United States
Environmental Protection
Agency

Office Of
Enforcement
(LE-133)

300-R92-008
April 1992

EPA

Enforcement Accomplishments Report

FY 1991

Table of Contents

I. Message from Administrator William K. Reilly and Herbert H. Tate, Jr., Assistant Administrator of the Office of Enforcement

II. Institutionalizing a Cross-Program/Multi-Media Enforcement Perspective

A context setting narrative that describes the Agency's cross-program/multi-media enforcement initiatives and its progress implementing them.

III. Environmental Enforcement Activity

IV. Major Enforcement Litigation and Key Legal Precedents

An alphabetized summary of important civil and criminal judicial case settlements, administrative actions, and key court decisions that occurred during the year.

V. Building and Maintaining a Strong National Enforcement Program

Summaries of major enforcement program strategies, initiatives, guidance, and management studies. Subsections on local enforcement, Federal facilities, cooperative work with environmental groups, relationships with other Federal agencies and international issues.

VI. Media Specific Enforcement Highlights and Regional Accomplishments

Brief summaries of each National program and each Region's FY 1991 highlights.

Appendix: Historical Enforcement Data
FY 1991 National Penalty Report
List of EPA Headquarters and Regional Enforcement Information Contacts

A Message from the Administrator and Assistant Administrator

EPA's commitment to the vigorous enforcement of environmental law, and the commitment of the Bush Administration, is reflected in the significant expansion of the Agency's civil, criminal, and federal facility enforcement activities since 1989. Overall, this Administration has assessed about 55 percent of all the civil penalties and criminal fines assessed in EPA history -- $200 million for FY 1989-1991 compared with $166 million for FY 1972-1988. The Department of Justice under Attorneys General Richard Thornburgh and William Barr has our gratitude -- indeed, the Department deserves the thanks of every American for its full support and participation in this enterprise.

Over the past year, EPA enforcement again operated at record levels, setting all-time highs for criminal referrals and civil penalties. EPA's enforcement record shows that over the past three years the Agency:

- Referred to the Department of Justice over 44 percent of all criminal referrals in Agency history;
- Obtained 50 percent of the Agency's total guilty verdicts or pleas, resulting in sentences meting out more than 65 percent of all months of incarceration ordered in Agency history; and
- Assessed more than 67 percent of all criminal penalties assessed in Agency history.

During FY 1991, EPA moved beyond its traditional enforcement of media-specific laws to emphasize cross-program, multi-media enforcement. We now target our inspection and enforcement efforts on the basis of the most significant health and ecological risks across all environmental media.

We achieved these levels and took these steps even as we increased our use of non-regulatory tools like voluntary pollution prevention, environmental information and education, and market-based economic incentives to achieve our goals. Indeed, some of the voluntary, direct action programs like "33/50" are achieving results faster than our more traditional regulatory programs. Under this program, more than 700 companies have committed to reduce -- by 300 million pounds -- emissions of 17 high-priority toxics by 1995.

Nonetheless, enforcement remains one of the most important tools in EPA's arsenal. Only because we are committed unequivocally to vigorous enforcement are we able to expand our methods as we seek the most cost-effective approaches to environmental protection.

The FY 1991 Enforcement Accomplishments Report provides a concise summary of the Agency's enforcement efforts over the last year, including explanations of EPA's Strategic Plan for Enforcement, highlights of significant enforcement cases, and statistical information on EPA and state programs. Above all, this report sends a clear message of deterrence to potential violators: this Agency is committed to a vigorous and effective environmental enforcement program, now and into the future.

William K. Reilly
Administrator

Herbert H. Tate, Jr.
Assistant Administrator
for Enforcement

II. FY 1991: Institutionalizing a Cross-Program/Multi-Media Enforcement Perspective

In retrospect, FY 1991 may well prove to be a turning point for environmental enforcement. It was the year that the Environmental Protection Agency (EPA) moved from policy development to implementation of its Enforcement Four-Year Strategic Plan. During the past twelve months, the Agency has made major strides in integrating a cross-program/multi-media approach to its inspection and enforcement programs. By integrating a cross-program/multi-media perspective into all stages of the enforcement planning and decision-making, the Agency intends to achieve additional public health and environmental protection results, deterrence, and efficiency which could not be achieved through the use of traditional single-media approaches alone.

EPA's commitment to cross-program/multi-media enforcement is one reflection of its greater emphasis on better integrating consideration of health and ecological risks into inspection targeting and case selection. While these concepts apply in single-medium cases as well, cross-program/multi-media enforcement is intended to result in comprehensive identification and remediation of problems at a facility. Cross-program/multi-media inspections also have the potential of better focusing senior management in the regulated community on the broad range of environmental compliance issues, better ensuring that they do not overlook significant environmental problems.

Throughout its Regional Offices, EPA is experimenting with different techniques for inspection targeting, case screening, and case coordination. The Agency is carefully building the structures necessary to support cross-program/multi-media enforcement, since frankly, this type of enforcement does not come naturally to EPA's structure and culture. This building process, initially viewed by many in the Agency with skepticism and concern, is now being implemented with excitement and enthusiasm.

An example of how this approach is working nationally is the series of cross-media enforcement actions, both civil judicial and and administrative, filed against major sources of lead emissions. The actions were filed by EPA and the Department of Justice on July 31, 1991, against violators located in each of EPA's ten regions. EPA coordinated across its compliance programs to file enforcement actions under six environmental statutes to reduce a specific pollutant -- lead. Along with pollution prevention, education, and training, enforcement was a major component of the agency-wide strategy to significantly reduce lead exposures to the public -- particularly the risk of high blood lead levels in children -- and to the environment. The Department of Justice filed twenty-four civil cases in Federal courts across the country, and EPA initiated direct administrative enforcement actions against fourteen facilities, assessing some $14 million in total penalties. The cases in the initiative were filed under six different statutes: the Resource Conservation and

Recovery Act (RCRA); the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); the Clean Water Act (CWA); the Safe Drinking Water Act (SDWA); the Clean Air Act (CAA); and the Emergency Planning and Community Right-to-Know Act (EPCRA).

EPA has also focused geographically on the Chesapeake Bay and the Great Lakes as cross-program/multi-media initiatives. In FY 1992, EPA plans to add another pollutant-specific initiative, and industry-specific initiative, a company-specific initiative, other regional geographic-based initiatives, and an international initiative focused on the Mexican border.

In order to have the capability to look at patterns of noncompliance within or across environmental programs, EPA needs accurate, readily accessible data on source compliance status. These data will help targeting of specific geographic, industry, company, facility, or pollutant-specific sources based on compliance status, compliance history, and/or environmental risk profile. To provide that capability, EPA has developed an automated capability which can link information from its various mainframe computer systems. This new capability, known as Integrated Data for Enforcement Analysis (IDEA) utilizes EPA's powerful mainframe computer capacity to allow EPA enforcement personnel to engage in an interactive analysis of compliance and enforcement data that is contained in the various media program data systems. This capability also provides access to corporate identification information allowing users to structure their analyses based on corporate parentage or structure, industrial sector, pollutants, and/or geographic sector.

EPA is also developing cross-program/multi-media training courses for its compliance inspectors and its technical and legal staffs; these courses will be available to State environmental program and legal personnel. Courses will be offered under the umbrella of the National Enforcement Training Institute (NETI), created to provide training to EPA, State, and local personnel involved in environmental enforcement. State representatives serve on the Institute's Advisory Council and participate actively in curriculum development and program design.

The emphasis on cross-program/multi-media enforcement raises questions about EPA's working relationships with the States. In response to requests from States for clarification, on August 9, 1991, EPA issued a proposed Addendum on Multi-Media Enforcement to the Policy Framework on State/EPA Enforcement Agreements. As the proposed addendum makes clear, a cross-program/multi-media approach is not intended to change the current structure under which State and local governments have the primary enforcement responsibility, nor current ground rules for determining which level of government should assume the lead for enforcement response. However, implementation of a cross-program/multi-media approach will require even closer Federal/State working relationships. EPA is committed to working cooperatively with States to forge those relationships.

III. Environmental Enforcement Activity

Federal Judicial and Administrative Enforcement Activity

Judicial Enforcement - Civil

During FY 1991, the EPA made a concerted effort to approach its enforcement activity with a cross-program/multi-media perspective, and where appropriate, to bring cross-program/multi-media and multi-facility enforcement actions against violating facilities to bring about comprehensive solutions to complex interrelated environmental problems. With this cross-program/multi-media perspective, the Agency intends to achieve additional public health and environmental protection results, deterrence, and efficiency which might not be achieved through use of traditional single-media approaches alone.

An Agency-wide workgroup analyzed operational modifications that would facilitate greater use of cross-program/multi-media approaches, and recommended modifications to the counting methodology that had been used in the past to track and account for civil referral activity. These adjustments are intended to more accurately reflect the greater magnitude of cross-program/multi-media actions and the variety of violations being addressed, and to remove any accounting-related disincentives to bringing these cases.

Through this transition period, EPA maintained an aggressive civil judicial enforcement program by referring 393 cases to the Department of Justice (DOJ). While the 393 cases are the highest total ever referred in one year, EPA has not claimed a record year since under the old counting method, the Agency would have had 366 referrals, slightly below the previous referral record of 375 in FY 1990. (With the new counting approach, we estimate that the 375 civil cases referred to DOJ in FY 1990 would have totaled 406).

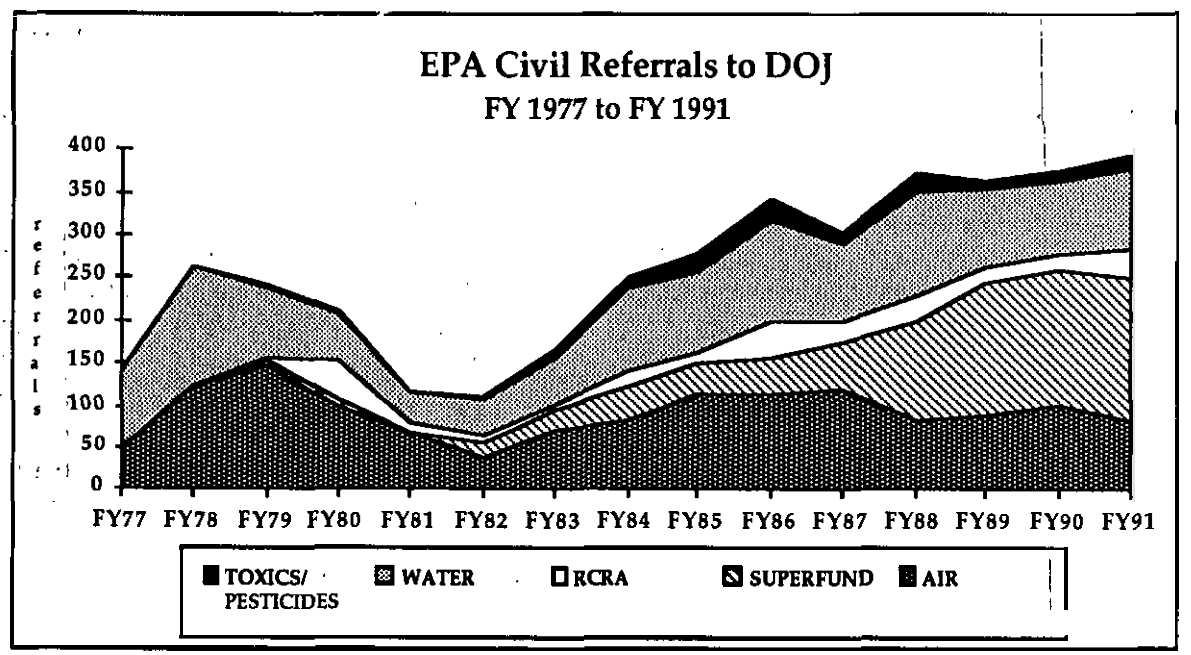


Illustration 1

Since FY 1989, 1,132 civil judicial cases have been referred to DOJ, nearly thirty percent of all civil cases referred in the 20 years 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 1991 with 164 civil judicial cases referred to DOJ (a number not influenced by the new counting procedure).

Monitoring Judicial Consent Decrees

At the end of FY 1991, the Agency reported that 686 judicial consent decrees were in place and being monitored to ensure compliance with the provisions of the decrees, an increase of 40 over last year and three and a half times the number of six 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 actions against more than 100 violating facilities during the year including the referral of 14 cases to DOJ for enforcement of the consent decree with the court.

Judicial Enforcement - Criminal

In FY 1991, EPA's criminal program established records for most categories of criminal enforcement activity. New records included referring 81 cases to DOJ (the previous record was 65 in FY 1990), bringing charges against 104 defendants (the previous record was 100 in FY 1990), and the number of months of jail time to which defendants were sentenced with 963 months (the previous record was 745 months in FY 1990). Forty-eight criminal cases concluded during the year, and 82 defendants were convicted. In addition, 28 of the defendants convicted were sentenced to incarceration.

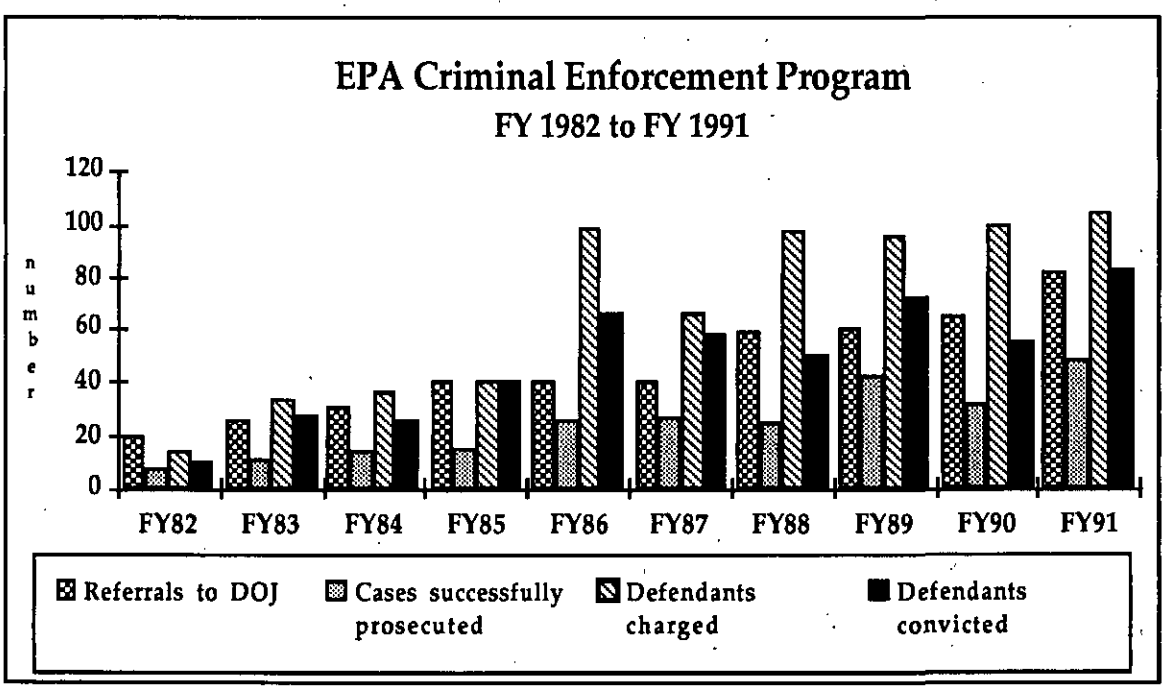


Illustration 2

FY 1991 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 previous illustration indicates, case referrals and the number of defendants charged and convicted have increased since 1982. Evidence of the strong recent growth of the criminal program is that 53% of all referrals, 65% of all months sentenced, and 68% of all penalties assessed have occurred during the last three years.

Imposition of incarceration and probation is an extremely effective part of the criminal program, and serves as a strong deterrent. Probation is very effective 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 the prison sentence that was suspended in lieu of probation. Since 1982, individuals have received prison sentences for committing environmental crimes totaling 261 years, and 785 years of probation have been imposed.

Administrative Enforcement

EPA posted its second highest annual total for administrative enforcement activities in FY 1991 with 3,925 actions. The Agency record of 4,136 was set in FY 1989. The totals for FY 1991 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 1991 figures indicate that EPA programs continue to make widespread use of these effective and less resource intensive tools.

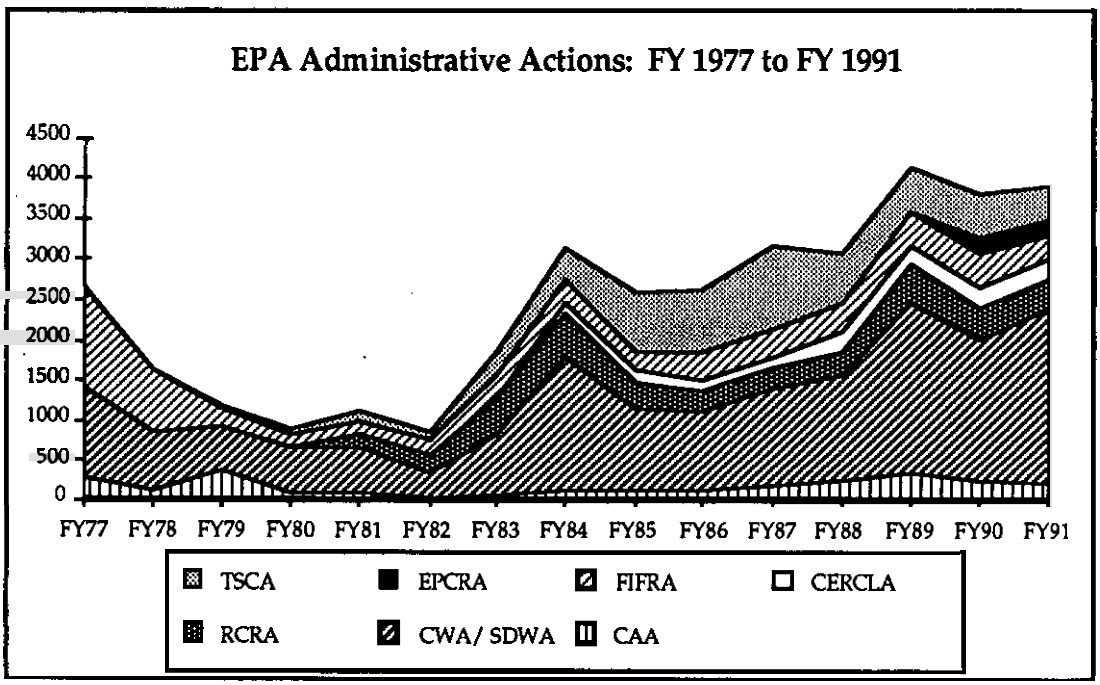


Illustration 3

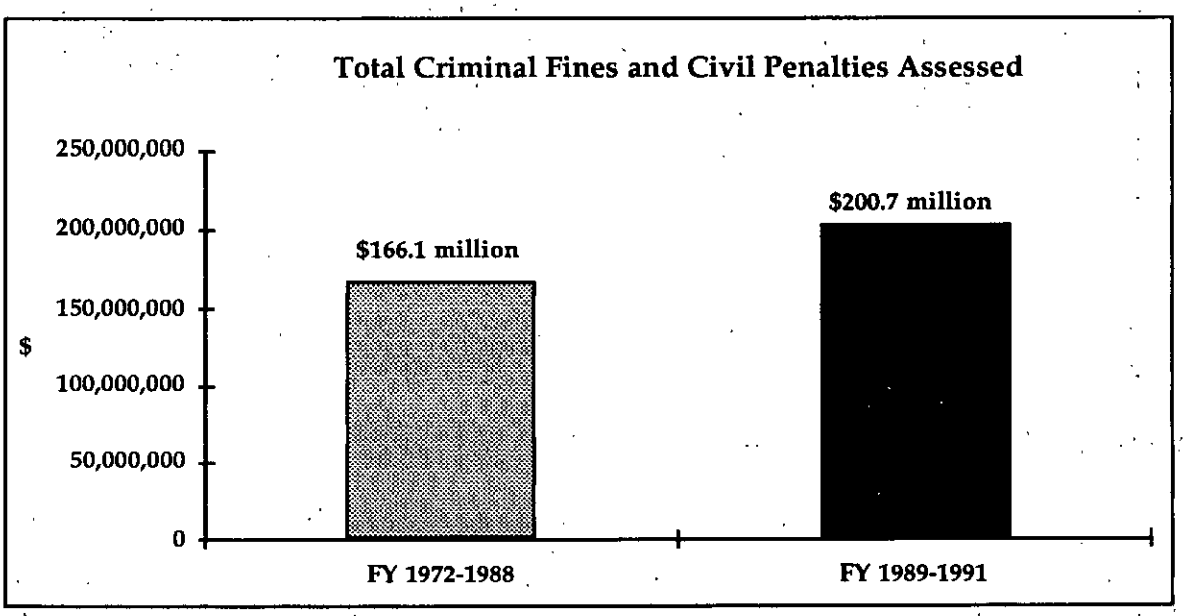
Federal Penalty Assessments

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).

In FY 1991, $73.1 million in civil penalties were assessed, an all-time record ($41.2 million in civil judicial penalties and $31.9 million in administrative penalties, both all-time records). This represents a 21 percent increase over FY 1990 and in FY 1991 alone, 23 percent of all civil penalty dollars in EPA's history were obtained. Overall, 53% of all civil penalty dollars in EPA's history were assessed in the last three years. Since its creation, EPA has imposed $321.3 million in civil penalties ($209 million with civil judicial actions and $113 million with administrative actions).

Criminal fines totaled $14.1 million in FY 1991 (before deducting suspended sentences), which represents a two and a half fold increase from FY 1990 and is the highest amount ever assessed by EPA for criminal cases. In the five years EPA's criminal enforcement program has been tracking penalty data, $43.8 million in criminal fines have been imposed before deduction of suspended sentences. One third of all criminal fines in EPA's history were assessed in FY 1991.

Overall, in the last three years, EPA has assessed 55% of all civil penalties and criminal fines combined (see chart below).



In FY 1991, $9.7 million in Clean Air Act civil penalties were assessed ($7.3 million for stationary source violations and $2.3 million for mobile source violations); $26.6 million in Clean Water Act penalties were assessed ($23.1 million in civil judicial penalties and $3.5

million in administrative penalties); over $10.6 million in Toxic Substances Control Act administrative penalties were assessed; and $17.7 million in Resource Conservation and Recovery Act penalties were assessed ($10.0 million in civil judicial penalties and $7.6 million in administrative penalties). The Federal Insecticide, Fungicide, and Rodenticide Act and Safe Drinking Water Act programs are largely delegated to the States; however, EPA assessed over $932,000 and $2.0 million respectively, under these statutes. The Toxic Release Inventory program assessed nearly $3.9 million. Over $889,700 in Emergency Planning and Community Right-to-Know Act (EPCRA) §302-§312 and CERCLA §104 penalties were assessed. The Wetlands program assessed $504,200 and the Marine and Estuarine Protection program assessed $264,000. The FY 1991 total includes a civil judicial penalty for $220,000 assessed under the Lead Control Contamination Act (a 1988 amendment to the Safe Drinking Water Act). This penalty reflects the first case brought by the Agency under this Act.

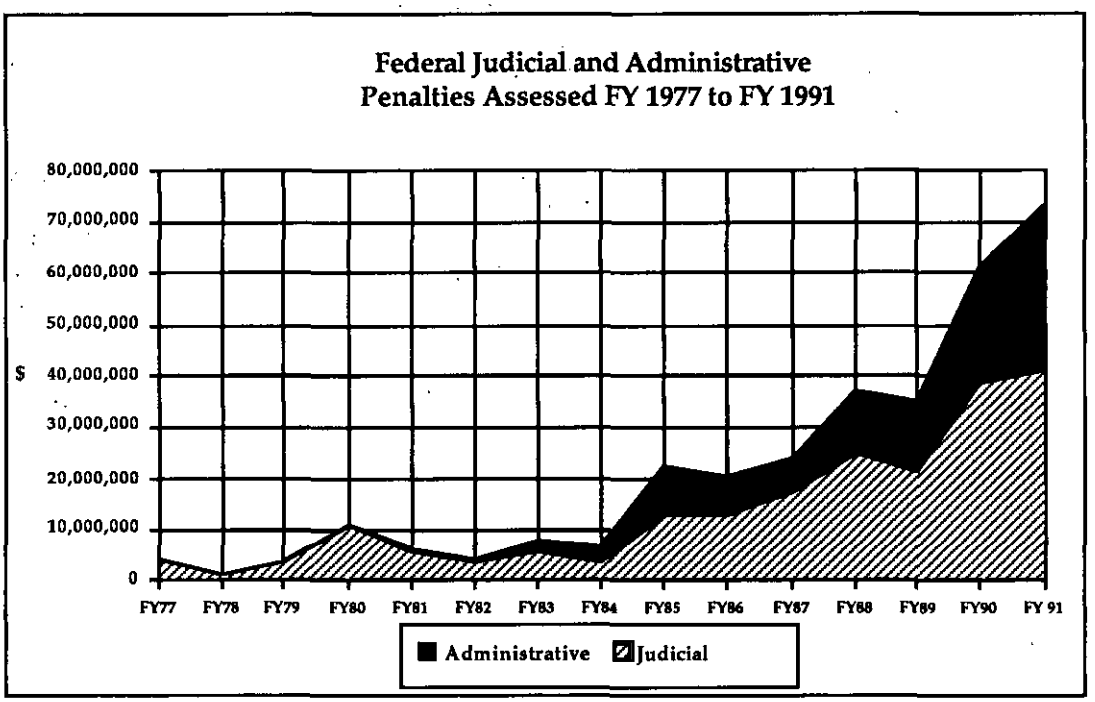
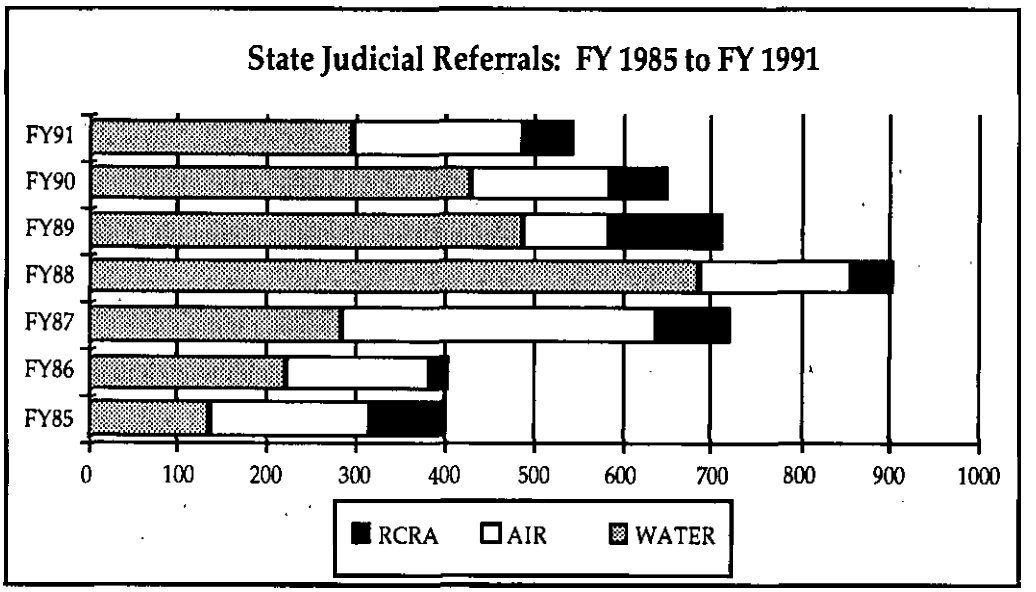


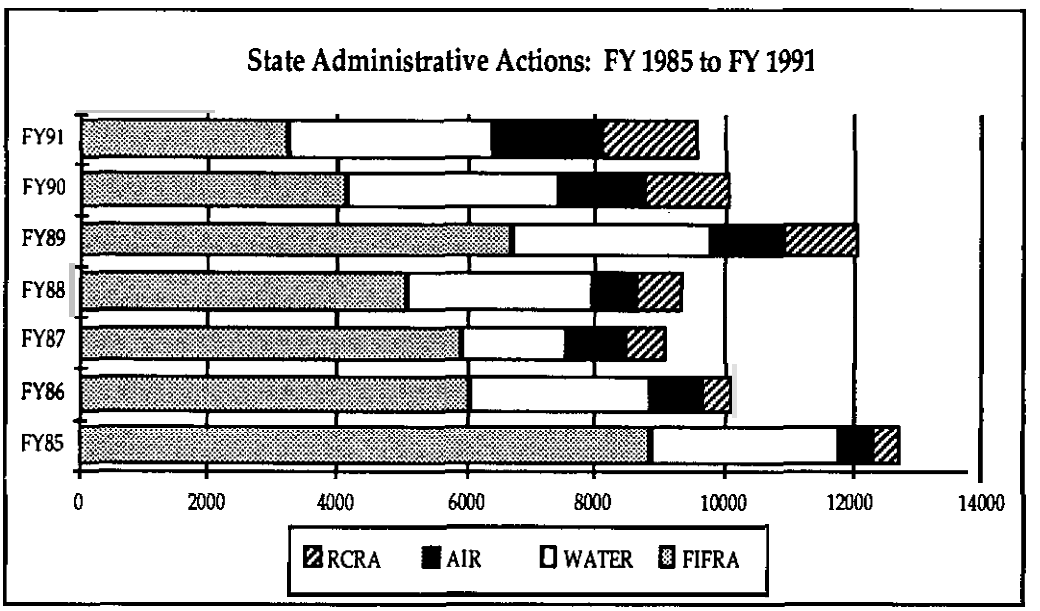
Illustration 4

For further information on EPA penalty practices, see the National Penalty Report in the Appendix.

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 1991, the States referred 544 civil cases to State Attorneys General and issued 9,607 administrative actions to violating facilities.





Illustrations 5&6

EPA Contractor Listing

In FY 1991, a near record number of facilities were added to EPA's List of Violating Facilities (List) under the authorities provided to EPA by Clean Air Act § 306 and Clean Water Act § 508, to bar facilities that violate clean air or clean water standards from receiving Federally funded contracts, grants or loans. Federal agencies are prohibited by statutory mandate from entering into contracts, grants or loans (including subcontracts, subgrants or sibilance) to be performed at 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), effective automatically on the date of the conviction. Facilities which are mandatorily listed remain on the List until EPA determines that they have

corrected the conditions giving rise to the violations. Nineteen facilities were listed in FY 1991 based on criminal convictions -- one short of the record set in FY 1990. Ten facilities were removed from the List in FY 1991. Since FY 1986, 74 facilities have been placed on the mandatory list. Fifty-two facilities remained on the List as of the end of FY 1991.

Facilities with records of civil violations may also be listed, at the discretion of the Assistant Administrator for Enforcement, 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 discretionary listing if there are continuing or recurring violations of the CAA or CWA 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 are automatically removed from the List 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 for Enforcement 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. In FY 1991, EPA proposed to list one facility under its discretionary listing authority. Seven pending discretionary listing actions were withdrawn by EPA after consent agreements were entered into in the underlying civil enforcement cases.

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

This chapter provides highlights of major FY 1991 litigation which support media enforcement priorities and demonstrate innovative approaches in the enforcement process. FY 1991 was an exciting and challenging year for EPA's enforcement effort. The Agency began implementation of a new approach, described in the Enforcement Four-Year Strategic Plan and the Enforcement in the 1990's Project, by which Federal and State governments could better promote compliance with, and effective deterrence against violations of, environmental laws. Cases are listed alphabetically and not in order of importance

Clean Air Act Enforcement

In FY 1991, this program's activities centered upon implementation of the Clean Air Act Amendments of 1990. 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 (NAAQS) for the criteria pollutants involved violations of regulations for volatile organic compounds (VOCs), sulfur dioxide and particulates.

Stationary Source Program

U.S. v. American Cyanamid: The largest penalty to date for violations of §165 of the Clean Air Act and the regulations regarding Prevention of Significant Deterioration (PSD) was obtained from American Cyanamid on September 5, 1991. The company agreed to pay a civil penalty of $625,000 for construction of a facility in the Pearl River, New York, without first obtaining a necessary PSD permit and without giving the state or EPA the notification of construction required by the New Source Performance Standards. EPA's enforcement efforts forced American Cyanamid to halt construction immediately on the facility until it obtained the proper PSD permit, which the company received in May 1990.

U.S. v. American Fructose, Decatur, AL: Region IV negotiated a judicial consent decree with this facility for violations of the federal New Source Performance Standards under the Clean Air Act. EPA charged the facility with failure to timely conduct certain testing and to notify EPA of activities required by those standards. Under the consent decree, the company agreed to pay a civil penalty of $145,000.

Bakery Enforcement Initiative

Large, commercial bakeries are significant sources of VOC emissions (which come primarily from the biological action of yeast). Region II issued Notices of Violations citing VOC violations at six major baking plants, including such industry giants as Nabisco Biscuit; SB Thomas, Inc. and Continental Baking. Other bakeries cited include Harrison Baking, Marathon Bakery, and Automatic Rolls. Continental Baking was the subject of a FY 1990 pre-referral negotiation (PRN), referral and in FY 1991 reached a settlement with EPA pursuant to which it will pay a civil penalty of over $328,000. Continental has also spent over $500,000 on an afterburner to control its VOC emissions.

U.S. v. Bethlehem Steel, (N.D. IN): In May 1991, the United States settled its action for Bethlehem Steel's State Implementation Plan (SIP) violations under the Clean Air Act at two coke oven batteries known to be leaking carcinogenic emissions into the atmosphere from more than ten percent of their doors. Bethlehem of Burns Harbor, IN, had also violated a site specific SIP provision which prohibited visible emissions of more than 20 percent opacity on a two hour average basis from a battery combustion stack. The consent decree requires Bethlehem to achieve and maintain compliance, improve operation and maintenance practices, self-monitor emissions for the life of the consent decree, and pay a penalty of $600,000.

CFC Importer Cases

In FY 1991, EPA settled five cases against companies that imported chlorofluorocarbons (CFCs) without first obtaining required consumption allowances. Such imports violate the Rule to Protect the Stratospheric Ozone, 40 C.F.R. Part 82, which limits the amount of identified stratospheric ozone-depleting chemicals (ODCs) that can either be manufactured in the United States or imported from other countries. By limiting the amount of consumption allowances that are available in a given year, the United States limits the amount of ODCs that can enter the country in that year, and fulfills its international commitment not to use more than its share of these chemicals as the world phases out their production. Companies found to have imported ODCs without allowances can ensure that the United States remains within its ceiling by purchasing unexpended allowances after the fact, by exporting ODCs to countries that are below their ceilings, or by transforming the ODCs into ozone-benign substances.

U.S. v. Coors Brewing Company: An administrative order under §167 of the Clean Air Act was issued to Coors Brewing, Elkton, VA, on April 25, 1991, requiring cessation of construction of a major source without a valid permit. Coors obtained a prevention of significant deterioration (PSD) permit from EPA on March 19, 1981, for the construction of a 10 million barrel per year brewery facility in the Elkton area of Rockingham County, Virginia. Coors did not commence construction of the brewery during the required time period, so the company requested and obtained extensions to the permit. Each of these extensions was permissible because every extension required Coors to perform a new best available control technology (BACT) and modeling analysis prior to the start of any construction related to the brewery. The company has not yet constructed anything that was provided for in the permit. Subject to certain conditions, the latest extension gives Coors until April 15, 1992, to initiate construction of the brewery.

Subsequently, Virginia was delegated authority to administer the PSD program on behalf of EPA. Coors violated the PSD regulations when it constructed, without receiving an appropriate permit modification from the Commonwealth, one of two planned natural gas-fired (NG) boilers, not contemplated by the original PSD permit, to serve as back-up units for the coal-fired boilers that were permitted. In addition, a six-inch NG line, metering, and pressure reducing station; outside overhead pipe gallery; and power house building for the NG boilers have also been constructed at the planned Coors brewery site. The continued construction of the facility without a valid PSD permit would violate §165(a) of the Clean Air Act, PL 101-549, 42 U.S.C.' 7475(a), and the Commonwealth's State Implementation Plan.

U.S. v. Ethyl Corporation (M.D. Louisiana): An eight-year old, heavily contested, precedent-setting Clean Air Act case concerning violations of the federal regulations limiting emissions of vinyl chloride into the air, was settled on March 25, 1991. A civil enforcement case was filed in the U.S. District Court for the Middle District of Louisiana in February 1983, against Ethyl Corporation regarding its plastics plant in Baton Rouge, Louisiana. The complaint alleged that Ethyl discharged vinyl chloride to the atmosphere on at least 81 occasions, between 1976 and 1981. Ethyl moved to dismiss the complaint on the grounds that the vinyl chloride regulations established work practices, not emission standards, with the result that the regulations would not be valid. The District Court Judge accepted Ethyl's argument and dismissed the complaint. EPA appealed this ruling and the U.S. Court of Appeals for the Fifth Circuit reversed the decision, holding that the regulations were emissions standards, and remanded the case to District Court for trial. Ethyl filed a Petition for a Writ of Certiorari with the U.S. Supreme Court on August 30, 1985, but the Supreme Court declined to hear the case. After extensive discovery proceedings and then settlement meetings in which the District Court Judge participated, EPA and Ethyl agreed on a resolution of the case. A consent decree was filed on March 25, 1991, ordering Ethyl to pay a civil penalty of $320,000.

U.S. v. Formosa Plastics (M.D. Louisiana): A six-year old Clean Air Act case against Formosa Plastics Corp., Baton Rouge, Louisiana, in the U.S. District Court for the Middle District of Louisiana was settled on November 5, 1990. The Formosa Plastics case was filed in January 1984, alleging violations of the federal Clean Air Act regulations limiting emissions of vinyl chloride into the air from Formosa Plastics' ethylene dichloride and vinyl chloride manufacturing

facility. In mid-1985, a District Court Judge in the Middle District of Louisiana had placed a stay on proceedings in all cases alleging violations of the Clean Air Act requirements regarding vinyl chloride emissions. The Judge had ruled in a similar case against Ethyl Corporation that the vinyl chloride regulations established work practices, not emissions standards, and so were not valid. The U.S. Court of Appeals for the Fifth Circuit reversed the District Court Judge in the Ethyl case, and the U.S. Supreme Court was asked to consider the case. The Supreme Court declined to consider the Ethyl case, and the Fifth Circuit ruling was final. Subsequently, the stay was lifted on the Formosa Plastics case and negotiations resumed. A consent decree for penalties only was entered on November 5, 1990, and a civil penalty of $65,000 was paid on November 8, 1990, which closed the case.

U.S. v. Gates Energy Products (W.D. Mo.): As part of the National Multi-Media Lead Enforcement Initiative, a complaint and consent decree were filed simultaneously on July 31, 1991, under which Gates agreed to pay $200,000 for New Source Performance Standards (NSPS) violations and violations of the SIP requirement to obtain operating permits at Gates' lead-acid battery manufacturing plant in Warrensburg, Missouri and four other facilities. Gates further consented to three supplemental environmental projects. The first requires a multi-media environmental compliance and management audit of the Missouri and Florida plants. The second is a pollution prevention project reducing the use of 1,1,1, trichloroethane (a solvent and degreaser used at the plant). The third is a pollution reduction project designed to minimize lead oxide waste.

U.S. v. General Dynamics (N.D. Texas): General Dynamics (GD) is the operator of Air Force Plant No. 4 in Fort Worth, Texas, the only facility at which the F16 fighter plane is made. A case filed in 1987 alleged that GD violated the EPA-approved Texas air pollution standards governing emissions to the air of volatile organic compounds at three coating operations at the facility. In a landmark decision in FY 1990, a court for the first time ruled that the contractor at a Government Owned, Contractor Operated (GOCO) facility is considered the operator as a matter of law. This held significance for cases involving GOCO facilities where the contractor claimed that it is the alter ego of the United States government, exercising no independent judgment or authority. An Agreed Order was issued by the U.S. District Court for the Northern District of Texas on January 2, 1991, granting EPA's request for summary judgment on whether GD had violated the Texas standards. The court further ruled that GD must come into compliance with the applicable standards within three years or cease operations. The order also included a penalty amount of $350,000, that was offset by GD's claims against the Ai r Force.

U.S. v. General Motors Corp., (N.D. OH): A consent decree was entered on April 11, 1991, resolving the Government's action under the Clean Air Act (CAA) against General Motors Corp. (GM) for violations at its Lordstown, Ohio, automobile assembly plant. As a result, GM installed a coating system that reduces volatile organic compounds (VOC) from its paint shop operations from approximately 3,400 tons per year to 750-800 tons per year. GM paid a civil penalty of $1,539,326.

