inventory, 768 were pending issuance and 192 were open. Five hundred thirty-eight (70% of the 768 pending cases had enforcement actions issued during the fiscal year, with 147 (27%) meeting the new SNC criteria. Of the 339 SNC cases on the inventory, 155 (46%) were closed by the end of the year. (Note: The numbers in the BOY are inflated in comparison to last year due to introduction of automated STARS reporting through the FTTS system. The information that can rule out non-SNC violations is not available at the BOY for most cases that have not been issued. Therefore, we choose to collect all possible SNCs at the BOY. The reporting method for FY 1991 will eliminate the BOY in favor of tracking all SNCs in current fiscal year and previous fiscal year categories.)

During FY 1990, the Regions identified 90 and issued 73 new SNC violations for the subset of TSCA violations targeted for issuance within 180 days of inspection (PCB, AHERA and Asbestos-in-schools violations). Of these, 64% were issued within the 180-day timeframe, against a 75% target.

For FY 1991 and beyond, all SNC administrative complaints, regardless of the inspection date will be considered for the purposes of timeliness. Prior to FY 1991, only SNCs from current year inspections were considered.

Federal Insecticide, Fungicide, and Rodenticide Act Enforcement

Significant noncompliance under FIFRA is defined to include pesticide misuse violations and suspension/cancellation actions. Enforcement of pesticide use violations of FIFRA is delegated to 48 States. Sections 26 and 27 of FIFRA establish standard procedures for giving States primacy and authorize the Administrator to override or rescind a grant of primacy in certain situations. Since EPA is not in a position to monitor State responses to each allegation of pesticide misuse referred to the Agency, the regional pesticides programs focus oversight activities on evaluating the overall success of State pesticide enforcement actions. The programs track, on a case by case basis, only those allegations involving the most serious violation of uses. These categories of significant violations are agreed to in advance by the Region and State. Categories vary among the States, based on patterns of pesticide use characteristic to the State.

Any allegation of misuse is formally referred to a State and tracked by the Region in two stages; investigation and enforcement response. During investigation, the Region contacts the State regarding planned enforcement action. The State has 30 days after completing the investigation, then, to taken an appropriate response action. (This timeframe can be extended by the Region if circumstances warrant.) In FY 1990, EPA and the States addressed 157 SNCs, while 19 SNCs awaited action at the end of the year.

For FY 1991 and beyond, a new definition of SNC will be applied for FIFRA federal violations. FIFRA federal SNCs will be any administrative complaint where a violation has an associated gravity level of "1", according to the new FIFRA enforcement Response Policy. The above set of SNCs will also, for the first time, be tracked for adherence to the 180-day case issuance standard applied to TSCA and EPCRA SNC cases.



Emergency Planning/Community Right to Know Act Enforcement

Significant noncompliance for EPCRA is defined as violations for non-reporting/failure to report or falsified reporting. Of the 237 potentially SNC cases in the Beginning of Year inventory, 145 were pending issuance and 92 were open. One hundred eleven (77%) of the 145 pending cases had enforcement actions issued during the fiscal year, with 104(94%) meeting the SNC criteria. Of the 196 SNC cases identified from the BOY, 80 (41%) were closed by the end of the year. [Note: In FY 1991, the reporting based upon the BOY will be eliminated in favor of tracking all SNCs in current fiscal year and previous fiscal year categories.] During FY 1990, the Regions identified 145 and issued 75 new SNC violations. Of these, 47% were issued within 180 days of inspection.

For FY 1991, all SNC administrative complaints, regardless of the inspection date will be considered for the purposes of timeliness. Prior to FY 1991, only SNCs from current year inspections were considered.

Federal Facilities Enforcement

During FY 1990, the Federal Government continued to make a substantial commitment to the environment. In April, 1990, EPA created the Office of Federal Facilities Enforcement (OFFE), a unique multi-media enforcement office, to serve as the central agency point of contact for all Federal environmental programs. Developed in response to increasingly complex conditions at Federal facilities nationwide, OFFE provides a centralized point of focus for Federal facility compliance with all environmental laws and requirements.

The Federal Government manages a vast array of industrial activities at its 27,000 installations. At nearly 5,000 of these facilities, the Government has budgeted approximately \$1.74 billion for environmental programs. This record amount was 19% higher than the previous record in FY 1989 of \$1.46 billion. In FY 1990, this amount included plans for the following program areas; \$156 million for the Clean Air, \$517 million for CERCLA, \$195 million for Clean Water, \$2 million for Endangered Species Act, \$ 1 million for FIFRA, \$593 million for RCRA, \$38 million for TSCA, and \$234 million for other projects. These amounts are an indication of the Government's ongoing commitment to environmental compliance.

EPA has continued to encourage compliance at all Federal Facilities through a vigorous enforcement and outreach program. Nationwide, over 930 inspections were conducted. In spite of significant interaction between EPA and Federal agencies, overall compliance rates for unaddressed significant violations remained somewhat constant at 65%. For Department of Defense (DOD) facilities, overall compliance remained relatively constant at 50%, for DOE overall compliance also remained constant at 80%. Within each media, the Government's compliance rate was: 90% for CAA, 41% RCRA, 91% for NPDES, 66% for TSCA, and 69% for multi-media inspections.

Nationwide, a record number of enforcement agreements were executed to respond to the complex conditions at Government facilities. For violations under RCRA, EPA issued notices or entered into Federal Facility Compliance Agreements at 46 facilities. Within each final agreement, provisions were made for citizen enforceability. Considerable efforts were also made in each environmental statute to address instances of noncompliance with an enforceable agreement.

Beyond assuring compliance, EPA worked closely with other Federal agencies performing environmental restoration at the 116 Federal facilities which are on the National Priorities List. Working closely with state regulators a record 45 Interagency Agreements were developed to focus Federal cleanup efforts at most significant threats through expedited response actions (ERA's) and strategic targeting response priorities.



A common commitment at DOE's Hanford Facility, Washington, led to record funding of their environmental restoration activities at \$89 million. EPA also worked closely with DOE to identify ERA opportunities. This culminated in the execution of an Agreement in Principle in October, 1990, to initiate three ERA's at an FY 1991 cost of \$10 million.

B. Regional Office Accomplishments

Region I - Boston

(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

Region I's enforcement efforts during FY 1990 set several records and established new directions. The Region issued an all-time record of 229 administrative orders to violators in New England during FY 1990 (not including actions taken at Superfund sites), and referred 32 civil and six criminal cases for prosecution by the Department of Justice. By comparison, in FY 1989 the Region issued 177 administrative orders and referred 29 civil and eight criminal cases.

Region I piloted a new approach to enforcement through use of cross-media procedures designed to facilitate decision-making about the potential for multi-media enforcement at violating facilities. The Region made it standard practice to perform a multi-media compliance/enforcement status check for a facility slated for enforcement action and to obtain a Toxics Release Inventory Report for the facility. The results of the database searches for those facilities with some multi-media enforcement potential were summarized on a Multi-Media Compliance Check form and discussed at managers' enforcement meetings in the Office of Regional Counsel, with program representation as appropriate. Based on the discussions at the enforcement meetings, decisions were made to develop some actions as multi-media enforcement cases, to plan for further cross-media coordination, or to take other follow-up action.

The heightened emphasis in the Region on multi-media enforcement led the Region in FY 1990 to make two major multi-media civil referrals and to coordinate issuance of administrative complaints when developed against the same violating facility.

In another new direction for the enforcement program, the Region made increased efforts in FY 1990 to encourage innovative forms of relief in settling enforcement actions. As examples, the Region began to consider the potential for pollution prevention projects and environmental audits as components of settlements. In addition, during the latter part of the year, the Region made a major commitment to developing a strategic plan for its enforcement program.

The overall objective of these program directions is to maximize the environmental benefit from enforcement actions through effective case screening and targeting and creative use of the tools available to the Region for case resolution. These initiatives begun in FY 1990 are certain to become cornerstones of Region I's enforcement program in the future.

Region II - New York

(New Jersey, New York, Puerto Rico, Virgin Islands)

Region II's record for FY 1990 displays a continued strong commitment to an aggressive, targeted enforcement enforcement program.

Multi-Media Enforcement Pilot Project - A workgroup was created to identify candidates for multi-media inspections, and plan a concerted enforcement response to documented violations. Two such inspections were performed during FY 1990, and five or more are scheduled for FY 1991. Both FY 1990 inspections resulted in multi-media enforcement actions. The major case concerns Caribbean Petroleum, a Puerto Rico oil refinery, against which four concurrent administrative actions were filed (under RCRA,



CWA Section 311, EPCRA, and CWA Section 309) assessing total civil penalties in excess of \$700,000. A goal of the action is to secure respondent's agreement to institute a corporate environmental auditing program and/or implement a suitable pollution prevention project.

Enforcement Leveraging - A pilot program to leverage the use of scarce enforcement resources was implemented in April, focussing on Categorical Industrial Users (CIUs) in violation of pretreatment rules. We invited such violators to voluntarily come forward and settle their penalty liability with EPA. The "carrot" was that while such violators would have to pay the economic benefit portion of the penalty specified in our penalty policy, we would reduce the gravity portion. The "stick" is that violators who failed to come forward will, when identified, be subject to more severe sanctions. Twenty facilities identified themselves, and two final orders were issued in FY 1990. We will also actively seek to identify violators who did not come forward.

Superfund Enforcement - The total dollar value of all Region II CERCLA settlements and orders complied with in FY 1990 was over \$375 million. Notable settlements include the Occidental/S-Area site, where RD/RA is valued at \$117.5 million; the Lone Pine settlement, valued at \$40 million; the York Oil mixed funding settlement, in which a PRP was pre-authorized for reimbursement of 48% of its RD/RA costs, among the highest yet approved by EPA; and the Mattiace and BFI cases, in which penalties and damages of \$350,000 and \$600,000, respectively, were obtained.