George Fox College, (Newberg, OR) and Elliott-Jochimsen Construction: The complaint in this case alleged that when the college renovated the college library, asbestos was not identified and work practice standards were not followed, resulting in asbestos contamination throughout much of the library. Subsequent to EPA and Oregon Department of Environmental Conservation inspection and identification of asbestos, the college decontaminated the library books and other items within the library. This is the first asbestos case EPA has brought in Oregon in many years, and resulted in a penalty of $131,250.

U.S. v. J.M. Huber Corp.: Pursuant to a settlement with both the United States and the State of Maine, J. M. Huber Corp. paid a $328,000 civil penalty and installed costly control equipment to ensure future compliance with the Clean Air Act. The federal and state governments had concurrently filed actions against the company for excess particulate matter emissions from its waferboard facility in Easton, Maine. From July 1988 to December 1990, J.M. Huber Corp.'s particulate emissions exceeded the standard in Maine's federally-approved state implementation plan. As part of the settlement, the company agreed to comply with a particulate emission limit which is even stricter than the regulatory limit. The consent decree was entered by the U.S. District Court for the District of Maine in July 1991.

Ketchikan Pulp Corporation: Region X issued a compliance order to Ketchikan Pulp Corporation (KPC) during FY 1991 for failure to install sulfur dioxide emission control equipment on an oil-fired power boiler. It is estimated that KPC's failure to install this equipment resulted in an extra burden of approximately 910 tons per year to the Ketchikan, Alaska, airshed. KPC shut down the boiler in response to the order.

U.S. v. MPM Contractors, Inc. (D. Kan.): In this case involving violations of the asbestos regulations, the court provided a clear statement that the government may establish violations of the asbestos work practice standards without proving visible emissions of asbestos. The U.S. District Court for the District of Kansas ruled on October 2, 1990, that visible emissions of asbestos are not an element of proof in establishing violations of the asbestos work practice standards under §112 of the Clean Air Act. The court held that the defendant is liable for penalties for violations of the asbestos regulations and the Clean Air Act, and granted the United States motion for summary judgment on liability. The case was originally filed on August 22, 1989, for violations of the asbestos regulations, including violations of the work practice standards for asbestos at three facilities where asbestos removal was conducted.

On April 18, 1991 the court also issued a preliminary injunction against MPM, its owner, Michael McGill, and Asbestos Removal Company, Inc., a company which had been purchased by McGill, prohibiting McGill from dispersing any assets pending assessment of a penalty for the asbestos violations.

U.S. v. Nevada Power Company: EPA signed a consent decree with Nevada Power on August 20, 1991, requiring the company to pay a civil penalty of $400,000 for by-passing the pollution control equipment at its Reid-Gardner fossil-fuel fired electrical generating station in Moapa, Nevada, violating opacity and particulate matter standards, failing to properly operate continuous emission monitors ("CEM") and failing to record and report CEM data in violation of §111 of the Act and the NSPS for opacity and particulate matter.

The case was generated as part of a Region IX initiative targeting "good pollution control practices" and related violations at electric power generating stations. This settlement also authorizes EPA to determine compliance with particulate and opacity standards on the basis of data generated by the CEM.

U.S. v. Northern Aroostook Regional Incinerator Facility, et. al.: The three Maine municipalities, (Madawaska, Fort Kent and Frenchville), which own the Northern Aroostook Regional Incinerator Facility located in Frenchville, Maine, agreed to pay a civil penalty of $125,000 for particulate violations at the incinerator. The defendants had violated the New Source Performance Standard for Incinerators, 40 C.F.R. Part 60, Subpart E, and the applicable particulate emissions standard in the Maine SIP. The defendants have agreed to shut down the incinerator and switch to a new solid waste disposal program involving a combination of recycling and landfill disposal.

U.S. v. Stanson Wrecking Co. and Williams and Richardson Co., (E.D. MI): On June 28, 1991, Judge George Woods, Eastern District, Michigan, entered an order in U.S. v. Stanson Wrecking Co. and Williams and Richardson Co. requiring the defendants to pay a civil penalty of $60,000. The order requires the defendants to comply with the asbestos NESHAP regulations under the Clean Air Act and contains specific requirements with regard to notice, inspector training, and asbestos abatement worker training. Fines of $20,000 were assessed against each defendant for NESHAP violations. Additionally, Stanson, of Detroit, was assessed $10,000 for failing to respond to a §114 information request and $10,000 for violating an administrative order issued by EPA under §113 of the CAA.

U.S. v. State of Hawaii, Department of Transportation: Illustrating the unusual locations with the potential for asbestos-related air pollution, EPA obtained a penalty of $20,000 from the State of Hawaii, Department of Transportation (HDOT) for violations of the asbestos NESHAP during a demolition of asbestos-lined concrete planters at the Honolulu International Airport. The complaint alleged that HDOT violated the NESHAP by its failure to notify EPA of the demolition, its failure to remove the asbestos prior to demolition, its failure to keep the asbestos wet during demolition and its failure to properly store the asbestos debris. The consent decree was signed by EPA on August 22, 1991.

U.S. v. Unitank Terminal Service, et al.: A consent decree entered on April 30, 1991 resolved a

significant Clean Air Act civil action against Unitank Terminal Service, Unitank, Inc., and DRT Industries, Inc. for past violations of the NESHAP for equipment leaks of benzene at a bulk liquid storage terminal (petroleum and chemical products) in Philadelphia, PA. After prevailing on certain issues via summary judgment and obtaining a precedent-setting opinion, the U.S. obtained the defendants' agreement to pay civil penalties in the amount of $135,000, despite the fact that the defendants had previously sold the facility on March 7, 1990.

U.S. v. USX Corporation (Clairton, PA) (W.D. PA): A Clean Air Act civil complaint against USX Corporation for violations of the CAA and the Pennsylvania/Allegheny County State Implementation Plan at various sources (coke oven battery, bleeder stacks, and quench towers) at USX's coke plant in Clairton, PA, was filed on February 25, 1991, in the U.S. District Court for Western Pennsylvania. The violations involve the venting of raw coke oven gas at the bleeder stacks and the use of contaminated water to cool hot coke at the quench towers. The violations are alleged to have occurred on several occasions since 1987. The complaint seeks to have USX install new equipment and take other steps to prevent any additional violations and payment of a civil penalty of $25,000 for each violation.

U.S. v. Wards Cove Packing Company: Wards Cove paid a civil penalty of $60,000 for violations of the asbestos NESHAP during the renovation of two retorts (sterilization vessels) at the company's packing plant at Excursion Inlet, Alaska. Signed by EPA on May 20, 1991, the decree further provides that defendants will comply with the asbestos NESHAP in the future and will institute an asbestos control program to ensure such compliance.

U.S. v. Weyerhaeuser Company: Weyerhaeuser agreed to pay a penalty of $500,000 for failing to comply with PM and NOx emission limitations in a minor source permit issued by EPA. Weyerhaeuser also agreed to install additional control equipment on their Marshfield, Wisconsin, facility and undergo Prevention of Significant Deterioration review if it ever again exceeds the permit emission restrictions.

U.S. v. Wick Construction, et al.: In this case the Port of Seattle and its contractors (Gordon Brown, Ballard Construction and Toro Construction) paid $80,000 for asbestos NESHAP violations during renovations at Sea-Tac Airport. In addition to payment of the civil penalty, the consent decree in this case requires the Port of Seattle and Wick to implement an extensive internal asbestos control program which includes inspection and sampling of all facilities being renovated or demolished, designation of asbestos program managers and site coordinators, and complete specified asbestos training.

U.S. v. Zimmer Paper Products, Inc. (S.D. IN): The defendant agreed to pay a $250,000 civil penalty and to comply with the Indiana State Implementation Plan. To reduce volatile organic compound emissions from its paper coating line, Zimmer, of Indianapolis, IN, must either use low solvent technology, install an incinerator and capture system, or cease operation of the violating line by July 1992, 15 months after entry of the consent decree.

U.S. and Commonwealth of PA. v. USX Corporation (Fairless Hills, PA): A consent decree resolving a significant Clean Air Act civil action against USX Corporation (USS Division) for violations of the Pennsylvania State Implementation Plan at various sources (sinter plant, open hearth furnaces, and blast furnaces) at USX's steel plant in Fairless Hills, PA, was successfully completed during FY 1991. The terms of the settlement include the payment by USX of civil penalties in the amount of $700,000, and agreement to provisions requiring compliance with all applicable CAA requirements upon any future resumption of operation of the previously operating noncomplying sources. Operation of the relevant sources was suspended by USX on January 31, 1991. The consent decree was executed during FY 1991 and was lodged on October 4, 1991.

U.S. and State of Maryland v. Bethlehem Steel Corporation (D. MD): A Clean Air Act civil complaint against Bethlehem Steel Corporation for violations of the Maryland SIP at various emission points (charging operations, door areas, offtake piping, combustion stacks, and pushing and hot coke transfer operations) at three coke oven batteries at Bethlehem Steel's plant in Sparrows Point, MD, was filed on April 25, 1991, in the U.S. District Court. The violations involve excess emission of particulate matter. The complaint seeks a court order to direct Bethlehem Steel to comply with the CAA and payment of a civil penalty.

State Air Enforcement Actions

Beginning with the FY 1991 Accomplishments Report, EPA will be including significant state enforcement actions submitted by the EPA Regional offices. We anticipate that State actions will play a greater role in future reports.

American Signature/Foote Davies, Lincoln, NE (CAA): A State consent decree was entered on October 15, 1990, for the defendant's failure to obtain a Prevention of Significant Deterioration permit as required by the Nebraska Implementation Plan. The defendant paid $80,000 penalty and was required to obtained a permit to comply with the SIP.

Gates Energy Products, Inc., Warrensburg, MO: A State consent decree was entered on July 5, 1991, for the defendant's failure to obtain new source review permits under the Missouri implementation plan. The Company paid a $20,000 penalty for the violations which was the statutory maximum for the violation under the facts of the case. The source is a lead-acid battery manufacturing plant. This case is a companion case the Region's Clean Air Act judicial case which was filed as part of the Agency's lead initiative (see page 4-3).

Slay Bulk Terminals, Inc., St. Louis, MO: A State consent decree was entered on January 31, 1991 for violation of the emission standards for benzene under the EPA's National Emission Standards for Hazardous Air Pollutants. The Company agreed to pay a $28,000 penalty and was required to meet a schedule to comply with the emission standards.

State of Texas v. Dynagen, Inc: Dynagen, Inc., a subsidiary of General Tire Company, operates a rubber plant located in Odessa, Texas. The Texas Attorney General's office filed suit against Dynagen, Inc. in December 1989, on behalf of the Texas Air Control Board (TACB). The TACB had reported more than 70 air emission violations including styrene and butadiene, known carcinogens, against the company over the preceding two-year period after receiving numerous complaints from local residents. The case was settled in September 1991, with the company agreeing to a $1.4 million cash settlement. In addition to the cash settlement, the company agreed to spend more than $12 million to install state-of-the-art equipment to rid the plant of faulty air emissions. This was the largest settlement ever assessed under the Texas Clean Air Act, making it a landmark settlement.

State of Texas v. International Paper Corp: During 1987, International Paper Corporation (IPC) at Nacogdoches, Texas, started production of wafer board with a permit from the Texas Air Control Board (TACB) that allowed 280 tons per year (TPY) emissions of volatile organic compounds (VOCs) from the resins used to bond the wafer board together. The VOCs were methylene diphenylisocyanate. Via stack tests, the TACB determined that the actual emission rate was approximately 1,000 TPY, making IPC subject to the Prevention of Significant Deterioration (PSD) standards, requiring Best Available Control Technology (BACT) for control equipment. IPC entered into an order with TACB in 1988; however, subsequently it was determined that BACT (a wet electrostatic precipitator on the veneer dryers) was not in use at the facility to control VOCs. On March 6, 1991, EPA staff met with the company to discuss their violations and urged them to resolve the situation with TACB. Subsequently, IPC entered into negotiations with TACB and agreed to use the BACT and pay a $350,000 administrative penalty. EPA reviewed and concurred with TACB's enforcement penalty.

Federal Facilities - Air

Federal Facilities Asbestos Order: Region II issued a compliance order to the U.S. General Services Administration for asbestos NESHAPs violations in connection with renovation operations at the federal office building in New York City -- the second largest government office building in the country. The order was issued in response to a particular violation, but in deciding to issue the order Region II considered a lengthy history of similar violations at this building and at other GSA-managed buildings. EPA had been attempting to reach a settlement with GSA concerning these violations at the time the new violations were documented. The order applies to all buildings owned or operated by GSA in Region II. The violations which gave rise to the order involve the removal of ceiling tiles which were covered with asbestos dust (from asbestos insulation which had fallen onto them from above). Region II determined that such asbestos-covered tiles were subject to the requirements of the revised asbestos NESHAPs rule. This interpretation was confirmed by EPA

Headquarters. In addition to GSA, EPA also issued orders to its contractors performing the renovation work. Although GSA disagrees with EPA's interpretation and has elevated the matter, it is cooperating in establishing a more consistent approach to asbestos control at its facilities, and states that it has suspended work involving asbestos at its facilities.

General Services Administration (GSA): On May 6, 1991, EPA issued a Prevention of Significant Deterioration (PSD) determination and New Source Performance Standards (NSPS) applicability determinations to the General Services Administration (GSA), thereby removing the principal barrier to permit issuance for renovations to coal-fired boilers at the GSA Central and West Heating Plants in Washington, DC. Concurrent with its PSD/NSPS determinations, EPA drafted a proposed long-term Federal Facilities Compliance Agreement for the two heating plants. The Agreement was signed by GSA and EPA.

In March, 1989, GSA notified EPA and the District of Columbia of its intent to renovate the plants. In June, 1990, EPA, in reevaluating the scope of the proposed projects, determined that PSD and NSPS might be applicable, and advised GSA of this. In July, 1990, EPA learned that work had begun on West Unit # 4 in December, 1989, without a permit. On July 20, 1990, EPA and the District of Columbia met with GSA. GSA was advised to discontinue work on West # 4 until the PSD/NSPS questions were resolved. EPA also informed GSA that during its investigation of PSD applicability, modeled violations of the sulfur dioxide National Ambient Air Quality Standards were found to occur during normal operation of the heating plants. The violations were caused by "downwash" effects resulting from insufficient stack height.

GSA continued construction on West # 4 until September 12, 1990, when the District of Columbia issued a NOV requiring further construction to be suspended. The NOV stated that District of Columbia permits "...cannot be issued until it has been determined if PSD or NSPS applies..." An Interim Federal Facilities Compliance Agreement with GSA was signed on January 29, 1991 to provide conditions and requirements for operation of West Heating plant pending final determinations of PSD and NSPS applicability.

Interim Federal Facility Compliance Agreement: EPA Region IV and DOE-Savannah River: On June 21, 1991, the U.S. EPA, Region IV and the U.S. Department of Energy, Savannah River Field Office (DOE-SR), entered into the first interim agreement between EPA and DOE, an Interim Federal Facility Compliance Agreement and negotiations for a Federal Facility Compliance Agreement. This interim agreement was intended to permit the parties to develop a final phase plan to bring the DOE-SR into compliance and maintain compliance with the Clean Air Act and the National Emissions Standards for Hazardous Air Pollutants (NESHAP). The interim agreement required DOE-SR to immediately enter into good faith negotiations on a Federal Facility Compliance Agreement and to take certain immediate corrective actions in order to bring DOE-SR into full compliance with the NESHAP. A final agreement is now in place.

Clean Air Act Enforcement
Mobile Source Program

- Lead Phasedown

U.S. v. Dupont: In this case, Dupont, the major distributor of tetraethyl lead, was alleged to be liable under the lead phasedown regulations as a "refiner," since it participated in the blending of exorbitant amounts of lead in excess of federal limitations. EPA's determination of "refiner" status was based on the fact that Dupont was a major supplier of lead and Dupont oversaw the blending operations of the lead. EPA issued a Notice of Violation on November 24, 1986 alleging lead phasedown violations and citing Dupont as a refiner along with Will Petroleum, Inc., A. Terricone, Inc., and Triad, Inc. Since Dupont denied responsibility and would not settle, a complaint was filed in Federal District Court in New Jersey on December 28, 1989 against E.I. Dupont Nemours Company. The United States pursued litigation of this case in order to make the supplier of such a highly toxic substance responsible for such a violation. This case was settled for $875,000 pursuant to a court entered Consent Decree filed on July 2, 1991.

Western Refining: EPA alleged that during numerous quarters Western Refining had exceeded the lead standard, illegally banked and used lead rights, and incorrectly reported usage of lead to EPA. An excess of 4.640 million grams of lead was introduced into the environment as a result of

these alleged violations. In addition to liability being imposed against the corporate defendants, liability was imposed against two individuals that were discovered to be integrally involved in the management and ownership of Western Refining. This case was settled on April 24, 1991 for a total penalty of $300,000.

• Fuel Volatility

Unocal Corporation: On March 5, 1990, a complaint was filed in District Court alleging eight days of violations of gasoline volatility regulations. During discovery in this case, Unocal's counsel notified the United States that he had determined that gasoline analysis reports relied on by Unocal in presenting its defense had been fraudulently altered to reflect complying RVP test results. The United States and Unocal subsequently entered into an Agreement in Principal in September 1991, providing for payment of a civil penalty of $80,000, certain ongoing reporting requirements by Unocal, and stipulated penalties for any future violations or failure to comply with the reporting requirements.

• Aftermarket Catalytic Converter Policy Cases

Car Sound Exhaust Systems: In a well publicized action last year, EPA initiated enforcement against Car Sound Exhaust Systems, a manufacturer of aftermarket catalytic converters. This case is significant because it expanded the scope of EPA's aftermarket catalyst program which had previously only focused on the installers of these catalysts. This should further insure the integrity of the program by addressing the responsibilities of the catalyst manufacturers as well. Car Sound Exhaust Systems was manufacturing and selling catalytic converters with insufficient internal catalyst material, contrary to information it had previously submitted to EPA, and was thus in violation of the policy. This case was settled on January 14, 1991. The settlement included a penalty component of $30,000 and a public education component of $20,000.

Cole Muffler: EPA issued a Notice of Violation in September, 1989 against Cole Muffler for 444 violations of EPA's aftermarket catalytic converter policy at 27 separate Cole Muffler Shops located in New York and Pennsylvania. Mitigation efforts by Cole Muffler resulted in a voluntary recall of all vehicles. However, the company would not agree to an acceptable penalty for these violations. A complaint was filed in federal district court on May 16, 1991. EPA subsequently determined that Cole Muffler had committed additional violations of the tampering prohibition, resulting in a total of 3,288 violations. The complaint was amended on February 27, 1992 to reflect the additional violations. This is the largest aftermarket catalytic converter case handled by EPA.

U.S. v. Economy Muffler and Tire Center: EPA received a very favorable decision in this case which centered on EPA's aftermarket catalytic converter policy. This case involves an automobile repair shop that installed 51 two-way catalytic converters on vehicles requiring the installation of three-way catalytic converters, and four aftermarket catalytic converters on vehicles still subject to the vehicle manufacturer's five year/fifty-thousand mile warranty. A complaint was filed in the District Court for Virginia after Economy refused to settle with EPA. The court granted the government's motion for summary judgment for liability, giving "considerable deference" to EPA's consistent interpretation that replacing a three-way converter with a two-way converter was tampering, and further stated that the legislative history supported EPA's interpretation.

• Tampering Cases

CED'S d/b/a Products for Power: During FY 1991, EPA resolved its longest running case against a manufacturer of emission control defeat devices, CED's d/b/a Products for Power. This case arose from an investigation initiated in early 1980 of this company and a number of others which manufactured and distributed catalytic converter replacement pipes, commonly referred to as "test tubes," which were designed to be installed in place of catalytic converters. EPA proceeded with its investigation of manufacturers under the theory that the manufacturer was causing regulated parties (repair shops) to tamper with emission controls in violation of § 203(a) of the Clean Air Act. Prior to the 1990 Clean Air Act Amendments it was a violation of § 203(a) of the Act to "cause" a regulated party to tamper with a motor vehicle's emission control system. Effective with the new Amendments, the manufacture or sale of a "defeat device" such as a test tube, is now explicitly a violation.

After extensive litigation involving the legality of EPA's search warrant and following extensive investigation, EPA cited CED's for causing tampering on 42 vehicles. EPA and CED's signed a Settlement Agreement in June 1987 which required the company to terminate all operations associated with test tubes within 120 days and to pay $75,000 to the government over the next 24 months. After EPA discovered that CED's had neither terminated its sale of test tubes, nor begun it's payment of the required civil penalties, the matter was immediately referred to the Department of Justice who filed for breach of the agreement. The court agreed with the government that CED's violated the agreement and that the government assessment of the company's profits realized as a result of the breach of the agreement resulted in a penalty which includes the original settlement agreement penalty plus these profits and a punitive penalty amount. Under the decree, CED's must terminate all manufacturing and sales of illegal "test tubes," pay a civil penalty of $292,000, insure EPA a right of entry for future inspections, and permanently enjoins CED's from engaging in the manufacturing, sale, or distribution of these devices.

• Cases Involving Manufacturers that Engage in High Performance Modification of Vehicles

The Clean Air Act Amendments of 1990 established the prohibition against the manufacture or sale of defeat devices. §203(a)(3)(B) of the Act, prohibits any person from manufacturing, selling, offering to sell, or installing any part or component intended for use with, or as part of, any motor vehicle, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle in compliance with the regulations at 40 C.F.R. Part 86, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.

The legislative history associated with the prohibition against defeat devices cites "test pipes" and programmable read-only memory (PROM) chips as examples of such devices. All the known manufacturers of test pipes have ceased such production. EPA is currently investigating PROM chips manufactured by three different companies. Samples of the PROM chips have been sent to the EPA laboratory in Ann Arbor, Michigan, to determine whether they are defeat devices under the Clean Air Act provisions.

Callaway Cars, Inc.: In this case, EPA alleged that Callaway modified 111 1988 Chevrolet Corvettes prior to sale and delivery to the ultimate purchaser in violation of the Clean Air Act. Records uncovered by EPA indicate that the company was aware that these modified vehicles would not meet federal emissions standards. This action by EPA was well publicized and should send a strong message to the industry regarding EPA's efforts to control high performance modifications that increase emissions. This case was settled on August 15, 1991. The settlement amount is contingent on the results of an EPA conducted test of a vehicle modified by Callaway Cars. If EPA concludes that the modified vehicle satisfies federal emission standards, then Callaway Cars will pay a penalty of $200,000, otherwise, it will pay a penalty of $356,000.

• Warranty Cases

Chrysler Corporation: This action alleged that Chrysler Corporation denied warranty coverage as required by the Clean Air Act in 40 instances. This is EPA's second case of this nature. The emissions warranty covers defects in emissions related parts or components in an automobile for five years or 50,000 miles, whichever comes first. This case was settled on January 25, 1991, with a civil penalty of $80,000 and a public education component of $80,000 to be paid to Colorado State University. Furthermore, Chrysler agreed to reimburse the owners of the vehicles at issue, as well as those vehicle owners discovered through a review of its records, for costs incurred because of Chrysler's failure to honor the warranty. Moreover, Chrysler agreed to make certain changes to its warranty policy as a term of the settlement with EPA.

• Nonconformance Penalty Program

General Motors Corporation: In FY 1991, pursuant to the Nonconformance Penalty Program (NCP), EPA performed a production compliance audit at General Motors Corporation to determine the emission levels emitted by certain heavy duty engine families. Based on the audit, EPA collected $386,902 in NCPs from General Motors for the introduction into commerce of 4,153 heavy duty engines not in compliance with federal emission standards.

• Manufacturers Investigations

In addition to the recall, SEA, and imports enforcement programs, in FY 1991, MOD continued to investigate whether manufacturers are in compliance with Title II of the Clean Air Act. These investigations focused on manufacturers that introduced vehicles into commerce without obtaining an EPA certificate of conformity demonstrating compliance with Federal emission requirements. FY 1991 efforts yielded several full-scale investigations resulting in substantial settlement payments to EPA. In addition to these enforcement actions, MOD is continuing eight manufacturer investigations.

Cushman, Inc.: During FY 1991, EPA concluded its investigation of Cushman, Inc. EPA determined that Cushman introduced into commerce 1626 vehicles without an EPA certificate of conformity certifying compliance with federal emission requirements in violation of §203(a)(1) of the Act. By settlement agreement, Cushman agreed to pay civil penalties of $88,000 and to implement a retrofit and incentive program to render the vehicles excluded from the Clean Air Act requirements. The retrofit and incentive program required Cushman to provide free service parts to all vehicle owners as an incentive to retrofit their vehicles. The service part kit is valued at $147.50. To date, Cushman has delivered 244 service part kits to vehicle owners for a total value of $35,990.

Excalibur: MOD also took action against Excalibur Automobile Corporation, Inc., (Excalibur), a manufacturer of neoclassic luxury automobiles. Excalibur is currently in chapter 7 liquidation bankruptcy. EPA determined that Excalibur sold 148 vehicles in the United States without a certificate of conformity in violation of §203(a)(1) of the Act. In February of FY 1991, EPA referred the case to the U.S. Attorney's office. The U.S. Attorney filed a proof of claim in bankruptcy court against Excalibur seeking $1,480,000 in civil penalties for the 148 violations.

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.

U.S. v. Allens Manufacturing Co. Inc: On May 21, 1991, the U.S. District Court for the District of Rhode Island entered a consent decree requiring that Allens Manufacturing Co. Inc. of Providence, RI pay a $210,000 civil penalty and comply with federal and local pretreatment standards. Allens specializes in the production of belt and shoe buckles and other metal stampings. As a result of its metal plating operations, Allens discharges process wastewater containing heavy metals to the Narragansett Bay Water Quality Management District Commission publicly owned treatment works. This discharge is governed by EPA's pretreatment standards. As alleged in the government's complaint, Allens repeatedly violated federal electroplating and metal finishing pretreatment limitations as well as local pretreatment limits. In addition, Allens violated various monitoring and reporting requirements.

U.S. v. Alto-Tronics Corp: On April 22, 1991, the U.S. District Court for the District of Massachusetts entered stipulated amendments to the government's Clean Water Act consent decree with Alto-Tronics Corp. of Burlington, MA. The amendments contained a civil penalty of $300,000 for violations of the consent decree that required compliance with national categorical pretreatment requirements. Alto-Tronics, a printed circuit board manufacturer, discharged heavy metals into the sewer and sewage treatment system operated by the Massachusetts Water Resources Authority which, in turn, discharges into Boston Harbor.

U.S. v. Ashland Oil, Inc: A Regional Presiding Officer issued a decision on May 22, 1991, granting judgment against Ashland Oil, Inc., and assessing Ashland a civil penalty of $51,000. The case was brought administratively under §311(j) of the Clean Water Act, and 40 CFR Part 114, and alleged that Ashland did not have a legally adequate Spill Prevention, Control and Countermeasures Plan in effect at its Floreffe facility near Pittsburgh, PA, during the period immediately before, during and after the disastrous spill of diesel oil on January 2, 1988. A hearing was held in May of 1990. The Presiding Officer rejected Ashland's defenses that its Plan was adequate under the regulatory standard, that it had no obligation to anticipate equipment failure based on its past experience at that

facility and that increasing the size of a tank did not require amendment to the Plan.

U.S. v. Ashland Ethanol et al, (S.D. OH): On November 28, 1990, the United States District Court in Cincinnati entered a consent decree settling a Clean Water Act (CWA) enforcement case against defendants over past wastewater violations at their South Point, Ohio facility. The decree resolved a suit filed by the Department of Justice (DOJ) on EPA's behalf alleging that the plant had exceeded its National Pollutant Discharge Elimination System (NPDES) permit limits more than 900 times between July 1983 and September 1987. The defendants agreed to pay a $627,000 civil penalty. The case demonstrates that substantial penalties will be imposed for past violations, particularly when a company saves significant amounts of money by failing to promptly correct violations.

U.S. v. BP Oil, Inc.: On December 14, 1990, a consent decree was entered resolving an enforcement action brought against BP Oil, Inc. for Clean Water Act violations at the company's Marcus Hook, PA, oil refinery. Under the decree, BP was required to pay a $2.3 million penalty, $2,191,000 to the United States and $109,000 to the Commonwealth of Pennsylvania.

U.S. v. Caribe Tuna (Puerto Rico): On August 1, 1991 a complaint was filed in this action citing defendant's violations of its Clean Water Act NPDES permit for discharges into Ponce Bay, Puerto Rico. The action was filed as part of EPA's National Lead Initiative. Caribe Tuna exceeded its permit limits for a number of pollutants, including lead, some 370 times from December, 1986 to July, 1990. The facility is a tuna fish processing and canning facility operated by a wholly owned subsidiary of Mitsubishi Foods. The only treatment provided prior to discharge of its effluent is screening, and the effluent has consistently violated NPDES permit limits.

U.S. v. Cerro Copper (S.D. IL): A consent decree was entered in this case on January 15, 1991, requiring Cerro to recycle its wastewaters in order to meet pretreatment limits for copper and non-ferrous metals at its Sauget, IL plant. Cerro also was required to pay a civil penalty of $1,400,000.

U.S. v. Ethyl Corporation (M.D.Louisiana): In settlement of one of the most significant lead discharge cases in EPA history, the owner of a Baton Rouge, Louisiana, organic chemical manufacturing and lead recovery facility agreed to pay the United States a civil penalty of $750,000 for violations of the effluent limitations in a federal wastewater discharge permit. As part of the July 1991 EPA Lead Initiative, the United States filed a complaint in the U.S. District Court for the Middle District of Louisiana alleging that Ethyl Corporation had violated its NPDES permit and §301 of the Clean Water Act by discharging to the Monte Sano Bayou and the Mississippi River, on numerous occasions during the period from December 1987 through July 1991, pollutants in quantities in excess of permit limitations for total lead, total suspended solids, total organic carbon, chlorinated hydrocarbons and pH. The United States and Ethyl subsequently agreed to a settlement whereby Ethyl will pay the United States a penalty of $750,000 and undertake an environmental audit of the Baton Rouge facility. The consent decree setting forth the terms of settlement was lodged with the Court on August 28, 1991. The United States' motion for entry of the consent decree was filed with the Court on October 17, 1991.

U.S. v. Exxon (New York): On June 14, 1991 the New Jersey District Court entered a Consent Decree in this case arising out of a January, 1990 oil spill from a ruptured underwater pipeline. Under the terms of the Decree, Exxon will provide about $10 million for a trust fund to mitigate environmental damage resulting to natural resources from the spill of over 500,000 gallons of oil. The fund will be administered by two federal agencies, the States of New York and New Jersey and the City of New York. In a related development discussed under "Criminal Enforcement Program," below, a guilty plea was entered by Exxon in connection with the same spill.

U.S. v. Island Petroleum & Jorge Luring (Puerto Rico): On April 6, 1991 the Puerto Rico District Court entered a an order requiring payment of nearly $2.8 million in penalties, and permanently enjoining Island Petroleum Products, Inc. and its owner, Jorge Luring, from any discharge from its electroplating facility, either directly to the waters of the United States or indirectly to a sewage system. Discharge may not resume until payment has been made of a $50,000 penalty owing under a 1988 Consent Decree in the case, plus payment of $2,736,000 in stipulated penalties for civil contempt of the prior Decree.

U.S. and California v. Los Angeles, et al: In May, 1991, the United States and California filed suit against the Cities of Los Angeles and Burbank and against Chevron, U.S.A., Continental Can Company, Inc., Stainless Steel Products, Inc., Teledyne Industries, Inc., and Zero Corporation for violations of EPA's industrial waste pretreatment requirements. EPA's pretreatment regulations require cities, like Los Angeles and Burbank, to properly regulate discharges of industrial wastewater to their cities' sewer lines. In 1990, EPA and California conducted a detailed evaluation of Los Angeles and Burbank's performance in implementing their pretreatment programs and documented a number of serious deficiencies. Most importantly, both cities had numerous industries which were repeatedly violating Federal standards for treating toxic wastewater prior to discharge to the sewer system. EPA and California identified the five companies sued as serious violators of Federal pretreatment requirements that were not being properly regulated by Los Angeles or Burbank.

EPA has issued orders to the cities and to the industries to require them to comply with Federal standards. The civil action is intended to ensure compliance with the orders and to assess an appropriate civil penalty for the violations of Federal requirements.

U.S. v. Louisiana Pacific Corporation and Simpson Paper Company: EPA and the Department of Justice lodged consent decrees in a Clean Water Act enforcement action against Louisiana-Pacific Corporation ("L-P") and Simpson Paper Company ("Simpson") on September 9, 1991. The Consent Decrees resolved claims brought in 1989 against L-P and Simpson for repeated violations of NPDES permits at two pulp mills located near Eureka, California. Under the consent decrees, Louisiana Pacific and Simpson are each required to pay $2.9 million in civil penalties, the fourth largest penalties ever collected under the Clean Water Act.

EPA and DOJ brought suit to remedy two water pollution problems: the persistent chronic toxicity of the mills' effluents (as measured by several bioassay tests) and the adverse impact to recreational users exposed to the mills' effluent discharges. The Consent Decrees impose several obligations to remedy these problems. One, L-P and Simpson must install treatment technologies shown effective at reducing chronic toxicity of the companies' effluents. Two, L-P must install an outfall extension to ensure that L-P effluent does not wash into areas used for recreation. Three, Simpson must study whether treatment measures can render its effluent colorless, odorless, free of potential skin irritants and free of compounds demonstrated in surrogate testing to have carcinogenic potential. If Simpson is unable to meet these criteria through treatment, it must also install an outfall extension to ensure that its effluent does not wash into areas used for recreation.

Boston Harbor Cleanup - U.S. v. Metropolitan District Commission: EPA's seven-year enforcement case effort to clean up Boston Harbor paid off during FY 1991 with the initiation of construction of the long-awaited new secondary treatment plant at Deer Island. The groundbreaking ceremony was held in July 1991. The harbor's water quality is expected to improve when the primary treatment portion of the plant is completed in 1995 and when the secondary treatment portion of the plant is completed in 1999. In the meantime, interim improvements to existing facilities and the elimination of scum discharges have already led to significant improvements in the harbor's water quality.

At the same time, the harbor cleanup plan was jeopardized this past year by the initial failure of the State of Massachusetts to make available a landfill site needed to ensure the proper disposal of sewage sludge and other treatment plant residuals. In response, in February 1991, the U.S. District Court for the District of Massachusetts imposed a sewer connection moratorium throughout the Boston metropolitan area. This finally led to the transfer of a landfill site in Walpole, MA, by the state legislature, breaking more than a decade of logjams in siting sludge disposal facilities.

U.S. v. Metropolitan Council/Metropolitan Waste Control Commission (MC/MWCC): On August 18, 1991, a consent decree was entered in Federal District Court in Minnesota to settle a suit against the MC/MWCC for Clean Water Act (CWA) violations at the Blue Lake and Seneca Wastewater Treatment Plants. The case (which came about as a result of the U.S. filing over a Minnesota suit) reaffirmed that States are expected to act as U.S. EPA's partners in enforcement, and must seek penalties that are consistent with Federal policy. U.S. EPA disagreed with Minnesota over the relatively small penalty levied by the State on MC/MWCC.

As a result of the decree, MC/MWCC paid a total civil penalty of $527,000 ($395,000 to the U.S. and $132,000 to the State) rather than the $132,000 in installments to be paid to the State.

Municipal Enforcement Program: Consent Decrees were entered in two National Municipal Policy Enforcement Initiative cases and Phase I Pretreatment Enforcement Initiative case in Region II. Under the Decrees the municipalities in question will provide upgraded sewage treatment facilities, and pay civil penalties as follows: Hoboken, New Jersey ($225,000; achieve compliance with NPDES permit limits by 1/8/93); West New York, New Jersey ($160,000; achieve compliance by 5/31/93) and Dunkirk, New York ($100,000; achieve compliance with pretreatment and NPDES requirements by 7/1/92). The Hoboken and West New York cases were two of a number of cases brought against municipalities in Hudson County, New Jersey. The consent decrees resolve the last actions in that group of cases, and culminate a decade-long effort to bring these municipalities into compliance.

U.S. v. Penn Hills, PA (W.D. PA): On September 10, 1991, the United States District Court for the Western District of Pennsylvania granted the government's motion for a preliminary injunction against the Municipality of Penn Hills, PA. Penn Hills had for some time been discharging untreated and partially treated sewage from several treatment plants. The bypassing occurred most often in wet weather. Two of the Penn Hills plants are not far upstream from the intake of the Wilkinsburg-Penn Joint Water Authority, a water supplier. Penn Hills had failed to respond in substance to repeated state and federal efforts to address Penn Hills' noncompliance with its NPDES permits. In the preliminary injunction, the court ordered Penn Hills to take immediate steps to identify all points at which bypassing was taking place, and to develop a plan to eliminate the bypassing. The court also ordered Penn Hills to hire an independent outside contractor to review the operation of the plants and to develop an overall process control strategy.

U.S. v. Pfizer Pigments Inc., et al. (E.D. Pa.): In the first of two record-setting Clean Water Act civil penalties assessed in FY 1991, an industrial pretreater (unlawfully discharging wastewater contaminated with excess ammonia and iron to the Easton, Pennsylvania sewage treatment plant) was fined $3.1 million for its violations of national pretreatment standards and local pollutant loading limitations established by Easton. This penalty recouped the full economic benefit that accrued to Pfizer as a result of its violations, and assessed an additional penalty based on the seriousness of Pfizer's violations. The assessment of this negotiated penalty was encompassed in a consent decree entered with the court. Pfizer was sued along with several other parties, the most prominent of which is the Easton Area Joint Sewer Authority which is being sued for failing to properly implement its industrial pretreatment program.

U.S. v. PRASA (Puerto Rico Wastewater Treatment Plants): Region II continues to devote extensive resources to this case involving a large number of PRASA wastewater treatment facilities. The Region is monitoring PRASA's compliance with a series of court orders entered in this case. Motions to Enforce were filed on a quarterly basis; Motions to Establish a Compliance Schedule for Advanced Waste Treatment were prepared and filed; a modified court order pertaining to requirements for operator training and rehabilitation of PRASA's pump stations was negotiated and filed; and force majeure claims were reviewed (and mostly denied). In related developments, CWA §309(g) administrative penalty actions were filed for violations at PRASA's Mayaguez, Fujardo and Las Piedras treatment plants. Extensive administrative litigation has ensued in two of these cases, while the third was settled.

In the Matter of Puerto Rico Urban Renewal and Housing Corporation (Puerto Rico): On March 4, 1991 Administrative Law Judge Spenser Nissen denied Respondent's Motion to Dismiss and granted in part EPA's Motion for Accelerated Judgment in this Clean Water Act §309(g) case. In this ruling, the ALJ found the Respondent liable for discharging without a permit domestic sewage into the Culebrinas River in San Sebastian, Puerto Rico. The respondent had built a 544 unit development of low income housing. As part of the development, PRURHC constructed a sewage collection system and a pump station to transport the sewage to a treatment plant. The collection system was never connected to the plant and, instead, raw sewage was discharged from the inoperative pump station through a manmade ditch to the River. Respondent argued that it was not responsible for the discharge and that residents had improperly connected to the system. The ALJ found Respondent strictly liable for the system and the discharge, but ordered a hearing

on the appropriate amount of the penalty.

U.S. v. Roll Coater (S.D. Ind.): On March 22, 1991, the U.S. District Court for the Southern District of Indiana, assessed one of the largest civil penalties ever obtained for pretreatment violations - $2,093,750. The penalty was assessed against Roll Coater for its violations of the national categorical pretreatment standards for coil coaters. This was one of the first Clean Water Act cases that EPA has taken to trial on the issue of penalties. The court awarded a penalty well in excess of the economic benefit that Roll Coater obtained as a result of the savings it obtained during the years it was discharging wastewater containing chromium, zinc and cyanide to the public sewers in violation of applicable national pretreatment standards. This case was filed in July 1989. The opinion filed by the court only dealt with the issue of penalties since Roll Coater had completed installation of a new treatment plant and achieved compliance by August 1989.

Rosebud Sioux Reservation (Rosebud, South Dakota): In June 1991 an administrative compliance order was issued to the Rosebud Sioux Tribe ordering the tribe to cease the discharge of raw sewage to Rosebud Creek. Citizens complaints from the reservation and the obvious human health risks associated with the release of raw sewage prompted this action. Through close coordination with the municipal facilities branch of EPA this action proved to be successful. The discharge was ceased as required by the Order. The discharge of raw sewage to the nations waters are a common occurrence on reservations due to the lack of federal funding. Through coordination with municipal facilities, EPA can help to eliminate these poor conditions by providing money, technical assistance and a reasonable schedule for achieving compliance with the Clean Water Act to the tribes. This case has served as a model for providing assistance to other reservations with poor wastewater treatment conditions.