Consent Decree Enforcement - Region II initiated 10 consent decree enforcement actions during FY 1990, and over \$1.3 million in stipulated penalties was collected for consent decree violations.

Tzavah Asbestos Case - The judgment in this case yielded a total civil penalty of \$555,000, the largest amount ever from a Clean Air Act NESHAPS for asbestos demolition/renovation.

Vineland Chemical LOIS Case - The court in this case awarded a civil penalty of \$1.2 million, the highest ever for a RCRA Loss of Interim Status case.

Waste Oil Enforcement - Civil actions were filed against 7 waste oil handlers for violation of the RCRA used oil and other Subtitle C rules. Two administrative actions were also filed seeking \$125,000 in penalties from other violators.

Region III - Philadelphia

(Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

EPA's Philadelphia's office issued nearly 300 administrative enforcement actions, the highest total ever for the Region.

The Region referred 48 civil cases to the Department of Justice, the third highest Regional total, and the CERCLA program referred a record number of cases (29). The Region matched its previous high of nine criminal referrals to the Department of Justice.

Based upon a review of several Region III case studies, it was clear that using a single-media approach for addressing sites with multi-media problems is not appropriate in all cases. Events that occurred at the Avtex Fibers plant in Front Royal, Virginia, demonstrate the need for a coordinated approach to regulating releases from facilities to address all media. Avtex Fibers was the impetus for Region III to examine and propose a cross-media enforcement project.

A cross-media work group was convened in October, 1989 to evaluate the need and potential for implementation of cross-media enforcement. The work group selected nine facilities to target for cross-media enforcement for the pilot project. These facilities were proposed after comparing Toxic Release Inventory (TRI) data, significant noncompliance (SNC) history for each program, and the Kanawha Valley Toxics Screening Study. The work group coordinated multi-media site evaluations, the filing of a



consent decree to settle CWA/RCRA violations at a pulp and paper mill (Penntech Papers, Johnsonburg, PA), and the development of joint SDWA/CERCLA orders to remedy drinking water threats near non-NPL sites. In response to Administrator Reilly's goals for the Chesapeake Bay, the Region embarked on a multi-media objective to reduce significant non-compliance (SNC). NPDES-SNC was reduced from 8.3% at the start of the initiative to 4.6%, and the number of federal facilities in non-compliance with at least one environmental program was reduced from 37 to 13.

Review of the site assessments completed in FY 1990 by the RCRA contractor demonstrates the need to address potentially significant risks posed by non-regulated and regulated releases. In FY 1991, the work group will develop a strategy for each facility and may include using a risk-based approach under Superfund authorities or utilizing several different authorities in one enforcement action. The facilities will be prioritized according to the risk they pose to human health and the environment. The work group and EPA upper management will then evaluate the implementation of the cross-media enforcement project and determine its applicability on a wider scale.

Negotiations were completed with federal facilities for the remaining Interagency Agreements for Superfund clean-ups. Region III is the first Region to have signed IAG's with all their federal facilities on the NPL.

The Region obtained a guilty plea in a criminal case involving illegal filling of wetlands that resulted in the largest monetary penalty assessed against an individual in an environmental case - \$1 million in fines and \$1 million in restitution (US v. Paul Tudor Jones).

Several additional national/Regional firsts were also achieved:

1. first national RCRA ROD (IBM Manassas, VA);
2. first penalty assessed against another federal agency by EPA (Letterkenney Army Depot);
3. first national SDWA Section 1431 order against a private company for remediation of a drinking water supply (Foote Mineral);
4. attained the highest penalty in a vinyl chloride NESHAP case and reached agreement for a precedent-setting audit program to ensure compliance (Occidental Chemical Corp.).

Region IV - Atlanta

(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Region IV's programs achieved strong levels of performance and set national precedents in several cases. In addition, as the Agency's lead region for enforcement in FY 1990, Region IV was instrumental in setting an agenda for a more integrated, effective enforcement program in the 1990s.

Regional organizational changes were made in FY 1990 to facilitate enforcement efforts. Region IV began a pilot reorganization of the Office of Regional Counsel to add a branch that exclusively focuses on multi-media, and the Policy, Planning and Evaluation Branch designated staff to ensure that four-year strategic enforcement themes, including multi-media enforcement, are institutionalized in Region IV.

Region IV began coordinating with the National Enforcement Investigations Center (NEIC) to identify multi-media noncompliers. This effort utilizes NEIC's Corporate Cross-Regional Identification Program (CCRIP). Based upon retrieval criteria defined by Region IV's Air, NPDES, and RCRA programs, a list is generated of facilities that have violations in at least two of the three programs. The list also indicates whether the facility is on the National Priorities List, or if it reported emissions for the Toxics Release Inventory. The list is updated on a quarterly basis. The multi-media noncomplier list is useful for inspection targeting, identification of multi-media noncompliers, and case screening. Region IV is also investigating the use of this list in enforcement negotiations.



A second product of NEIC's Corporate Cross-Regional Identification Program is the corporate profile retrieval. For each facility showing a violation in the Air, NPDES or RCRA programs, CCRIP searches data bases in all EPA Regions to determine if the facility has corporate affiliates which also have violations. This retrieval is an indication of corporate noncompliance patterns. It is primarily useful for enforcement negotiations and case screening; however, it may have utility in targeting corporate affiliates with compliance problems. Region IV led the nation in the number of criminal referrals. In addition, this year the Region criminal enforcement program tops the nation in number of defendants charged and the total number of cases in which charges were filed. These successes are largely due to the Region's specific emphasis on criminal enforcement.

Traditional enforcement activities also continued to be a high priority in FY 1990. EPA-lead actions included 366 administrative orders and 35 civil referrals to DOJ. Region IV's Superfund Cost Recovery program had the first and only treble damage award at the Naomi/Walker County site (\$1 million) and was very successful in de minimis settlements, including a case with over 200 PRPs. In RCRA, State penalty amounts increased from \$3.1 million in FY 1989 to \$6.1 million in FY 1990. The Water Division emphasized Wetlands enforcement, resulting in 35 administrative actions. A highlight for the Air, Pesticides and Toxics Division was Hoechst Celanese, who was found in violation of the NESHAP for equipment leaks of benzene based on a review of Title 313 emissions release data. Region IV responded with a civil referral.

Region V - Chicago

(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

During Fiscal 1990, Region V entered into several multi-million dollar settlements with an emphasis on multimedia enforcement and enforcement at Federal facilities. The filing of a consent decree with USX Gary Works is one of the nation's major environmental accomplishments for the year. Under terms of the decree, USX will undertake environmental improvements estimated at \$32.5 million, which includes a \$7.5 million sediment characterization and remediation and a \$1.6 million penalty for Clean Water Act (CWA) violations.

Five criminal cases involving violations of the Safe Drinking Water Act or CWA were filed. A significant settlement of one of those cases involved Menominee Paper Co., where the company pleaded guilty to falsifying 11 discharge monitoring reports and was fined \$100,000 in addition to a \$2.1 million civil penalty settlement. A notable part of the case was a judicial order that Menominee Paper take out a full-page newspaper advertisement disclosing its offenses and the penalty.

Region V entered into an important consent agreement with the U.S. Department of Energy (DOE) involving cleanup of the Feed Materials Production Center at Fernald, OH. The result was a \$2 billion, five-year plan that, along with a similar facility at Hanford, WA, will serve as models for cleanup of other government and privately owned nuclear sites. Contamination from the Fernald center was affecting air, land, and water on site and in the community adjacent to the plant. Hazard studies were scrutinized to assure DOE, the public, and the news media that cleanup would be carried out to protect human health and the environment. Major impacts of this agreement are that it firmly established EPA's authority to exercise its authority at facilities operated by other Federal agencies and that it made the U.S. EPA Administrator the final arbiter of disputes, moving that function from the Office of Management and Budget. Other Region V Federal facilities affected during the year were DOE's Mound Plant in Miamisburg, OH, and Hicks Air Force Base at Minneapolis/St. Paul. The Mound Plant cleanup is estimated at \$800 million.

Under Superfund, enforcement was outstanding with Region V accounting for almost one quarter of the national referrals to the Department of Justice and 29 Records of Decision signed. A consent decree at the Liquid Disposal Inc. site in Utica, MI, requires 41 settling defendants to carry out a \$22.4 million cleanup. The Region also settled one of its oldest cases against Alvin Laskin and about 140 other potentially responsible parties (PRPs). The PRPs agreed to pay \$1.47 million of a \$5 million cleanup, the



first \$350,000 in oversight costs, and any future oversight costs exceeding a \$1.75 million estimate.

Under RCRA, the Region set a precedent in the Master Metals, Inc. consent decree. The decree required the company to close all its treatment, storage, and disposal units because of its loss of interim status (LOIS). Only certain specified container storage areas not subject to LOIS were exempted. This decree is the first settlement providing a compliance schedule for non-LOIS container storage units while requiring closure of LOIS units at the same facility. Another important consent decree required Chemical Waste Management, Inc. to pay a \$750,000 penalty and close an enormous sludge pile at its Vickery, OH, facility. Additionally, the Region resolved a six-count Toxic Substance and Control Act (TSCA) case with Chemical Waste for operations at its Chicago incinerator. This action resulted in a \$3.75 million civil penalty, a record TSCA administrative settlement.

Region VI - Dallas

(Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

The Region VI enforcement program's goal is to achieve compliance through fully considered, decisive and effective enforcement. Enforcement efforts are directed, on a priority basis, at the most serious threats to human health and the environment. Our enforcement program seeks these objectives:

1. Emphasis on environmentally significant and precedent-setting cases.
2. Greater penalties aimed at removing economic benefits of non-compliance and at deterrence;
3. Use of leading-edge enforcement techniques to complement traditional activities; and
4. Leveraging environmental protection capability through state enforcement and capacity building.