U.S. v. South Essex Sewerage District: In September, 1991, EPA and Massachusetts settled an action against the South Essex Sewerage District (SESD) which addressed the discharge of pollutants into Massachusetts Bay in violation of the Clean Water Act. Under the consent decree entered by the U.S. District Court for the District of Massachusetts on September 16, SESD agreed to pay a fine of $225,000 and comply with a schedule to construct a secondary wastewater treatment plant and meet interim effluent limits. SESD is a sewer authority that represents the communities of Beverly, Marblehead, Peabody, and Salem, MA. It operates a 41 million gallon a day primary wastewater treatment facility in Salem. SESD had applied for and been denied a §301(h) waiver under the Clean Water Act, but had not proceeded to construct a secondary wastewater treatment plant.

U.S. v. Terre Haute, IN. (S.D. IN): On November 7, 1990, a consent decree resolving U.S. v. Terre Haute, IN was entered by the court. Among other things, the Decree requires Terre Haute to undertake both short-term and a long-term compliance programs. The main features of the long-term program are: rehabilitating the anaerobic digesters, constructing additional plant improvements, and carrying out a long-term solids management plan, and an operating plan for the treatment plant. Additionally, the consent decree requires Terre Haute to pay a civil penalty of $81,000 for past violations of the Clean Water Act.

U.S. v. USX Gary Works, (N.D. IN): The consent decree with USX Corp.'s Gary Works facility, entered in U.S. District Court in Hammond, IN, on October 22, 1991, marked a turning point in the history of the Grand Calumet River. At a cost of $34.1 million, including $1.6 million in civil penalties, USX must bring its Gary Works plant into compliance with the Clean Water Act. The decree specifies more than 100 steps designed to effect source-by-source reduction of waste materials at the plant. Furthermore, USX must develop and implement a sediment remediation plan designed to address contaminated river sediments along the five miles of Grand Calumet River abutting USX property. Not only does the settlement require compliance with the Gary Works' 1983 permit, it stipulates further actions in anticipation of the more stringent limitations in the next permit.

U.S. v. Wheeling-Pittsburgh Steel, (S. D. Ohio): On July 16, 1991, the U.S. District Court for the Southern District of Ohio entered a settlement containing the largest civil penalty ever obtained by the United States, or a citizen group, for Clean Water Act wastewater discharge violations -- $6,184,220. During the course of this litigation, Wheeling-Pittsburgh installed most of the basic treatment facilities and monitoring stations needed to comply with its water permits at its

Steubenville, Mingo Junction and Yorkville facilities in Ohio, at a total cost of over $20 million. This record penalty and a comprehensive compliance program was obtained despite the fact that Wheeling-Pittsburgh Steel was in bankruptcy from 1985 through 1991. In addition to paying the penalty, the settlement requires Wheeling-Pittsburgh Steel to undertake numerous measures to remedy past violations and prevent future violations. Pursuant to the settlement, Wheeling-Pittsburgh Steel will conduct a comprehensive facilities evaluation to identify and remedy all possible sources of water pollution discharges, implement a toxicity reduction program, and conduct biannual environmental audits. This case was initiated by the U.S. in June 1988 because Wheeling-Pittsburgh Steel had committed thousands of violations of applicable Clean Water Act permit requirements, including repeated discharges of wastewater containing lead, zinc, cyanide, total suspended solids, oil and grease, and total chrome to the Ohio River in violation of applicable limits.

Western Sugar: For discharging excess amounts of sugar which resulted in increased levels of BOD into the Yegen Drain, Yellowstone River, this facility in Billings, MT, paid total penalties of $338,000, (an initial penalty of $185,000 plus stipulated penalties of $153,000). The company also installed monitoring equipment costing $250,000. The facility was found to be out of compliance with its Consent Decree which stipulates payment of the statutory maximum penalty if high BOD levels resulted from further discharge. Western Sugar also spent $1 million to correct its new monitoring equipment, Sugar also spent another $1,000,000.

State Water Enforcement Actions

Beginning with the FY 1991 Accomplishments Report, EPA will be including significant state enforcement actions submitted by the EPA Regional offices. We anticipate that State actions will play a greater role in future reports.

Coors Brewing (Golden, Colorado): The State of Colorado settled three enforcement actions against Coors Brewing during FY 1991. The first enforcement action, settled on October 23, 1990, resulted from an unpermitted discharge of ground water contaminated with solvents and BTEX into Clear Creek. The State settlement included a cash penalty of $250,000 with an additional $400,000 in credit projects. EPA's RCRA enforcement action for this discharge was initiated on June 16, 1990, and settlement for $700,000 was reached on October 3, 1991. A second State enforcement action against Coors resulted from an operator error at the brewery which caused beer to be discharged to the wastewater treatment plant, which in turn caused a fish kill in Clear Creek. The State collected $36,000 for this discharge. The State issued a separate action against Coors for effluent violations of their NPDES permit. The State settled with Coors for $175,000 for these violations. Coors Brewing has required that their departments begin to coordinate and clear all actions through their environmental department to prevent further environmental damage.

Geneva Steel Corporation: In the largest out-of-court settlement for violations of the Utah Water Pollution Control Act and the Utah Pollutant Discharge Elimination System Permit for its mill at Orem,Utah Geneva Steel Corporation paid $467,000 in upfront and stipulated penalties between December 1989, and June 1991. These stipulated penalties for discharging excessive ammonia concentrations were included in the Settlement Agreement signed May 31, 1990.

Noel Water, Co., Noel, MO: The Noel Water Company treats wastewater from the Hudson Foods poultry processing plant. The State established that the facility had improperly discharged wastewater into the Elk River, located in southeast Missouri. The Missouri Department of Natural Resources filed suit in federal court against Noel Water Company and Hudson Foods on January 28, 1991, for repeated water pollution violations. It was the first lawsuit of it kind ever filed by the State of Missouri under the citizen suit provisions of the Clean Water Act. In addition to compliance schedules for both Noel and Hudson, the companies agreed to pay in excess of $200,000 plus contributions to local agencies.

Thiokol Corporation: In one of the largest out-of-court penalty settlements for violations of the Utah Pollutant Discharge Elimination System, Thiokol Corporation agreed to pay $70,000 in penalties to the State of Utah. Meanwhile, Utah agreed to waive another $25,000 in penalties if Thiokol met all deadlines of the compliance schedule in the Settlement Agreement signed by both parties September 9, 1991. This settlement agreement concluded regulatory

enforcement actions against the company for violations of the Utah Water Pollution Control Act which began with the issuance of a Notice of Violation and Order on February 22, 1991.

Federal Facilities - CWA

USAF Cheyenne Mountain (Colorado): On January 10, 1989, a NPDES Reconnaissance Inspection was performed at the facility. As a result of deficiencies found during an inspection, EPA entered into a Federal Facility Compliance Agreement to Cheyenne Mountain Air Force Base (January 4, 1991). The Agreement contained a construction schedule which required Cheyenne Mountain AFB to connect the North Portal oil/water separator to the Fort Carson Sanitary Sewer and to terminate discharge from Outfall 001 by September 30, 1991. Cheyenne Mountain AFB has met all requirements of the FFCA.

Mt. Rushmore National Memorial (South Dakota): Mt. Rushmore operates a wastewater treatment plant which discharges under an NPDES Permit. The facility has had problems consistently meeting the effluent limit in its permit. To correct identified problems at the facility, EPA entered into a Federal Facility Compliance Agreement with Mt. Rushmore (April 20, 1991). The Agreement contained a construction schedule to upgrade the facility. Mt. Rushmore has met all requirements of the FFCA.

Marine Protection Research and Sanctuaries Act (MPRSA)

Ocean Dumping Ban Act Enforcement: During FY 1991 Region II continued to track compliance with the nine judicial Consent Decrees and Enforcement Agreements entered into by EPA with the States of New York and New Jersey and the municipal sludge dumpers. Although the six municipalities in New Jersey ceased all ocean dumping of sludge in March, 1991 as scheduled, EPA negotiated modifications of five of the nine Decrees to allow time for the exploration of beneficial reuse of sludge as a long-term, land based alternative. The five municipalities for which such modifications were made are: Westchester County, N.Y., Middlesex County and Bergen County Utilities Authorities, N.J., Linden Rosell Sewage Authority, N.J., and Rahway Valley Sewage Authority, N.J. In addition, EPA issued demand letters to collect stipulated penalties for violations of the Consent Decrees by the Passaic Valley Sewerage Commission, N.J. and the Joint Meeting of Essex and Union Counties, N.J. The violations they are charged with involve inadequate interim sludge handling contracts.

In the Matter of Port of Oakland and Great Lakes Dredge and Dock Company: EPA Region IX entered into a consent agreement with the Port of Oakland resolving its Marine Protection Research and Sanctuaries Act (MPRSA) administrative enforcement action against the Port of Oakland. The Port of Oakland and its contractor, Great Lakes Dredge and Dock Co., violated the MPRSA by: 1) discharging contaminated dredge sediments into the Pacific Ocean in violation of a MPRSA permit, and 2) failing to adhere to various operational and monitoring requirements imposed by the MPRSA permit. Under the consent agreement, the Port paid a civil penalty of $150,000.

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.

A&A Enterprises/Blue Spruce Placer Mine (Boulder County, Colorado): On June 6, 1991, Region VIII ordered A&A Enterprises to restore a placer mining site in wetlands adjacent to Gamble Gulch and Boulder Creek. The Region also began proceedings to assess up to $24,800 in penalties for violations of §404 of the Clean Water Act in 1990 and 1991. These administrative enforcement actions followed attempts to resolve the violations informally. Publicity associated with the enforcement actions generated several public comments in support of strong enforcement against the firm. Small placer mining operations are widespread in Region VIII and the deterrent effect of the enforcement actions should extend beyond the immediate area of the Blue Spruce Placer Mine violations.

Richard Anderson & City of Hampden (Hampden, North Dakota): On December 14, 1990, Richard Anderson and the City of Hampden, North Dakota, signed an administrative order on consent requiring restoration of seven wetlands that had been illegally drained into a county road right-of-way.

The drainage activities violated §404 of the Clean Water Act and Federal Highway Administration prohibitions against draining wetlands into the rights-of-way of federally-funded roads and highways. The restoration work was overseen in the field by representatives of the U.S. Fish and Wildlife Service and the Soil Conservation Service. Satisfactory restoration of the 32 acres of wetlands affected by the violation has been completed.

Clifton Water District (Clifton, Colorado): On the eve of a Class I administrative penalty hearing scheduled to begin on September 23, 1991, the Clifton Water District agreed to pay a $20,000 penalty for constructing a municipal water supply diversion structure in the Colorado River east of Grand Junction, Colorado, in violation of §404 of the Clean Water Act. The discharges, which occurred in the late fall of 1988 and winter of 1989, affected a reach of the river inhabited by the Colorado Squawfish, a federally listed endangered species, and the razorback sucker, which was recently proposed for listing as an endangered species. The penalty settlement represented a milestone in a series of enforcement actions in response to the District's Clean Water Act §404 violations during construction of the diversion structure. In June, 1989, EPA ordered the District to perform an alternatives analysis and studies of the structure's impact on migration of endangered fish species. On May 30, 1991, the District signed a consent agreement requiring it to seek after-the-fact authorization for the structure from the Corps of Engineers. The consent agreement also requires the District to remove any structures and fill material that are not authorized by the Corps at the conclusion of the after-the-fact permit process.

U.S. v. Golf Legends, Ltd.,(Conway, S.C.): Region IV fined Golf Legends, Ltd. $75,000 for the unauthorized filling, excavation, and clearing of approximately 123 acres of forested wetlands near Conway, SC. In addition to the fine, Legends restored and created approximately 40 acres of wetlands on site, preserved in perpetuity approximately 460 acres of wetlands adjacent to the golf course and a 100 acre bay in the Conway, SC area.

Markel Homes, Inc. (Boulder, Colorado): A Colorado developer paid a $20,000 administrative penalty and agreed to perform a three-acre wetland restoration project on Boulder Open Space property. The wetland restoration project is intended to compensate for Markel's filling of 1.3 acres of urban wetlands between 1984 and 1987 without a Clean Water Act §404 permit and then building apartment units on them. The 19-acre wetland impacted by the project was given a high priority for protection under the City of Boulder's local wetland protection program because of its size and the amenities it provided to nearby residents. EPA agreed to the compensatory mitigation project instead of requiring the removal of the buildings and the fill they were built on because of the tenuous financial condition of the developer and the savings and loan company that had financed the project. The City of Boulder played a key role in the enforcement action by providing technical advice to EPA and negotiating the agreements under which the developer was allowed to perform the mitigation work on Open Space land near Boulder Reservoir. The case reflects the Region's continuing commitment to enforcement actions aimed at protecting wetlands in urbanizing areas in the Rocky Mountain west.

Ramsey County Water Resources District (Ramsey County, North Dakota): On January 17, 1991, Region VIII completed a series of administrative enforcement actions begun in 1989 against the Ramsey County Water Resources District for violations of §404 of the Clean Water Act. The District is a state-chartered drainage agency operating in Ramsey County, North Dakota. Late in 1988 the District hired a contractor to excavate a channel at least 45 feet wide through prairie pothole wetlands for the purposes of converting wetlands to crop land. An estimated 5,000 cubic yards of vegetation and soil was discharged in wetlands on either side of the drainage channel and the ditch drained 600 - 700 acres of palustrine emergent semi-permanently flooded wetlands. The Region's enforcement actions culminated in payment of a $2,500 penalty by the Water Resources District and the completion of restoration measures aimed at blocking the ditch and breaching the spoil piles along it. The case marked Region VIII's first administrative penalty action for a §404 violation and sent a strong deterrent message to other drainage districts in North Dakota where similar enforcement actions were underway or pending.

U.S. v. Floyd E. Riley and Fercom Aquaculture Corporation (E.D. Mo.): As a result of this enforcement action, 200 acres of wetlands will be established to replace wetlands destroyed by the

defendant. In settlement of a Clean Water Act §404 enforcement action on September 15, 1991, forested wetlands, emergent wetlands, and aquatic beds will be established in the floodplains of two streams in north central Missouri. In addition, a 140 acre greenbelt will be established in perpetuity along the larger of the two streams, and the defendants will pay a $5,000 civil penalty. In the construction of its aquaculture ponds, the defendants destroyed 160 acres of forested wetlands, wetland pasture, oxbow wetlands and stream channels.

Russo Development Corp. v. William Reilly, et al. (New Jersey): After more than three years of protracted litigation, the New Jersey District Court on May 17, 1991 dismissed this challenge to an EPA "veto" under §404(c) of the Clean Water Act of a wetlands fill permit. Though nominally a defensive litigation, the case has significance to EPA wetlands enforcement program, holding that EPA may "veto" an "after-the-fact" permit proposed by the Army Corps of Engineers. The plaintiff, a developer, sought to enjoin EPA and/or the U.S. Army Corps of Engineers from enforcing any provisions of the Clean Water Act in connection with property it owns and has developed in the Hackensack Meadowlands, New Jersey. The plaintiff asserted that enforcement action threatened by EPA for violations of §404 of the CWA was causing it irreparable injury. The action arose after EPA, in March, 1988, issued the §404(c) "veto" of any permit to fill wetlands within approximately 57 acres of property owned by the plaintiff. The plaintiff's request for reconsideration has been denied; an appeal to the Third Circuit is considered likely.

U.S. v. Marshall Sasser, South Carolina: In July, 1991, a Presiding Officer issued an Initial Decision, assessing a penalty of $125,000, and directing the respondent to submit a restoration plan for EPA approval, and to implement an approved plan of restoration for approximately 75 acres of tidal wetlands. Mr. Sasser owns property in South Carolina that includes wetlands which were historically impounded to facilitate rice cultivation.

Sinclair Oil Corporation d/b/a Sunlight Ranch (Montana): In the first ruling of its kind in the 9th Circuit, the Sinclair Oil Corporation was found in violation of §404 of the Clean Water Act for bulldozing a large amount of streambed material in the Little Big Horn River in Montana during late winter and early spring, 1987. The court held that a redeposit of indigenous streambed materials constitutes an addition of pollutants and that the defendant's activities were therefore regulated. Following the appointment of a settlement judge to facilitate the resolution of civil penalty issues, the Sinclair Oil Company agreed to pay a penalty of $15,000 and a consent decree was entered by the court on August 28, 1991. Stream restoration work had been completed pursuant to an EPA administrative order which was issued in 1987. The court's favorable ruling is important because the kind of stream alteration work at issue is commonplace throughout Region VIII.

U.S. v. Blaine and Ronnie Stewart, Robbinsville, N.C.: - Region IV fined the Stewarts $3,000 for the unauthorized filling in a trout stream in Robbinsville, NC. The fill resulted in a large fish kill downstream. The Stewarts restored the impacted area and also paid the State of North Carolina $3,000 for costs incurred by the fish kill and restocking the impacted stream.

Techpartnership (Boulder, Colorado): During December 1990, Techpartnership, a Boulder, Colorado, commercial real estate development partnership, completed removal of illegally discharged fill placed in 1.8 acres of a 19 acre wetland. The discharges, which violated §404 of the Clean Water Act, occurred in 1987 and 1989. In March, 1991, Techpartnership paid a $5,000 administrative penalty following administrative enforcement action begun by EPA Region VIII in September, 1990. The affected wetland received a high priority for protection in a City of Boulder study of wetlands within the Boulder Planning Area and was the subject of illegal discharges by others as well. EPA's enforcement actions reflected the Region's emphasis on urban wetlands and resulted in the restoration of wetland values in the affected area.

U.S. v. Winding Brook Turf Farm: A conservation easement was established as part of a consent decree entered on July 18, 1991, by the U.S. District Court for the District of Connecticut in the wetlands enforcement case of U.S. v. Winding Brook Turf Farm. The defendant, which proposed the easement as a supplemental environmental project, was alleged to have filled 17 acres of wetlands in Suffield, CT. In settlement of EPA's complaint, the defendant agreed to restore the damaged wetlands, pay a $35,000 penalty, and establish a conservation easement on the filled

wetlands and adjoining land to help ensure better long-term protection of the wetlands.

Safe Drinking Water Act (SDWA) Enforcement

Public Water Supply Program (PWSS)

The PWSS program establishes a regulatory program for public water systems and requires EPA to set drinking water standards (including Maximum Contaminant Levels) for a variety of pollutants.

U.S. v. City of North Adams: An important precedent was established during 1991 in EPA's drinking water enforcement case brought against the City of North Adams, MA. On August 7, 1991,the federal district judge ruled that the EPA could bring a federal court action notwithstanding the earlier filing of a state court action, where the state court action sought relief less extensive than that sought by EPA and where the state court action was not filed within thirty days of the state receiving a Notice of Violation from EPA. Prior to the initiation of the federal court action, the City had refused to agree to any binding schedule for the construction of a drinking water filtration plant. Trial in federal court was held in November 1991 to establish a federally binding schedule and to set the penalty that the City will need to pay because of its past delays.

U.S. v. EBCO Company, Inc. (S.D. Ohio): As part of the Agency's Lead Enforcement Initiative, a civil action was filed against the EBCO Company, Inc. of Columbus, Ohio, for the manufacture and sale of drinking water coolers which were not lead free. This was the first action under the Lead Contamination Control Act of 1988, which amended the Safe Drinking Water Act (SDWA). A Consent Decree was entered by the Court which provided for a repair recall program and a $220,000 penalty. This is the largest penalty ever obtained under the SDWA.

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).

Underground Injection Control Initiative

On September 13, 1991, EPA issued, after an intensive period of negotiations, ten National Administrative orders on consent with ten major oil companies. The oil companies to whom the orders were issued are Amoco, Ashland, B.P., Exxon, Marathon, Mobil, Shell, Sun Oil, Texaco and Unocal. The Orders require extensive inventory information, cessation of injection, waste minimization, extensive closure, an oversight contractor for a representative sample of the closures, and penalties totaling more than $800,000.

This enforcement action was the first of its kind under the Underground Injection Control Program in its use of national administrative orders to address oil company operations in 49 states and territories and was brought to identify the Class V wells of the companies and remedy contamination associated with their use. The initiative will result in the permanent closure of over 1800 service station bay drain wells nationwide that had been receiving automotive-related wastes such as oil, anti-freeze, solvents, etc., some of which had been seeping into underground sources of drinking water. Closure of these wells will prevent further contamination.

U.S. v. TLS, Inc. (S.D. Miss.): A judgement by default was issued against TLS, Inc., Heidelberg, Mississippi, on July 22, 1991, for violation of the Safe Drinking Water Act's UIC regulations. TLS failed to pay an administrative penalty of $10,000, and stipulated penalties of $200 per day agreed to in an Administrative Order on Consent, which also required TLS, Inc., to properly plug and abandon an injection well. The Court awarded the government penalties of $7,500, the unpaid balance due, plus stipulated penalties accruing under the Administrative Order at the rate of $200 per day from October 7, 1988 until compliance is achieved with the provisions of the Administrative Order, plus interest on the total amount from the date of the Court's Order until paid in full, plus all costs.

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

FY 1991 Superfund enforcement made significant strides toward refining certain areas of CERCLA enforcement and attaining the "Enforcement first" goal of the 90-Day Superfund Management Review. The benefits of the FY 1991 enforcement program include both savings in the expenditure of the Fund and acceleration of the nation's efforts to cleanup hazardous sites. A model consent decree was adopted which will simplify and speed the settlement process. In addition, close integration of the Response and Enforcement Programs continues to result in a healthy increase in cleanup settlements through judicial actions and consent decrees.

U.S. v. Alabama Power, et al.(N. Dist. Ala.): A settlement involving many of the Southeast's electric cooperatives and a subsidiary of the Southern Company resulted in a recovery for the government of $1,325,518 in costs spent to remediate a National Priorities List (NPL) Superfund Site. Over 100 generators were designated as potentially responsible parties (PRPs). They negotiated with EPA for one year to achieve the settlement which includes conduct by the PRPs of thirty years of operation and maintenance at the Site. The consent decree was entered in the U.S. District Court for the Northern District of Alabama on May 10, 1991.

The Site, located in Greenville, Alabama, included two pieces of property which had been contaminated with PCBs in the course of transformer repair operations at the now-bankrupt Mowbray Engineering Company. EPA cleaned up the Site pursuant to Superfund before discovering that there were viable PRPs.

U.S. et al. v. Alcan Aluminum Corp. et al. (N.D. New York): On Jan. 15, 1991, the District Court granted in its entirety the government's Motion for Summary Judgment against Alcan Aluminum, a PRP at the Pollution Abatement Services (PAS) Superfund site in New York. Alcan was ordered to pay EPA and its co-plaintiff, the State of New York, about $4 million in past costs incurred in connection with cleanup work at the site. Alcan had refused to participate in a 1987 settlement with some 83 other PRPs, pursuant to which they reimbursed the plaintiffs about $9.1 million in past costs. EPA sued Alcan for all costs not recovered from those settlors. From 1970 to 1977 Alcan had sent to PAS about 200 gallons of PCBs, and about 4.6 million gallons of a waste emulsion contaminated with small quantities of metals including lead, cadmium and chromium. Alcan had argued that these contaminants were in such low concentrations that the materials did not constitute "hazardous substances" under CERCLA; the court rejected any lower limit for concentration of hazardous constituents. The court also awarded the government prejudgment interest and declared that EPA's indirect costs are also recoverable. The opinion is particularly important because Alcan has refused to participate in numerous other Superfund settlements involving essentially the same sorts of waste shipments.

Alloway v. U.S. (D. New Jersey): The District Court of New Jersey on February 19, 1991, denied a motion to stay an EPA administrative Order for Access issued by Region II pursuant to §104(e) of CERCLA. The court also granted EPA's cross-motion and ordered the plaintiff to comply with the administrative order. That order sought access to Alloway's property which, although not contaminated nor even contiguous to contaminated property, is a potential route to the Ewan Property Superfund site, which is "landlocked" and has no road access. Alloway also argued that the 5th Amendment of the Constitution required EPA to compensate him before entering his property. The court dismissed this claim as well, noting that Alloway could file a Tucker Act claim after the action. The opinion stressed EPA's police power and supported a broad reading of the statutory term "adjacent property." Alloway appealed the decision to the Third Circuit Court of Appeals, which denied the requested stay of the order. EPA then promptly carried out the site work in question, rendering any further litigation at this time moot.

Anspec Company v. Johnson Controls, Inc.: On January 4, 1991, the Sixth Circuit reversed and remanded the Eastern District Court of Michigan's ruling that a successor corporation could not be liable under CERCLA §107(a). The Department of Justice filed an amicus brief in the plaintiff's appeal of the September 25, 1989, decision in this CERCLA private party contribution action. The plaintiff seeks to recover costs incurred in cleaning a site contaminated with hazardous substances. The plaintiff sued the successor corporations of the site's former

owner. The Sixth Circuit concluded that Congress included successor corporations within the description of entities that are potentially liable under CERCLA for cleanup costs. The court also concluded it did not have to fashion a federal common law rule to reach a determination. The court applied Michigan corporation law to find that a successor corporation is liable after there has been a formal merger.

Arctic Surplus: EPA Region X successfully negotiated and executed an administrative order on consent for a removal action at a privately-owned site with the U.S. Defense Logistics Agency (DLA). Two such administrative orders on consent have been negotiated and executed with DLA with respect to the Arctic Surplus site.

Arctic Surplus is a 22-acre site located in a mixed commercial/residential area near Fairbanks, Alaska. Past activities at the site involved the disposal and treatment of military surplus, including the salvaging of batteries and the incineration of transformer casings and transformer oil containing PCBs. Much of this military property was surplused by the U.S. Defense Logistics Agency (DLA). Asbestos, PCB, and lead contamination are prevalent, and pose a direct threat to the area's drinking water supply. The first administrative order (1990) required DLA to conduct specific removal activities at the Arctic Surplus site. In 1991, DLA entered into a second order with Region X which provided that DLA would finance EPA removal activities at the site during the summer of 1991, including an extent of contamination survey and necessary removal/containment activities. Pursuant to this order, DLA agreed to pay $500,000, into an EPA site-specific account and agreed to pay an additional $500,000 if necessary. These costs included the payment of oversight costs. In addition, DLA agreed to pay directly for lab work, continue groundwater monitoring and to continue investigating long-term treatment/ disposal options for dioxin. Stipulated penalties were included in the order.

U.S. v. Atochem North America, Inc. (D. New Jersey): A Consent Decree was signed by the Defendant in June, 1991, pursuant to which Atochem will carry out a $46 million RD/RA at the Meyers Property Site in New Jersey. The company has also agreed to reimburse EPA $2.7 million in past costs, as well as all future costs incurred by EPA. Under the settlement, Atochem will carry remedial work at the site, located in Franklin Township. Soils at the site were found to contain a variety of chemicals, including chlorinated pesticides (particularly DDT and its breakdown products), and volatile and semi-volatile organic compounds. A predecessor of Atochem was an owner/operator of the site producing DDT there in the early 1940's.

U.S. v. Automation Components, et al. (D. New Jersey): The District Court on September 9, 1991 entered a default judgment against two defendants in this action. The complaint in this case named nine defendants who are PRPs at the SCP/Newark Superfund site in New Jersey. The defendants failed to participate with other PRPs in a 1985 settlement for a removal action valued at about $3 million. Region II then issued to non-settlors a unilateral administrative order requiring them to cooperate and coordinate with the settlors on the removal work. Four of the defendants did not comply with their orders; other defendants failed to comply with the consent order they executed. The complaint in this action seeks cost recovery, civil penalties and treble damages against the non-compliers. The two defendants involved in the default judgment, Maas & Waldstein Co. and Automation Components, Inc., had declared bankruptcy. Under the default judgment they were each declared jointly and severally liable for $289,272, the full amount of costs incurred by EPA in connection with the site. The default judgments will be entered in the appropriate Bankruptcy Courts.

U.S. v. AVX Corp., et al: On July 16, 1991, the United States District Court for the District of Massachusetts entered the first consent decree for this site between plaintiffs EPA, National Oceanic and Atmospheric Administration, and the Commonwealth of Massachusetts and two defendants, Aerovox, Inc. and Belleville Industries. These defendants are a current and former operator of a capacitor manufacturing plant on New Bedford Harbor responsible for PCB dumping which caused extensive contamination of harbor sediments and biota.

Under the consent decree, the plaintiffs will recover a total of $12.6 million for remedial activities and natural resource damages. Furthermore, in September of 1991, the Department of Justice lodged a consent decree settling the liability of AVX Corporation at this Superfund site for $66 million. Under the settlement AVX Corporation, the major

contributor to PCB contamination of New Bedford Harbor, will contribute $50 million toward remedial activities at the site and $7 million to federal and state trustees for the restoration of natural resources damaged by PCB contamination.

U.S. v. Bethlehem Steel, (7th Cir. 1990): On December 28, 1990, the United States Court of Appeals for the Seventh Circuit upheld the District Court's determination that U.S. EPA properly denied Bethlehem Steel's petition, under §106(b) of CERCLA, for reimbursement of costs expended by the Company to conduct a partial cleanup of the Conservation Chemical Company of Illinois (CCCI) facility in Gary, IN. §106(b) was enacted as part of the 1986 Superfund Amendment and Reauthorization Act (SARA) amendments. Bethlehem had received a §106 order to conduct the cleanup activities prior to the enactment of the SARA amendments but complied with the order post-SARA. The court agreed with the EPA that §106(b) was applicable only to a party which both received and complied with a CERCLA §106 order after enactment of the SARA amendments. This was a matter of first impression although a similar case is pending before the District of Columbia Circuit and at least one other case has been filed by Bethlehem in Colorado.

Bingham Creek Channel Kennecott Copper Company (Utah): An Administrative Order on Consent was issued May 20, 1991, settling recovery of $250,000 in past response costs, $2 million in future costs, and the performance of certain removal actions at the Bingham Creek Channel site. Kennecott Utah Copper Company agreed to reimburse the Superfund for costs incurred by Region VIII's Emergency Response program in the investigation and cleanup of lead soil contamination in residential areas near West Jordon, UT, and also agreed to haul the contaminated soils to a repository on its property for secure storage.

Boarhead Corporation v. Edwin Erickson: In a case with potential precedential value involving EPA's work at Superfund sites, the U.S. Court of Appeals for the Third Circuit upheld a lower court ruling against a property owner's request to stay EPA's CERCLA-related pre-clean up activities until EPA conducted appropriate review under §106 of the National Historic Preservation Act. The Court of Appeals decision of January 1991 agreed with the U.S. District Court's earlier opinion that the Boarhead Corporation's complaint lacked subject matter jurisdiction pursuant to the timing procedures for judicial review specified in §113(h) of CERCLA, as amended.

The decision allowed EPA to continue with site investigative work at the Boarhead Farms site in Bucks County, PA. The decision suggests that EPA's clean up activities at Superfund sites cannot be slowed or halted as a result of legal actions brought against EPA by private parties under other statutes, where CERCLA is determined to take precedence over those statutes. The case had added importance since both the State of Pennsylvania Historical and Museum Commission and the National Trust for Historic Preservation filed an amicus curiae brief supporting Boarhead Corporation's appeal of the lower court ruling.

U.S. v. BRIO Task Force (S.D. Texas): On April 4, 1991, the U.S. District Court for the Southern District of Texas signed a consent decree between the United States and those parties who have agreed to conduct a remedial action at the Brio Superfund Site. The court also entered an order which denied petitions from a citizen group and two utility districts who had wanted to change the proposed consent decree. The court in its ruling indicated that the EPA, in proceeding with this settlement, "adequately represented the interests" of these parties. The intervenors' concerns centered around objections to the remedy decision (onsite incineration) and a belief that potential health risks were inadequately evaluated. The intervenors have appealed the District Court's decision to the Court of Appeals for the Fifth Circuit, however, there is no stay of the District Court's decisions. Consequently, entry of the consent decree has paved the way for EPA to begin a long delayed remedial process which will save the government an estimated $60 million and eliminate a potential threat to human health and the environment.

Richard C. Schleck, t/a Brook Industrial Park v. U.S. (D. New Jersey): On January 7, 1991 the District Court rejected plaintiff's claim for an alleged taking at its property, the Brook Industrial Park Superfund Site in Bound Brook, New Jersey. The plaintiff refused to grant EPA access to the property to conduct investigatory work. Region II issued an administrative access order under §104(e) of CERCLA. The owner then filed this lawsuit. The court dismissed the plaintiff's claims for compensation for an alleged taking, on two grounds: (1) lack of subject matter

jurisdiction, and (2) failure to state a claim upon which relief may be granted. The plaintiff's contention that EPA is bound by the terms of an old State cleanup order was also rejected. The court granted the Motion of EPA and its co-defendant, the U.S. Air Force, to dismiss the case entirely.

California Gulch Operable Unit 2+ (Leadville, Colorado): EPA issued three Administrative Orders for the California Gulch Superfund site located in the Leadville Mining District, Leadville, Colorado. The study area covers about 16 square miles which have been impacted by mining, milling, and smelting activities for over 100 years. The Site contains many mine waste and smelter waste piles and acid mine drainage. Soil, ground water, and surface water contamination from metals in these mining wastes has been documented.

Under the terms of the first Administrative Order, EPA required Resurrection Mining Company to perform certain tasks in support of the Remedial Investigation (RI) activities for the site. The RI will identify contaminants of concern and remedial action alternatives which will be evaluated in the Feasibility Study and finalized in the Proposed Plan and the Record of Decision.

Under the terms of the second Administrative Order, EPA required ASARCO, Inc., to perform certain studies in support of the RI activities for the site. The studies require development of Work Plans and implementation of Work Plans after EPA approval.

Under the terms of the third Administrative Order, EPA required the respondent, Hecla Mining Company, to perform an Engineering Evaluation/Cost Analysis for the Malta Gulch mine tailings, to determine the nature and extent of any releases and any appropriate response activities at the Malta Gulch tailings. The Order stipulates that Hecla would "resolve any remaining liability by agreeing to implement and/or pay an appropriate share of the cost of EPA's chosen or likely response action for the Malta Gulch tailings...." The response action would expedite remediation of the impacts to human health and/or the environment resulting from the Malta Gulch mine tailings.

U.S. v. Chevron Chemical Co., et al. (Operating Industries, Inc. Superfund Site): On September 16, 1991, a Second Partial Consent Decree was entered resolving claims for the first two operable units and past costs with an additional 65 parties. The first decree involved over 100 parties and was worth over $67 million in site work and past costs. The second settlement is valued at over $8.5 million, and it includes premiums of nearly $1 million from recalcitrant parties. In addition, the District Court for the Central District of California denied a motion to intervene that had been filed by a non-settlor who sought to delay entry by challenging EPA's allocation formula. The non-settlor asserted that its right to contribution from the settling parties provided a protectable interest under §113(i) of CERCLA. The court did not agree and denied the motion.

The Operating Industries, Inc. site is a 190-acre, former landfill that operated for 36 years, accepting industrial and municipal waste. EPA has now, through the two Consent Decrees, settled with approximately 185 parties for site control and monitoring and leachate management, including the construction of an onsite leachate treatment plant.

In the matter of Chevron U.S.A. and the ATA Pipeline Company (Albuquerque, New Mexico): In an innovative first use of authority under CERCLA, four major petroleum companies and a pipeline partnership have been ordered to take actions necessary to prevent interference with an ongoing Superfund remedial action. On February 8, 1991, Region VI issued a Unilateral Administrative Order (UAO) under the authority of CERCLA §106. The Respondents to the UAO are alleged to be responsible for releases of petroleum related contaminants which are threatening to interfere with an ongoing groundwater cleanup at the South Valley Superfund Site in Albuquerque, New Mexico. With this new use of §106 authority, the Respondents have been brought within the domain of CERCLA even though they are not all Potentially Responsible Parties and the releases in question are petroleum related. The Respondents are currently in compliance with the order and are expediting actions to address the petroleum contamination.

Cinnaminson Landfill (Cinnaminson, New Jersey): On July 7, 1991, Region II issued a unilateral administrative order for RD/RA at the Cinnaminson Landfill to Sanitary Landfill, Inc., a subsidiary of Waste Management, Inc. The first operable unit work which the company will perform under the order, including groundwater

extraction and treatment, is valued at $20 million. In addition, Sanitary Landfill has reimbursed EPA about $3.2 million in past costs for the site.

In the Matter of City Industries, Winter Park, Florida: On September 10, 1991 a consent decree involving the City Industries site in Winter Park, Florida was lodged in U.S. District Court, Middle District of Florida. Under the terms of this decree, approximately 146 settling defendants (including approximately 120 de minimis defendants) agree to "cash out" (i.e., fund all of the Remedial Action, which is estimated to cost over $4 million), to reimburse EPA for all future response costs, to reimburse EPA for all past costs incurred since a previous decree in this case (approximately $117,000), and to pay the long-term operation and maintenance costs of the cleanup.

Commencement Bay/Tacoma Tar Pits Superfund Site, Tacoma, Washington: Following a complaint filed by the U.S. in FY 1990, six consent decrees were entered in FY 1991 settling all government claims under CERCLA Chapters 106 and 107 resulting in over 100% recovery of costs to the government. EPA obtained recovery of all costs, implementation of all response actions and recovery of penalties in this matter.

U.S. v. Cordova Chemical Corp. et al. (W.D. MI): A Unilateral Administrative Order was issued in Ott/Story/Cordova on February 5, 1991. The Respondents, Cordova Chemical Company of Michigan, Cordova Chemical Company of California, Aerojet General Corporation, CPC International, Inc., and Dr. Arnold C Ott, were directed to perform remedial design for the remedy as described in the Record of Decision under CERCLA dated September 29, 1990, for the second operable unit associated with the site and to implement such design through remedial action.

On August 27, 1991, after 15 days of trial and the entry of thousands of exhibits and documents, the judge of the U.S. District Court issued a 75 page opinion in favor of the United States, requiring Ott/Story/Cordova to conduct a clean-up in Muskegon, MI, at a cost estimated to exceed $50 million. The judge held the State of Michigan not liable under CERCLA for clean up activities at the site. More importantly, however, the case provides the government with a very favorable precedent and guidelines for determining the liability of parent corporations regarding compliance with environmental law. The Court held CPC and Aerojet, the parent corporations, liable for cleaningup after themselves, their predecessors, and their subsidiaries.

U.S. v. Custom Industrial: This case involved three separate settlement agreements, in the form of two judicial consent decrees and one administrative agreement. The consent decrees, lodged on June 20, 1991, were CERCLA §107 cost recovery agreements with 34 and 3 potentially responsible parties (PRPs), respectively, together reimbursing EPA approximately $1,045,000 for removal costs. EPA also issued an administrative order on consent for this site, obligating 199 de minimis generators to reimburse EPA approximately $419,000. The total sum recovered, approximately $1.46 million, represents 90% of the costs incurred by EPA during the removal at this site. In August 1991, the Department of Justice filed a complaint against the two recalcitrant PRPs in order to recover the remaining ten percent. This case is particularly noteworthy because it combines some of EPA's major enforcement themes, i.e., de minimis settlements and actions against recalcitrant parties.

U.S. v. Dow Chemical Company, et al. (Casper, Wyoming): EPA and three PRPs, KNEnergy, Inc., The Dow Chemical Company, and Dowell-Schlumberger, Inc., reached a settlement for Remedial Design/Remedial Action at this Site in Casper, Wyoming.

The PRPs agreed to pay $5.4 million in reimbursement of past costs incurred by EPA at the Site, including costs associated with the installation of a municipal water system for residents. The PRPs also agreed to implement the remedy set forth in the ROD issued by EPA in September of 1990. Because the ROD calls for separate remediation of the two separate ground-water plumes, the PRPs will perform the work pursuant to two separate statements of work, allowing work to proceed in a more rapid, phased manner.

In the Matter of Defense Logistics Agency: On May 29, 1991, EPA and the Defense Logistics Agency (DLA) entered into an administrative consent order pursuant to §104 and §106 of CERCLA for the removal and proper disposal of 70,000 pounds of depleted uranium stored in a dilapidated building owned by Chemical

Commodities, Inc. near DeSoto, Kansas. CCI purchased the depleted uranium from the Defense Surplus Sales Office, a department in the Defense Supply Agency (now DLA) in 1965 and 1966. The material has been stored at the site for more than twenty-three years. Due to the weight of the material, the floor of the building was in imminent danger of collapse threatening the release of the depleted uranium into the environment. DLA commenced the response action in July, 1991.