During FY 1990, the Region developed an enforcement pilot project which focused on innovative techniques such as targeting, risk-based decision making, and screening. It included meetings between the Regional Administrator and senior executives of corporations that owned targeted facilities. The meetings focused the attention of these senior executives on the serious interest of Regional management in reducing toxic releases from their facilities.

The pilot project, the Toxic Release Reduction Project, is a two phased approach that will attempt to obtain reduction of risk from toxic chemicals emitted from industrial sources. Phase I consists of a review of selected sources with a recalculated individual risk of 10-2 or greater in the Air Toxic Exposure and Risk Information System (ATERIS) data. The purposes are to explore the possibility of reducing toxic emissions, to insure compliance with all regulatory provisions, and to conduct a complete multi-media risk assessment. A key feature of this effort is meetings between the Regional Administrator, State officials, and company executive officers, which have already occurred. Enforcement actions will follow as appropriate.

Phase II consists of a multi-media compliance investigation and subsequent multi-media risk assessment of selected sources in a target area to explore the potential for risk reduction. The target area selected was the heavily industrialized area between New Orleans and Baton Rouge, Louisiana, on the Mississippi River. Risk screenings were performed on facilities reporting under the Emergency Planning and Community Right-to-Know Act Section 313 (Toxic Release Inventory, or TRI data) which considered the relative toxicities of the chemical emissions as well as the quantity of emissions.

Both phases are focused on reductions of toxic emissions with demonstrable or predictable effects on public health and the environment, and they will seek facility alterations through the following mechanisms: (1) formal enforcement actions, (2) review of existing permits, (3) non-traditional methods, such as discussions between the Regional Administrator and facility executives to obtain voluntary plant-wide emission reductions, (4) environmental awards for facilities which are in compliance with all regulations in an exemplary manner, (5) create incentives to encourage facilities to report and correct violations.



Through the Region's awards program, members of the regulated community that achieve exemplary compliance in all media are recognized by the Regional Administrator. This program has been well received in the regulated community and recognized on a national level.

The Region collected over \$1.3 million in administrative penalties for violations of the Clean Water Act, more than any other Region, while issuing over 900 administrative orders. Under the Resource Conservation and Recovery Act, the Region collected over \$1.7 million in penalties. Under the criminal enforcement program, about one third of the total national amount of sentenced jail time was assessed against violators in Region VI. Finally, among the administrative enforcement actions, Region VI realized a civil penalty of \$375,000 and a commitment of some \$60 million in cleanup cost outlays from Transwestern Pipeline Company for remediation of PCB contaminated natural gas compressor stations in New Mexico.

Region VI has worked closely with Mexico's Secretariat of Urban Development and Ecology (SEDUE). EPA and SEDUE have institutionalized inspections of maquiladoras in Mexico and their sister plants in the U.S.

Region VII - Kansas City (Iowa, Kansas, Missouri, Nebraska)

Region VII's enforcement program goals for FY1990 included: working with the States to initiate timely and aggressive enforcement actions for environmentally significant violations; increasing the use of pollution prevention conditions and environmental audits in settlements; obtaining enforceable agreements for compliance and remediation at Federal Facility sites; continuing to build and maintain a coordinated team approach among all programs, the Office of Regional Counsel and the Office of Criminal Investigations; and increase multi-media enforcement activities.

The following are highlights of the many enforcement accomplishments achieved by Region VII, including its four states, in FY1990:

State Enforcement: The Region VII states issued 398 administrative orders and initiated 100 referrals to the State Attorney General Offices. The 57 referrals in the Water Program ranked first among all regions nationally. The States (and the Region) achieved a substantial improvement in the timeliness of the enforcement actions against high priority violators in the RCRA Program.

Federal Enforcement: Significant Increase in Administrative Penalties: The Region VII office assessed over \$1 million in administrative penalties, an increase of 70% over FY 1989. This includes a 222% increase in TSCA penalties, a 61% increase in FIFRA, a 50% increase in Water, and a 20% increase in RCRA.

Major Judicial Settlement: The Region obtained a \$1.5 million penalty settlement in a Clean Water Act judicial action against Eagle-Picher, in addition to an agreement to conduct a multi-media audit.

Increase in Superfund Enforcement: Superfund issued 27 administrative orders, including 8 unilateral orders. This represented an increase of 59% from FY 1989.

Aggressive Federal Facility Enforcement Programs: Of the \$1 billion in PRP-lead clean-ups obtained through Superfund enforcement agreements, \$841 million is attributable to environmental clean-ups to be completed by Federal Facilities under Section 106 Interagency Agreements.

Pollution Prevention Settlements: The Region obtained agreement through TSCA settlements to voluntary removal and proper disposal of PCB transformers, oil, capacitors and soil, with an estimated cost of over \$6.1 million.



Times Beach Settlement: The Region reached a settlement agreement with Syntex Agribusiness and Syntex (USA) for clean-up a incineration of dioxin-contaminated soil and debris from 28 dioxin sites in Eastern Missouri, with an estimated project cost of over \$200 million.

Region VIII - Denver

(Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

In Region VIII, enforcement tools are used in appropriate and innovative ways to correct environmental and health problems, to remove economic benefits accrued by polluters as a result of noncompliance, to encourage environmental stewardship by all, and to help preserve the unique and largely unspoiled environments in its States for future generations to enjoy. The States of Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming, and many county and local governments, often have lead roles through delegated program responsibilities or their own individual environmental program requirements.

During 1990, the Region added focus to its enforcement efforts by providing a forum for its enforcement branch chiefs to work closely with the Deputy Regional Administrator to bring a cross-program focus to environmental enforcement. A rotational position was established for enforcement program branch chiefs to enhance their knowledge of both the individual enforcement programs and national environmental enforcement directions, and to help assure that implementation of new agency initiatives reflect the views of Regional enforcement staff. Important first steps were taken to formalize institutional relationships needed to support these new initiatives.

During FY 1990, the Region emphasized its judicial enforcement program and increased the numbers of new civil cases referred to DOJ to 24 (up from 11 in FY 1989). For this same period of time, the number of administrative enforcement actions remained relatively stable at 230 actions (versus 228 in 1989). And, substantial resources were used for criminal investigations at the Department of Energy's Rocky Flats Facility near metropolitan Denver.

Specific noteworthy accomplishments included:

The Region began implementing the national Enforcement 4-Year Strategic Plan with a comprehensive participatory approach to enforcement planning, multi-media targeting, strategic value case review, and enforcement communications. New activities during FY 1990 included a process for screening and strategic value case review; active work groups for developing a regional enforcement strategic plan, for targeting and screening, and for communications; and a geographic enforcement initiative.

Under the CWA 404 Program, the Region met its commitment for Class I penalty complaint reviews by the Office of Wetlands Protection and the Office of Enforcement; thereby setting the stage for assessment of penalties for wetlands enforcement. The Region is publicizing each enforcement action in a planned and targeted manner to obtain the maximum deterrent value from each action. The UIC Program settled the civil case against Pioneer Exploration, Inc. for the largest dollar penalty collected to date in the UIC program nationally. The case resulted in substantial environmental benefit when the operator agreed to properly plug and abandon several injection wells that had failed mechanical integrity tests. Region VIII led the Nation in having all of its major permittees in compliance with secondary treatment standards. A key case in this program was a civil judicial referral against Western Sugar which resulted in the largest environmental penalty ever collected in the State of Montana.

Emphasis under the UST Program involved a leak detection enforcement initiative on Indian lands. Several phases were completed including tank surveys, training of Indian environmental coordinators, information request letters and follow-up enforcement. In FY 1990, this initiative resulted in two actions against the Bureau of Indian Affairs.



Region IX - San Francisco

Arizona, California, Hawaii, Nevada, Trust Territories)

Region IX's enforcement goals are to achieve and maintain compliance, enhance state capability, establish deterrence, and prevent pollution. The Region's approach balances these five goals in determining the most effective and efficient means to achieve high rates of compliance in all environmental programs. Throughout the year, the Region emphasized risk reduction, toxic loadings reduction, pollution prevention and habitat protection.

The Region prepared 38 new referrals during FY 1990, 21 of which were forwarded to the Department of Justice during the year. Two criminal referrals were forwarded to DOJ for prosecution. Sixteen referrals were concluded during the year, resulting in penalties of \$2,733,000 and awarded cost recoveries of \$3,512,120. A total of 147 Administrative enforcement actions were issued.

Unilateral Administrative Orders (UAO) under CERCLA were utilized at seven NPL sites. The UAO at Koppers requires \$70 million in remediation work. The total estimated Remedial Design/Remedial Action work being performed by potentially responsible parties is \$133.2 million. CERCLA Federal Facility Agreements were successfully negotiated with the Army, Air Force, Navy and Marine Corps, at 12 NPL sites.

An Enforcement Pilot Project was initiated in cooperation with the State of California Regional Water Quality Control Board and the U.S. Army Corps of Engineers to address pretreatment, above ground oil storage facilities and wetlands preservation in the San Francisco Bay area. The pilot has resulted in both judicial and administrative enforcement cases and provided a focus for shared environmental concerns in three regulatory areas that impact the vital resources of the bay.

Supporting State and local agency program development is a continuing priority. The South Coast Air Quality Management District (SCAQMD) in California successfully negotiated a \$1,000,000 cash penalty in addition to a schedule to achieve compliance by Lockheed Aerospace Corporation. The case was identified as part of the cooperative EPA, State Air Resources Board, and SCAQMD aerospace rule effectiveness study.

Establishing significant legal precedent is also a part of the Region's enforcement agenda. With the Shell Oil case, Region IX established Clean Water Act Spill Prevention, Control and Countermeasure penalties on a PER DAY basis. Shell agreed to a \$20 million settlement including penalties and resource damage payments to the 16 federal, state and local agencies cooperating in this enforcement action addressing a 1988 crude oil spill to San Francisco Bay.