U.S. v. Dow Corning Corporation: On May 22, 1991, a consent decree between the United States and Dow Corning Corporation for the Howe Valley Landfill site was entered in the Western District of Kentucky. Under the decree, Dow Corning is obligated to perform or pay for all remaining cleanup at the site. EPA's selected remedy consists primarily of excavation of contaminated soils. Soils contaminated with inorganics will be disposed of off-site; soils contaminated with organics will be aerated. Air and ground-water monitoring are also required as are certain deed restrictions. Dow Corning agreed to reimburse EPA for all of its past and future costs, totaling approximately $154,000.

U.S. v. Entrada Industries, Inc., et al. (Salt Lake City, Utah): In September, 1991, an RD/RA consent decree was entered for the Wasatch Chemical Site in Salt Lake City, Utah. This decree is a three party agreement among EPA, the State, and the settling defendants which requires the defendants to: 1) reimburse 100 % of past EPA costs totaling $419,000; 2) pay EPA's future response costs; and 3) implement the selected remedy through performance of RD/RA. The selected remedy includes the use of an innovative technology, in-situ vitrification.

U.S. v. Environmental Service Group, et al. (W. D. New York): On September 30 a consent decree was lodged in District Court in connection with the Resolve Manufacturing Superfund site in Falconer, New York. The five settling defendants, as well as a number of other companies and individuals, are PRPs at the site, but refused to participate in a 1987 settlement pursuant to which over 100 other PRPs carried out a removal action valued at about $1 million. Region II issued the non-settlors a unilateral administrative order requiring them to cooperate and coordinate with the settling PRPs in performing the removal work. While some respondents complied with this order, others -- including the defendants in this lawsuit -- did not. The settling defendants in this decree are: ESG, Custom Muffler Service Center, Inc., Products Finishing, Inc., Ethan Allen, Inc., and Seco Corp. These companies agreed to pay all outstanding EPA costs in connection with the site, about $88,000, plus civil penalties in the amount of $40,000 for their violation of the EPA administrative order. EPA is considering what action to take against the remaining non-complying PRPs who also refused to join in this consent decree.

U.S. v. Farber, et al. (D. New Jersey): On August 29, 1991 the New Jersey District Court issued a ruling favorable to the government with respect to the scope of review of EPA's selection of a response action. The defendant had requested de novo review of the remedy selection, arguing that it had an inadequate opportunity to participate in the public comment procedure because it been notified late that it was a PRP. The court rejected the challenge, agreeing with EPA that any opportunity to comment it might afford the defendant should be limited to the procedures set forth at 40 CFR §300.825(c) of the 1990 National Contingency Plan. The court remanded the matter to EPA, allowing the defendant to comment as provided in that rule. The court specified that comments must be based on information available at the time of the original comment period. The court further held that review of EPA's remedy selection will be based on the administrative record under the standard of review set forth in §113(j)(2) of CERCLA. The decision is significant in that it is the first time a court has applied 40 CFR §300.825(c), and it represents a narrowing of the comment opportunity afforded by the same court in U.S. v. Rohm & Haas Co. in similar circumstances.

U.S. v. Frola, et al. (D. New Jersey): On September 27, 1991, a complaint was filed in District Court against nine individuals and companies in connection with Quanta Resources Superfund site in Edgewater, New Jersey. The defendants are PRPs that refused to participate in a 1985 settlement pursuant to which more than 60 other PRPs carried out a removal action valued at about $9 million. Region II then issued to these non-settlors a unilateral administrative order requiring them (1) to cooperate and coordinate with the settlors in performing the removal action, and (2) to perform certain additional removal work which the settlors were not obliged to perform. The additional work called for by

this "carve-out" order -- one of the first of its kind in the nation -- included testing and removal of soil and waste storage tanks, and testing of Hudson River sediments. The defendants, who refused to comply with this order are: James Frola and Albert Von Dohln (site owners), Alcan Aluminum Corp., Chemical Management, Inc., Luzon Oil Co., Petroleum Tank Cleaners, Inc., Snyder Enterprises, Inc., Texaco, Inc. and Total Recovery, Inc.. The complaint seeks recovery of about $617,000 in past EPA expenditures, plus civil penalties and treble damages. Two other firms which received the same unilateral order and also failed to comply previously signed consent agreements with EPA. Browning Ferris Industries paid $125,000 and Peabody International Corp. paid $360,000 in past EPA costs. These amounts represent more than 10 times what those companies would have paid had they chosen to participate in the original settlement.

State of Colorado v. Idarado Mining Company: On October 11, 1990, the United States Court of Appeals for the Tenth Circuit 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 the District Court for the District of Colorado on February 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 an amicus curiae brief seeking to overturn the District Court's ruling based on the lower court's incorrect interpretation of the statutory language found in CERCLA §121(e)(2). The United States argued that the state was not entitled to injunctive relief under CERCLA §121(e)(2). Relying on the Cadillac Fairview, Cannons, and Akzo Coatings cases, the Tenth Circuit agreed and held that the language of CERCLA §106 and §121 do not create an explicit right to injunctive relief for the states.

In the Matter of InterChem: This Administrative Order on Consent issued pursuant to §106 of CERCLA was negotiated using the theory of liability successfully advanced by EPA in the United States v. Aceto Agricultural Chemicals case. The site is an abandoned pesticide formulation facility which had been operated under several corporate names by several different parties. Because there were no former owners or operators apparently capable of carrying out the necessary response actions, EPA successfully negotiated an order for removal actions with a group of nine generator PRPs who had sent technical grade pesticides to the site for formulation. The settlement, which was filed on June 18, 1991, will foster the use of the Aceto theory of liability at other such facilities.

U.S. v. I. Jones Partnership et al. (N.D. IL): Through an innovative de minimus settlement under the Superfund law involving five administrative orders, combined with persistent non-settler/non-complier enforcement actions, Region V EPA obtained full clean-up of the I. Jones site in Fort Wayne, IN, reimbursement of 90 percent of past costs and substantial §106(b) penalties. The finances included a $5 million PRP-conducted final phase of a three phase removal action, and reimbursement of $2,575,041 in response costs. Following the original de minimus settlement with 139 generators in October 1989, the Region negotiated specific complier, non-complier, de minimus and "installment payment" plans with individual parties. In addition, a cost recovery referral against the current owners was made to DOJ in September 1990; in October 1991, the U.S. amended the filed complaint to include additional parties. This is the first suit filed in the Region seeking treble damages and statutory penalties for noncompliance with the unilateral removal orders under §106.

IPC v. Aetna Casualty and Surety Co: In this case, the District of Columbia Circuit Court of Appeals decided that the Eighth Circuit Court of Appeals misapplied Missouri insurance law in Continental Insurance Co. v. NEPACCO, 842 F.2d 977 (8th Cir. 1986). The three judge panel in IPC held that CERCLA response costs are damages under Missouri insurance law compensable under a comprehensive general liability policy. Specifically, the court reasoned that a Missouri court would rely on the common understanding of the word "damages" and would not impose a technical meaning. The panel thus agreed with the federal government, which participated in this case as amicus curiae urging the court to find that CERCLA response costs are "damages" which must be paid by an insurance carrier.

Kentucky Avenue Site (Horseheads, New York): On June 28, 1991, Region II issued a unilateral administrative order for RD/RA at the Kentucky Avenue Wellfield Superfund site to Westinghouse Corp. The work which Westinghouse will do

under the order is an interim remedy valued at $15 million, and includes treatment of contaminated groundwater. The RI/FS for the first operable unit at the site identified Westinghouse as the primary source of contamination in the portion of the aquifer addressed by the remedy. Westinghouse agreed, in a separate administrative consent order, to perform the RI/FS for the second operable unit.

King of Prussia Site (Winslow Township, New Jersey): On April 15, 1991, Region II issued a unilateral administrative order for RD/RA at the King of Prussia Superfund site to five PRPs: Cabot Corp., Carpenter Technology Corp., Ford Electronics & Refrigeration Co., Johnson-Matthey, Inc., and Ruetgers-Nease Chemical Co. The work to be conducted under the order is valued at $15 million, and includes excavation and treatment of contaminated soils, sludges and groundwater. The site is an abandoned liquid chemical waste treatment/disposal facility operated by the King of Prussia Technical Corp. from 1970 to 1975.

U.S. v. Koppers Industries & Beazer East, Gainesville, Fl.: After executing the Record of Decision for the Cabot Carbon/Koppers Site on September 27, 1990, EPA issued a Special Notice Letter to the Cabot Corporation, which was the past owner of one half of the Site. EPA also issued Special Notice Letters to Koppers Industries, Inc. (Koppers) and to Beazer Industries, Inc. (BEI), which were, respectively, the current and past owners of the other half of the Site. Negotiations for a global consent decree were unsuccessful, as BEI refused to accept joint and several liability for the groundwater remedy for the entire Site. However, Cabot continued to negotiate concerning its half of the Site, resulting in a Consent Decree which was lodged on September 12, 1991. Under this Consent Decree, Cabot agreed to perform the RD/RA on its half of the Site; as well as to reimburse EPA for over $416,000 in past costs. Region IV issued unilateral administrative orders (UAOs) to Koppers and BEI on March 22, 1991. Those parties are complying with the UAO as it pertains to work on the Koppers half of the Site.

U.S. v. Koppers (Oroville, CA): On June 12, 1991, EPA and the Department of Justice lodged a consent decree in the United States District Court for the Northern District of California. The consent decree requires Beazer East, Inc., a potentially responsible party, to perform RD/RA of the Koppers NPL Site in Oroville, California. Wood products were treated at the site, resulting in soil and groundwater contamination by hazardous substances including cyanide, dioxins and furans. Beazer has agreed to perform design, construction, operation and maintenance of a groundwater and surface soil operable unit valued at approximately $77 million. The decree also requires Beazer to pay past costs and future costs associated with the site.

U.S. v. Helen Kramer: On February 8, 1991, the United States District Court for the District of New Jersey granted the United States' motion to strike affirmative defenses in the above CERCLA §107 cost recovery case and issued a lengthy opinion favorable to the government. Thirteen of the defendants filed a third-party action against more than 250 defendants, including 17 local governments. The defendants asserted that the United States excluded a class of defendants in violation of the Constitution when it named only industrial defendants and not municipalities. The court found that the Agency's Interim Municipal Settlement Policy is consistent with EPA's broad discretion to select defendants and is rationally related to CERCLA's purpose, and thus does not violate the equal protection clause of the Constitution. The court also held that the Interim Municipal Settlement Policy is a general statement of policy rather than a rule subject to the notice and comment requirements of the Administrative Procedure Act. Response costs for remediating contamination at the Helen Kramer Landfill, the number four site on the NPL, are estimated at $60 million.

Laurel Park Superfund Site: In FY 1991 EPA entered into a $21 million settlement, whereby 19 potentially responsible parties will perform cleanup at the Laurel Park NPL Site in Naugatuck, CT, and reimburse EPA and the State of Connecticut for past and future response costs. In addition, to expedite cleanup, EPA negotiated an agreement whereby the PRPs begin remedial design activities administratively, prior to the consent decree being lodged with the court. Moreover, concurrent with the settlement referral, the United States filed a CERCLA cost recovery action for unreimbursed costs against four non-settling PRPs. This action sends a clear message to PRPs that recalcitrance in settlement negotiations has a high price.

U.S. v. Lecarreaux et al. (D. New Jersey): On July 3, 1991, the court granted EPA's Motion for Summary Judgement in this case which seeks

penalties from two PRPs which failed to comply with a unilateral cleanup order. In 1984 Region II issued a unilateral order for a removal action at the Duane Marine site in Perth Amboy, New Jersey, to about 35 PRPs, including the site owner and operator, Edward Lecarreaux. All but Lecarreaux complied with the order. Some months later, EPA identified additional PRPs and issued a second unilateral order requiring these new PRPs to cooperate and coordinate with the first group of Respondents in the performance of the removal action. Again, all but one -- Lightman Drum Co. -- complied. EPA filed suit seeking response costs and civil penalties from these two non-compliers. The July 3 decision held the companies liable for costs and penalties; a hearing on the amount of penalties was scheduled for November 1991. The case is notable because it is the first time a court has ruled that penalty liability accrues against PRPs who fail to comply with an order, even though other PRPs have elected to comply and carried out the work in question.

The Lone Pine Cases: U.S. v. Acton Corp., et al.; and U.S. v. Armstrong World Industries, et al. (D. New Jersey): A consent decree was lodged on July 3, 1991, for performance of the RD/RA for Operable Unit 2 at the Lone Pine site in New Jersey (the Acton case). The settlement, signed by some 118 companies, is valued at about $10.3 million. The RD/RA work for Operable Unit 1, valued at about $40 million, is also being done by PRPs under a 1989 settlement. In the Armstrong case, EPA sued 17 PRPs who refused to join that earlier settlement, seeking recovery of additional past costs. A settlement with all but one of the Armstrong defendants was lodged on April 29, 1991, providing for payment of $4.4 million -- about 95% of EPA's outstanding costs.

Lowry Landfill (Denver, Colorado): The City and County of Denver and Metro Wastewater Reclamation District will be conducting the RI/FS for the Soils and Surface Water and Sediments Operable Units (Operable Units 4&5) at the Lowry Landfill site in Denver, CO. These studies will focus the data collection needed to characterize the extent of contamination and contribution of contamination from the soils and the surface water and sediments to the other operable units. An Administrative Order on Consent was signed March 25, 1991, and is the last of the RI/FSs to be conducted on the site. The studies are anticipated to be completed by March 1993 at a cost to the Respondents of two million dollars.

U.S. v. Marathon Battery (S.D. New York): A consent decree was lodged on September 27, 1991, providing for a cash out of $10.85 million for the costs of the Superfund RD/RA work for Area II of the Marathon Battery Site in Cold Spring, New York. There were two settling parties: Marathon Battery Company and the U.S. Army. A third PRP, Gould, Inc., declined to settle. EPA will perform the RD/RA work for this Area. The Army is making an additional payment of $500,000 to Marathon for past work at the site which Marathon carried out. EPA plans to seek recovery of its unreimbursed costs for Area II, past costs for the entire site, and a declaration of liability for future costs for the entire site, from Gould. In addition, EPA is commencing negotiations with the settling parties for reimbursement of costs for Areas I and III.

U.S. v. Mass Merchandisers Inc., Arkwood Superfund Site (W.D. Arkansas): In June 1991, Mass Merchandiser's Inc., agreed to conduct the cleanup under CERCLA at the Arkwood Superfund Site. This agreement was included in a Consent Decree requiring implementation of remedial design and remedial action plus reimbursement of all oversight and prior response costs. Mass Merchandisers will implement treatment involving both soil washing and incineration at an estimated cost of $12 million. The Arkwood Superfund Site is a former wood preserving facility utilizing both pentachlorophenol (PCP) and creosote processes.

U.S. v. Mexico Feed and Seed Co., Inc., James Covington, individually and doing business as Mexico Feed and Seed Co., Mary Covington, Pierce Waste Oil Service Inc., Jack Pierce, Mid-Missouri Electric Co., MORECO Energy Inc. (E.D. Mo.): This cost recovery case provides a ruling favorable to the government concerning successor corporation liability. On May 16, 1991, after a trial on the merits, a judgment was entered for the United States in the U.S. District Court for the Eastern District of Missouri, against the Defendants. In particular, the court held that Defendant MORECO Energy Inc. was liable as a successor corporation under a broadened version of the "mere continuation" exception known as the "substantial continuity" or "continuity of enterprise" exception to the general asset purchase rule which does not impose liability on a corporation purchasing assets for acts or omissions of the seller corporation. The Court awarded EPA a judgment against all defendants for $1,200,000 in past response costs.

U.S. v. Midwest Solvent Recovery, Inc.: On Friday, March 22, 1991, the first de minimis landowner settlement in Region V was lodged in this case. This settlement with Penn Central Railroad will result in recovery of $1.2 million. Trial on enforcement of unilateral administrative orders is scheduled to begin on May 6, 1991. EPA has negotiated and lodged in court a de minimis landowner settlement. The settlement with Penn Central, a defendant in the Midco case, provides a cash payment of $1,150,000. Penn Central acquired a railroad right-of-way adjacent to the Midco II NPL site when it came into being in the late 1970s.

Motherlode Gold and Silver, Ltd. (East Helena, Montana): A Consent Decree settling recovery of $250,000 in past response costs was entered with the United States District Court of Montana on March 4, 1991. Michael Chovanak and his insurance company agreed to reimburse the Superfund for costs incurred by Region VIII's Emergency Response program in responding to and cleaning up cyanide contamination resulting from a fire at the Motherlode Gold and Silver, Ltd. facility in East Helena, MT, which occurred in October 1984.

In the Matter of Munisport Landfill Site, North Miami, Florida: On September 24, 1991, the North Miami City Council signed the consent decree for the Munisport Landfill Site. The city agreed to perform the estimated $6 million RD/RA which includes designing a leachate collection system for the site. The city also agreed to pay $140,000 for past costs the government incurred at the site. The leachate has damaged area natural resources, including a protected mangrove preserve and local fisheries.

102nd St. Landfill (Niagara Falls, New York): On September 30, 1991, Region II issued a unilateral administrative order for RD/RA at the 102nd Street Landfill site in Niagara Falls, New York. The order was issued to the two PRPs for the site, Occidental Chemical Corp. and Olin Corp. The work they will do is valued at about $30 million. EPA, and its co-plaintiff the State of New York, have been in litigation with these companies for several years concerning this site; the RI/FS work was done by the PRPs under an earlier stipulation in the case. All parties to the litigation agreed that issuance of the EPA order would be an appropriate way to move the cleanup process forward.

U.S. v. Peirce, et al. (N.D. New York): On June 4, 1991, a partial consent decree was lodged in this case concerning the York Oil Superfund Site in Moira, New York. The decree embodies a mixed funding settlement with the Aluminum Company of America (Alcoa), The U.S. Army, and The U.S. Air Force. Under the decree, Alcoa agreed to perform RD/RA for the first operable unit at the site; the Army and Air Force will contribute funding for the work, and a portion of the work will be paid for EPA from the Superfund under a preauthorization decision document. The settling parties will also pay a portion of EPA's past costs and oversight costs. The settling parties work and contributions are valued at about $4.1 million; EPA's contribution to the site work is about $3.5 million. EPA plans to seek recovery of the balance of its costs from non-settling parties. The site was a waste oil recycling facility.

In the Matter of Penn Central Transportation Company: A court ruled that the United States may bring a claim under CERCLA against Penn Central Corporation ("PCC"), the reorganized corporation which emerged following the 1978 discharge in bankruptcy of the Penn Central Transportation Company ("PCTC"). The United States Court of Appeals for the Third Circuit on September 19, 1991, issued an order granting leave to the United States to file a complaint against PCC under CERCLA based on the fact that: 1) at the time the consumption order discharging PCTC from bankruptcy was entered in 1978, CERCLA had not been enacted; and 2) the restructuring of PCTC into PCC was not a "liquidation-type" reorganization as the PCTC retained all assets other than railroad assets. The order is significant since it represents a split in the Circuits regarding whether the United States should be allowed to file a CERCLA claim against a reorganized corporation following a discharge in bankruptcy and since it could have a widespread impact benefiting the government. PCC has been granted a stay in the matter pending a ruling on its proposed petition for certiorari to the Supreme Court.

U.S. v. Rohm and Haas Co., et al. (Lipari): On December 27, 1990, the United States filed a Stipulation and Consent for the entry of Partial Summary Judgment on joint and several liability against defendant Rohm and Haas Company for costs and declaratory judgment for future response costs. Rohm and Haas, the major generator of hazardous substances disposed of at the Lipari

Landfill - the number one site on the NPL - agreed to stipulate liability for costs incurred to remediate the landfill portion of the Lipari Landfill. Rohm and Haas has not acknowledged liability for the portions of the response action necessitated by migration of hazardous substances from the Landfill to several streams, a marsh, and a lake. Rohm and Haas agreed to the stipulation rather than file a response to the United States' Motion for Summary Judgment which was filed in August 1990.

U.S. v. E.H. Schilling, (S.D. OH): On May 31, 1991, the U.S. District Court for the RD/RA Consent Decree between the United States, Dow Chemical Company, Ashland Chemical, Inc., Aristech Chemical Corporation, E.H. Shilling & Son, and General Contractors, Inc. The Decree provides for a remedy with an estimated value of $11 million at the E.H. Shilling & Son Landfill site near Ironton, Ohio. Significantly for the Agency, the Decree parallels the model RD/RA consent decree and contains provisions for technical impracticability, periodic review, additional work, and alternative dispute resolution that may be useful in subsequent negotiations involving other sites.

U.S. v. Schuylkill Metals Corporation, Plant City, Fl.: This settlement consent decree for remedial design/remedial action requires a conservation easement to preserve and maintain the wetlands at the NPL Site. This is the first consent decree in EPA Region IV which provides for the government's acquisition of a conservation easement. The easement consists of specific restrictions on the wetlands to ensure that these areas remain undisturbed, except as necessary for the implementation of the remedial action. EPA will transfer the easements to the State of Florida after completion of the remedial action. The State of Florida has formally assured EPA that it will accept the transfer of the easement following completion of the remedial action.

U.S. v. Sharon Steel Corp., et al: On November 13, 1990, three consent decrees were entered in the District Court for the District of Utah, Central Division. The Sharon Steel settlement involved three cash-outs, under the authority of CERCLA §104, §106, and §107, totaling over $63 million. The settlements are embodied in three consent decrees that resolve the United States' claims against Sharon Steel Corp., UV Industries and the UV Liquidating Trust, and Atlantic Richfield Co. ("ARCO") relating to both the Midvale Tailings Site and the Midvale Slag Site. $2,300,000 of the total settlement fund will be allocated to the Department of the Interior for purposes of restoring, replacing, or acquiring the equivalent of natural resources, with the remainder of the funds to be credited to the Superfund and earmarked for purposes of the Sharon Steel Site. An Administrative Order on Consent (AOC) was previously entered between the U.S. and the State of Utah as a de minimus landowner.

U.S. v. Sheller-Globe Corporation (W.D. MI): On March 28, 1991, the U.S. District Court for the Western District of Michigan entered a Consent Decree under the Superfund Law in U.S. v. Sheller-Globe Corporation, et al.. Forty-one Potentially Responsible Parties (PRPs) signed the Decree for the Auto Ion Chemical Inc. Superfund site in Kalamazoo, MI. The settlors agreed to implement the Remedial Design/Remedial Action for soil remediation in the first operable unit and to pay to certain response costs incurred (and to be incurred) with remediation of the facility. The estimated cost of remediation associated with this first operable site is $3.4 million.

Solvent Savers Site (Lincklaen, New York): On May 29, 1991, Region II issued a unilateral administrative order for RD/RA at the Solvent Savers site to five PRPs: The American Locker Group, Bristol-Myers Squibb Co., General Electric Co., IBM Corp., and Pass & Seymour, Inc. The work they will do under the order is valued at about $29 million. The site was formerly used as a chemical waste recovery and drum reconditioning plant. Soils at the site are contaminated with volatile organic compounds, metals and PCBs; groundwater is also contaminated. The remedy includes groundwater treatment, and removal and treatment or off-site disposal of contaminated soils.

U.S. v. Syntex: The District Court of the Eastern District of Missouri entered a consent decree between the United States and Syntex on December 31, 1990, obtaining work valued at $100 million. The decree calls for Syntex to do the bulk of the work at the Missouri Dioxin sites including excavating and burning in a portable incinerator the dioxin-contaminated soil. The decree also provides that Syntex will pay EPA $10 million in past costs.

U.S. v. Town of Oyster Bay (E.D. New York): On February 22, 1991, a consent decree was entered regarding the Syosset Landfill Superfund Site. Under the decree the Town will implement the remedial action selected by EPA for this municipal landfill. The Town will cap the landfill using a geosynthetic membrane, and will additionally reimburse EPA for oversight costs. The value of the settlement is estimated at $26.3 million.

Union Chemical Superfund Site: On August 7, 1991, EPA and the State of Maine reached agreement with 60 potentially responsible parties at the Union Chemical Co. Inc. Superfund Site in South Hope, Maine. Under the terms of the settlement, the 60 PRPs will perform the remedy selected in EPA's record of decision, and will pay the United States a total of $2.8 million towards EPA's future oversight costs and in reimbursement of EPA's past costs. The settlement also allows the PRPs to undertake optional treatability studies for an alternative remedy for treatment of contaminated soils. In addition, EPA approved a de minimis settlement with an additional 270 PRPs, who will contribute approximately $3.1 million towards performance of the remedy. The settlements constitute a 96% recovery of EPA's remaining claims with respect to the site.

Moreover, also regarding the Union Chemical Site in FY 1991, in U.S. v. Union Research Co. Inc. et al. (D. Maine), EPA recovered significant penalties against three defendants who failed to respond in a timely way to EPA information requests issued under §104 of CERCLA and §3007 of RCRA. The three defendants, Ethan Allen Inc., Spencer Press Inc., and IMC Magnetics Corp. (New Hampshire Division) agreed to pay penalties of $21,000, $15,000 and $7,500, respectively, for failing to respond in a timely way to information requests issued in 1987 concerning their shipments of hazardous substances to the Union Chemical Co. site.

United Agri Products, Inc. (North Dakota): A Consent Decree settling recovery of $280,000 in past response costs was entered with the United States District Court of North Dakota, Northwestern Division, on April 8, 1991. United Agri Products, Inc., agreed to reimburse the Superfund for costs incurred by Region VIII's Emergency Response program in responding to and overseeing the clean up of contamination resulting from a fire at a pesticide warehouse in Minot, ND, which occurred in April 1987.

U.S. v. White Chemical Company: On October 2, 1990, Region II and the Agency for Toxic Substances and Disease Registry conducted an inspection of the White Chemical Company in Newark, New Jersey and determined that the site conditions were so dangerous that it was necessary to shut down the factory and evacuate the site. White Chemical refused to comply with EPA's request and Region II requested the Department of Justice to file a complaint for a temporary restraining order (TRO). On October 3, 1990, White Chemical filed a motion for show-cause order in bankruptcy court in an effort to preempt EPA's TRO. On October 5, 1990, the Bankruptcy Judge ordered White Chemical to leave the site immediately. The United States filed its motion for a TRO in federal district court on October 9, 1990. On that day, the court granted the United States' motion for a TRO; a preliminary injunction was subsequently granted.

Superfund Information Request Enforcement Initiative

Enforcement of CERCLA information requests remains a high priority of the Agency's Superfund enforcement program. Compelling compliance with such requests helps to generate acceptable settlement offers from PRPs. PRPs will, for example, be more willing to settle when they are assured that other parties are not escaping participation by ignoring EPA's information requests or filing incomplete responses.

The Agency launched a national initiative to emphasize enforcement of CERCLA §104(e)(2) requests in September 1989. This emphasis was reiterated in FY 1991 as the Agency not only continued to litigate previously filed cases but also filed seven additional cases of this type, which are summarized below.

U.S. v. Alco Tool Supply Company: The complaint, filed February 12, 1991, seeks civil penalties and injunctive relief for the defendant's failure to comply with Region V's request for information relating to the Conrail Railroad site in Elkhart, Indiana.

U.S. v. Ernest Barkman: The complaint, filed on November 15, 1990, seeks an injunction ordering the defendant to supply the requested information as well as civil penalties for his failure to respond to EPA's request. The defendant

failed to comply with Region III's request for information regarding the Walsh Landfill site.

U.S. v. Builder's Hardware Finishers, Inc.: The complaint, filed November 19, 1990, seeks to compel compliance with Region IX's request for information and asks the court to assess penalties for the defendant's failure to respond to the request regarding the BHFI electroplating site in Los Angeles, California.

U.S. v. Pacific Intermediate, Inc. and Benjamin L. Adams.: The complaint, filed July 16, 1991, asks the court to order the defendants to comply with Region IX's request for information as well as to assess penalties for the defendants' noncompliance.

U.S. v. Pratter: The court entered a default judgment against the site operator on October 10, 1990. The judgment included a $50,000 penalty for the defendant's failure to respond to Region IX's information request. This is the second largest penalty ever assessed for noncompliance with a CERCLA information request.

U.S. v. Pretty Products, Inc., et al.: The U.S. filed a complaint on January 28, 1991, seeking civil penalties and injunctive relief for the refusal of Pretty Products, Inc. and its corporate parent, Lancaster Colony Corporation, to supply certain requested information relating to the Coshocton City Landfill site in Ohio.

U.S. v. Union Research Co., Inc. et al.: The Agency recovered penalties from three parties who failed to respond in a timely manner to Agency information requests, issued pursuant to CERCLA §104(e) and RCRA §3007, regarding the Union Chemical Company site in Maine. The three defendants, Ethan Allen Inc., Spencer Press Inc, and IMC Magnetics Corp. (New Hampshire Division) agreed in a settlement with Region I to pay penalties totaling $ 43,500.

Superfund Enforcement Lead Initiative

As part of an Audi lead initiative, EPA and the Department of Justice filed six complaints and lodged two consent decrees under CERCLA. These Superfund enforcement actions involve various sites across the country and over a hundred potentially responsible parties. Together, the six complaints request reimbursement of approximately $10 million in Superfund money that EPA spent on cleanup actions at six sites where lead was a contaminant of concern. EPA's Superfund cleanup actions helped reduce lead contaminated groundwater, treat lead contaminated surface and subsurface soils, and eliminate the airborne threat of lead contaminated dust to nearby residences. These Superfund enforcement actions are designed to support EPA's overall enforcement effort to target lead, a highly toxic metal, and reduce lead exposure from Superfund Sites.

Lead Cases

In the Matter of ASARCO/East Helena Superfund Site: EPA entered into an Administrative Order on Consent with ASARCO, the potentially responsible party (PRP) at this Site on July 19, 1991. Under the Order, ASARCO is removing lead-contaminated soil from schools, daycare centers, yards, parks, playgrounds and unpaved streets and alleys.The ASARCO/East Helena Superfund Site occupies eighty acres and is located in East Helena, Montana. ASARCO Incorporated (Asarco) owns and operates a primary lead smelter in East Helena, Montana. During the 102 years of operation of the smelter, both stack and fugitive emissions have been released into the Helena Valley. As an operating smelter, the plant's air emissions are undergoing air quality State Implementation Plan (SIP) review and revision by the state of Montana. The smelter is about one quarter mile from residential areas of East Helena. About half of the yards, playgrounds and parks in East Helena have more than 1,000 parts per million (ppm) lead in their surface soils. Natural background soils in the area contain 12-20 ppm lead.

The site has three separate operable units (OUs). The first OU was addressed in July 1990. The second operable unit will address the removal of lead-contaminated soil from residential areas such as yards, parks, playgrounds, and unpaved streets and alleys. EPA, in conjunction with ASARCO and the Montana Department of Health and Environmental Sciences, believes that the removal of highly contaminated lead soils is the most effective way to lower exposure to lead in East Helena. The removal action is expected to take several years to complete.

U.S. v. Atlas Lederer: On July 31, 1991, the Department of Justice filed a complaint in the United States District Court for the Southern District of Ohio under CERCLA. The complaint

seeks reimbursement of $1.2 million in Superfund monies expended at the Site in connection with EPA response actions and requests a declaratory judgment on liability for future expenditures.

The United Scrap Lead Superfund Site is located in Troy, Ohio and is about twenty-five acres in size. RI/FS was completed in August 1988 and the ROD was signed on September 30, 1988. The ROD requires excavation and on-site treatment of battery casings, excavation and on-site treatment of surface soils containing lead concentrations greater than 500 parts per million (ppm), demolition of structures, monitoring of surface water, air and groundwater, and construction of new well. Remedial actions at this Site will involve an innovative soil washing technique.

U.S. v. Berks Associates, Inc., et al: On July 31, 1991, the Department of Justice filed a complaint in the United States District Court for the Eastern District of Pennsylvania seeking reimbursement of more than $5 million in Superfund money expended for past response costs and a declaratory judgment on liability for future response costs pursuant to CERCLA §104, §106, §107 and §113. The Douglassville Disposal Superfund Site is a defunct waste oil processing facility located in Douglassville, Pennsylvania. The site consists of approximately 50 acres located along Highway 724 on the southern bank of the Schuylkill River. The site is approximately three miles northwest of Pottstown and 11 miles southeast of Reading and is almost entirely within the 100 year floodplain of the Schuylkill River. The facility consists of a waste oil processing area in the southern portion of the site and numerous other areas used for waste disposal. These disposal areas included two large lagoons that were once filled with waste oil sludge, an oily filter cake disposal area, an oil drum storage area, an area where waste oil was landfarmed into the soil, the former processing/tank farm area, a small backfilled lagoon, an old incinerator, and an area of scrap metal and tanks.

A second Record of Decision, representing the first operable unit ("OU1") at the site, was signed on June 24, 1988. The remedial action selected consisted of removing liquids and sludges from various areas at the site and transporting them off-site for incineration. In addition, the former processing area was to be dismantled and uncontaminated tanks sold for scrap. Lastly, provisions were made for the disposal of contaminated and uncontaminated rubble at both on-site and off-site locations.

U.S. v. Estate of Lovie M. Hebelka, et al: On July 31, 1991, the Department of Justice filed a complaint in the United States District Court for the Eastern District of Pennsylvania seeking: (i) injunctive relief pursuant to CERCLA §104(e) for site access for EPA authorized representatives to effect remedial activities; (ii) reimbursement of about $1 million in Superfund money spent on response costs at the site; and (iii) a declaratory judgment on liability pursuant to CERCLA §113(g) for further response costs in connection with the site.

The Hebelka Auto Salvage Yard Superfund Site occupies about 20 acres of land adjacent to and north of Old Route 22 in Weisenburg Township, Lehigh County, Pennsylvania, approximately 9 miles from Allentown. During the 1950s, 60s, and 70s, the property was used as an automobile junkyard at which battery salvage operations took place. Over time, large piles of battery casings were accumulated at the Site. On December 15, 1985, an EPA Field Investigation Team site inspection of the property revealed soils downgradient from the battery piles contaminated with high amounts of lead and chromium. Three homes are immediately adjacent to the property.

U.S. v. NL Industries, et al: On July 31, 1991, the Department of Justice filed a complaint in the United States District Court for the Southern District of Illinois seeking enforcement of Unilateral Administrative Orders (UAOs) issued under CERCLA §106 and reimbursement under CERCLA §107.

The NL Industries\Taracorp Superfund Site is located in Granite City, Illinois. The primary source of contamination at this site is a secondary lead smelter that operated from the 1903 through 1983. Uncontrolled air emissions have caused the lead contamination to migrate off-site, with lead being distributed throughout the surrounding community. EPA signed a Record of Decision on March 30, 1990, which required the cleanup of contaminated residential soils to 500 parts per million (ppm) lead. About 1,200 residences in and near Granite City, Madison, and Venice, Illinois are to be cleaned at an estimated cost of over $28.5 million dollars.

On November 27, 1990, the Region issued forty-three UAOs to the potentially responsible parties

PRPs at this site and requested that they commence remedial action. After a period of negotiation, the PRPs refused to comply with the orders. EPA's complaint requests that the PRPs reimburse EPA's past costs, imposition of penalties and punitive damages for failure to comply with the UAOs, and injunctive relief to require the defendants to implement the remedial action.

U.S. v. Peter Gull and N.L. Industries: On July 31, 1991, the Department of Justice filed a complaint in the United States District Court for the Southern District of California to recover $2.5 million in Superfund money. EPA is also requesting the court impose punitive damages and penalties of more than $7 million for the defendants' failure to comply with a UAO.

The B & H Battery Site is 2.8 acres in size and is located in a mixed residential and open livestock area in Norco, California. The former site operator bought old batteries and refurbished them. However, a number of batteries were not refurbished and the operator either dismantled the batteries or sold them intact to scrap metal yards and two lead smelters. Dismantled batteries were broken open and the waste battery acid was drained directly onto the ground. Lead contaminated battery pieces were also scattered over the Site.

EPA issued a UAO to the PRPs at the Site that required the PRPs to remedy the lead contamination and commence Site cleanup. The PRPs refused to fully comply with the order, thus forcing EPA to take over response actions at the Site and incur costs of several million dollars.

Municipal Initiative

On July 17, 1991, EPA Administrator Reilly announced an initiative on municipal liability. EPA committed to develop national guidelines for allocating costs to municipal solid waste (MSW), convene a national conference to discuss cost allocation issues (which was subsequently held October 10 & 11, 1991), and develop a model settlement document for municipalities that have generated or transported MSW to Superfund sites. The October conference, involving a cross-section of all affected private and public sectors, discussed the problems in allocating costs and a wide variety of creative possible solutions. The guidelines will be used to limit the number of third party suits brought against local governments that have contributed waste to Superfund landfills.

Municipal Cases

U.S., et al. v. Acushnet Co., et al: In June 1991, the United States District Court for the District of Massachusetts entered a CERCLA §106 and §107 consent decree. Under the consent decree, fourteen potentially responsible parties have agreed to conduct the remedial design, remedial action, and operation and maintenance for thirty years at the First Operable Unit. The present value of these activities is estimated to be $10.5 million. The settlers have also agreed to reimburse the United States for: (1) 100% of the United States' future oversight costs for the first five years of the remedy, and 50% thereafter, up to a total of $1.5 million; and (2) past costs of $620,000.

U.S., et al. v. Simpson Tacoma Kraft Co., et al: On June 24, 1991, a complaint was filed and a proposed consent decree in the above referenced case was lodged with the United States District Court for the Western District of Washington. The consent decree is designed to settle the enforcement action under CERCLA §106 and §107 at the St. Paul Waterway Problem Area of the Commencement Bay Nearshore/Tideflats Superfund Site. The complaint also includes a claim for relief under §311 of the Clean Water Act, and the consent decree contains a covenant not to sue under that provision of the statute.

The consent decree requires the potentially responsible parties (PRPs) to assume responsibility for monitoring the effectiveness of a cap placed over contaminated sediment pursuant to a previous consent decree entered into with the State of Washington. The PRPs also agree to reimburse the United States for: (1) all past costs through the date of the Record of Decision (ROD), which total $354,536; (2) 60% of EPA's oversight costs from the date of the ROD through the date of entry of the consent decree; and (3) all future oversight and response costs. The consent decree also settles claims for natural resource damages by the National Oceanic and Atmospheric Administration, the Department of Interior, the State of Washington, the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe.

Prospective Purchaser Agreements

Indian Bend Wash Superfund Site (South), Tempe, Arizona: On September 27, 1991, the Department of Justice concurred in a Prospective Purchaser Agreement for this site. The Agreement pertains to the Arizona Department of Transportation's (ADOT) proposal to construct a freeway through the northern portion of the South Indian Bend Wash Superfund Site (SIBW) in Tempe, Arizona.

The Prospective Purchaser Agreement provides the ADOT with a covenant not to sue under CERCLA §106 and §107 and RCRA §7003 for any present contamination on or under the proposed freeway portion of the SIBW site. ADOT has agreed to conduct response activities on the freeway portion of the SIBW site worth over $1.1 million. In addition, ADOT also grants EPA an irrevocable right of access to the Freeway Property, upon reasonable notice and at reasonable times, for the purpose of monitoring compliance with the agreement and undertaking response actions at the SIBW site.

In the Matter of Bankamerica Corp., et al.: On May 9, 1991, the Department of Justice concurred in the above referenced Prospective Purchaser Agreement. The Agreement pertains to the purchase of the Fick Foundry property at the Mouth of City Waterway Problem Area of the Commencement Bay Nearshore/Tideflats (CB/NT) Superfund Site. The Agreement provides the Settling Parties, and any successors in interest, a covenant not to sue for the sediment contamination at the Mouth of City Waterway Problem Area. The Settling Parties have agreed to pay the United States $350,000 and perform cleanup activities at the Fick Foundry Property.

Federal Facilities - Superfund/RCRA

Crab Orchard: On September 13, 1991, the Regional Administrator signed a Federal Facility Agreement under CERCLA §120 that provides remedial action at the Crab Orchard National Wildlife Refuge. The other signatories are the Department of the Interior, the Department of the Army, and the Illinois Environmental Protection Agency. It is the first CERCLA Section 120 agreement to include more than one other Federal agency as a PRP. It is also the first CERCLA §120 agreement to provide for private party participation in remedial activities pursuant to §120(e)(6) and §122 of CERCLA.

In the Matter of Dyess Air Force Base, Abilene, Texas: On September 28, 1990, EPA issued a Notice of Non-compliance (NON) against the facility citing improper waste determination, inadequate closure plan, inadequate ground water monitoring, improper management of land disposal restricted wastes, and other violations including non-compliance with an Administrative order issued by the state on February 16, 1988. On September 4, 1991, a separate NON was issued for leaking underground storage tanks. During negotiations, there was agreement that the RCRA Federal Facility Compliance Agreement should be revised to include the UST order requirements. The final FFCA was signed by the facility on September 12, 1991. The FFCA requires comprehensive assessment of groundwater contamination, remediation, and implementation of procedures to bring the facility into compliance with RCRA.

Fernald Federal Facilities Agreement (Fernald, Ohio): On September 20, 1991, the Regional Administrator signed an Amended Federal Facilities Agreement between U.S. EPA and the Department of Energy (DOE) for the clean-up of the Feed Material Production Center in Fernald, OH. For the first time, DOE has acknowledged EPA's authority to assess stipulated penalties, noting RI/FS submittals are inconsistent with CERCLA and the National Contingency Plan. The agreement, which utilizes innovative risk assessment techniques, requires DOE to implement remedial action, pay $100,000 in penalties, and perform supplemental environmental projects worth $150,000.

In the Matter of the Former Nebraska Ordnance Plant: In September 1991, EPA signed an agreement with the State of Nebraska and the U.S. Department of the Army covering cleanup of the former Nebraska Ordnance Plant, located near Mead, Nebraska. The former Defense Department facility, much of which is now occupied by the University of Nebraska's Agronomy Research Center as well as several private landowners, has contamination in both soil and groundwater from the Defense Department's handling of explosives and solvents at the site. The interagency agreement pursuant to §120 of CERCLA covers investigation and cleanup by the Army over approximately five years.

Fort Devens - Sudbury Training Annex and Fort Devens: EPA entered into Federal Facilities Agreements (FFA) with the Army for these two facilities in May 1991. The FFAs address the investigation, development, selection, and implementation of response actions for all releases or threatened releases of hazard substances at the installations. A site specific Master Environmental Plan will be appended to each FFA to serve as a detailed comprehensive plan for the work to be performed pursuant to CERCLA.

Loring Air Force Base: EPA, the state of Maine, and the Air Force entered into a FFA under CERCLA §120 on January 30, 1991. Loring is located in the north of Maine in a very rural area. Loring was selected for closure pursuant to the 1990 Base Closure and Realignment Act and is scheduled to close September 30, 1994. Hazardous wastes generated on the base include waste oils, fuels cleaned from aircraft and vehicles, spent solvents, polychlorinated biphenyls, and pesticides. EPA is committed to overseeing the remediation of the contamination at the base pursuant to the terms of the FFA.

Naval Industrial Reserve Ordnance Plant: EPA, the Minnesota Pollution Control Agency and the Navy entered into a CERCLA §120 FFA which became effective June 7, 1991. The Navy will undertake work necessary to implement the September 1990 ROD for groundwater remediation at the facility, conduct RI/FS work as needed to characterize the source of groundwater contamination, and remediate soils on site. The FFA also provides mechanisms to conduct other response actions and CERCLA-mandated five year reviews, as necessary.

Pease Air Force Base Superfund Site: On April 24, 1991, EPA, the Air Force, and the State of New Hampshire signed an Interagency Agreement for the Superfund cleanup at Pease Air Force Base in Portsmouth, New Hampshire. Pease is an NPL Site under CERCLA. The Interagency Agreement contains precedent-setting provisions which ensure that the cleanup will be unimpeded by closure and redevelopment, while at the same time allowing those activities to take place.

Rocky Flats Plant: A Federal Facility Compliance Agreement (FFCA) was signed by EPA and DOE on May 10, 1991. The FFCA addresses storage prohibition violations of the land disposal restrictions program of RCRA for certain mixed wastes at the Rocky Flats Plant. These wastes are prohibited from land disposal without prior treatment and can not be stored except for the sole purpose of accumulating sufficient quantities of waste as are necessary for the proper recovery, treatment or disposal. However, no treatment capacity nor treatment technologies exist at this time to handle these wastes. The purpose of the Agreement is to have DOE address the storage violation by getting treatment technologies developed and operational.

Savannah River Site: On March 13, 1991, EPA signed a RCRA FFCA with DOE to address RCRA Land Disposal Restriction issues at the Department of Energy's (DOE's) Savannah River Site (SRS) in Aiken, South Carolina. The FFCA was negotiated because DOE is storing wastes at SRS which are prohibited from land disposal. The land disposal restrictions program prohibits the land disposal of certain wastes unless pre-treated using specific technologies or to specified treatment standards. For a number of prohibited waste streams at SRS, no operational treatment systems exist. The storage of these wastes constitutes a technical violation of the land disposal requirements of RCRA. This FFCA contains an important commitment on behalf of DOE to develop, construct and operate technologies to treat radioactive mixed waste streams and to address the related waste management issues associated with those waste streams at SRS.

Steamtown National Historic Site (Scranton, PA): On September 30, 1991, Region III issued a Notice of Noncompliance, Compliance Schedule and Notice of Necessity for Conference (NON) to the United States Department of the Interior, National Park Service for violations of the Resource Conservation and Recovery Act and the Pennsylvania Solid and Hazardous Waste Management Regulations at the Steamtown National Historic Site in Scranton, PA. The NON cites the respondent for, among other things, accumulating more than 1000 kilograms of hazardous waste at the facility without a permit or interim status, storing hazardous waste at the facility without a permit, storing open containers of hazardous waste at the facility, and failing to have the prescribed containment system in the facility's container storage area. The Region hopes that an ensuing Federal Facility Compliance Agreement will resolve long

outstanding PCB problems.

In the Matter of U.S. Department of the Army - Ft. Riley, KS: A CERCLA §120 Interagency Federal Facility Agreement between the U.S. Department of the Army, the Kansas Department of Health and Environment (KDHE) and EPA, Region VII, became effective in June, 1991 following 45 days of public comment. This Agreement requires the Army to conduct an RI/FS and select and perform appropriate remedial actions under KDHE and EPA oversight and/or approval at the Fort Riley Kansas NPL Site. Addressing the entire facility, this Interagency Agreement requires the Army to investigate and remediate all known and suspected areas of contamination which resulted from the historical disposal practices at the facility including seven solid waste landfills and surface areas. Each discrete area of contamination will be addressed as operable units under the agreement. There was substantial public opposition to this agreement, and the Region engaged in extensive public education and outreach. The primary area of concern to the public, the 4 square mile impact zone, will be included in the RI/FS.

In the Matter of U.S. Department of Energy Pantex Plant, Amarillo, Texas: The first corrective action order under RCRA to be issued by EPA Region VI to a Department of Energy (DOE) facility was issued on December 10, 1990, to the DOE Pantex facility at Amarillo, Texas. The order includes a Corrective Action Plan which outlines timeframes, scope of corrective action activities during interim measures, RCRA Facility Investigation (RFI), corrective measures and corrective measures implementation phases. The proposed order alleged that hazardous waste constituents were land disposed via unlined ditches, playa lakes, and/or the on-site sanitary landfill. Wastes have migrated into the underlying Ogallala Formation which contains the Ogallala aquifer, one of the most productive and extensive aquifers in the United States. The final order provides for the cessation of land disposal of certain waste streams, sampling and analysis, submission of interim measures reports and recommendations, along with RFI and corrective measures requirements.

Warren Air Force Base: On September 25, 1991, EPA, the Air Force, and the State of Wyoming entered into a FFA under CERCLA §120 for the Warren Air Force Base. Waste generated at the facility has consisted primarily of spent solvents from equipment cleaning and various maintenance operations. The Air Force also maintained an acid well used for spent battery acid disposal. Five landfills are located at the facility and these hold various non-hazardous and hazardous wastes. Two fire protection areas involve extensive use of various fuels and combustible materials for fire training exercises. Both areas are now closed and were replaced by a third. The agreement calls for the investigation and cleanup of the facility.

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 the past fiscal year, an aggressive enforcement program, including both civil judicial and administrative actions, emphasized multi-media coordination and targeted initiatives. With a new RCRA civil penalty policy in place, the RCRA enforcement program will seek increased penalties and economic sanctions, while continuing to encourage settlements incorporating pollution prevention and waste minimization goals.

NATIONAL INITIATIVES

Land Ban Initiative

On February 22, 1991, EPA and the Department of Justice announced eight judicial and 20 administrative actions to enforce the Land Disposal Restrictions (LDR) of RCRA. The Land Ban Initiative was well-publicized and should play a significant role in deterring future LDR violations. EPA Administrator William K. Reilly underscored the importance of these enforcement efforts stating that "[t]hese enforcement actions are part of a continuing nationwide campaign by EPA and the Justice Department to stop people from illegally putting hazardous wastes in the ground. The restrictions are intended to significantly reduce the nation's reliance on land disposal of hazardous wastes in order to protect ground water and minimize risks of exposure to hazardous wastes."

As part of the Land Ban initiative, a $1.85 million consent decree was lodged with E.I. Du Pont de Nemours in federal district court. The

consent decree resolved certain alleged past violation of the land disposal restrictions provisions at Du Pont's Chambers Works facility in New Jersey. It also provided for an independent compliance audit and pollution prevention measures. Several other significant cases were filed as part of the initiative. The administrative cases sought a total of over $3.5 million in penalties against a variety of companies, including BF Goodrich and Ciba-Geigy. The judicial cases included actions against Grumman St. Augustine Corp., National Rolling Mills, and Proteco and a multimedia enforcement action under RCRA and the Clean Water Act against Columbia Manufacturing.

U.S. v Grumman, St. Augustine, Fl.: Grumman - St. Augustine Corporation's (GSAC) business consists of stripping, painting and refurbishing aircraft. GSAC generates two major F002 waste streams, wastewater treatment sludge and paint chips. The complaint alleges that after November 8, 1986, GSAC violated LDR by failing to determine if these waste streams were restricted {40 CFR §268.7(a)} and failing to provide the required notice and information to the disposal facility {40 CFR §268.7(a)}.

U.S. v. National Rolling Mills, Inc.: A judicial complaint was filed on February 22, 1991, alleging multiple RCRA violations by National Rolling Mills, Inc. ("NRM"), Paoli, PA. The violations alleged in the complaint included: storage of drums of land ban restricted hazardous waste on-site for more than one year; failure to maintain on-site copies of notifications and certifications for off-site shipments of restricted hazardous waste; failure to notify off-site treatment or storage facility of applicable treatment standards for shipments of restricted hazardous waste; and failure to include waste minimization description efforts in their 1990 Biennial (both treatment, storage and disposal and generator) Reports.

U.S. v. MTD Products Inc. and Columbia Manufacturing Co. Inc.: On February 22, 1991, the United States filed a multi-media civil action for penalties and injunctive relief against Columbia Manufacturing Co. Inc., the present facility owner and operator, and MTD Products Inc., the facility's prior owner and operator, under RCRA and the CWA. Columbia manufactures bicycles and school furniture at its factory in Westfield, MA. EPA multi-media inspections of the Columbia facility disclosed 29 violations of federal and Massachusetts RCRA regulations at the Columbia site, as well as significant violations of the CWA by Columbia and MTD Products Inc. Among other matters, the complaint focuses on two unlined surface impoundments at the facility which were used as part of its wastewater treatment facilities. Metal hydroxide sludge (waste from its electroplating operations) was routinely pumped into these impoundments for permanent disposal until May 1983. Analysis of soils in and around these impoundments detected significant levels of cyanide. Analyses of groundwater samples in the vicinity of these impoundments indicate significant levels of several hazardous wastes, including chromium, cadmium, trichloroethylene and volatile organic compounds (VOCs).

U.S. v. E.I. du Pont de Nemours & Co. (Chambers Works): The United States entered into a settlement agreement with E. I. du Pont de Nemours ("Du Pont") in this RCRA enforcement action focused on New Jersey's largest hazardous waste treatment and disposal facility. On May 22, 1991, the U.S. District Court for the District of New Jersey entered a consent decree settling this RCRA §3008 case. The consent decree was filed with the court concurrently with a complaint on February 22, 1991. The settlement resolves certain past LDR violations that the United States alleges occurred at the company's Deepwater, New Jersey facility, known as "Chambers Works." Du Pont violated the LDR provisions of RCRA by unlawfully disposing of corrosive acids and toxic solvent wastes at the Chambers Works, and by violating related LDR testing, waste analysis and record keeping provisions. The consent decree requires Du Pont to pay a $1.85 million penalty to the United States. In addition, Du Pont is required to conduct an environmental compliance audit and pollution prevention study pursuant to the settlement.

U.S. v. Proteccion Tecnica Ecologica, Inc.: Proteccion Tecnica Ecologica, Inc. ("Proteco") is a hazardous waste treatment, storage and disposal facility located in Puerto Rico. Proteco allegedly violated eight separate provisions of a consent decree that it had previously entered into with the United States to address alleged violations of RCRA at its facility. Additionally, Proteco allegedly violated 16 requirements under RCRA's "interim status" provisions for hazardous waste facilities operating prior to the issuance of a permit. Three of these interim status claims allege violations of the LDR requirements:

Proteco allegedly failed to retain appropriate records from generators who shipped LDR wastes to its facility; Proteco allegedly failed to amend its Waste Analysis Plan to incorporate LDR requirements; and Proteco allegedly stored LDR wastes at its facility for more than one year for purposes other than the accumulation of quantities necessary to facilitate proper recovery, treatment or disposal. Proteco lost its interim status to operate on May 15, 1990. In this action, the United States is seeking injunctive relief and civil penalties of up to $25,000 per day for each violation of RCRA, and stipulated penalties and injunctive relief for violations of the consent decree.

Lead Initiative

On July 31, 1991, 20 RCRA cases (12 judicial and 8 administrative) were filed as part of a multi-media initiative to enforce existing laws and regulations aimed at reducing lead exposure to the public and the environment. A total of 36 (24 judicial and 12 administrative) actions were filed under six environmental statutes -- the first time a specific pollutant was targeted for multimedia enforcement action. The RCRA cases in the initiative were truly multi-media, addressing lead contamination in soil, water and air.

U.S. v. American Brass, Inc., (M.D. Ala.): On July 31, 1991, a civil Complaint was filed against American Brass, which owns and operates a secondary brass smelting facility in Headland, Alabama. The company was cited for violations of the RCRA Land Disposal Restrictions prohibiting placement of hazardous wastes which contain lead (D008) in excess of the regulatory treatment level for that metal. The lawsuit seeks injunctive relief requiring compliance with LDR requirements and prohibiting further operation until American Brass can assure EPA that it can operate in accordance with RCRA. Simultaneously, a Motion for Contempt was filed in the Middle District of Alabama regarding violations of a Consent Decree lodged against American Brass. This Motion sought injunctive relief requiring American Brass's compliance with the Consent Decree requirements and prohibiting further operation until the company can assure EPA it can operate in accordance with the Consent Decree. These issues were resolved as of March 9, 1992 when the District Court entered a modified consent decree between EPA and American Brass.

In the Matter of Amoco Oil Co.: On July 31, 1991, Region III issued a RCRA administrative complaint seeking penalties against Amoco, regarding the unpermitted storage and management of lead- containing wastes at Amoco's Yorktown, VA oil refinery. This complaint was issued as part of EPA's Lead Initiative. In addition, the complaint cites Amoco for storage of hazardous wastes in drums and tanks for longer than the 90-day accumulation period without a permit, numerous record keeping violations, an inadequate contingency plan, and failure to make adequate hazardous waste determinations. Concurrent with issuance of the complaint, EPA sent Amoco a draft RCRA §3008(h) corrective action consent order to address releases from the facility. Administrative litigation is pending in this matter.

In the Matter of AT&T (Richmond, VA): On July 31, EPA issued a 3008(a) administrative complaint seeking penalties to AT&T for RCRA violations at its Richmond Works facilities in Richmond, VA. The complaint allegations include: unpermitted storage of hazardous wastes, failure to manifest hundreds of shipments of hazardous wastes, numerous LDR record keeping violations, an inadequate contingency plan,and an inadequate training program. Concurrent with issuance of the complaint, EPA sent a RCRA 3008(h) consent order to AT&T to implement the remedy selected by EPA in the RCRA Record of Decision for the facilities.

U.S. v. Environmental Pacific Corporation, Amity, OR: As part of Environmental Pacific Corporation's (EPC) operations at Amity, Oregon, EPC received lead acid and alkaline batteries, which it allegedly drained prior to shipment to recyclers or sent undrained to recyclers. During an inspection conducted by EPA Region X and the Oregon Department of Environmental Quality, hazardous constituents, including lead, cadmium, chromium, barium, mercury and silver, were found in soil and surface waters off-site. The civil judicial action undertaken by Region X seeks an injunction requiring EPC to clean up the lead and other hazardous constituents contaminating its facility and to study all areas where releases might have occurred.

U.S. v. Group Dekko International, Inc.: This is an enforcement action against Group Dekko for unlawful land disposal of toxic, lead-bearing

waste in an uncontrolled pile that may contain as much as 60 million pounds of waste. The waste pile was generated at a copper recovery facility near Kendallville, Indiana, that is part of Group Dekko's Reclaimers operating division. The complaint also addresses an unlawful shipment of waste as well as numerous testing and recordkeeping violations at Reclaimers. The complaint seeks an injunction requiring Group Dekko to cease using the waste pile and to maintain testing and records at the site as required by RCRA. The complaint also seeks civil penalties.

U.S. v. Kurdziel Industries, Inc: Kurdziel Industries (formerly Kurdziel Iron Industries, Inc.) is an enforcement action concerning Kurdziel's gray iron foundry located in Rothbury, Michigan. Wastewater and waste by-products from operations containing hazardous amounts of lead had been discharged into settling ponds and other areas at the foundry for years. The United States has filed a motion to hold Kurdziel in contempt of court for numerous violations of a Consent Decree it had agreed to in 1987, including failure to abide by the Decree's requirements concerning groundwater monitoring, financial assurance for closure of the contaminated areas, and liability insurance in case of an accident involving the contaminated areas. The action seeks an injunction requiring compliance and payment of stipulated penalties by Kurdziel.

U.S. v. Raymark Industries Inc: On July 31, 1991, the Department of Justice filed a civil complaint in the U.S. District Court for the District of Connecticut against Raymark Industries Inc. requesting that the court order Raymark to study and perform corrective action at its facility in Stratford, CT. Raymark had manufactured automobile brakes and friction products at this 34 acre facility from 1919 through 1989, and disposed of its hazardous wastes (principally lead-asbestos wastes and dust) on-site. In some areas, this lead-asbestos fill is up to 17 feet deep. There is also extensive groundwater contamination on-site. The complaint requests that the court order Raymark to comply with an administrative order issued by EPA on March 31, 1987, pursuant to §3013(a) of RCRA, which instructs the company to study its site in order to ascertain the nature and extent of the hazard created by the presence and release of hazardous waste. Raymark has failed to comply with the terms of the order. Based on the results of this study, the complaint's second claim requests that Raymark be ordered by the court to carry out a corrective action plan as approved by EPA.

U.S. v. Torrington Hide & Metal (Wyoming): On July 31, 1991, the U.S. filed a case in the U.S. District Court of Wyoming against Torrington Hide & Metal under CERCLA §106 and RCRA §7003 imminent and substantial endangerment statutory authorities. On February 28, 1989, U.S. EPA issued a RCRA §3008(a) administrative complaint, to Torrington Hide & Metal for twenty years of illegal disposal of hazardous waste resulting in lead contamination in the soils. The administrative case was vacated and a referral was filed in 1991 due to injunctive relief needs at the site. The defendants have claimed bankruptcy, and EPA has performed assessment and stabilization activities at the site to minimize potential exposure.

Export-Import Cluster Filing

On September 26, 1991, EPA filed 16 administrative actions under RCRA as part of a multi-media effort targeting illegal export and import of hazardous waste or chemicals. A total of 23 cases were filed to enforce the export and import regulations of RCRA, TSCA, FIFRA and the Clean Air Act. This cluster filing illustrated the increasing priority the Agency is placing on transboundary environmental problems.

Eight of the 16 RCRA cases concerned shipments of hazardous waste to Mexico and were developed in cooperation with the Mexican government. Other RCRA actions involved shipments of hazardous waste or chemicals to and from Canada, and exports to Asia and Europe. These administrative actions address a broad range of export and import violations including: failure to notify EPA and receive consent prior to export of hazardous waste to a foreign country; shipments of hazardous waste in violation of quantity limits set out in EPA's acknowledgement of the consent provided by the receiving country; and violations related to tracking of waste shipments.

In the Matter of Birmingham Bolt Company, Southern United Steel Division: This RCRA action involves a bolt and bar manufacturing operation that uses steel reclaimed from scrap metal in its manufacturing process. Hazardous waste generated at the facility, emission control dust from an electric arc furnace, was collected in a baghouse and was exported to Mexico for

reclamation. EPA issued an Acknowledgement of Consent to export after it received BBC's Notice of Intent to Export, and obtained Mexico's consent. EPA alleges, however, that BBC exported a greater quantity of waste than it indicated it would export in its original Notice of Intent, and prior to obtaining EPA's acknowledgement of Mexico's consent to increase the volume of waste which may be shipped, in violation of 40 CFR §262.53. EPA's complaint asks BBC to comply with the regulations and seeks a penalty for violations.

In the Matter of Coastal Metal Finishing: This action involves an electroplating facility which performs several types of plating operations. These operations include precious metal plating, plating of common metals and anodizing. The facility uses conventional treatment which includes chrome reduction, cyanide destruction and chemical precipitation of metals to treat its process wastewater. The alleged RCRA violations, which have been occurring since 1987, include failure to notify EPA of some exports of hazardous wastes, resulting in some unauthorized shipments; failure to properly complete manifests for export shipments; failure to submit annual reports; and additional regulatory violations under Subtitle C of RCRA, including violations of the Land Disposal Restrictions, and container management provisions of RCRA. EPA's Complaint asked Coastal to comply with the regulations and seeks penalties for violations

In the Matter of Sheffield Steel Corporation: This RCRA action involves a steel mill operated by Sheffield Steel Corporation located in Sand Springs, Oklahoma. Waste generated by the facility includes emission control dust (K061) from the production of steel in electric arc furnaces, and contains chromium, lead, and cadmium. The waste is shipped to Zinc Nacional, Monterrey, Mexico, for reclamation. The violations alleged in the complaint include export of wastes prior to receiving an EPA Acknowledgement of Consent for the export; the export of a greater quantity of hazardous waste than represented in the facility's notification of intent to export, without renotifying EPA of the intent to ship additional wastes and obtaining an EPA Acknowledgment of Consent to the additional shipments; and the export of wastes without the EPA Acknowledgement of Consent accompanying the shipment. EPA is seeking compliance with the regulations and penalties.

In the Matter of Stablex (R.I.), Inc.: This action involves a commercial wastewater treatment and hazardous waste storage facility, which is a major exporter of hazardous wastes to Canada. Essentially all of the waste generated and handled by Stablex are shipped to Stablex Canada, in Blainville, Quebec, which was formerly owned by the same company. The alleged RCRA violations, which have been occurring since 1988, include the export of certain types of hazardous wastes which were not included in the facility's notification of intent to export upon which Canada's consent to receive the wastes was based; failure to provide adequate Notification of Intent to export; failure to properly complete manifests for export shipments; and additional regulatory violations under Subtitle C of RCRA, including violations of the Land Disposal Restrictions. EPA is seeking compliance with the regulations and penalties.

In the Matter of Universal Metal and Ore Co., Inc. (New York): In September Region II filed an administrative complaint against this firm alleging violations of RCRA pertaining to the trans-boundary movement and handling of hazardous wastes. The Region II case seeks penalties which may be among the largest of the 16 RCRA cases included in the initiative.

REGIONAL INITIATIVES

Great Lakes Enforcement Initiative

As part of its effort to clean-up the Grand Calumet River area and Great Lakes Region, EPA filed three civil judicial lawsuits on October 16, 1990 against companies with facilities near Gary, Indiana. These actions, against Inland Steel Co., Inc., Bethlehem Steel Corp. and Federated Metals Corp., involved violations of hazardous waste, air and water laws and, together, constituted a unique, geographically-limited coordination of statutory enforcement authorities.

EPA sought to compel Inland to comply with its air, water and hazardous waste permits and to clean up toxic contamination deposited in sediments at the Indiana Harbor area of southern Lake Michigan and on its 2 1/2 mile man-made peninsula which the company used for hazardous waste disposal. Bethlehem Steel's operation in Burns Harbor, Indiana generates several types of hazardous wastes; releases threatened the Little Calumet River

and the Burns Ditch which flow into Lake Michigan. At Federated Metals' former smelting and refining facility in Whiting, Indiana, releases of lead and cadmium threatened human health and endangered the surrounding wetlands and Lake George.

California Generators Administrative Enforcement Initiative

Beginning in FY 1990, EPA Region VIII developed an administrative enforcement initiative targeting a group of California hazardous waste generators who improperly shipped wastes to unpermitted facilities in Wyoming and Utah. The region filed a total of eleven such actions. The cases, which involved multiple shipments, alleged three violations per shipment: (1) the improper shipment of hazardous wastes to unpermitted facilities, (2) the failure to include a proper shipping manifest wit the shipments, and (3) the failure to provide a land disposal ban notice. Several of these cases were concluded in FY 1990.

In FY 1991, Region VIII successfully resolved the remaining cases, with penalties ranging from $20,000 to $247,000. The defendants in these actions included BFM Energy, Cessna (General Dynamics), City of Fontana, SAIC, Harbor, Inc., Paul-Munroe, VAL Circuits, DICO, Inc. and Exotic Materials.

Region II Fur Pelt Industry Non-Notifier RCRA Enforcement Initiative

During FY 1991, Region II filed administrative complaints against six New Jersey firms engaged in fur processing and transportation of the resulting wastes. The firms illegally generated, stored, transported and disposed of hazardous wastes generated during the processing of fur pelts. The industry uses sawdust soaked with solvents to clean fur pelts. Two fur processors charged, Ella Industries, Inc. and Superior Dyed Furs, Inc., ignored all RCRA rules and disposed of the solvent-laden waste sawdust through transporters which then brought the sawdust to horse stables, factories and other locations not authorized to accept hazardous wastes. The improper handling and disposal of the solvent-laden waste sawdust could cause environmental contamination and human health problems; the solvents used include suspected carcinogens. The transporters cited are Lignum Chemical Works, Inc., Atlantic Sawdust and Paper Shredding, Landew Sawdust, Inc., and Ray Reilly Stables, Inc. During FY 1991 Region II inspectors visited 27 fur industry facilities.

Virgin Islands UST Enforcement

In FY 1991, Region II issued a complaint seeking penalties and compliance order against Frank Mustafa in the U.S. Virgin Islands, for violations of UST notification and leak detection requirements. The Virgin Islands environmental agency reported a large upsurge of interest in compliance following the press reports. Of 25 parties issued Notices of Violation by the Virgin Islands government in FY 1991 regarding leak detection infractions, all have since responded. The compliance rate for leak detection in the Virgin Islands now stands at 100%, either through implementation of the leak detection requirements or through closure of existing facilities.

Region II Waste Oil Enforcement Initiative

In FY 1990 civil actions were filed against seven Region II waste oil handlers for violations of the used oil regulations and other RCRA requirements. (Two administrative actions were also filed at that time against waste oil handlers.) With respect to two of the civil actions there were significant litigation developments in FY 1991. On August 8, 1991, the court in U.S. v. Nassau Oil (E.D. New York) issued a default judgment in favor of EPA awarding a civil penalty of $900,000. In U.S. v. Eastern Oil (D. New Jersey), the court denied the bulk of summary judgment motions filed by both the government and the defendant, but granted the government's summary judgment motion as to certain counts. The parties subsequently reached a settlement, providing for a penalty payment of $195,000. The ensuing consent decree was entered on February 28, 1992. Eastern has also agreed to adopt new operating procedures at its facility to insure the proper handling of used oil, and to mark its tanks with logos reading "Don't Pollute - Recycle Oil."

Other Significant RCRA Actions

In the Matter of Accurate Associates, Inc. (New York): On May 24, 1991, Region II issued an order under §7003 of RCRA requiring the removal of hazardous wastes from the premises of a former metal plating factory in New York City. The order

was directed to the owners and operators of the former factory, and specified steps which had to be taken to ensure the prompt and safe removal of the wastes discovered at the site, as well as certain testing and possible remedial action relating to the sewage system connections at the facility. This case was developed with cross-media cooperation in the Regional office. A Region II EPCRA inspection in December 1989, resulted in an administrative complaint issued to Accurate Famous Castings, Inc. When the Respondent company failed to respond to the complaint, EPCRA inspectors again visited the facility and found that the company had vacated the premises. The inspectors found about seventy 55-gallon drums on site, many in poor condition, and many marked as containing cyanide plating wastes, an acutely hazardous substance. The EPCRA program forwarded this information to the RCRA program, and after an accelerated investigation the §7003 cleanup order was issued.

In the Matter of Acme Brass and Aluminum Foundry, Inc. (Marshalltown, Iowa): In an administrative case, the owner/operator of a brass and aluminum foundry in Iowa was found liable under §3004 of RCRA for conducting treatment of hazardous waste without a permit. The Chief Administrative Law Judge ruled on September 24, 1991, that Acme Brass and Aluminum Foundry's practice of mixing hazardous baghouse dust with non-hazardous foundry sand in an open pile behind its facility was treatment of a hazardous waste which required a RCRA permit. In addition, the ALJ ruled that although the company was a small quantity generator, it failed to comply with certain conditions of the small quantity generator regulations and thus was not exempt from the RCRA permit requirements.

U.S. v. Alchem-tron, Inc./GSX Corp.: On January 25, 1991, the United States District Court for the Northern District of Ohio entered a consent decree settling a RCRA enforcement action against GSX Chemical Services of Ohio, Inc. (formerly known as Alchem-tron, Inc.). The settlement provided, in part, for the payment of a civil penalty of $350,000.00. In this action, filed on December 5, 1986, the United States alleged that a number of the units at the Defendant's facility located in Cleveland, Ohio, lost interim status on November 8, 1985, when Alchem-tron failed to certify compliance with the applicable financial responsibility requirements. In 1989, the district court granted the United States motion for partial summary judgment and held that the units at issue had lost interim status. The court permanently enjoined the Defendant from treating, storing, or disposing of hazardous waste in the units that lost interim status. The parties subsequently entered into the consent decree in order to settle the remaining penalty-related issues.

U.S. v. Buckeye Products, Inc.: On January 30, 1991, the United States District Court for the Eastern District of Michigan issued an order holding Buckeye in contempt for failing to comply with a 1987 consent decree. The contempt order includes provisions requiring defendant to: (1) immediately commence ground water monitoring on a quarterly basis; (2) fully and timely implement post closure care; (3) pay $104,871 as payment of the outstanding civil penalty due, plus interest; and (4) pay $5.31 million in stipulated penalties for violating the consent decree. The government subsequently garnished Buckeye's assets to satisfy the contempt order. The defendant has moved to quash the government's efforts to execute the contempt order and that motion is currently pending.

In the Matter of Burlington Northern (Cheyenne, Wyoming): On September 10, 1991, the U.S.EPA filed a RCRA 7003 Administrative case on consent against the Burlington Northern Railroad Company. The action was filed to impel cleanup of a Cheyenne site containing high levels of lead. Known contamination of soil, and potential contamination of surface and ground water including drinking water sources made this site of imminent and substantial endangerment to human health and the environment. Cleanup activities to be performed include immediate access restrictions to the site, installation of wells and groundwater monitoring, an evaluation of the depth of soil contamination and contaminants present, an evaluation of all drinking water supply wells within 1/4 mile of the facility, soil stabilization and removal, and site reconstruction. This case was interesting because Burlington Northern was neither an owner or an operator, and most of the disposal activities at the site occurred prior to 1980. A simultaneous unilateral §7003 order was filed against the owner of the site to compel their participation in the cleanup as necessary and to ensure that if any contamination remained on site, a deed notice was entered with the appropriate local zoning authority.

U.S. v. Casmalia Resources, Hunter Resources and Kenneth H. Hunter, Jr.: On August 28, 1991, a complaint was filed against three respondents, each an operator and owner of a hazardous waste treatment, storage and disposal facility located in Santa Barbara County, California. The complaint seeks civil penalties and injunctive relief for numerous violations of RCRA, including improper expansion of landfills, disposal of waste in excess of specified design capacity, inadequate insurance coverage and failure to amend its closure plan for new construction. The complaint also seeks corrective action. The case has been consolidated with an action filed the previous day by the County of Santa Barbara under RCRA's citizen suit provision. The State of California has moved to intervene to present claims under both RCRA and state law.

In the Matter of Chemical Commodities, Inc. and Jerald Gershon: In this action to debar the respondents from federal assistance, loan and benefit programs, Region VII obtained an agreement by respondents to accept a debarment for three years. The three year period was the amount of time proposed by the Region in its notice. The debarment order was entered on September 17, 1991. The debarment was proposed by the Region as a result of respondents' violations of hazardous waste regulations under RCRA, including a conviction of respondent Chemical Commodities, Inc. for violations.

In the Matter of Chemical Reclamation Services, Texas; Treatment One a Division of SET Environmental Inc., Texas; Rollins Environmental Services, Texas; Hydrocarbon Recyclers Inc., Oklahoma: In the first such actions taken by the EPA, these four companies were cited in early 1991 in administrative enforcement actions for importing hazardous waste from facilities in Mexico without the required notifications to EPA. The hazardous waste regulations under RCRA require that before importing hazardous waste, a company must submit a written notification to EPA at least four weeks in advance of the date the hazardous waste is expected to arrive at the U.S. facility.

In the Matter of C. P. Chemicals, Inc. (South Carolina): On January 7, 1991, Region IV entered into a RCRA §3008(a) Consent Agreement with C.P. Chemicals, Inc. The consent agreement provides for C.P. Chemical's payment of a $242,500 civil penalty and settlement of a complaint and compliance order which the Region issued to C.P. Chemical because the state had been unable, for a number of years, to bring the Respondent into compliance with RCRA. Among the diversity of RCRA violations the Region charged the company with were: (1) continuing to operate a hazardous waste management unit for 173 days after losing interim status to operate this unit; (2) failing to submit a closure/post-closure plan for this unit; and (3) failing to certify compliance with RCRA financial assurance requirements for three of its hazardous waste management units.

In the Matter of Craig Adhesives (New Jersey): EPA and Craig Adhesive Company signed a Consent Agreement in late September 1991, settling a RCRA Administrative action for violations of seventeen regulations in the N.J. Administrative Code. Operating a hazardous waste storage facility without having applied for a RCRA permit, using leaking and deteriorating containers for hazardous waste, and failure to inspect its storage area were among the most significant of the allegations in the EPA Complaint. The company is presently undergoing a New Jersey RCRA cleanup and has agreed to pay a civil penalty of $230,000 and spend $185,000, over three years, and to implement a research and development program to reduce or substantially eliminate hazardous solvent constituents from its solvent-based adhesive formulations.

In the Matter of Cypress Aviation and The City of Lakeland, Fla.: An administrative law judge's decision established strict liability for absentee landowners by awarding a penalty of $25,000 against the operator of a facility for violations of Land Disposal Restrictions and assessed a penalty of $12,500 against the city that owned the facility. The judge found the city liable as the owner, although it was not involved in the operations. However, the judge calculated the city's penalty based upon its own conduct and declined to hold the owner strictly liable for the penalty assessed.

In the Matter of Deluxe Packages, Division of Paperboard Packaging Corporation: On August 24, 1990, EPA Region IX issued a RCRA 3008(a) order against Deluxe Packages for alleged violations of Subtitle C of RCRA at its South San Francisco, California facility. Deluxe Packages produces flexible packages for the food industry. EPA cited Deluxe Packages for failure to make a

waste determination of generated waste and for storage of hazardous waste without a permit. On May 22, 1991, EPA signed a consent agreement with Deluxe Packages. Deluxe Packages agreed to pay a civil penalty of $93,000 and perform all work EPA ordered to bring the facility into compliance, including implementation of hazardous waste management unit closure plan.

In the Matter of Eli Lilly Industries: On September 16, 1991, the Regional Administrator in Region II signed a Consent Agreement and Consent Order in the above matter. EPA had issued a Complaint to Eli Lilly on December 24, 1990, alleging that the company had violated the terms of its RCRA permit. The five counts set forth in the Complaint alleged that Eli Lily had violated the terms of its RCRA permit by improperly operating its hazardous waste incinerator. The violations included: 1) failure to maintain the scrubber pH monitor; 2) failures to maintain the total dissolved solids monitor; 3) exceeding the allowable total dissolved solids concentration in the scrubber water; 4) failures to perform checks to verify that the incinerator automatic waste feed cut-off system was operational; and 5) failure to perform daily calibrations of the incinerator stack carbon monoxide monitor. As part of the conditions of settlement of this matter, the company agreed to pay a penalty of $74,127 and to develop and install a Distributed Control System for its hazardous waste incinerator, which will provide improved combustion, temperature, pH, and waste destruction control for the incinerator.

U.S. v. Envirite Corporation: On November 8, 1991, the U.S. District Court for the District of Connecticut granted a request by Envirite Corporation to re-open the Consent Decree in U.S. v. Envirite Corporation, Civil Action No. H-89-279(EBB). The Judge vacated the Consent Decree, ordered the return of the penalty, and restored the case to active status. In a Joint Stipulation of Dismissal resolving this litigation and a Consent Agreement and Order resolving a related RCRA civil administrative action, the United States has agreed to a dismissal of the complaint and will return to Envirite the sum of $66,740 and Envirite will address several matters including revisions to the ground-water assessment program for its Thomaston, CT facility. The Joint Stipulation of Dismissal was filed with the District Court on March 31. On April 2, 1992 the Court signed the Stipulation, ordering the dismissal of the civil judicial action.

U.S. v. Environmental Waste Control ("EWC"), d.b.a. "Four County Landfill": In a 1989 decision, the United States District Court for the Northern District of Indiana assessed penalties of $2.778 million against Environmental Waste Control (EWC), permanently enjoined operation of the EWC landfill, and ordered EWC to conduct corrective action. The penalty in this case was the largest RCRA civil judicial penalty ever assessed by a court at that time. The lower court granted such relief based on EWC's operation of the landfill after losing interim status as a result of financial assurance and ground water monitoring deficiencies, and based on the contamination to ground water that resulted from landfill releases. On October 31, 1990, the United States Court of Appeals for the Seventh Circuit affirmed in all respects the district court's order in favor of the government (and the intervening citizen's group, Supporters To Oppose Pollution (STOP)). On April 22, 1991, the U.S. Supreme Court denied EWC's petition for certiorari. The issues presented in the certiorari petition related to whether the lower courts correctly ruled that EWC lost interim status and whether the district court erred in issuing an injunction closing the landfill.

Federal-Hoffman, Inc. v. EPA: On November 21, 1990, the District Court of Minnesota upheld a decision by the Chief Judicial Officer ("CJO") that assessed a $77,000 civil penalty against Federal-Hoffman, Inc. for violations of RCRA regulations governing placement of liquid waste into landfills. In 1986, EPA Region V brought an administrative enforcement action under RCRA §3008(a) alleging that the plaintiff, a small arms manufacturer, illegally disposed of waste containing free liquids in that plaintiff's interim status unit which did not have "a liner and leachate collection and removal system that meets the requirements of §264.301(a)," as required by 40 CFR §265.314(a). The company argued that its unit qualified for the "existing portion" exemption provided in §264.301(a). The Agency's position was upheld by the CJO, who imposed a civil penalty of $77,000 for the regulatory violations. The district court deferred to the Agency's interpretation of its own regulations, and agreed that the "existing portion" exemption did not allow the plaintiff to by-pass the regulatory restrictions on disposal of liquid waste into landfills. The court also found that the administrative record fully supported the factual basis for the CJO's decision regarding the existence of a regulatory violation, and

upheld the amount of civil penalties assessed by the Agency.

In the Matter of Flexsteel Industries, Inc. (N.D. Iowa): This case involved persistent and successful efforts to assert EPA's authority to conduct inspections under RCRA. EPA Region VII tried unsuccessfully to secure access to the Flexsteel Industries, Inc. (Flexsteel) facility in Dubuque, Iowa, for purposes of conducting an inspection to determine whether hazardous wastes or hazardous constituents had been released into the environment from solid waste management units. On August 1, 1991, pursuant to §3007 of RCRA, EPA filed an application for an administrative search warrant in the United States District Court for the Northern District of Iowa, Eastern Division. Following an ex parte hearing on the application, a Chief United States Magistrate issued the administrative search warrant. On August 6, 1991, Flexsteel filed a motion to quash the administrative warrant and requested oral argument. The Magistrate denied Flexsteel's motion. The inspection of the Flexsteel facility was performed on August 13, 1991. On August 22, 1991, Flexsteel renewed its motion to quash the administrative search warrant. Finding that Flexsteel's renewed motion failed to raise any claims not previously heard and considered by the court, on October 8, 1991, the Magistrate issued an order denying Flexsteel's renewed motion.

In the Matter of Formosa Plastics, Inc., Point Comfort, Texas: An order representing the largest civil penalty yet assessed under RCRA was entered into with Formosa Plastics Corporation, Point Comfort, Texas, on February 27, 1991. On October 11, 1990, EPA Region VI had issued a RCRA §3008(a) Complaint against this facility for several RCRA violations, including failure to submit a RCRA permit application, develop a waste analysis plan, make a hazardous waste determination, maintain leakproof containers, develop a closure plan, and demonstrate financial assurance. Under the agreed final order, Formosa Plastics agreed to pay a cash penalty of *$3,375,000, set up a $1,000,000 trust fund to benefit* the environment, and implement a program of pollution prevention projects and environmental audits. Formosa Plastics was also issued a RCRA agreed corrective action order on February 27, 1991. Under this corrective action order, Formosa Plastics will investigate the type and extent of soil and ground water contamination at the facility and will develop and implement a remedial action plan.

U.S. v. General Electric Co.: On March 29, 1991, the United States District Court for the Northern District of New York entered a consent decree between General Electric Co. and the United States. Pursuant to the agreement, General Electric Company agreed to pay $176,000 in penalties for violations of RCRA Subtitle C, at its silicone production facility in Waterford, New York. In addition, GE agreed to construct a container/drum storage pad with a protective roof and take other measures related to container storage and management practices.

In the Matter of GSX Chemical Services of Ohio, Inc.: GSX Chemical Services of Ohio, Inc. owns and operates as a hazardous waste management facility in Cleveland, Ohio. A Consent Agreement and Final Order was entered between GSX and EPA Region V with an assessment of $110,000 penalty for violations of an Administrative Complaint. GSX was cited for improper storage of hazardous materials, non-marked containers, storage of waste in unpermitted areas, non-documentation of training for emergency coordinators, and several other violations. In addition, an earlier penalty was assessed for $350,000 as part of a LOIS judicial action.

U.S. v. The Hanlin Group Inc.: In one of the Agency's first efforts to enforce the terms of an interim status corrective action order, a complaint was filed on July 31, 1991, in the U.S. District Court for the District of Maine against The Hanlin Group Inc. The consent order, issued pursuant to §3008(h) of RCRA, required the company to conduct a site assessment with respect to mercury, carbon tetrachloride, and chloroform releases to the groundwater and mercury contamination of soil at the company's Orrington, Maine, site and to submit an interim RCRA facility investigation report, all of which the company is alleged to have failed to do in accordance with the order. The complaint seeks payment of penalties of up to $25,000 per day or in the alternative, stipulated penalties of $5,000 per violation per day as spelled out in the administrative consent order; for violations of the consent order and completion of the site assessment, subject to EPA approval, as expeditiously as possible. Hanlin filed for protection from creditors under Chapter 11 of the U.S. Bankruptcy Code three weeks prior to the filing of the complaint.

In the Matter of Harklau Industries, Inc. (N.D. Iowa): In this bankruptcy case, EPA was successful in obtaining an order approving the sale of a facility by a bankrupt owner (Harklau Industries) to a prospective purchaser of the property (Hawkeye Leisure Trailers Limited) on the express condition that both the owner and the buyer sign a consent agreement negotiated by Region VII, under §3008(a) of RCRA. The order was entered on August 26, 1991, by the United States Bankruptcy Court for the Northern District of Iowa. Both parties and EPA have subsequently signed the agreement and, as a result, the process of removing the drummed wastes and testing for possible hazardous waste contamination in the soil and ground water at the site has commenced.

U.S. v. Household Manufacturing Co. In October of 1990, the U.S. District Court for the Northern District of Ohio, entered a consent decree between the U.S. and Household Manufacturing, Inc., Eljer Industries, Inc. and Eljer Manufacturing, Inc. This action concerned the Eljer Plumbingware Division facility (Eljer) of Household Manufacturing, Inc. located in Salem, Ohio. The facility is an iron foundry that manufactures and enamels bathroom fixtures. The consent decree provided that the defendants would implement a closure plan for a land disposal unit that had lost interim status; implement a proper ground water monitoring system; cap all hazardous wastes until closure was initiated; comply with financial responsibility requirement; and comply with other operating requirements along with paying a civil penalty of $235,000.

U.S. v. ILCO: On October 8, 1991, more than three years after the trial of this case was concluded, the U.S. District Court for the Northern District of Alabama issued a final judgment in United States v. ILCO, et al. The United States filed this multi-media action against ILCO and ILCO's president, Diego Maffei, in March 1985, and the State of Alabama intervened as co-plaintiff. The action sought civil penalties and injunctive relief for violations of RCRA and CWA, and reimbursement of response costs incurred by EPA under to CERCLA. The original action also included claims for further injunctive relief under §3008(h) and §7003 of RCRA and §106 of CERCLA, although these claims were settled during trial in July and August 1988. The court issued a preliminary ruling on December 10, 1990, ruling in favor of the United States on nearly [illegible], finding defendants liable for civil penalties, injunctive relief, and reimbursement of response costs. The court did not at that time enter a judgment, nor did it rule on the amount of penalties or the form of injunctive relief.

In its final judgment, the court imposed a $3.5 million penalty on ILCO; it ordered ILCO to comply with RCRA and CWA, imposing several specific requirements including meeting the RCRA financial responsibility requirements during closure; and it ordered ILCO and Maffei to reimburse the United States for CERCLA response costs. The court divided the penalty at $2 million to be paid to the United States, and $1.5 million to be paid to the State of Alabama. This case has been appealed to the Court of Appeals for the Eleventh Circuit.

U.S. v. Marine Shale Processors Inc. (W.D. Louisiana): The U.S. District Court for the Western District of Louisiana on August 2, 1991 issued an order stating that Marine Shale Processors, Amelia, Louisiana, could make limited use of the ash from its hazardous waste incinerator, which Marine Shale calls "aggregate". Marine Shale is allowed to use that portion of the ash which has been "certified" by Marine Shale to meet the limits of RCRA for placement on the land. That portion of the ash may be used as aggregate in the construction of an industrial park within the immediate vicinity of Marine Shale's plant, but no other sales of the "aggregate" are allowed and no person other than Marine Shale may use the industrial park. The Court issued this order after a week of trial at the end of July 1991, on whether to grant a preliminary injunction against any movement of the ash from the Marine Shale property.

On June 17, 1990, the United States had filed a complaint against Marine Shale Processors in U.S. District Court alleging that the company was illegally placing hazardous wastes on the land, was claiming to be a recycler but was actually incinerating hazardous waste without a permit, and was discharging water pollution without a permit. Marine Shale began to remove the ash from its property on March 23, 1991, and the United States promptly asked the District Court for a temporary restraining order. Before the hearing on that request, Marine Shale agreed not to remove the ash until a ruling by the court on a preliminary injunction in an agreed order on March 28, 1991.

In the Matter of Midwestern Drum Services, Inc.: Midwestern Drum Services, Inc. located in Venice, Illinois, owns and operates as a hazardous waste management facility. A Consent Agreement and Final Order was entered between Midwestern Drum Service and EPA Region V for a civil penalty of $112,125 for such violations as failure to amend the contingency plan to include all drum areas, failure to make weekly inspections, failure to keep containers closed during storage, failure to identify hazardous wastes, and numerous other violations. Major issues in the case included whether or not Midwestern Drum was a small quantity generator and whether Midwestern Drum operated an incinerator at its facility. The small quantity generator issue was resolved on procedural grounds in a partial motion for summary judgment when the company failed to file a timely response.

In the Matter of the Missouri Air National Guard Facility, (Bridgeton, Missouri): In Region VII's first RCRA settlement with a National Guard facility, the Region successfully negotiated a consent agreement and consent order pursuant to §3008(a) of RCRA with the Missouri Air National Guard facility located in Bridgeton, Missouri, near the St. Louis, Missouri airport. Based on an EPA inspection on June 21, 1989, EPA filed a RCRA §3008(a) complaint on January 3, 1990, alleging violations of RCRA storage and land ban requirements. In addition, the complaint demanded payment of civil penalties in the amount of $11,560. The Missouri Air National Guard admitted to the violations; however, the Guard argued that it was a federal facility, not subject to penalties under RCRA. EPA argued that the facility was a state facility and therefore subject to RCRA penalties. The Missouri Air National Guard ultimately agreed to settle the case and paid the civil penalty, despite its prior assertions that the facility was a federal facility.

Municipal and Industrial Disposal Co. v. Reilly: On August 26, 1991 Municipal and Industrial Disposal Company (M&I) appealed a Summary Judgment granted in favor of the EPA on July 26, 1991, by the U.S. District Court for the Western District of Pennsylvania. In Municipal and Industrial Disposal Co. v. Thomas, filed December 1988, M&I sought review of a Final Decision by EPA's Chief Judicial Officer (CJO) holding that M&I had violated RCRA's groundwater monitoring requirements at its inactive hazardous waste landfill located in Elizabeth Township, PA. The CJO's Decision awarded EPA an administrative penalty of $25,250. EPA filed a counterclaim against M&I seeking enforcement of the Final Decision, including payment of the $25,250 plus interest, as well as the imposition of penalties for M&I's failure to comply with the Final Decision. EPA also sought penalties for M&I's failure to perform a study pursuant to RCRA § 3013, which EPA had ordered in March 1987. In mid-1989, both parties filed Motions for Summary Judgment and the District Court denied M&I's Motion while granting the U.S.'s Motion. The Court found M&I liable for the original administrative penalty of $25,250, for penalties plus interest on the unpaid original judgment, and found M&I liable, without setting a fixed dollar amount of liability, for its failure to comply with the § 3013 Order.

U.S. v. Ownbey Enterprises, Inc.: A civil suit was filed on March 27, 1991, against Ownbey Enterprises, Inc. of Dalton, GA, alleged violations of the underground storage tank provisions of RCRA. According to the complaint, Ownbey Enterprises, Inc. failed to undertake certain corrective actions to address groundwater and soil contamination resulting from leaking underground storage tanks at Deep Springs Grocery, located on Beaverdale Road, near Dalton, GA. The requirement had been included in an administrative Consent Order agreed to by the company on February 15, 1989. The Complaint further alleges that Ownbey Enterprises failed to provide a permanent water supply to users of a drinking water well which had been contaminated by petroleum leaking from the underground storage tanks. The suit further alleges that the company did not carry out its own plan to clean up the groundwater contamination, in violation of the administrative Consent Order. This action seeks to require the Ownbey Enterprises, Inc. to comply with the administrative Consent Order, impose civil penalties for the company's failure to comply with the Order up to $25,000, for each day of violation after July 20, 1990.

In the Matter of Powder River Crude, et al. (Texaco, Wyoming): On September 17, 1991, the U.S. EPA issued a §7003 Administrative Order against Texaco,Inc. for cleanup of the Powder River Crude (PRC) facility. Starting in August, 1988, PRC received at least 210,000 gallons of waste oil from the Texaco Casper Refinery. Between receipt of this waste and September 1989, PRC ceased operations. In September 1989,

EPA identified significant staining and other evidence of random discharges and releases of oily waste at the PRC site. In August 1990, EPA collected samples at PRC which contained benzene over the TCLP hazardous waste criteria as well as high concentrations of lead. A visit in August 1991 identified that waste had breached impoundments and tanks and was flowing uncontrolled through the site. In addition, concern was raised over the structural integrity of the tanks themselves. In conducting an environmental assessment of the PRC release, EPA contacted Wyoming Game & Fish (WG&F) and U.S. Fish & Wildlife Service. The PRC area was identified as a migration pathway for peregrine falcons and bald eagles, federally-listed threatened and endangered species. These agencies expressed concern about the hazard to migratory water fowl and sparrows which might feed in the area. WG&F identified wetlands in the area and ranked it as having value for recreation and wildlife habitat. The issuance of the order to Texaco was one of a series of fifteen orders issued by EPA and compels clean-up of PRC including the necessary removal of the contamination. On a short term basis, the §7003 action is intended to prevent endangerment to wildlife as well as the catastrophic failure of the containment structures currently holding the waste materials.

U.S. v. Production Plated Plastics, Inc. et al: On October 15, 1991 the United States filed a reply brief before the U.S. Court of Appeals for the Sixth Circuit responding to Production Plated Plastics' (PPP) interlocutory appeal of two district court decisions. PPP challenged the district court's grant of summary judgment on liability and a separate grant of summary judgment for injunctive relief. On February 20, 1992, the United States Court of Appeals for the Sixth Circuit affirmed both district court decisions.

In an opinion and order dated January 24, 1991, the U.S. District Court for the Western District of Michigan, granted in part the United States' Motion for Partial Summary Judgment on Injunctive Relief, in an action brought under RCRA. Accordingly, the court ordered defendants PPP, Michigan City Plastics, Inc. (MCP) the company which owns PPP, and Michael J. Ladney, Jr., majority stock holder of MCP and corporate officer of both corporations, to immediately commence closure of its Richland, Michigan, facility in accordance with its approved closure plan. Although PPP obtained interim status in 1980, its authorization to treat, store and dispose of the listed hazardous waste F006, generated in its processes, was lost in November 1985. This is believed to be the first RCRA case in which the court awarded injunctive relief on summary judgment. The court held that an evidentiary hearing is not always required before an injunction is issued, if affidavits or other documentation clearly establish the plaintiff's right to the injunction. Furthermore, if the purpose of the legislation would be thwarted by a failure to comply, and the legislation specifically authorized injunctive relief, no finding of irreparable injury or balancing of the equities need be made.

U.S. v. Publix Oil Company, Inc., et al., (Georgia): On July 11, 1991, the U.S. Bankruptcy Court ruled in favor of the United States' objection to Publix's motion to abandon property, including underground storage tanks. The U.S. objection, filed July 3, 1991, alleged that abandonment was not appropriate in that the underground storage tanks located at 41 facilities may pose an imminent and identifiable harm to the environment in violation of RCRA. The Court not only ruled that the debtors had the burden of proving that abandonment was appropriate, but also that six months was an appropriate extension of the bar date to allow an investigation of the 41 facilities located in five southeastern states.

In The Matter of Rail Services, (Calvert City, Ky): Region IV issued a §7003 unilateral order which compelled Rail Services to cease operation until it trained its employees in the proper techniques for safely managing the solid and hazardous wastes generated at the facility. Previously, an employee was killed when he used improper safety measures in entering a rail car. In addition, hazardous waste removed from the rail cars were managed unsafely. This action represented the Region's first §7003 order issued for mismanagement of solid waste.

In the Matter of Rhone Poulenc: EPA has alleged in an administrative penalty complaint that the Rhone Poulenc facility in Institute, WV, has violated §268.3(a) of Subtitle C of RCRA by impermissibly diluting a multi-source leachate waste stream containing metal constituents. EPA Hazardous Waste No. F039 (wastewaters) is prohibited from land disposal unless the waste meets applicable treatment standards. The complaint alleges that the facility has been diluting such wastes to achieve compliance with

LDR as a substitute for adequate treatment. Penalties assessed for this violation and additional LDR violations total $546,000.

In the Matter of Safety-Kleen Corp.: On Thursday, June 27, 1991, a Consent Agreement and Order was filed with the Region I Hearing Clerk resolving this action. The complaint and compliance order in this action was originally filed in September, 1990, and asserted that Safety-Kleen had failed to properly determine whether two of its waste streams, generated at its Bridgewater, Massachusetts, Service Center were LDR wastes prior to off-site shipment. A penalty of $19,000 was assessed. During negotiations with the company, Safety-Kleen came forward with information relating to the same violation occurring at seven additional Safety-Kleen facilities in Region I, relating to 27 additional waste streams. Under the terms of this Consent Agreement, Safety-Kleen has agreed to pay a civil penalty of $116,000 and EPA has agreed to release the company from liability for the originally cited and additional violations. A $16,000 portion of the civil penalty is to be offset in return for Safety-Kleen's production and distribution of a video, aimed at generators of LDR wastes, explaining the LDR requirements. The videotape will be distributed by Safety-Kleen to 100 trade associations and industry groups chosen by EPA Region I.

In the Matter of Salt River Project (Navajo Generating Station Page, Arizona): On November 22, 1989, EPA Region IX issued a RCRA §3008(a) order against Salt River Project (SRP) for violations at its Navajo Generating Station (NGS). The Order cited the facility for disposal of hazardous waste without a permit, storage for greater than 90 days, and failure to notify EPA of storage and disposal activities. NGS is a coal-fired electric generating station located on the Navajo Nation near Page, Arizona. Since the facility is located on Indian lands, EPA has jurisdiction. The facility uses a chromium compound in the bearing cooling water (BCW) system. The water is well over the EP Toxicity concentration for chromium. Under normal circumstances, the BCW system is a closed-loop system, with the cooling water running from storage tanks to heat exchangers and equipment to be cooled and back to storage tanks. However, these systems require periodic cleaning and maintenance and this means the system must be drained. Since 1982, the BCW system had been drained four times, with the water from the BCW systems being released to a concrete-lined channel, going through an unlined ditch, through a pipe, into a surface impoundment. These activities were never reported to EPA. In addition, EPA found that drums of various hazardous wastes were stored for over 90 days in the facility's storage area.

On January 4, 1991, EPA and SRP signed a consent agreement wherein SRP agreed to pay a $113,500 penalty and to undertake a site investigation to determine whether contamination exists at the facility as a result of the release of chromium-contaminated water. If significant contamination is found, the facility will prepare a remediation plan for EPA approval and then conduct remediation. To help ensure future compliance with regulatory requirements, SRP agreed to submit written operating procedures describing steps taken to assure that wastes will be stored no longer than 90 days as well as submit quarterly reports and manifests to EPA for the year describing hazardous waste generation and disposal.

U.S. v. Sinclair Oil, Little American Refining Co. (Wyoming): On July 23, 1991, the United States District Court for the District of Wyoming entered a consent decree between Sinclair Oil and the United States resolving disputes relating to Region VIII's issuance of unilateral administrative orders under RCRA §7003(a) and §3008(h) against Sinclair Oil Corporation's Little America Refining Company ("LARCO") in Evansville, Wyoming. Pursuant to the consent decree, Sinclair will perform Interim Measures, a RCRA Facility Investigation, and a Corrective Measures Study, and will implement those corrective measures proposed. In addition, Sinclair will resolve all pending issues regarding closure of the hazardous waste management units at the LARCO facility.

In the Matter of Solvay Animal Health, Inc. (Charles City, Iowa): Following the first administrative hearing in Region VII under the 40 C.F.R. Part 24 regulations, EPA, Region VII, issued a Final Administrative Order (FAO) to Solvay Animal Health, Inc. on June 3, 1991 pursuant to RCRA §3008(h). An Initial Administrative Order (IAO) under RCRA §3008(h) was issued to the company on December 29, 1989. Solvay contested the IAO and requested a hearing on this matter which was held on March 6, 1990 pursuant to the Part 24 regulation. The Presiding Officer's Recommended Decision

and the Regional Administrator's Final Decision were issued on February 26, 1991 and April 22, 1991, respectively. Both the IAO and FAO required Solvay to conduct a RCRA facility investigation and corrective measures study to address the nature and extent of any release of hazardous wastes/constituents from its facility. The decision provides significant precedential value to other contested RCRA §3008(h) orders because Solvay contested virtually every provision of the IAO, which was patterned after the model IAO. The final decision upheld all the model IAO provisions in all but two respects. The Final Decision requires the Region to provide copies of all guidance documents that are utilized by the Region in reviewing submitted work products or in overseeing the work to be performed, and precludes the Region from requiring indemnification in the unilateral order.

In the Matter of Standard Tank Cleaning Corp. (New Jersey): On July 19, 1991, the Chief Judicial Officer (CJO) Ronald upheld an Administrative Law Judge (ALJ) Initial Decision of March 28, 1991, and rejected Standard Tank's appeal as untimely. The Respondent/Petitioner, one of the Frank Family companies which were the subject of Region II's most extensive multi-media enforcement work during FY 1991, was charged with RCRA violations for failure to demonstrate that it had obtained insurance for its hazardous waste treatment and storage facility. After a two-day trial in February 1989, the ALJ had found Respondent liable and imposed a penalty of $132,312.50 -- more than twice as much as requested in EPA's administrative complaint. This amount was $10,000 higher than the economic benefit calculated by EPA. The ALJ decided on that increase, finding that "Respondent's conduct ... displayed deliberate neglect, indifference, or both. It is a luminous example of lack of good faith." When rejecting Standard Tank's appeal, the CJO also denied Respondent's Motion to Reopen the Hearing.

U.S. v. United Technologies Corp.: On April 1, 1991, the United States amended the RCRA complaint filed in September, 1990 in the U.S. District Court for the District of Connecticut against the United Technologies Corp. (UTC), significantly expanding the case to include additional violating facilities, as well as violations at previously included facilities. The original complaint alleged over 100 violations of RCRA's requirements at six UTC facilities in Connecticut. These violations included improper hazardous waste container management, storage of hazardous wastes without a permit, inadequate personnel training and record keeping, incomplete contingency planning, inadequate groundwater monitoring, non-compliance with land disposal restriction notification requirements and export regulations, and violations of a prior consent agreement with EPA. The amended complaint adds over 50 additional RCRA violations at five of the original six facilities, and at a Pratt & Whitney facility on Colt Street in East Hartford and a Sikorsky Aircraft facility in Stratford, CT.

U.S. v. Vineland Chemical Co., Inc.: On March 7, 1991, the U.S. Court of Appeals for the Third Circuit affirmed an April, 1990, decision by the U.S. District court for the District of New Jersey ordering Vineland Chemical Company (Vineland) to pay a $1.223 million civil penalty for violations of the LOIS provisions of RCRA, and to close their two surface impoundments in accordance with New Jersey requirements.

In affirming the decision of the District Court, the Third Circuit found that: 1) joint and several liability attached under RCRA to a facility owner/operator without any need for a showing of bad faith, and 2) constitutional due process is not violated by imposition of a penalty for RCRA violations which occurred during the pendency of a defendant's judicial appeal of EPA's LOIS determination. Vineland lost their authorization to operate under Interim Status on November 8, 1985, as a result of submitting a deficient RCRA §3005(e)(2)(B) certification of compliance with groundwater monitoring and financial responsibility requirements.

In the Matter of Whitehead Oil Co. Inc. (Lincoln, Nebraska): On Sept. 6, 1991, EPA settled its first complaint for violations of the financial responsibility rules for underground storage tanks (UST). Whitehead Oil Co. Inc. of Lincoln, Nebraska, came into compliance and paid a $60,768 penalty. This enforcement action will discourage UST owners from transferring USTs to smaller companies, as suggested in trade publications, as a strategy to comply with the phased-in financial responsibility rule which provides later compliance dates for small businesses. Whitehead had transferred three of its USTs to an affiliate in order to defer its compliance date.

In the Matter of Wilson and Hampton Painting Contractors (California, Wyoming): On June 26, 1991 the U.S. EPA entered into a final order/consent agreement with Wilson and Hampton Painting Contractors, a painting contractor in Southern California that shipped hazardous waste to an illegal TSD facility in Wyoming. A RCRA §3008(a) administrative order was issued on November 8, 1990, for non-compliance with the RCRA generator regulations which resulted in a final assessed penalty of $20,000. Wilson and Hampton, as a part of the settlement, agreed to purchase and utilize a solvent recovery system, prepare an article for a national paint trade magazine discussing the necessity of understanding and complying with RCRA, present a seminar to the Painting and Decorating Contractors Association concerning the importance of compliance, and train their personnel in regulations covered by RCRA and the Department of Transportation.

State RCRA/CERCLA Enforcement Actions

Beginning with the FY 1991 Accomplishments Report, EPA will be including significant state enforcement actions submitted by the EPA Regional offices. We anticipate that State actions will play a greater role in future reports.

State Agency for Surplus Property, (Jefferson City, Missouri): This is a state agency that manages the surplus properties of the State of Missouri. The Missouri Department of Natural Resources (MDNR) found that the facility had improperly managed and disposed of hazardous waste. On April 11, 1990, the MDNR issued an administrative order that required the facility to investigate and remediate any contamination. The MDNR assessed a penalty against their sister state agency for the hazardous waste violations. On January 9, 1991, MDNR and the State Agency for Surplus Property developed a settlement agreement that required payment of a monetary penalty and the establishment of a state-wide hazardous waste training program for state employees. A penalty of $22,000 was also assessed.

CP Chemicals (New Jersey): The New Jersey Department of Environmental Protection and Energy reached agreement with CP Chemicals, Inc., of Middlesex County, New Jersey, in connection with an administrative enforcement action for a series of water pollution discharge violations. The company agreed to pay a penalty of $3.2 million, and to investigate and clean up groundwater contamination at its Sewaren facility.

E.I. DuPont de Nemours (New Jersey): E.I. DuPont de Nemours agreed to pay the State of New Jersey a civil penalty of $663,000 in an administrative enforcement action which cited air pollution violations at the company's Deepwater (Salem County) plant. The company also agreed to install improved equipment to prevent excess emissions in the future, and committed itself to a schedule to achieve compliance with State emission limits.

Missouri State Penitentiary, Jefferson City, MO: This facility is a correctional institution for the State of Missouri. The Missouri Department of Natural Resources (MDNR) found that the facility had improperly managed and disposed of hazardous waste. On May 18, 1990, the MDNR issued an administrative order that required the facility to correct hazardous waste management procedures. On January 30, 1991, MDNR and the Missouri State Penitentiary developed a settlement agreement that required payment of a monetary penalty of $25,000.

Orleans Sanitary Landfill, (New York): The New York State Department of Environmental Conservation (NYSDEC) took vigorous enforcement action against the Orleans Sanitary Landfill (OSL) and its owner, John Smith, for systematic under-reporting of waste accepted at the landfill. In addition to obtaining the highest penalty in New York history--$3.1 million--the Department pioneered the use of several innovative sanctions designed to insure that future operations at OSL are conducted in full compliance with environmental laws. NYSDEC barred the owner of OSL from being involved, owning or operating a solid waste management facility operation anywhere in New York State. In addition, the Department required the future landfill operations to fund a Department monitor to serve as NYSDEC's eyes and ears at the facility and ensure future compliance; and it required the hiring of a Certified Investigative Auditing Firm to oversee and audit the company's operations to ensure compliance with operating requirements.

Safety-Kleen Corporation: On November 21, 1991, the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) signed a consent agreement with Safety-Kleen Corp. which resolves violations are fifteen separate Safety-Kleen hazardous waste storage and treatment facilities located in California. In this agreement, DTSC agreed to process Safety-Kleen's numerous permit applications in a coordinated statewide review and provide Safety-Kleen with DTSC's final approval covering all applicable Safety-Kleen facilities. Safety-Kleen agreed to pay a total of $1.3 million which consists of a penalty component of $1 million and a $300,000 component which is a reimbursement to DTSC for their cost associated with reaching and executing the settlement agreement.

Schenectady Chemicals, Inc., (Schenectady, New York): NYSDEC issued a comprehensive, multi-media Order on Consent to Schenectady Chemicals, Inc. (SCI), imposing a $1.3 million penalty against SCI, and requiring the company to undertake, subject to extensive Departmental oversight, a wide array of compliance, investigative and remedial measures in numerous program areas including water, air and hazardous waste. SCI must also develop and implement a Best Management Practices plan at each of its four facilities designed to identify specific practices which will prevent or minimize the potential for releases of pollutants to the waters of the State. Altogether, SCI expects to spend up to $60 million to meet its obligations under the Order.

Terry Schulte Chevrolet (joint State & EPA actions): On October 22, 1990, the South Dakota Department on the Environment and Natural Resources issued the state equivalent of a §3008 (a) order to Terry Schulte. Violations included failing to manifest properly, failing to make a hazardous waste determination, failing to label drums properly, failure to undertake activities required for contingency plans such as posting fire extinguisher locations, spill control materials, and fire alarms. No penalties were collected, although compliance was achieved and land ban violations were referred to Region VIII EPA for action.

On December 14, 1990, the U.S. EPA filed an administrative penalty order against Terry Schulte Chevrolet Incorporated, Docket No. RCRA §3008 VIII-91-04. This action was at the request of South Dakota due to the state not having delegation for land disposal restriction violations. The violations included failure to ship listed hazardous waste to an authorized hazardous waste facility with the required land disposal restriction notices and/or certifications, and a penalty of $156,250 was proposed. To date no settlement has been reached, and the case is proceeding toward an administrative hearing before an ALJ.

People v. Seagate Technology, Inc. dba Seagate Magnetics Division (California): Seagate Magnetics was investigated in regard to their role in causing the unlawful transportation of unmanifested plating waste to an unpermitted facility. On December 7, 1990 a final judgement was entered against Seagate Magnetics in Santa Clara County Superior Court. The judgement ordered the defendant to pay $600,000 in civil penalties pursuant to the Hazardous Waste Control Act, $250,000 pursuant to the Business and Professions Code, $100,000 in cy-pres restitution to the Department of Toxic Substances Control and $42,197 in costs, for a total of $992,197. A permanent injunction was also ordered.

Sola Optical USA, Inc., (Eldon, MO): This firm manufactures optical lenses. The company produces a lead sludge which they had disposed of improperly. The Missouri Department of Natural Resources (MDNR) conducted a multi-media investigation of this facility and found that the facility has caused lead contamination in the Lake of the Ozarks. On May 15, 1991, the MDNR referred the case to the Missouri Attorney General's Office for formal enforcement action, which is to include environmental relief and monetary penalties. The MDNR and Sola have tentatively reached a multi-media settlement (both waste and water programs) for Sola's past hazardous waste management practices and environmental damages. A penalty in excess of $250,000 is being discussed.

Arizona v. Talley Defense Systems: On September 4, 1991, Arizona and defendant Talley agreed to settle this civil action for a $500,000 penalty, the largest environmental penalty in Arizona history. The action, filed in October 1990, charged Talley with 15 violations of Arizona's hazardous waste laws. Under the agreement, Talley will amend its application for a hazardous waste treatment permit, meet record-keeping and employee training requirements, and search for and clean up any existing hazardous waste.

USDOD/Tooele Army Depot (North) (Tooele, Utah): The State of Utah completed negotiations with the Tooele Army Depot concerning an August 24, 1990 NOV/CO issued by the State of Utah. The agreement required Tooele to remedy all 136 counts of the NOV/CO.

Toxic Substances Control Act (TSCA) Enforcement

TSCA enforcement embraces the basic tenets of pollution prevention and data quality. TSCA's regulation of existing and new chemical substances encourages the manufacture and use of substances that pose only reasonable effects on human health and the environment. In FY 1991, TSCA enforcement actions emphasized compliance with the premanufacture notification requirements for new chemical review, the reporting and retention of information under §8, compliance with the AHERA rule, and the proper use, storage, and disposal of PCBs. Many settlements resolving TSCA administrative enforcement actions are notable for their inclusion of supplemental environmental projects incorporating pollution prevention and environmental auditing provisions.

In the Matter of A&D International: On May 28, 1991, the Chief Judicial Officer signed a consent order settling an administrative civil penalty action. The Agency had charged A&D International, Inc., with violations of the Halogenated Dibenzo-p-dioxin/Dibenzofuran Test Rule and violations of the TSCA Good Laboratory Practices Standards (GLPs). A&D imported the chemical substance chloranil, for which dioxin testing is required under the Test Rule and §4 of TSCA. The Agency accepted the payment of a penalty of $12,000 and an agreement not to import chloranil in the future to settle this case.

Airline Maintenance Facilities: During FY 1991, Region II issued administrative complaints against a number of airlines for PCB violations at aircraft maintenance facilities. PCBs are contained in transformers and other electrical equipment used and serviced at the facilities. Complaints were issued against American Airlines (seeking $354,000 in penalties), British Airways ($131,000) and TWA ($296,000) as part of this industry-specific enforcement initiative.

In the Matter of Alcolac, Inc.: In September 1989 EPA charged Alcolac with violating §5 and §8 of TSCA. The violations impaired the Agency's ability to evaluate a chemicals effect on human health and the environment. Earlier in 1989, Alcolac pleaded guilty in Federal court to illegally exporting a solvent used in making chemical weapons, which was ultimately to be re-exported to Iran. In October 1990, Alcolac agreed to pay a civil penalty of $280,000, conduct a TSCA compliance audit covering four U.S. manufacturing facilities, and conduct two industry outreach programs. In accordance with the settlement agreement, EPA anticipates issuing a demand letter for stipulated penalties based upon the final audit report.

In the Matter of American Cyanamid Company and In the Matter of Ruetgers-Nease Chemical Company: These companion cases were EPA's first administrative actions involving violations of the terms of TSCA §5(e) consent orders. Under §5(e), EPA may issue a consent order which prohibits or limits manufacture, processing, distribution in commerce, use, and disposal of a premanufacture notification substance pending the development and review of information addressing potential risks. The settlements included penalty payments of $28,345 by Cyanamid, $3,600 by Ruetgers-Nease, and the implementation by both companies of a Company Standard Policy and Practice Directive.

In the Matter of Bedoukian Research, Inc.: The Chief Judicial Officer signed a consent order settling this TSCA §5 and §8 administrative civil penalty matter. The settlement consists of the payment of $37,200 civil penalty, implementation of an environmentally beneficial project, and additional certifications for TSCA compliance. Bedoukian was charged with improperly submitting to the Agency untimely and false notices of commencement of the manufacture of new chemical substances.

U.S. v. Boliden Metech, Inc.: In a consent decree entered on January 10, 1991, in settlement of a civil enforcement action, Boliden Metech Inc. agreed to undertake a sampling and analytical program to determine the extent of PCB contamination of several piles of shredded materials containing precious metals. Once the extent of PCB contamination is determined, Boliden is required to dispose of the contaminated piles and materials in accordance with the PCB

regulations. Until 1990, Boliden shredded computer parts and other products at a shredder facility in Providence, RI in order to recover valuable metals. In the late 1980s, the piles of shredded material were found to contain PCBs. Boliden has now shut down the shredding operation.

In the Matter of Burlington Industries, Inc.: In February 1991, EPA filed a $3,061,000 TSCA administrative complaint alleging violations of §5 premanufacture notification requirements by Burlington Industries. Settlement negotiations are underway.

In the Matter of DSM Resins U.S., Inc. (New Jersey): This major TSCA §5 and §13 importer case was settled in August, 1991, with an agreement by the respondent to pay a penalty of $750,000 and implement various steps to prevent recurring violations. Under TSCA, anyone manufacturing or importing a new chemical substance not included on EPA's Chemical Substances Inventory must submit a premanufacture notice at least 90 days prior to manufacture or import. Compliance with TSCA must also be certified by importers. EPA inspections at DSM Resins found that the firm had not filed appropriate notices for several chemical substances. In addition, the company has now implemented a computerized tracking system to ensure that all of its imports comply with TSCA rules.

In the Matter of General Electric Co.: In March 1991, General Electric Co. (GE) agreed to pay a $150,000 penalty to settle Region I's complaint for violations of the PCB regulations under the TSCA. EPA charged GE with widespread violations at its Pittsfield, MA facility: failing to properly mark PCB transformer locations, storing combustible materials near PCB transformers, improper PCB storage, inadequate recordkeeping, and failing to follow required PCB spill response procedures. GE also violated its approval for PCB incineration through improper operating and recordkeeping procedures.

As part of the settlement, GE committed to the removal of all of its PCB electrical equipment from the Pittsfield facility over a period of three years. The equipment to be removed from service and properly disposed of includes over 130 PCB transformers and over 1300 PCB capacitors. These actions are expected to reduce the risks of PCB spills and fires at the facility. EPA estimates the cost of the removal and disposal project at over $1 million.

In the Matter of General Electric Chemicals, Inc.: In June 1991, the Chief Judicial Officer approved a settlement agreement with General Electric Chemicals which included penalty, audit, and pollution prevention provisions. A TSCA administrative complaint was issued alleging violation of §8(e), the substantial risk information reporting provision. General Electric Chemicals agreed to pay a $75,000 penalty, and General Electric Company, GEC's corporate parent, agreed to conduct a TSCA §8(e) compliance audit of all its domestic subsidiaries. In addition, both GEC and GE agreed to implement $890,000 worth of pollution prevention projects involving reductions in emissions or the use of acrylonitrile, 1,3-butadiene, various phenols, 1,1,1-trichloroethane, and methylene chloride. These chemicals are some of the Agency's top 25 chemical candidates for pollution prevention targeting.

In the Matter of General Motors, In the Matter of CECOS, International, and In the Matter of CWM Chemical Services (New York): In March 1991, Region II issued administrative complaints to these companies for violations of the TSCA regulations and approvals relating to the handling and disposal of PCB-contaminated wastes. EPA inspections of the records at GM's Massena, New York facility showed that hydraulic fluid in some machines contained PCBs in excess of 500 parts per million. These fluids were processed through the waste water treatment system where reclaimed fluid and sludge from the process also had over 500 ppm of PCBs. This sludge was solidified with sand and limestone and shipped to the landfills operated by CECOS and CWM (a subsidiary of Chemical Waste Management, Inc.). These landfills hold TSCA approvals issued by EPA for disposal of PCB wastes. Under the conditions of their approvals, PCB-contaminated wastes, of the sort sent by GM, required testing prior to being accepted for interment in the landfills. The companies failed to test the wastes, and did bury them. They should have rejected such wastes for burial, requiring instead that they be incinerated due to the elevated PCB concentrations.

In the Matter of Goodyear Tire & Rubber Company: On November 29, 1990, the Region VI Regional Administrator signed a Consent Agreement and Final Order (CAFO), resolving the case against Goodyear Tire & Rubber

Company, Houston, Texas. The CAFO assessed a $135,000 penalty. However, $121,500 of the penalty was deferred pending timely completion of the removal of PCB Transformers from its Houston facility in accordance with Remittance Agreement. The Remittance Agreement provided that Goodyear shall remove all PCB Transformers from its facility by October 1, 1990, and spend at least $405,000 on the removal and replacement of eight transformers. Goodyear had been charged with improperly disposing of PCBs (five leaking transformers) and failing to timely repair or replace the five PCB Transformers.

In the Matter of Great Northern Nekoosa Corp.: In the first joint effort in Region I under TSCA and the Superfund Removal Program to address violations of TSCA and subsequent remedial work relating to the clean-up of PCB spills, Region I entered into an administrative settlement on September 30, 1991, with Great Northern Nekoosa Corp. Under the agreement, Great Northern agreed to pay a penalty and reimburse EPA for its investigative and oversight costs of remedial work conducted at the company's facility in East Millinocket, Maine. In addition to spending in excess of $7 million for the remediation of PCB spills, the company agreed to pay an administrative penalty of $20,800 and to reimburse EPA for its costs in the amount of $210,000. The clean-up performed by Great Northern Nekoosa Corp. was completed in January, 1991.

In the Matter of Hall-Kimbrell: In July and August of 1991, nine additional administrative cases were filed against Hall-Kimbrell Environmental Services Inc. for alleged violations of the Asbestos Hazard Emergency Response Act ("AHERA") involving Respondent's inspections of schools for asbestos and its preparation of management plans to abate asbestos found. Total proposed penalties against this Respondent now exceed $5.8 million and are the result of one case each from Regions V and IX, and seven from Region VII, in addition to the original eleven from Region VIII. All of the complaints allege that materials which may contain asbestos were missed during Respondent's inspections, and the Region V and IX complaints allege that the resulting management plans did not contain all of the elements required by the regulations promulgated pursuant to AHERA. Negotiations aimed at a national settlement of the outstanding violations have been ongoing since September of 1990, but, since no settlement had been reached as of August, EPA notified the 1300 local educational agencies in 40 states where Respondent worked that there may be deficiencies in their inspections and management plans. On September 6, 1991, EPA issued a TSCA subpoena to Hall-Kimbrell requesting that EPA inspectors be allowed to inspect the copies of management plans stored in Respondent's Lawrence, Kansas, warehouse. Also in September, the House Subcommittee on the Environment, Committee on Governmental Operations, held a hearing on EPA's AHERA program in general and the prosecution of this case in particular.

In the Matter of Halocarbon Products Corporation: In one of the first TSCA administrative actions seeking the statutory maximum penalty of $25,000 per-day of violation, the Administrative Law Judge ruled that notice to OSHA of the death and injury to its employees does not relieve Halocarbon of the duty to report under §8(e), the substantial risk information reporting provision of TSCA. The ruling came through an Order granting EPA's Motion to Strike Affirmative Defense. This administrative enforcement action involves failure to report substantial risk information under §8(e) based upon the February 1989 chemical release incident at a Halocarbon facility where one worker was killed and another seriously incapacitated. The case is still pending and a Hearing date has not yet been set.

In the Matter of Jetco Chemicals Inc.: In this TSCA administrative civil penalty action for violation of the §8(a) Preliminary Assessment Information Rule, Jetco agreed to pay a penalty of $19,500, review and certify compliance with all §8(a) reporting requirements, and prepare and submit a TSCA compliance manual.

Kaiser Aluminum and Chemical Corporation, Trentwood Works, Spokane, Washington: A consent agreement between the facility and EPA was signed in February 1991, assessing a penalty of $30,600. The company paid $15,300 in cash; the remainder of the assessed penalty will be permanently suspended, provided the company spends $30,600 to dispose of PCBs remaining in use at their facility. The facility had been issued an administrative complaint in November 1990, alleging that the facility violated TSCA PCB regulations regarding disposal, recordkeeping and inspections.

In the Matter of Markem Corp.: On June 6, 1991, Markem Corp. of Keene, NH agreed to pay a penalty of $33,000 and undertake three supplemental environmental projects not required by law in a multi-media settlement of an administrative complaint filed by EPA for the company's violations of Federal PCB regulations. This settlement is unusual in that each of the three SEPs involves reduction or elimination of a different pollutant. Each of the projects results in the elimination or reduction of a pollutant and are therefore beneficial for the environment: 1) removal and proper disposal of a PCB transformer; 2) installation of a cleaning-solvents recovery system; and 3) a project designed to eliminate the use of heavy-metal pigments in the company's ink products. These three projects all The estimated cost of these three projects is $210,500. This settlement is the culmination of an action begun by EPA in June 1990, for violations of the Federal regulations promulgated under TSCA controlling the use and recordkeeping of PCBs.

In the Matter of Monsanto Chemical Corporation: This administrative enforcement action was brought for violation of TSCA §8(e). Monsanto failed to report the results of a carcinogenicity study of Santogard PVI within 15 days as required. Pursuant to a consent agreement Monsanto agreed to pay a fine of $198,000 and conduct an environmental audit on its studies of developmental toxicity effects, reproductive effects, and carcinogenicity. Post audit, the company paid $648,000 for the violations found in the audit.

In the Matter of Moore Business Forms, Inc.: On June 27th, 1991, EPA and Moore Business Forms, Inc. signed a consent agreement settling a TSCA case for $2.2 million -- the largest §5 penalty on record. The consent agreement also required completion of an independent TSCA audit, with the highest stipulated penalties ever -- $50,000 -- for violations of TSCA §5 and §8. This also was the first consent agreement to require an Emergency Planning and Community Right-To-Know Act (EPCRA) audit and training program.

Moore self-disclosed violations of TSCA §5 and §8 to EPA in April 1991. After an expedited safety review by EPA's Office of Toxic Substances, the Agency granted enforcement discretion to the company for release of customer-owned stocks of paper products containing the chemical substances involved in the violations. In exchange, EPA secured Moore's agreement to accept EPA's jurisdiction over the matter, to provide batch records, to waive its right to an administrative hearing, and to cooperate fully in negotiating the case. The company's request for further enforcement discretion was denied pending the signing of the consent agreement.

EPA cited the company with failing to notify the Agency prior to manufacturing and using six chemical substances that did not appear on the TSCA Inventory. §5 of TSCA mandates that no person may manufacture or import a chemical substance which does not appear on the TSCA inventory without submitting to EPA a premanufacturing notice (PMN). The complaint, which was issued simultaneously with the signing of the consent agreement, also cited Moore for failure to provide a certification statement to the district director at the port of entry adequately representing the true compliance status of a chemical substance.

In the Matter of Moses Lake Industries: In this administrative civil penalty action, Moses Lake disclosed to the Agency that it had violated TSCA §5 by importing new chemical substances which did not appear on the TSCA Inventory of existing chemical substances, and that it had failed to provide a certification statement to the district director at the port of entry as the true compliance status of these chemicals pursuant to TSCA §13. This matter was settled for $130,000 following issuance of an administrative complaint.

In the Matter of New Jersey Transit Rail Corp. (New Jersey): On September 27, 1991, a settlement was executed in this case providing for payment of a $120,000 penalty and including significant pollution prevention provisions. The Respondent failed to remove from service by July 1, 1986 transformers containing dielectric fluids with more than 1000 ppm of PCBs, as required by the TSCA rules. As part of the settlement, New Jersey Transit agreed to spend nearly $110,000 to conduct an extensive PCB sampling survey at seven of its rail facilities; a total of 1050 samples will be taken. The company also selected retro-fitting or rebuilding of transformers as its means of coming into compliance, which is environmentally more sound than having the transformers drained and refilled.

Oregon Steel Mills, Portland, Oregon: A consent agreement was signed on August 1, 1991, assessing a penalty of $286,000, the largest TSCA PCB

penalty ever assessed in EPA Region X. Of this total penalty, the company paid $143,000 in cash. The remainder of the assessed penalty will be permanently suspended, provided Oregon Steel Mills spends at least $286,000 by 1993 to dispose of PCBs remaining in use at their facility. The complaint alleged violations of the federal TSCA PCB regulations, including improper disposal, storage, marking, recordkeeping, and failure to register PCB transformers.

Port of Portland, Portland, Oregon: The Port was issued an administrative complaint in March 1991, alleging that the Port violated TSCA PCB regulations, including disposal, recordkeeping, and registration violations. A Consent Agreement was signed in August 1991, assessing a penalty of $55,208, a reduction based on the Port's expenditures of $43,500 to dispose of PCBs at the facility.

In the Matter of SIKA Corporation: In September 1991 the Agency issued an administrative complaint against SIKA for violations of TSCA's §5 premanufacture notification and import requirements. The Agency proposed to assess a civil penalty of $13,118,500, but reduced this amount by 50%, to $6.6 million, to reflect SIKA's timely and voluntary disclosure of the violations to the Agency in accordance with the TSCA §5 Enforcement Response Policy. This case was issued as part of the Agency's border cluster filing initiative in which it took action against 23 facilities for violating law concerning the illegal import or export of hazardous waste and certain chemical substances and pesticides.

In the Matter of Texaco, Inc: On March 28, 1991, an administrative complaint was issued against Texaco, Inc., Midland, Texas, seeking a $157,150 civil penalty for PCB violations. The Complaint charged Texaco with improper disposal of PCBs, improper use of PCB capacitors, incomplete annual documents, and storage for disposal of PCB capacitors in excess of the one year limit imposed by the PCB regulations. On November 7, 1991, a Consent Agreement and Final Order was filed with the Regional Hearing Clerk, assessing a $134,520 civil penalty against Texaco, Inc. The violations resulted from an August 1989, EPA inspection of Texaco, Inc.'s Midland, Texas office.

In the Matter of Triangle Laboratory, Inc: EPA issued a civil administrative complaint against Triangle Laboratory, Inc., for violations of the TSCA Good Laboratory Practices Standards. Triangle performed testing required under §4 of TSCA on the behalf of four chloranil importers. The Agency filed a motion to strike five of the affirmative defenses raised by Triangle Laboratory in response to an administrative complaint charging the laboratory with violations of the TSCA Good Laboratory Practices Standards. Despite the answer's general denial and thirteen affirmative defenses, the only significant issue was whether a testing laboratory can be subject to TSCA. The Agency moved to strike all affirmative defenses relating to liability, so as to address this issue directly. That issue was never decided because a settlement was soon reached. On October 18, 1990, the Chief Judicial Officer signed a CACO to settle the first enforcement action brought against a laboratory for violations of the TSCA Good Laboratory Practice Standards. Triangle agreed pay a civil penalty of $13,950 in settlement.

In the Matter of United Technologies Corp: United Technologies Corp. paid $730,000 in August 1991 to settle an EPA action for widespread PCB violations. EPA brought this action under TSCA in December 1989, to address violations at five UTC manufacturing and research facilities. The severity of the violations and UTC's history of prior PCB violations in New England prompted the assessment of the largest TSCA penalty ever by Region I.

The settlement incorporates a unique commitment by UTC to submit to a PCB testing program and compliance audit by an independent consulting firm. The audit component requires an intensive PCB testing and removal program for a variety of manufacturing and research equipment (hydraulic systems, heat transfer systems, air compressors) at four separate facilities. The audit is expected to be completed in 1992. The audit firm will monitor compliance with all PCB regulatory requirements, including proper marking, storage, and recordkeeping. The audit and the removal of PCBs from equipment are expected to reduce the risks of spills, improper disposal, PCB fires, and other human and environmental exposure at the facilities. The audit firm will also analyze UTC's management systems as they relate to PCB compliance. UTC will pay stipulated penalties to EPA for any violations disclosed by the audit.

The settlement includes an additional supplemental environmental project in which UTC will remove and properly dispose of PCBs from PCB electrical equipment at three facilities

at a cost to the company of $150,000.

In the Matter of Wego Chemical Co. (New Jersey): EPA Administrative Law Judge Frank Vanderheyden issued a ruling in June 1991, holding Wego liable for violations of TSCA §8(a) reporting rules. The ruling followed a two-day trial in June 1990, during which Wego argued that during negotiations to settle a previous enforcement action the Agency lawyer had promised EPA would not sue the company again. EPA denied such representations had been made, sought to prevent Wego from calling the EPA lawyer as a witness, and argued that testimony on the subject by Wego witnesses should be stricken from the record. Judge Vanderheyden granted these motions and held Respondent liable for the violations. The Judge reserved his ruling on the question of penalties.

U.S. v. Norristown (PA) State Hospital: On September 27, 1991, Region III issued a complaint alleging violations of §2614 of the Toxic Substances Control Act to Norristown State Hospital. This is the first Region III Worker Protection Rule civil complaint issued. The complaint alleges that the hospital failed to conduct monitoring at the initiation of each asbestos job, failed to institute a required respirator program, failed to provide separate storage facilities for protective and street clothing, and failed to provide annual medical examinations.

U.S. v. Sugarhouse Realty, Inc. and William H. Thayer (E.D. PA): In what is believed to be the first use of a receivership to accomplish a PCB clean up under TSCA, a District Court granted a motion by the United States and ordered the appointment of a receiver to manage the clean up of PCB contamination of the Jack Frost Sugarhouse in Philadelphia, PA. The Court also entered judgment against the defendants for $500,000 to be used by the receiver to accomplish the clean up. The United States requested this relief after defendants' repeated failure to comply with terms of consent decrees requiring clean up of the site.

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

EPCRA establishes a structure at the state and local levels to assist communities in planning for chemical emergencies and requires facilities to provide information to EPA on various chemicals present in the community, which shall be made available to the public. Under §313 certain manufacturing facilities must provide EPA with annual data on the amounts of chemicals that they release into the environment, either routinely or as a result of accidents. In addition, facilities must report accidental releases of "extremely hazardous substances" and CERCLA "hazardous substances" to state and local response officials, and report to state and local officials inventories of chemicals on their premises for which Material Safety Data sheets exist. FY 1991 enforcement efforts targeted nonreporters as well as late and incorrect reporters.

All American Gourmet Company (Salt Lake City, Utah): On May 8, 1991, EPA and the All American Gourmet Company entered into a consent agreement for violations of EPCRA §313. The agreement was based upon failure to submit required reports under EPCRA §313. In addition to agreeing the pay a civil penalty of $25,740, the All American Gourmet Company was required to assist in the construction of a new sewer line which will reduce and/or eliminate the formation of hydrogen sulfide in the sewer system.

In the Matter of Bittner Industries: On July 3, 1991, Region IV ratified a consent agreement and order in this matter including a penalty of $6,000. The Region had initiated an administrative enforcement action against Bittner for failure to report its processing of styrene and its use of acetone in its facility in Diaz, Alabama in 1989. The agreement includes Bittner's commitment to reduce styrene emissions by either using a styrene vapor suppressant additive in its manufacturing process or by installing air scrubbing equipment. The cost of either of these improvements is estimated to be $20,000.

In the Matter of Bristol County Water Authority: On May 9, 1991, Region I signed a Consent Order settling the civil administrative enforcement action brought against Bristol County for violations of CERCLA §103 and EPCRA §304 and §312 resulting from a chlorine release. Under the terms of the Consent Agreement and Order, Bristol County will pay $7,000 and will make supplemental environmental expenditures with first year costs estimated at $60,000 to $70,000. These expenditures will be for the replacement

all of the Water Authority's gaseous chlorination systems with less hazardous liquid hypochlorite systems.

In re CBI Services: On April 30, 1991, an Administrative Law Judge (ALJ) awarded $99,000 in this case. Complainant had alleged that the Respondent, CBI Services of Bourbonnais, IL, violated §313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) by filing the required Form R's for six listed chemicals 230 days after the due date of July 1, 1988, and after an EPA inspection. The ALJ lowered the complainant's penalty, holding that because the date of inspection of a facility can be controlled by EPA, the regulated community cannot determine the point at which penalties for failure to report will increase under the policy; therefore, disparate treatment or the appearance of disparity must result from the application of the policy to these "nonreporters." Because the CBI Services decision is the third that questions the basis of the distinction between late and nonreporter, the Office of Enforcement issued guidance for the resolution and initiation of all §313 EPCRA cases against similar nonreporters.

Fashion Cabinet Manufacturing, Inc. (West Jordan, Utah): On April 26, 1991, EPA and the Fashion Cabinet Manufacturing, Inc. entered into a consent agreement for violations of EPCRA §313. The agreement was based upon failure to submit the required reports under EPCRA §313. In addition to a $19,950.50 civil penalty, the Agreement requires Fashion Manufacturing, Inc. to undertake and complete capital environmental projects including: installation of a laminator which would replace a substantial quantity of toluene, methyl ethyl ketone and methyl isobutyl ketone, installation of a new dust collector and removal of the underground toluene storage tank.

In the Matter of Foam Design, Inc.: On August 31, 1991, Region IV ratified a consent agreement and order in this matter. The Region had initiated an administrative enforcement action against Foam Design of Lexington, Kentucky, for its failure to report for 1988 its use of Methylenebis (phenyl-isocyanate). Under the terms of the settlement, Foam Design will pay a penalty of $10,450 and will spend approximately $53,000 on an environmentally beneficial project. That project will consist of the construction of a system to recycle polystyrene scrap, which will result in an 85% reduction in the amount of methylenebis used.

In the Matter of Gary Chemical Corp.: On December 14, 1990, in the largest EPCRA settlement in the nation to date, Region I resolved an administrative action against Gary Chemical Corp., a plastics and rubber manufacturing facility in Leominster, MA, for failure to submit estimates of its emissions of four toxic chemicals. Violations included the failure to notify EPA and the Commonwealth of Massachusetts of its emissions of lead compounds, antimony compounds, barium compounds, and di-(2-ethylhexyl) phthalate in calendar years 1987 and 1988. In settlement of the case, the company submitted the required information and agreed to pay a penalty of $142,800.

In the Matter of Granite State Packing Co.: On August 15, 1991, in settlement of an administrative action against Granite State Packing of Manchester, NH, the company agreed to pay a $35,190 penalty and donate $35,400 worth of computer and other emergency response equipment to the NH State Emergency Response Commission and the Manchester Fire and Police Departments. The computer equipment will assist the SERC in tracking hazardous materials within the state and will enhance fire and police hazardous material response capabilities. The company was cited for failing to make timely notifications of an anhydrous ammonia release, under §103 of CERCLA and §304 of EPCRA, and for failing to provide chemical inventory data to local and state contingency planning groups, under § 312 of EPCRA.

Longmont Foods Inc. (Longmont, Colorado): On June 26, 1991, EPA and Longmont Foods Inc. entered into a Consent Agreement for violations of EPCRA §313. In addition to a $11,850 civil penalty, Longmont Foods Inc. agreed to provide training courses for its management and other personnel involved in the generation, handling, and disposal of hazardous materials. The Company also agreed to expend $53,550 on an environmental project including sending its sludge which it currently landfills for disposal to the Department of Energy's bioconversion program.

U.S. v. NVF Company: On March 29, 1991, Region III signed a consent agreement and consent order in final settlement of an EPCRA §313 complaint filed against the NVF Company (Yorklyn, DE). The settlement of the complaint called for performance of two pollution prevention projects costing a total of $435,000 and payment of a $16,500 cash penalty.

Pitt-Des Moines, Inc.: EPA filed a complaint against Pitt-Des Moines, Inc. (PDM) alleging PDM failed to file a Form R for the calendar year 1988 for the substances nickel and chromium. In July of 1990 the case was heard by Judge Daniel Head. PDM argued that it did not exceed the EPCRA threshold for these substances and was therefore not liable. In a final ruling, Judge Head assessed a penalty of $12,000.00 for failing to file a Form R for nickel in 1988. The major points of the decision are: rejects the argument that the amount of material "processed" only includes the portion actually affected by the processing, accepts the contents of the company's Form R as admissions, but rules that admissions can be controverted or explained at trial, accepts as correct the proposed penalty, but reduces the penalty for "mitigating factors" such as the lack of possibility of any accidental release and the lack of a danger to the people involved in the processing. The decision provides further support for calculating the EPCRA threshold amount using the total amount of material processed, rather than just the portion affected by the processing.

In the Matter of Rainbow Paint and Coatings, Inc.: An ALJ held that an action for penalties for EPCRA violations is not subject to the automatic stay provisions of the Bankruptcy Code. An order granting EPA's motion for accelerated decision was entered on August 8, 1991. Judge Vanderheyden concluded that Respondent had violated §313 of EPCRA and assessed a penalty of $10,000.

A complaint was issued for failure to submit toxic chemical release inventories for xylene for calendar years 1987 and 1988. The respondent answered the complaint denying the allegations and further stating that it was a debtor in a Chapter 7 bankruptcy proceeding and had ceased all business activities. A motion for accelerated decision on the issues of liability and penalty was then filed by Region VII. Judge Vanderheyden concluded in his order that: 1) this matter was not subject to the automatic stay provisions of the Bankruptcy Code; 2) it was shown clearly and conclusively that the respondent was subject to the requirements of EPCRA and had violated §313 by failing to submit Form Rs for xylene for the years 1987 and 1988; and 3) complainant had demonstrated persuasively that the penalty amount sought was appropriate under the provisions of EPCRA and the EPCRA enforcement response policy.

Rohr Industries, Auburn, WA: On August 21, 1991, an ALJ issued an accelerated decision in response to an EPCRA administrative complaint which had been issued on June 19, 1989 to Rohr for failure to report to the Toxics Release Inventory the toxic chemical 1,1,1-trichloroethane which it "otherwise used" at its Auburn facility in 1987. The decision granted EPA's motion for accelerated decision on liability and penalty, and assessed the full proposed penalty of $17,000.

In the Matter of St. Joe Minerals Corporation, Inc., et al.: In the first administrative case filed in Region VII for violations of the emergency release notification requirements, EPA collected $63,000. The settlement was entered on February 7, 1991, resolving violations of §304 of EPCRA and § 103 of CERCLA. The company had failed to timely notify Federal, state and local authorities, as required by CERCLA and EPCRA, of a release of 539,000 pounds of sulfuric acid from its facility in Herculaneum, Missouri.

Spence-Geiger, Inc. (Golden, Colorado): On September 6, 1991, EPA entered into a Consent Agreement with Spence-Geiger, Inc. (SG) for violations of AHERA. The case involved the failure to properly inspect and identify asbestos containing materials in school buildings. The settlement ensures that all potential inspection and management plan violations of AHERA by SG are addressed within one year. This is significant because the total number of schools involved is in excess of 160 in Colorado. This case also sends a message to the regulated community and school districts of the Agency's position on the seriousness of complying with the AHERA.

Tiz's Door Sales, Everett, WA: EPA filed an EPCRA administrative complaint against Tiz's Door Sales alleging it failed to report three toxic chemicals to the Toxics Release Inventory (TRI) for the years 1987, 1988 and 1989. The final assessed penalty was $14,450. A portion of the penalty was deferred pending implementation of supplemental environmental projects (SEPs) consisting of the purchase of high efficiency spray equipment and improvements to the paint spray booth at the facility; this portion of the penalty will be waived if the SEPs are installed. The SEPs are expected to significantly reduce the releases of TRI chemicals from this facility as well as reduce the amount of chemicals used at the facility.

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

EPA regulates the use of pesticides in the United States under the authority of FIFRA by requiring that all pesticides sold and used in the United States, including imported products, be registered with EPA. FIFRA is designed to provide for pre-market clearance of pesticides and post-market surveillance of pesticides and pesticidal devices to ensure prevention of unreasonable adverse effects upon human health or the environment. In accordance with the statute the States have primary enforcement responsibility for pesticide use violations. FY 1991 enforcement efforts focused on violations of the import-export requirements, good laboratory practices requirements, product mislabeling, and sale of unregistered pesticides.

In the Matter of Carter Wallace (Lambert Kay Division): In October 1991, the Agency issued its first ever administrative civil penalty complaint alleging violations of the FIFRA Good Laboratory Practices Regulations. The sixty count complaint was issued for $260,000. Carter Wallace was the sponsor and registrant of several studies submitted to the Agency in support of a pesticide registration, which were conducted by AMA Laboratories. An EPA inspection revealed that, despite a compliance statement signed by Carter Wallace and AMA that the studies were conducted in accordance with FIFRA Good Laboratory Practices, serious violations had occurred during the conduct of the studies. A Notice of Warning was issued against AMA Laboratories pursuant to FIFRA §14(a)(2), which is the maximum level of action that can be taken for a first-time violation by a laboratory under FIFRA.

Columbia Cascade, Vancouver, WA, Permapost Products, Hillsboro, OR, and Pacific Wood Treating Portland, OR: EPA Region X charged three companies, Columbia Cascade, Permapost Products, Inc., and Pacific Wood Treating, with distribution of an unregistered pesticide because they sold wood products which had been treated with unregistered wood preservatives. The Region settled with Pacific Wood Treating for a penalty of $4,920 and with Columbia Cascade for a penalty of $1,188.

In the Matter of Hartz Mountain Corporation: On November 11, 1990, the Agency settled a civil administrative action against Hartz Mountain for violations of §6(a)(2) of FIFRA. Section 6(a)(2) requires registrants to notify the Agency of any additional factual information that comes to light regarding unreasonable adverse effects of a registered pesticide. An inspection of Hartz Mountain's facility revealed that Hartz Mountain had received numerous complaints of adverse effects following exposure to the Hartz Blockade Cat Flea and Tick Repellent and Hartz Blockade Dog Flea and Tick Repellent. These complaints contained sufficient information to enable Hartz Mountain to investigate whether or not the reported adverse effects and exposures occurred. Four counts of the Agency's complaint charged Hartz Mountain with failure to notify the Agency of four series of similar incidents of adverse effects reported to Hartz Mountain by its customers. Hartz Mountain was charged with failure to notify the Agency of fourteen incidents of adverse effects where Hartz Mountain was advised by an expert that the effect may have resulted from exposure to the pesticide. Hartz agreed to pay $45,000 in settlement.

In the Matter of Impex Industries Inc.: In a decision that has broad implications for the producers of ultrasound pesticide devices, the ALJ held that Impex Industries ultrasound units were "misbranded" within the meaning of FIFRA. Basing her decision on testing data presented by EPA, the ALJ found that Impex's ultrasound units did not control or repel rodents as stated in labeling. EPA brought the action against Impex Industries in 1984. The ALJ's June 1991, decision assessed Impex a $1,000 penalty.

In the Matter of Gothafn Chemical Co. Inc.: In a settlement between EPA and Gotham Chemical Co. Inc. in September, 1991, Gotham agreed to pay a $21,250 civil penalty for violations FIFRA. EPA had brought an administrative action against Gotham, located in Stamford, CT, for its misbranding and adulteration of pesticide products used for controlling algae and bacteria in water. Gotham sold these misbranded and adulterated products to four CT hospitals in 1988 and 1989 for use in the water cooling towers of the hospitals. The penalty obtained in this settlement is the largest ever obtained by Region I for violations of FIFRA.

In the Matter of Monsanto Company, Inc.: In April 1991, the Chief Judicial Officer signed the consent order approving the consent agreement in this matter, which required Monsanto to pay a

penalty of $287,920 to settle the administrative action brought for violations of FIFRA §17(a) export labeling and notification requirements. This represents the highest penalty obtained in settlement of a FIFRA administrative action. The consent agreement also requires Monsanto to bring all past and future shipments of the pesticide into compliance with the purchaser acknowledgement requirement. The amended complaint charged Monsanto with failure to obtain the purchaser acknowledgement statement for shipments of an unregistered pesticide and failure to provide bilingual labeling.

In the Matter of Sandoz Crop Protection Corp.: In October 1990, EPA filed an administrative complaint against Sandoz Corp. for violating §17(a)(1) and §12(a)(1)(a) of FIFRA by exporting shipments of four unregistered pesticides without first obtaining statements from the foreign purchasers acknowledging that pesticides were not registered for use in the United States, and the same shipments violated FIFRA §17(a)(1), §2(q)(1)(H) and §12(a)(1)(E), because the products were not labeled with the statement "Not Registered for Use in the United States of America". Pursuant to a consent agreement, Sandoz paid a penalty of $98,000 and conducted an audit to determine compliance with FIFRA §17 export requirements. EPA has issued a demand letter for stipulated penalties of $11,000 for violations found in the audit.

In the Matter of Shield-Brite Corporation: On June 28, 1991, EPA was granted motion for accelerated decision on liability which favorably disposed of a number of arguments raised during the Agency's recent pesticides export initiative. The decision affirmed the Agency's position that for pesticides exported to non-English speaking countries, FIFRA requires bilingual labeling, and that this labeling must be affixed before the pesticides reach the foreign country. The court rejected Shield-Brite's argument that the requirement for bilingual labeling was not valid because it appeared in a policy statement rather than a regulation, and stated that "the requirement for such labeling is clearly established by FIFRA and EPA's published interpretation." The Court rejected Shield-Brite's argument that the language of the policy could be read to allow either English or the language of the importing country, holding that such a construction would be illogical. The decision clearly states that exporters must comply with the bilingual labeling requirement before the pesticides reach the foreign country even if the export is an intra-corporate transfer.

In the Matter of Sporicidin International: This was the first administrative enforcement FIFRA case to be heard in EPA Headquarters. Sporicidin appealed the initial order which held that Sporicidin made unauthorized claims for two disinfectant products, i.e., that the products would kill the AIDS virus. The Chief Judicial Officer affirmed both the findings and the $10,000 violation penalty. In the text of the appeal decision, the Chief Judicial Officer made several legal findings of importance to both FIFRA enforcement and to the administrative process in general. The major finding is that the phrase "claims made as part of the products distribution and sale" is to be construed broadly. Thus, the Chief Judicial Officer rejected Sporicidin's contention that only claims that physically accompany particular pesticide stocks during their sale or distribution are covered by FIFRA. EPA charged Sporicidin with making false claims and using misleading information in the process of selling its disinfectants to hospitals. At the time of this violation, the Agency had accepted no claims that a product would kill the AIDS virus and had approved no claims to that effect. Making such claims for a pesticidal product was therefore in violation of FIFRA. This case was part of a 1988 initiative against the making of such unacceptable claims.

U.S. v. E.I. DuPont de Nemours & Company, et al: On March 29, 1991, EPA issued an administrative complaint against E.I. DuPont de Nemours & Company, Terra Chemicals International, Platte Chemical Company and Lesco, Inc. for numerous multiple sales and/or distributions of an adulterated pesticide registered to DuPont. EPA had earlier discovered that quantities of DuPont's benomyl pesticide products had been contaminated with atrazine (an herbicide) during production by Terra Chemicals, an agent of DuPont, some time in 1989. EPA issued stop sale orders to DuPont and the other named corporations shortly after discovering the adulterated benomyl, and DuPont voluntarily recalled the adulterated products. EPA's administrative complaint seeks civil penalties from each of the corporations for each of the 256 documented sales or distributions of the contaminated benomyl.

At the time this complaint was issued, EPA learned from DuPont that new batches of

atrazine-contaminated benomyl had been discovered. DuPont has begun a voluntary recall of all of its benomyl products. On March 29, 1991, EPA issued stop sale orders to DuPont and the related producing and distributing corporations, prohibiting the further distribution of DuPont's contaminated benomyl products.

Criminal Enforcement - All Statutes

U.S. v. Alcus and AEI-KAARS Production Company (E.D. Kentucky): On February 1, 1991, in the United States District Court for the Eastern District of Kentucky, Lexington, Kentucky, Samuel T. Alcus, III was sentenced to pay a $10,000 fine and to serve three years probation pursuant to his guilty plea to one count of the negligent discharge of brine into the Birch Branch River in Magoffin County, Kentucky between November 1989 and January 1990. Alcus is the president of AEI-KAARS Production Company, an oil production company with several leases throughout Western Kentucky. The company was also sentenced pursuant to a plea of guilty, to one count of the knowing discharge of brine into the Birch Branch River during the same time period and was sentenced to a $100,000 fine. As part of the sentence, Alcus and AEI-KAARS paid $55,000 of the imposed fine as restitution to the Kentucky Hazardous Waste Management Fund, a fund established to assist in financing the Kentucky Environmental Crimes Workshop. The sentencing marked an end to the first successful CWA conviction in the history of Kentucky relating to the stripper well industry.

U.S. v. Baytank Inc., et al. (5th Cir.): On June 13, 1991, the U.S. Court of Appeals for the Fifth Circuit affirmed the conviction of Baytank (Houston), Inc., a chemical transfer and storage facility, on two counts of improper storage of hazardous wastes in violation of RCRA. On one count, Baytank was fined $50,000, and received a suspended sentence on a second count provided that it execute a community service program. On appeal, the defendant challenged jury instructions given at trial relating to the knowledge requirement under RCRA. The court rejected the challenge, and adopted the general intent standard for criminal violations of RCRA, holding that it is not necessary to prove that the defendant knew that the waste had been identified under EPA regulations as hazardous. The court stated that "knowingly" as used in RCRA means that the defendant knows factually that he/she is storing, what is being stored, that what is being stored factually has the potential to harm others or the environment, and that he/she has no permit. On appeal, the government's challenge to the trial court's overruling conviction on a number of counts was successful. A retrial on these counts is pending.

U.S. v. Birchfield, et al. (N.D. Georgia): On July 17, 1991, in the United States District Court for the Northern District of Georgia, Atlanta, Georgia, Kenneth Birchfield was convicted by a federal jury of the illegal disposal of hazardous waste, in violation of RCRA. Birchfield was also convicted of manufacturing and possession with intent to distribute methamphetamine, carrying a firearm during a drug offense, and possession of a firearm by a convicted felon. Birchfield and his codefendant James Angerami were also convicted of conspiracy to manufacture and possess with intent to distribute methamphetamine and possession of a nonregistered firearm. The defendants and three (3) other individuals had been involved in the illegal production of methamphetamine from a business named Metro Fab. During the illegal manufacturing process, all wastes and substandard product batches were dumped on the ground adjacent to the clandestine laboratory located in the Atlanta metropolitan area. The three (3) individuals, Glenda Newsome, Edwin Eugene Trout and Shawn Lee Rawls had been convicted on April 26, 1991 of conspiracy and possession of an illegal drug. All defendants in the case have been sentenced to serve lengthy prison sentences.

U.S. v. John Borowski and Borjohn Optical Technology Inc: On November 7, 1990, U.S. District Judge Douglas Woodlock sentenced John Borowski to 26 months in prison, followed by two years of supervised release, and a $400,000 fine in the first knowing endangerment criminal case under the CWA. It is the longest prison term in New England for an environmental violation. The case concerned the illegal discharge of toxic metals and dangerous chemicals into the sewer system, and the endangerment of employees as a result. John Borowski is president of Borjohn Optical Technology Inc. of Burlington, MA. The company was also fined $50,000 and ordered to make a lump sum payment of $15,500 for medical insurance for two of its former employees.

The illegal discharges stemmed from Borjohn's metal finishing operations, in which the company plated various metals, including nickel, onto Bradley Fighting Vehicle elevation mirrors,

M-1 Tank mirrors, and cruise missile folding mirrors. The defendants ordered employees to dump the chemicals down the sewer using plastic buckets. During the illegal disposals, the employees were exposed to toxic levels of nickel, nitric acid, and nitrogen dioxide. The discharges to the sewer eventually led to the Massachusetts Water Resource Authority's sewage treatment plant, which in turn discharges to Boston Harbor.

U.S. v. Brittain (10th Cir.): A jury in the U.S. District Court for the Western District of Oklahoma convicted Raymond T. Brittain, a city public utilities director exercising general supervisory authority over the Enid, Oklahoma's wastewater treatment plant, for failure to report discharges of pollutants in violation of a CWA permit. On appeal, the U.S. Court of Appeals for the Tenth Circuit addressed the question of whether a "person," as opposed to the permittee, could be liable for a permit violation. The court held that the statute plainly states that any "person" (including an individual as well as a corporation or other organization, i.e. a municipality) who causes a permit violation through knowing or negligent conduct, is subject to criminal sanctions. The court went further, however, and stated that responsible corporate officers, to be held criminally liable, would not have to "willfully or negligently" cause a permit violation. Instead, the willfulness or negligence of the subordinate actor would be imputed to the supervisor by virtue of his position or responsibility.

U.S. v. Buckley (6th Cir.): On April 30, 1991, the U.S. Court of Appeals for the Sixth Circuit affirmed the convictions of Paul J. Buckley for criminal violations of the CAA and CERCLA. At trial, in the U.S. District Court for the Northern District of Ohio, a jury found Buckley, the project manager, guilty of knowingly emitting asbestos into the environment in the process of demolishing a stationary source, as well as for failing to notify the appropriate Federal agency of a known release of a reportable quantity of asbestos, as required by CERCLA. On review, the Court of Appeals upheld the trial court's finding that both the CAA and CERCLA are general intent statutes. The knowledge elements of both statutes require merely that the defendant had knowledge of the emissions themselves, not knowledge of the statute proscribing the emissions. Thus, the government need not prove wrongful intent or awareness of wrongdoing in prosecutions under these statutes. Good faith on the part of the defendant is immaterial. The court rationalized its holding by finding that dealing with hazardous materials, such as asbestos, puts individuals on notice that criminal statutes regulate the handling and disposal of the substances.

U.S. v. Control Disposal, et al. (N.D. Texas): In the first Federal criminal prosecution for violations of a city's pretreatment program, Control Disposal (located in Dallas, Texas) and its CEO, Herman Goldfaden, pled guilty to felony violation of the CWA for disposing of industrial waste trap residues into the Dallas sewer system. The defendants also pled guilty to a felony violation of RCRA. The company and Goldfaden were sentenced on July 16, 199,1 with Control Disposal receiving a one-million dollar criminal fine. Goldfaden was sentenced to three years of imprisonment and a $75,000 fine.

U.S. v. Defense Systems Corporation: On September 30, 1991, Defense Systems Corporation a/k/a Hi-Shear Corporation pled guilty to two RCRA counts in the United States District Court for the District of Nevada. The corporation agreed to pay a penalty of $375,000 on each count, or a total of $750,000 to the federal government and was placed on 5 years of probation. The corporation further agreed to pay a penalty of $375,000 to the State of Nevada.

Defense Systems Corporation retails and manufactures explosive devices. The first count of the indictment charged that the corporation transported hazardous wastes, namely propellants and other explosive wastes from its California facility to its Nevada facility, without a hazardous waste manifest as required by RCRA. The second count charged the corporation with the illegal storage of hazardous wastes, namely propellants and other explosive wastes, at the Nevada facility although the corporation did not have a storage permit or interim status as required by RCRA.

On July 23, 1991 three employees of the Defense Systems Corporation were indicted for four counts of illegally transporting, storing and disposing of hazardous waste and making a false statement to EPA. Trial for the three individuals is scheduled in the near future.

U.S. v. Exxon Corporation, et al. (D. Alaska): As part of a global settlement of Federal enforcement actions arising from the discharge of over ten

million gallons of crude oil from the tanker "Exxon Valdez" in the Prince William Sound, Alaska on March 23, 1989, the two corporate defendants, Exxon Corporation and the Exxon Shipping Corporation, entered into a new plea agreement with the government on September 30, 1991. (The Captain was prosecuted by the State of Alaska). The original plea agreement was rejected by the federal judge on April 24, 1991.

In the new agreement, formally entered before the court on October 8, 1991, Exxon Shipping agreed to plead guilty to three counts and Exxon Corporation agreed to plead to one count of the indictment returned against them in Anchorage, Alaska on February 27, 1990. Exxon Shipping pled to a misdemeanor violation of the CWA for the negligent discharge of oil without a permit, a misdemeanor violation of the Refuse Act for the illegal discharge of refuse (oil) from a ship, and a violation of the Migratory Bird Treaty Act for unpermitted killing of over 36,000 migratory birds. The company agreed to pay a fine of $20 million. The Exxon Corporation pled to the one Migratory Bird Treaty Act count, and agreed to pay a fine of $5 million. Both defendants also agreed to now make a remedial payment of $50 million to the State of Alaska, and $50 million to the federal government for restoration projects relating to the oil spill. A companion civil consent decree requires establishment of a $900,000,000 trust fund for remediation.

U.S. v. Exxon (New Jersey): On March 20, 1991, Exxon pled guilty to a misdemeanor information charging it with negligently discharging oil into the Arthur Kill without a permit, in violation of the CWA. As part of a global settlement involving the United States, the States of New York and New Jersey, and the City of New York, Exxon agreed to pay a criminal fine of$5,000,000. In addition, as described under "Water Enforcement Program," above, on the same date in the Eastern District of New York, Exxon's agreement to a civil settlement of $10,000,000 was accepted by the court.

U.S. v. Enviro-Analysts, Inc., et al. (D. Wisconsin): On October 4, 1991, in one of the first successful environmental criminal trial involving the sale of fraudulent laboratory reports, Enviro-Analysts, Inc. and its owner, John Ruetz, were found guilty of falsifying analytical data for clients who were required to comply with the CWA and RCRA. Ruetz and the lab were convicted for routinely falsifying data by using incorrect equipment and procedures to certify compliance and fabricating test results for samples that had never been taken. The vice-president of Enviro-Analysts, Robert Schloesser, was charged separately and previously pled guilty to two counts of violating the CWA. Eventually, Schloesser testified against the corporation and Mr. Ruetz. The extent of the effect of Enviro-Analysts' criminal conduct on the program reliance on voluntary compliance by the regulated community is now being examined by an extensive review of permits issued by the State of Wisconsin.

U.S. v. Kamal Salieb Gabra, et al. (New Jersey): On August 29, 1991 Kamal Gabra pleaded guilty to a criminal violation of FIFRA. This case, handled by EPA's Office of Inspector General, involved illegal export of misbranded and mislabeled pesticides, and falsification of EPA documents in furtherance of the scheme. Gabra's three companies, Liberty International Agricultural Products, Nevacide, Ltd., and Hercules Chemicals, U.S.A., shipped hundreds of thousands of dollars worth of pesticides to Middle Eastern countries since 1988, though not all the shipments were illegal. Sentencing is scheduled for November, 1991. Gabra apparently took the orders for the pesticides from clients, and others mixed the chemicals for him. Gabra has agreed to provide information about those who helped him circumvent Federal laws. Gabra is also now out of the business of exporting pesticides.

U.S. v Reginald Max Goldsmith, Ga. (RCRA): On August 30, 1991, in the United States District Court for the Northern District of Georgia, Atlanta, Georgia, Reginald Max Goldsmith was convicted by a jury on both counts of a two count indictment charging violations of RCRA. The indictment, handed down on July 2, 1991, charged Goldsmith with the illegal transportation and storage of hazardous waste to an unpermitted storage facility. The proof at trial demonstrated that Goldsmith, using a fraudulent company, contracted with Hunt Chemicals Company to transport and dispose of approximately two hundred 55-gallon drums containing various hazardous wastes. After improperly removing the drums, Goldsmith provided Hunt Chemicals with fraudulent documents representing compliance with all EPA regulations regarding the transportation and disposal of hazardous waste. The drums ultimately were discovered, and illegally discarded, at three separate

locations in the Atlanta metropolitan area. Sentencing is scheduled for a later date.

U.S. v. Hassler (M.D. Florida): On November 21, 1990, Charles A. Hassler was sentenced pursuant to his guilty plea to the charge of violating the Land Ban Restrictions of RCRA. Hassler was sentenced to serve three months community confinement and to pay a $500 fine. Hassler, the former Director of Public Works and City Engineer for Longwood, Florida, admitted that in October 1988, he knowingly directed municipal employees to illegally bury sixteen drums of hazardous waste within 100 yards of the city's water reservoir. Several of the drums ruptured, causing contamination of the surrounding soil. The sentencing marked a successful end to the nation's first prosecution under EPA's recently implemented Land Ban Restrictions.

U.S. v Croda Inks, George Ault, George Moore, Kevin G. Moore and John Michael Cox, Tn. (RCRA/CWA/Title 18): On September 16, 1991, in the United States District Court for the Western District of Tennessee, Western Division, Memphis, Tennessee, George Ault entered a plea of guilty to a one count indictment charging a felony violation of the CWA. Ault, a supervisory employee of Croda Inks, an ink formulator and producer, admitted to the knowing discharge of solvent washes and water washes, which were generated during the ink formulation process, into McKellar Lake without a permit. Also indicted on that date was George Moore, former general manager at Croda's Memphis plant, for the illegal storage of hazardous waste without a permit, in violation of RCRA in addition to a knowing discharge in violation of the CWA. Moore's son Kevin G. Moore and John Michael Cox, both Croda employees, also pled guilty to making false statements and misrepresentations to EPA Special Agents investigating the violations at Croda. All defendants will be sentenced at a later date. The corporation, pursuant to a guilty plea entered in April, 1991 for negligent violations of CWA was sentenced on July 10, 1991, to three years probation and ordered to pay a fine of $200,000, half to be suspended upon the payment of $100,000 restitution to the State of Tennessee Hazardous Waste Remedial Fund. Further, the corporation was ordered to publish a public apology, and incur the costs of remedial action at the Memphis plant site.

U.S. v. International Paper Company (D. Maine): On July 3, 1991, in Portland, Maine, International Paper Company pleaded guilty to violations of Federal laws at its Androscoggin Mill in Jay, Maine, and was fined $2.2 million. The mill is the largest paper mill in Maine, and the fine is one of the largest imposed in Maine for environmental violations. The company was convicted of three counts of storing and treating hazardous waste without a permit or interim status in violation of RCRA, and two counts of making false statements to the government in violation of 18 U.S.C. §1001. From 1986 to 1988, the company generated and mixed ignitable waste solvents with waste oil prior to disposal by incineration in the mill's power boilers. In 1987, the company falsely stated that it did not generate hazardous waste at its mill, and in 1986 it falsely stated that its mill had only one outfall to the Androscoggin River, when in fact it had two. All of these crimes were committed knowingly by the company. No individuals were charged. The U.S. Attorney said that since 1988 the company has taken steps to come into compliance with environmental requirements.

U.S. v Mark Irby, S.C. (CWA): On September 13, 1991, in Richmond, Virginia, the United States Court of Appeals for the Fourth Circuit affirmed the sentence of two years and nine (9) months incarceration for Mark Irby (the longest jail term ever handed out in South Carolina for an environmental crime). Irby, the former plant manager of a wastewater treatment facility, was convicted of multiple violations of the CWA. He was sentenced on November 28, 1990 pursuant to his conviction on charges that from March, 1987 through September, 1988, he knowingly discharged sewer sludge into the Reedy River in South Carolina, tampered and caused falsification of wastewater monitoring reports, and failed to report nonpermitted discharges to the appropriate State and Federal authorities as required by law.

Irby appealed his only sentence, which he is presently serving. Irby asserted that the District Court erred in increasing his offense level under Part Q of the Sentencing Guidelines, which states, if the offense resulted in an ongoing, continuous, or repetitive discharge, release, or emission of a pollutant into the environment, the offense level increases by six levels.

The Court of Appeals found that the CWA's definition of "pollutant" encompasses "sewage sludge." The record showed that Irby ordered the discharge of approximately 500,000 gallons of

partially treated sludge at least twice a week for two years. The District Court found as fact that actions performed at Irby's direction allowed sewage sludge from the waste sludge holding basin to be discharged virtually untreated into the adjacent river. Because of the huge quantities of pollutant discharged, the finding of the lower court clearly was not erroneous, said the Appeals Court.

U.S. v. Paul Tudor Jones II and William B. Ellen (D. MD): On April 15, 1991, William Ellen was sentenced to serve six months in prison, 12 months probation and 60 hours of community service relating to his conviction on five felony counts of violating the CWA. Ellen was the project manager involved in the filling of 86 acres of wetlands on the Eastern Shore of Maryland.

U.S. v. Laughlin and Donnelly (N.D. New York): On June 20, 1991, the United States District Court in the Northern District of New York reaffirmed the principle that under RCRA, ignorance of the law is no excuse. Defendant Laughlin, president and/or plant manager of GCL Tie Treating, Inc., and defendant Donnelly, a supervisor at GCL, were charged, in a twenty-seven count indictment with the illegal storage and disposal of hazardous waste without a permit. In a pre-trial determination, the court agreed with the government's assertion that, in order to obtain a conviction under RCRA §6928(d)(2)(A), the government need not prove that the defendants knew that it was illegal to treat, store, or dispose of hazardous waste without a permit. The government, thus does not have to prove that the defendants knew that a permit was required or that the defendants knew that the company did not have a permit. In coming to its decision, the court explicitly disagreed with a contrary case, U.S. v. Johnson and Towers, finding the reasoning weak and unpersuasive. Instead, the court adopted the rule from U.S. v. Hoflin, which is that due to the public welfare nature of RCRA, proof of knowledge of the permit requirement or permit status is not required. For the first time, a court in the Second Circuit ruled on the issue of the state of knowledge necessary to prove a RCRA disposal violation. This decision should have important precedential value with the Second Circuit.

U.S. v. James Long, (New York): On May 17, 1991, James Long pled guilty to a one count information charging him with falsifying information pertaining to asbestos removals performed by Safe Air Environmental Group, Inc. at the Bethlehem Steel Plant in Tonawanda, NY. (See also discussion under "Air Enforcement Program," above, describing parallel civil proceedings initiated in connection with NESHAPs violations at this facility.) This case was investigated through the auspices of the Western District of New York LECC sub-committee on environmental crimes.

U.S. v. Louisville Edible Oil Products, Inc., et al. (6th Cir.): On October 7, 1991, the Supreme Court refused to grant the Petition for Writ of Certiorari filed by Louisville Edible Oil Products, Inc. This action allows the appellate decision below to stand. In a decision of first impression in the context of environmental law, the Sixth Circuit Court of Appeals ruled that the Western District of Kentucky was correct to deny defense motions to dismiss the indictments based on the Constitution's prohibition against double jeopardy. The reason for the decision was that, under the dual sovereignty doctrine, the prohibition against double jeopardy does not apply to charges placed by separate sovereigns (the Federal and county governments) even if the charges are both for the same offense. Even though EPA had delegated EPA's CAA authority to Kentucky, (which then redelegated to a county agency) to enforce the NESHAPs requirements for asbestos, the court found that the county agency was not a mere "tool" or conduit for Federal enforcement. The reason for this finding was that EPA lacks statutory authority to control the actions of the county agency, and indeed with regard to the violator the county agency acted on its own authority and despite EPA's conflicting views on how to proceed on the violations. This important decision has confirmed EPA's traditional position that in the criminal context the Federal government and the states maintain separate, independent, and concurrent enforcement authority. As a result of this decision, the case will now proceed to trial. The company, which manufactures edible oils such as salad oil, demolished or renovated two facilities that it owns in Louisville, Kentucky. The indictment charges the company, an affiliated company, and several top corporate officers with asbestos related violations of CAA and CERCLA.

U.S. v. MacDonald and Watson Waste Oil Company et al. (1st Cir.): A circuit court for the first time addressed whether the RCRA's "knowing" requirement applies to a corporate officer who did not actually know of his

corporation's illegal act (as opposed to not knowing the regulations which covers the corporation's activity). Following a jury trial during September 1989, in the U.S. District Court for the District of Rhode Island, MacDonald and Watson Waste Oil Company, Eugene E. D'Allesandro, President of MacDonald and Watson, and two other MacDonald and Watson employees were convicted, among other counts, of knowingly transporting and causing the transportation of hazardous waste to a facility which did not have a RCRA permit. D'Allesandro's conviction was based on the "responsible corporate officer" doctrine, on evidence that he was a "hands-on" manager, and that he knew in the past the company had violated RCRA. There was no direct evidence showing that he actually knew that the shipment of hazardous waste in question was being transported to his company's disposal facility in Providence, Rhode Island. The First Circuit Court of Appeals vacated D'Allesandro's conviction and rejected the broadest form of the "responsible corporate officer" doctrine, which would allow for the conclusive establishment of the element of knowledge by a mere showing that the individual held a position of corporate responsibility. At the same time, however, the First Circuit affirmed that knowledge did not have to be proven by direct evidence but could be inferred from the defendant's position, conduct and other facts and circumstances. The court went further and stated that "willful blindness to facts constituting the offense may be sufficient to establish knowledge." The case was remanded for retrial of Mr. D'Allesandro, who is presumed innocent unless proven guilty. The convictions of the MacDonald and Watson Waste Oil Company and the two other employees were affirmed.

U.S. v. Nanticoke Homes, Inc. (D. DE): The largest employer in southern Delaware pled guilty to Federal hazardous wastes violations on March 26, 1991, for storing hazardous waste without a permit and failing to notify the EPA of a release of a hazardous substance. Nanticoke Homes, Inc. generated ignitable waste at the company's Greenwood, DE facility and failed to ship any hazardous wastes offsite for disposal over a 31 month period, and company employees crushed and buried drums containing hazardous wastes on the property. As a result of the first Federal environmental prosecution in the State of Delaware, Nanticoke Homes, Inc. was sentenced on July 30, 1991, to pay a fine of $300,000 and to perform 400 hours of community service. The parallel Nanticoke Homes criminal prosecution and expedited environmental cleanup represent a model example of multi-office, multi-program, and civil/criminal coordination.

U.S. v. New York Bus Service, (New York): On May 29, 1991, New York Bus Service was assessed a criminal penalty of $25,000 based upon its plea of guilty to a one count information charging it with negligently discharging ethylene glycol into the Hutchinson River, New York without a permit, in violation of the Clean Water Act. This case was a joint investigation between the FBI, New York City Dept of Sanitation Police and EPA.

U.S. v. North Bennington Board of Water Commissioners, et al. (D. Vermont): In the first Federal criminal prosecution for violations related to the SDWA's regulation of public water supply systems, on October 29, 1990, the municipal Board, its Superintendent (Gerald Elwell), and employee (Peter Lauzon), and the owners/operators of the Pownal Water Company (Murray and Bertha Lewis) entered pleas of guilty, in the U.S. District Court for Vermont, to charges that they filed false statements on monthly water system operations reports. (Charges against several co-defendants are still pending.) Under the Safe Drinking Water program, water suppliers must test for contaminants such as turbidity and report results to state authorities and to EPA. It was alleged that the defendants knowingly falsified these reports, in violation of the Federal Criminal Code's false statement statute. Pursuant to a plea agreement with the government, the Board was fined $100,000, with payment suspended on condition that the Board comply with all legal requirements in the future. Lauzon was placed on probation; Elwell and the Lewises were placed on probation and fined $500.

U.S. v. Pillsbury Company (W.D. Mo.): The United States obtained a plea agreement in this case which is an excellent example of Federal/state cooperation and coordination in criminal enforcement of environmental statutes. On October 20, 1990, the Pillsbury Company plead guilty to one count of negligent discharge of ammonia into the Silver Creek in Joplin, Missouri, which resulted in a substantial fishkill. The plea agreement provides for payment of a $100,000 fine.

Pillsbury also paid $75,000 to the City of Joplin

as compensation for damages from the spill. The State of Missouri Attorney General settled its case against Pillsbury for $100,000. The City will use the settlements to purchase composting equipment for use by the Southwest Missouri Regional Solid Waste Commission, (SMRSWC). SMRSWC is a non-profit corporation formed by six southwest Missouri communities.

U.S. v. Plaza Health Laboratory, (New York): On January 31, 1991, Geronimo Villegas, the owner of Plaza Health Laboratory, was convicted, after a jury trial, of two counts of knowingly discharging hepatitis tainted blood vials into the Hudson River without a permit and two counts of knowing endangerment for discharging those vials into the Hudson River in violation of the CWA. Following that conviction, the defendant moved, pursuant to Rule 29 of the Federal Rules of Criminal Procedure, for a judgment of a acquittal. On December 13, the judge set aside the convictions of knowing endangerment and affirmed the convictions on knowing discharge. The defendant was sentenced to one year imprisonment, but is now out pending appeal. The Government has appealed the dismissal, and the defendant has appealed the convictions not dismissed.

U.S. v Ray R. Pleasant and William F. McMurray, Tn. (CWA): On August 21, 1991, in the Eastern District of Tennessee, Greenville, Tennessee, Ray R. Pleasant and William F. McMurray each entered guilty pleas before U.S. District Judge Thomas G. Hull to a criminal information charging violations of Federal environmental laws. The information charged Pleasant and McMurray with a violation of the CWA alleging negligent discharge of oil-contaminated water. Pleasant and McMurray were also charged with a violation of the Migratory Bird Treaty Act, stemming from the deaths of numerous waterfowl as a result of the illegal discharge. The charges resulted from the defendants' actions on Memorial Day, May 27, 1991, when they pumped water contaminated with diesel fuel from underground storage tanks and from an excavated pit on Pleasant's property in Kingsport, Tennessee into a storm sewer which emptied into the Madd Branch of the Holston River.

U.S. v. Puregro Company, Inc., et al. (D. Washington): On September 18, 1991, the U.S. District Court, sitting in Yakima, Washington, entered into a plea agreement whereby the PureGro Company pled guilty to one FIFRA misdemeanor count. The case arose from the firm's application of a wastewater mixture from a company evaporator tank containing the pesticides Dyfonate and Telone II to a field near Pasco, Washington on May 12, 1987, in a manner inconsistent with the labeling of those pesticides. The pesticides were sprayed on the surface of the field without calibrating the amount or concentration of the pesticides, causing illness to several nearby residents. The Government dismissed four RCRA counts against the company and all the individual defendants. The Company was fined $15,000. In addition, the District Court ruled that, despite the "responsible corporate officer" doctrine, a corporate employee responsible for environmental and safety matters could be held criminally liable only for "knowing" conduct, and not for activities of others of which he "should have known." The court further held that the term "knowingly" modifies hazardous waste, as well as, treats, stores or disposes of.

U.S. v. Queen Products Company, Incorporated and John Thomas Cottrell (W. D. Kentucky): On May 22, 1991, in the United States District Court for the Western District of Kentucky, sitting in Louisville, Queen Products Company (QPC) and John Thomas Cottrell were sentenced pursuant to their guilty pleas entered on March 20, 1991, to an information charging violations of RCRA. QPC was also sentenced pursuant to its guilty plea to a one count information originating in the Southern District of Indiana, charging the company with the knowing disposal of hazardous waste without a permit. QPC, a corporation engaged in the manufacture of electrical enclosures, admitted to the knowing disposal of hazardous waste without a permit at its Louisville, Kentucky facility and at property owned by the president in Jeffersonville, Indiana. The company was sentenced to pay a fine of $165,000, half to be suspended upon payment of $82,500 to the Commonwealth of Kentucky as restitution and an additional $10,000 to be paid to the State of Indiana as restitution.

QPC was also placed on eighteen months probation, and ordered to publish a public apology and to incur the cost of remedial action at the sites. Cottrell, the former plant superintendent of QPC, admitted to the knowing transportation and disposal of hazardous waste without a permit. He was sentenced to serve four months incarceration of a three year sentence, the balance suspended, two years of probation, and to pay a total of $10,000 in fines.

U.S. v. Sanchez Enterprises, Inc., et al. (E.D. Tenn): A jail term for an environmental crime was imposed against Gale Eugene Dean, the production manager of General Metal Fabricators, a metal coating facility in Irwin, Tennessee, and a division of Sanchez Enterprises, Inc. On August 5, 1991, the U.S. District Court for the Eastern District of Tennessee sentenced Dean to 40 months imprisonment for his part in the illegal disposal of spent solvents by burying the drums at the General Metal Fabricators' site between 1984 and 1989. On August 22, 1991, Sanchez Enterprises, Inc. entered a plea of guilty to a single felony violation of RCRA for the illegal disposal of hazardous waste. The corporation was fined $150,000, of which $25,000 is to be paid into an environmental fund for the State of Tennessee.

U.S.v. Saunders Asbestos Service, Inc., et al. (D. Mass): In a case against one of the largest asbestos removal companies in Massachusetts, Saunders Asbestos Service and its foreman, Dominic Lamarra, were sentenced on April 1, 1991, in the District of Massachusetts, for violating the CWA by discharging large amounts of asbestos-laden wastewater into the Charles River. Lamarra was sentenced to four months incarceration, and the company to a $5,000 fine and 2 years probation. In 1988, Lamarra supervised and directed his employees to wet down asbestos with water and then illegally dispose of the waste by pumping the asbestos-laden water into a street in Brookline, Massachusetts. The case is the result of the first joint environmental prosecution brought cooperatively by the United States Attorney's Office, the Commonwealth's Attorney General's Office, and the Commonwealth's Environmental Strike Force.

U.S. v. United Technologies Corp.: On May 14, 1991, United Technologies Corp. pleaded guilty to six felony violations of RCRA and was sentenced to pay a $3,000,000 fine, the largest criminal fine for a hazardous waste violation in the country. The case related to the use and disposal of an industrial solvent at the company's Sikorsky Aircraft Division in Stratford, CT. Workers at the facility sprayed the solvent on helicopter transmissions after the transmissions were tested. The resulting waste fell to the floor and was routinely hosed and squeegeed out the door onto the ground. An area of approximately 4,000 square feet was contaminated and eventually removed by Sikorsky under EPA supervision. During the relevant period of time, Sikorsky, which employs 14,000 people, had one person responsible for environmental compliance for all of its facilities nationwide.

U.S. v. Michael Weitzenhoff and Thomas Mariani: On October 2, 1991, a jury, in the District Court in Hawaii, convicted two former government officials of the Hawaii Kai Wastewater Treatment Plant of Clean Water Act violations. The two were found guilty of illegally dumping tons of partially treated sewage sludge into the waters of Hawaii, and are the first individuals convicted in Hawaii of CWA violations. Michael Weitzenhoff, the formal plant manager, and Thomas Mariani, the former assistant manager, were convicted of five felony counts under the CWA, and of an additional conspiracy count, charging them with authorizing the illegal discharges. The government alleged the discharges occurred in 1988 and 1989 on an estimated 40 occasions. The discharges were secretly made at night to avoid detection. Although it was not possible to determine the exact amount discharged, an expert estimated that some 440,000 lbs. of solids were in the millions of gallons of waste activated sludge discharged through the outfall. Sentencing is scheduled for January 13, 1992.

U.S. v. Weyerhaeuser Co. (W.D. Washington): On November 16, 1990, the Weyerhaeuser Company agreed to enter a plea of guilty to five misdemeanor counts for violations of the CWA. The criminal charges stemmed from the unpermitted discharge over a nine year period of paint wastes and wash water into Shannon Slough, a tributary of the Keyholes River, from the end seal and stencil painting operation at the company's Aberdeen, Washington sawmill. As part of the plea agreement, Weyerhaeuser agreed to pay a $125,000 criminal fine and $375,000 will be placed in a trust fund to be controlled by public officials as a form of restitution to the citizens of Grays Harbor County. The money from the fund will be used for cleaning up and eradicating all pollution sources along the Shannon Slough. Trustees of the fund will be representatives of governmental entities, including EPA. This case was the first effort of the newly created Environmental Crimes Unit of the U.S. Attorney's Office for the Western District of Washington, now staffed full-time by two Assistant United States Attorneys.

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 requirements from receiving or being used in the performance of Federally funded contracts, grants or loans, by placing the facility on the List of Violating Facilities. Federal agencies are prohibited by statute from entering into contracts, grants or loans (including subcontracts, subgrants or subloans) to be performed at facilities owned or operated by persons who are convicted of violating air standards under CAA §113(c) or water standards under CWA §309(c). The prohibition is effective automatically on the date of the conviction. Facilities which are mandatorily listed remain on the List until EPA determines that they have corrected the conditions giving rise to the violations.

Facilities with records of civil violations may also be listed, at the discretion of the Assistant Administrator for Enforcement, upon the recommendation of certain EPA officials, a State Governor, or a member of the public (this is referred to as discretionary listing). A facility may be recommended for listing if there are continuing or recurring violations of the CAA or CWA 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 1991 were Exxon Corporation (Exxon Bayway Refinery, Bayonne Terminal and Inter-Refinery Pipeline) and Big Apple Wrecking Corp. The Assistant Administrator's decision in the Exxon mandatory listing case established that a listed facility may include integrally related sites of operation constituting one complex facility, in this case a petrochemical refinery, pipeline, and terminal.

In Big Apple, a discretionary listing case against a construction and demolition company, the General Counsel upheld on appeal the Agency's interpretation of the definition of "facility" as including the business address of a construction company -- not the building or demolition site where the violation occurred. The General Counsel reversed on other grounds the Case Examiner's decision to list Big Apple, and remanded the case to the Case Examiner for further proceedings.

Big Apple Wrecking Corporation: In a discretionary listing proceeding against Big Apple Wrecking Corporation of Bronx, New York, an EPA Case Examiner had determined in 1990 that Big Apple should be placed on the List.

On appeal of the Case Examiner's decision by Big Apple, the General Counsel upheld EPA's interpretation of the "facility" to be listed as being the business address of a mobile or transitory business, rather than the site at which the violations occurred (which usually is not owned by the violator). However, the EPA Case Examiner's decision to place Big Apple on the List was vacated and remanded for further proceedings; the General Counsel held that he was unable to determine from the record of the proceeding whether the Case Examiner had applied a per se rule that any series of violations could constitute "continuing or recurring violations" (the legal standard for discretionary listing), or whether the Case Examiner had conducted a case-by-case determination, as EPA had indicated it would in the 1985 preamble to the contractor listing regulations. Nevertheless, the General Counsel held that there were undoubtedly numerous violations by Big Apple of the asbestos NESHAPS standards, which could constitute a basis for listing if the proper legal standard was applied. The General Counsel indicated that, on remand, the Region could initiate a new listing proceeding against Big Apple, or continue the current proceeding to clarify the application of the legal standard applied.

Exxon Company, U.S.A. (Linden and Bayonne, NJ): In a mandatory listing case involving Exxon Company, U.S.A.'s (Exxon) Bayway Refinery, Bayonne Terminal, and Inter-Refinery Pipeline (IRPL), EPA determined that the three sites of operation are not independent facilities, and that Exxon's facility consisting of the three sites should remain on the List of Violating Facilities (List). Exxon's complex petrochemical facility in Linden and Bayonne, NJ, was listed after Exxon

Corporation pled guilty to criminal violation of CWA § 309(c) for spilling some 567,000 gallons of Number 2 heating oil into the Arthur Kill, as a result of negligent failures in training, supervision, and operation.

In denying the first "independent facilities petition" filed under 40 CFR Part 15, the Acting Assistant Administrator relied upon the historical, operational, personnel, and budgetary connections among the three sites of operation, finding that the IRPL was controlled solely by employees and managers of the Terminal and the Refinery, and that together the three sites were part of a larger system serving a unitary purpose. The Acting Assistant Administrator also noted that even if the Terminal and Refinery were independent, each could be listed properly, because each could be deemed to be a facility which gave rise to Exxon Corp.'s conviction, in view of the responsibilities each had for operating the IRPL. Therefore, all three sites were properly placed on the List, and remained listed pending resolution of Exxon's petition for removal of the facility from the List.

Wheeling-Pittsburgh Steel Corp.: A discretionary listing action against three Wheeling-Pittsburgh Steel Corp. (Wheeling-Pittsburgh) facilities for continuing or recurring violations of the CWA was concluded when Wheeling-Pittsburgh entered into a Consent Decree, settling the civil enforcement actions against it. The discretionary listing case played an important role in facilitating the settlement of the judicial enforcement actions against Wheeling-Pittsburgh, which included a $6,000,000 civil penalty.

Multi-Media Enforcement

Bethlehem Steel/Lackawanna Plant: In FY 1990, EPA became aware of serious CAA asbestos NESHAPs violations in connection with the demolition of BSC's Basic Oxygen Furnace at its Lackawanna, New York plant. At that time, EPA initiated a case concerning this violation, and scheduled a full multi-media inspection for the first quarter of FY 1991. As a result of this inspection and other information EPA gathered subsequently, EPA identified an additional serious asbestos violation in connection with the demolition of the Slab Mill, and significant EPCRA and CWA/SPCC violations. EPA issued an administrative complaint for the EPCRA violation; EPA issued several administrative orders to BSC and its contractors for the CAA/NESHAPs violations; EPA prepared an administrative complaint for the CWA/SPCC violation, which will be issued in early FY 1992; and EPA terminated settlement negotiations with BSC, and requested that DOJ immediately file a civil action for the asbestos violations (which was done on October 1, 1991). EPA also continued to oversee implementation of a RCRA §3008(h) order issued to BSC in FY 1990 addressing cleanup of contamination at the facility.

U.S. v. Boeing Company: On June 28, 1991, Region III issued complaints under §16 of the TSCA and §3008(a) of RCRA against the Boeing Company, Ridley Township, PA. The complaints were issued following a multi-media investigation of the Boeing Helicopter Company Division. The RCRA complaint alleges fifteen counts, including the failure to provide LDR prohibition levels on 107 LDR notifications, failure to ensure that facility personnel complete initial safety training programs, and failure to remedy the deterioration or malfunction of equipment or structures, which an inspection had revealed, on a schedule that ensures the problem does not lead to an environmental or human health hazard. The TSCA complaint alleges nine counts, including marking, storage and record keeping violations of the PCB Rule.

Brookhaven National Labs: EPA performed a comprehensive multi-media inspection of this contractor-operated Federal facility located on Long Island, New York, and documented serious violations in a number of media. EPA issued administrative complaints citing serious TSCA and RCRA violations. EPA also issued an administrative order under the Clean Air Act for asbestos NESHAPs violations; EPA identified serious CWA/SPCC violations, which will be the subject of an administrative complaint to be issued in early FY 1992. Further, EPA is in the process of negotiating plume stabilization measures (a pump-and-treat system), and a CERCLA IAG for long-term cleanup of contaminated groundwater. Finally, EPA required the submission of information pursuant to §114 of the CAA and is investigating potential violations of PSD and VOC regulations.

Caldwell Systems, Inc.: Caldwell Systems (CSI), a defunct commercial hazardous waste incinerator in North Carolina, was the subject of a public health advisory by a TSDR in July 1990. Region IV issued a RCRA §3008(h) order in May 1991,

requiring corrective action in response to releases that occurred at the CSI site. The Region also conducted a site investigation under §104(b) of CERCLA to establish whether the site poses any current risk to area residents, and to identify information relevant to the corrective action under the RCRA order.

East 10th Street Site: On December 20, 1990, the Region III Regional Administrator signed a CERCLA unilateral administrative order for the East 10th Street Site in Marcus Hook, PA. This order was issued to several past and present owners and operators of the site. The order requires the respondents to identify and properly dispose of bagged and loose asbestos, identify and properly dispose of drums of PCB-containing materials and other hazardous substances, and to identify and properly dispose of other PCB contamination. These tasks are to be completed in compliance with the CAA and TSCA. The order also restricts and conditions access to the site by the respondents and their agents.

Hawk, Inc., Phar Oil Company and Jim Daugherty, Ky. - Kentucky Oil Well Violations: CWA and SDWA authorities were used to stop unpermitted discharges. The Region used its authority under both the CWA and the SDWA to address violations at two separate oil well operations in Kentucky. In one case, against Hawk, Inc., and Phar Oil, the Region negotiated a combined settlement of $8,000 with these parties for the unpermitted injection of brine into wells. The enforcement action was the result of joint inspections by EPA and the State of Kentucky. In addition to the penalty, Hawk completed remedial actions to stop the unpermitted discharges.

The Region used the same approach in enforcing against similar violations by Jim Daugherty in the Taffy Field in Ohio County, Kentucky. To settle this matter, Daugherty agreed to obtain a UIC permit for one of the wells, to plug and properly abandon four other injection wells, to monitor all wells and take any other necessary corrective action. He also agreed to pay a penalty of $5,000.

Lawtey Correctional Institute: A consent agreement and administrative penalty order was filed with the Regional Hearing Clerk on August 27, 1991 to fully resolve a CWA administrative action against the Florida Department of Corrections (DOC) for NPDES violations at the Lawtey Correctional Institute in Lawtey, Florida. The agreement requires payment of a $12,600 penalty and the implementation of a mitigation project consisting of a Radon survey and abatement work at Lawtey and other DOC facilities.

Region IV had cited the Lawtey facility for exceedances of its NPDES permit limits and assessed a Class I administrative penalty of $25,000 against the DOC. In exchange for a 50% reduction in the penalty, the DOC offered a series of environmentally beneficial projects. the Region accepted a Radon project valued at $35,000, which involves a survey to determine the levels of radon at DOC facilities. Those facilities with radon readings above recommended levels will undergo remediation to reduce the radon emissions.

Letterkenny Army Depot Federal Facility Compliance Agreement: On July 17, 1991, Region III and the Department of the Army entered into a multi-media Federal Facility Compliance Agreement (FFCA) regarding the Letterkenny Army Depot. The FFCA resolves numerous outstanding RCRA and CWA violations and is designed to bring the Depot into RCRA and CWA compliance. The FFCA also commits the Depot to perform a multi-media environmental audit of the Depot, and further establishes pollution prevention and waste minimization projects to reduce the production and disposal of hazardous wastes at the Depot.

Louisiana Land & Exploration (LL&E), Al: RCRA was the lead program with the UIC program in issuing an Order to LL&E for failure to notify in a timely manner, pursuant to RCRA, of benzene injections. The State cited LL&E for UIC and base RCRA violations and assessed a $25,000 penalty. LL&E owns an oil refinery in southern Alabama which injects wastewater into Class I UIC well. LL&E injection well was erroneously permitted as a Class II well (a well associated with production of oil and gas). LL&E injected benzene into the well on several occasions in amounts in excess of the Land Disposal Restricted Treatment Standards. EPA's RCRA program coordinated and led a multi-media inspection at the facility. As a result of the order, the facility then made process changes that rendered the waste non-hazardous.

Maine v. International Paper Co.: On April 12, 1991, the State of Maine entered into a consent

decree with the International Paper Company. Under the consent decree, International Paper agreed to pay a civil penalty of $885,000 to resolve multi-media violations of the State's environmental regulations. The State of Maine inspected International Paper's Jay, ME facility, the largest paper mill in the state, in 1988 and found numerous violations of the RCRA regulations, as well as of water, air, hazardous matter, and waste oil regulations. The consent decree requires International Paper to comply with all the applicable federal and state environmental regulations and provide testing, analysis, and monitoring of the site.

Monsanto - Pensacola, Fl. (RCRA/UIC): RCRA and UIC issued a Consent Agreement and final Order with an April 23, 1991 effective date to Monsanto for disposing hazardous wastes in a surface impoundment and the subsequent injection of the waste to a UIC well. The order assessed a total penalty of $29,300 for the RCRA and UIC violations. The Monsanto Chemical Company plant in Pensacola, Florida had a spill of maleic anhydride, a land disposal restricted waste on July 10, 1990. Because the material was discharged into Monsanto's surface impoundments, all of the material in the impoundments became a listed hazardous waste under RCRA's mixture rules. When the liquid from the impoundments was then injected into an underground injection well that was not permitted to receive listed waste, a violation of the SDWA occurred.

NASA Langley Research Center: On December 31, 1990, a Federal Facility Compliance Agreement (FFCA) was signed with the NASA Langley Research Center located in Hampton, VA. This FFCA addresses violations of both the CWA and the TSCA and represented the first multi-media FFCA completed in the Region. Since this facility is in the Chesapeake Bay drainage basin, the FFCA helped the Chesapeake Bay Program goal of bringing Federal facilities in the Chesapeake drainage basin into compliance with environmental laws by the end of December 1990.

Nelson Galvanizing: This facility, located in a densely populated area of New York City, was found to be operating with virtually no proper management of its hazardous feedstock and waste streams. Toxic chemicals were leaking into the ground, and there was almost no security to prevent persons from entering into the plant area. A multi-media inspection identified significant RCRA and EPCRA violations. A CERCLA removal order on consent was issued for clean up of the waste materials and reimbursement of EPA's oversight costs. The order was complied with. Administrative complaints citing RCRA and EPCRA violations were then issued, seeking penalties of about $1 million.

U.S. v. Neville Chemical Company: On September 30, 1991, EPA issued an administrative complaint to Neville Chemical Company, Pittsburgh, PA for violations of the chemical reporting requirements under §8 of the Toxic Substances Control Act. The complaint assessed a penalty of $78,000. On the same date, EPA issued a CAA administrative compliance order to Neville ordering the company to comply with the benzene Waste Operation National Emissions Standard for Hazardous Pollutants. This facility is one of the targeted sites in the Region's cross media risk-based enforcement project.

Oxy Oil & Gas USA, Inc., Tn.: - On September 15, 1991, EPA executed a CERCLA §106 Order on Consent with Oxy, the past owner and operator of a contaminated area in Copperhill, Polk County, Tennessee. Oxy has agreed to operate a wastewater treatment plant that treats acid mine drainage, deep mine waters, and contaminants from an abandoned tailings pond, until the influent to the plant meets water quality standards. Oxy will also conduct a hydrogeologic study of the area, install ground monitoring wells, and upgrade the wastewater treatment plant. Effluent limitations established by the State of Tennessee's NPDES permit program are included in the order as ARARs, and OXY has agreed to pay stipulated penalties if the effluent from the plant violates the ARARs.

Peach Metals Industries, Inc. Site (CERCLA/RCRA), Ga.: - On February 12, 1991, the Region issued a CERCLA 106 Unilateral Administrative Order requiring the removal of numerous 55-gallon drums and vats containing electroplating chemicals and other plating process wastes, and all associated contamination from an abandoned electroplating facility. The order also required the removal of all contamination contained in and about a surface impoundment and drainage ditch at the facility. Prior to the issuance of the order, EPA coordinated its enforcement action with the State of Georgia. Immediately after issuance of the EPA Order, the State issued an administrative enforcement order,

pursuant to its RCRA-equivalent statute, requiring the present owners to apply for a Closure/Post-closure RCRA Permit and to conduct corrective action(s) at the facility.

The corrective action(s) required by Georgia's order involved addressing groundwater contamination problems (releases from the surface impoundment primarily) from the disposal of hazardous wastes at the facility.

U.S. v. Precision National Plating Services, Inc: On September 30, 1991, Region III entered into an administrative order by consent pursuant to §1431 of the SDWA and §106 and §122 of CERCLA. The consent order settles an appeal to the Third Circuit Court of Appeals of an administrative order issued by EPA on February 11, 1991. Region III had issued its first combined SDWA and CERCLA unilateral administrative order to Precision National Plating Services, Inc. requiring remedial action for groundwater contamination at the company's Clark's Summit, PA facility. EPA's order found that underground drinking water was contaminated by chromium released from Precision National's facility. The appeal of the order will be withdrawn as part of the settlement.

U.S. v. SICPA, Inc.: On September 25, 1991, a consent order was issued assessing a penalty of $710,000 against SICPA Industries of America for violations of TSCA §5, §8, and §13 and EPCRA §313. SICPA's violations of TSCA include among other things, the failure to file a pre-manufacture notification before importing a new chemical substance on 54 days in 1984 and 1985 and failing to certify that these imports either complied with the requirements of TSCA or were not subject to TSCA. The agreed penalty for all TSCA violations reflected in the consent order, including those voluntarily disclosed to EPA during settlement negotiations, is $681,100, believed to be the largest penalty ever collected by Region III for violations of TSCA. The EPCRA penalty was $28,900.

STAR Enterprises (Joint SDWA/RCRA Order): On September 23, 1991, Region III issued an administrative order by consent under RCRA and the SDWA to STAR Enterprises, a joint venture partnership in which Texaco Marketing, Inc. has an interest, to address a massive release of oil that is migrating under a residential area in Fairfax, VA. The order constituted an arrangement for the removal of oil within the meaning of §311(c)(1) of the CWA. In order to obtain access for STAR to perform the work, it was necessary for the United States to file suit against the Stockbridge Community Association which owns an 8.3 acre parcel of property between the site from which the oil apparently originated and a community of residences. The Association had refused to grant access voluntarily because its members were angry about the spill and about the threats of explosion and drinking water contamination the spill presents. Access was granted by the Court on October 2, 1991, and work has commenced.

U.S. v. USX Corporation (Fairless Hills, PA): Region III sent USX a draft RCRA consent order for corrective actions and also issued administrative penalty complaints under the CWA and TSCA and the United States sent a demand for stipulated penalties for violations of the consent decree in U.S. et al v. USX Corp., in response to violations at USX's Fairless Hills, PA steel plant. The draft RCRA order seeks to initiate a process whereby USX would characterize the extent of hazardous waste deposition at the Fairless facility, evaluate the risks posed by that contamination, and prepare and evaluate alternatives for remediation. This site was one of the targeted sites in the Region's cross media, risk- based enforcement project.

U.S. v. York Metal Finishing Company and Edwin Walter (E.D. PA): The first Federal charges as a result of an investigation conducted by the Philadelphia Environmental Task Force were filed on September 11, 1991. York Metal Finishing Company and its owner Edwin Walter were charged with storing hazardous waste without a permit and with discharging polluted wastewaters containing cyanide into the Philadelphia sewer system. The defendants have agreed to pay $120,000 to reimburse the City and to pay a fine to the federal government of $100,000 for RCRA and CWA violations. In addition, the company's discharge to the sewer system has ceased and the illegally stored drums have been removed. Sentencing for the defendants has not been scheduled. The Philadelphia Environmental Task Force was formed to organize and coordinate Federal, state, and local resources to more effectively investigate and prosecute environmental crimes.

V. Building and Maintaining a Strong National Enforcement Program

Program Development

FY 1991 Pollution Prevention Activities

A strong enforcement program creates a climate of deterrence which forcefully encourages pollution prevention on the part of the regulated community. The costs of being in violation -- both the direct litigation costs as well as those resulting from remediation and civil or criminal penalties -- may be substantial. Compliance with stringent regulatory requirements creates an incentive for companies to find better ways to reduce and manage their waste.

Once the Agency has detected a violation and initiated an enforcement action, it can use its formal negotiations/settlement process to fashion pollution prevention conditions as part of the consent order or decree. During FY 1991, the Agency issued two policies relating to the systematic use of pollution prevention conditions in enforcement settlements: The Policy on the Use of Supplemental Environmental Projects in Enforcement Settlements (February 12, 1991) and the Interim Policy on the Use of Pollution Prevention and Recycling Conditions in Agency Enforcement Settlements (February 25, 1991). Both encourage the federal negotiators to incorporate pollution prevention conditions in both single and multi-media settlements when feasible, and lay out the boundaries and criteria the Agency will use to consider whether to seek and/or accept a pollution prevention activity as a basis for compliance and/or penalty mitigation activity. The Agency is interested in proposals that not merely transfer problems from one media to another, but is instead seeking genuine and permanent source reduction. **(For further information contact OCAPO)**

National Enforcement Training Institute (NETI)

Section 204 of the Pollution Prosecution Act of 1990 mandated that the Administrator establish the National Enforcement Training Institute within the Office of Enforcement to train Federal, State, and local lawyers, inspectors, civil and criminal investigators, and technical experts in the enforcement of the Nation's environmental laws. During FY 1991, the Agency took several steps to meet that statutory mandate.

An Advisory Council consisting of 38 representatives from EPA (Headquarters and the Regions), the NEIC, DOJ, State and local governments, and academia was formed to focus on significant enforcement training issues such as developing alternative funding approaches to assure that the NETI is self-sustaining, communications, outreach/delivery, and adequacy and effectiveness of enforcement curricula.

A key element of the NETI's training mission is the development and delivery of basic enforcement training with a multi-disciplinary, multi-media perspective. An agenda for this course was prepared and circulated for comment. New training on the Clean Air Act Amendments, RCRA, the Non-APA Consolidated Rules (Part 26, and an Enforcement Workshop for Lab Personnel were developed and delivered. Existing generic enforcement skills courses covering inspections, criminal investigations, financial case analyses, technical and scientific case development, information systems, enforcement communications, enforcement negotiations, and administrative practices and procedures were brought under the NETI "umbrella." Over 1800 enforcement personnel at the