Region X - Seattle

(Alaska, Idaho, Oregon, Washington)

Region X experienced several substantial changes during Fiscal Year 1990 which have strengthened emphasis on enforcement issues. The new management team in Region X is working to implement Administrator Reilly's emphasis on EPA's enforcement program. Key to maintaining this

emphasis has been the Deputy Regional Administrator's taking the lead in focusing Regional attention on enforcement activities.

One specific area of attention is multi-media enforcement. Programs are now coordinating to identify candidates for multi-media enforcement action; multi-media inspections have started and will continue through FY91 as a step in this process.

Within Region X, waste emissions from pulp and paper mills are proving to be one of the most



difficult environment problems faced to date. There are 23 mills scattered throughout the Region; however, 20 of the facilities are located in Washington and Oregon. Each of these plants represent a potentially significant risk to the environment and human health. Unlike many of the industries EPA regulates, pulp and paper mills tend to have emissions and industrial processes that cross several of EPA's single media programs. Virtually all of the regulatory programs have an interest in this particular industry.

Modeled after the multi-media inspections conducted at federal facilities over the past several years, Region X will be conducting multi-media inspections at two pulp mills, focusing on toxic emissions. The inspection team will consist of EPA and State inspectors, and level-of-effort (LOE) contractors. The project will be closely coordinated with both the regional Pollution Prevention initiative focusing on pulp mills as well as the headquarters initiative aimed at dioxin and toxic reductions at pulp mills.

A task force has been commissioned to strengthen enforcement and to identify ways to make the enforcement process more efficient. Chaired by the Regional Counsel, the task force addresses:

1. improving the targeting process;
2. improving the discovery of violations, including improving the quality of evidence;
3. improving the interface between programs and the legal process; and
4. demonstrating senior management's commitment to enforcement.

Fiscal Year 1990 can be best described as a transition year for Region X. Change is also expected to be the hallmark of Region X's enforcement programs over the next year as initiatives are implemented under the direction of the new regional leadership.

Appendix

Historical Enforcement Data

List of Headquarters Enforcement Contacts

List of Regional Enforcement Information Contacts



EPA CIVIL REFERRALS TO THE DEPARTMENT OF JUSTICE
FY1972 TO FY1990

	FY72	FY73	FY74	FY75	FY76	FY77	FY78	FY79	FY80	FY81
AIR	0	4	3	5	15	50	123	149	100	66
WATER	1	0	0	20	67	93	137	81	56	37
SUPERFUND	0	0	0	0	0	0	2	5	10	2
RCRA	0	0	0	0	0	0	0	4	43	12
TOXICS/PESTICIDES	0	0	0	0	0	0	0	3	1	1
TOTALS	1	4	3	25	82	143	262	242	210	118
AIR	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	
	36	69	82	116	115	122	86	92	102	
WATER	45	56	95	93	119	92	123	94	87	
SUPERFUND	20	28	41	35	41	54	114	153	157	
RCRA	9	5	19	13	43	23	29	16	18	
TOXICS/PESTICIDES	2	7	14	19	24	13	20	9	11	
TOTALS	112	165	251	276	342	304	372	364	375	

EPA ADMINISTRATIVE ACTIONS INITIATED (BY ACT)
FY1972 TO FY1990

	FY72	FY73	FY74	FY75	FY76	FY77	FY78	FY79	FY80	FY81
CAA	0	0	0	0	210	297	129	404	86	112
CWA/SDWA	0	0	0	738	915	1128	730	506	569	562
RCRA	0	0	0	0	0	0	0	0	0	159
CERCLA	0	0	0	0	0	0	0	0	0	0
FIFRA	860	1274	1387	1614	2488	1219	762	253	176	154
TSCA	0	0	0	0	0	0	1	22	70	120
TOTALS	860	1274	1387	2352	3613	2644	1622	1185	901	1107
CAA	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	
	21	41	141	122	143	191	224	336	249	
CWA/SDWA	329	781	1644	1031	990	1214	1345	2146	1780	
RCRA	237	436	554	327	235	243	309	453	366	
CERCLA	0	0	137	160	139	135	224	220	270	
FIFRA	176	296	272	236	338	360	376	443	402	
TSCA	101	294	376	733	781	1051	607	538	531	
EPCRA									206	
TOTALS	864	1848	3124	2609	2626	3194	3085	4136	3804	

EPA CRIMINAL ENFORCEMENT
FY1982 TO FY1990

	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90
Referrals to DOJ	20	26	31	40	41	41	59	60	65
Cases successfully prosecuted	7	12	14	15	26	27	24	43	32
Defendants charged	14	34	36	40	98	66	97	95	100
Defendants convicted	11	28	26	40	66	58	50	72	55
o Months sentenced			6	78	279	456	278	325	745
o Months served			6	44	203	100	185	208	222
o Months probation		534	552	882	828	1410	1284	1045	1176



STATE ENVIRONMENTAL AGENCY
JUDICIAL REFERRALS AND ADMINISTRATIVE ACTIONS
FY1985 TO FY1990

ADMINISTRATIVE ACTIONS						
	FY85	FY86	FY87	FY88	FY89	FY90
FIFRA	8,899	6,055	5,922	5,078	6,698*	4,145
WATER	2,936	2,827	1,663	2,887	3,100	3,298
AIR	448	760	907	655	1,139	1,312
RCRA	459	519	613	743	1,189	1,350
TOTAL	12,742	10,161	9,105	9,363	12,126	10,105
JUDICIAL REFERRALS						
	FY85	FY86	FY87	FY88	FY89	FY90
WATER	137	221	286	687	489	429
AIR	182	162	351	171	96	156
RCRA	82	25	86	46	129	64
TOTAL	401	408	723	904	714	649

Prior to FY 1990, the State FIFRA Administrative Action total included warning letters, including 3,409 in FY 1989. The FY 1990 total does not include 3,149 State warning letters.



EPA Headquarters Enforcement Offices

Office of Enforcement (OE)

Assistant Administrator	202-382-4134
Deputy Assistant Administrator	202-382-4137
Deputy Assistant Administrator-Federal Facilities	202-382-4543
Director of Civil Enforcement	202-382-4140
Associate Enforcement Counsel for Air Enforcement	202-382-2820
Associate Enforcement Counsel for Water Enforcement	202-475-8180
Associate Enforcement Counsel for Superfund Enforcement	202-382-3050
Associate Enforcement Counsel for RCRA Enforcement	202-382-4326
Associate Enforcement Counsel for Pesticides and Toxic Substances	202-475-8690
Office of Criminal Enforcement	202-475-9660
Office of Compliance Analysis and Program Operations (OCAPO)	202-382-4140
Office of Federal Activities (OFA)	202-382-5053
Office of Federal Facilities Enforcement	202-475-9801
Contractor Listing Program	202-475-8777
National Enforcement Investigations Center (NEIC - Denver)	303-236-5100

Office of Air and Radiation (OAR)

Stationary Source Compliance Division (SSCD)	703-308-8672
Field Operations and Support Division (FOSD)	202-382-2633
Manufacturers Operations Division (MOD)	202-382-2479

Office of Water (OW)

Office of Water Enforcement and Permits (OWEP)	202-475-8304
Office of Drinking Water (ODW)	202-382-5543

Office of Solid Waste and Emergency Response (OSWER)

Office of Waste Programs Enforcement (OWPE - CERCLA)	703-382-4810
Office of Waste Programs Enforcement (OWPE - RCRA)	202-382-4808

Office of Pesticides and Toxic Substances

Office of Compliance Monitoring (OCM)	202-382-7835
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U.S. Environmental Protection Agency Regional Offices Enforcement Information Contacts

Region I - Boston

Connecticut, Maine, Massachusetts,
New Hampshire, Rhode Island, Vermont

Office of Public Affairs
JFK Federal Building
Boston, MA 02203
617-565-3424 FTS: 8-835-3417

Region II - New York

New Jersey, New York, Puerto Rico,
Virgin Islands

Office of External Programs
Jacob K. Javitz Federal Building
26 Federal Plaza
New York, NY 10278
212-264-2515 FTS: 8-264-2515

Region III - Philadelphia

Delaware, District of Columbia, Maryland,
Pennsylvania, Virginia, West Virginia

Office of Public Affairs
841 Chestnut Building
Philadelphia, PA 19107
215-597-9370 FTS: 8-597-9370

Region IV - Atlanta

Alabama, Florida, Georgia, Kentucky, Mississippi,
North Carolina, South Carolina, Tennessee

Office of Public Affairs
345 Courtland Street, N.E.
Atlanta, GA 30365
404-347-3004 FTS: 8-257-3004

Region V - Chicago

Illinois, Indiana, Michigan, Minnesota
Ohio, Wisconsin

Office of Public Affairs
230 South Dearborn Street
Chicago, IL 60604
312-353-2072 FTS: 8-353-2072

Region VI - Dallas

Arkansas, Louisiana, New Mexico,
Oklahoma, Texas

Office of External Affairs
First Interstate Bank Tower at Fountain Place
1445 Ross Ave. 12th Floor Suite 1200
Dallas TX 75202
214-655-2200 FTS: 8-255-2200

Region VII - Kansas City

Iowa, Kansas, Missouri, Nebraska

Office of Public Affairs
726 Minnesota Avenue
Kansas City, KS 66101
913-551-7003 FTS: 8-276-7003

Region VIII - Denver

Colorado, Montana, North Dakota,
South Dakota, Utah, Wyoming

Office of External Affairs
999 18th Street Suite 500
Denver, CO 80202-2405
303-293-1692 FTS: 8-330-1692

Region IX - San Francisco

Arizona, California, Hawaii, Nevada,
Trust Territories

Office of External Affairs
75 Hawthorne Street
San Francisco, CA 94105
415-744-1020 FTS: 8-484-1585

Region X - Seattle

Alaska, Idaho, Oregon, Washington

Office of the Deputy Regional Administrator
1200 Sixth Avenue
Seattle, WA 98101
206-442-5810 FTS: 8-399-5810



FY 1990 Enforcement Accomplishments Report
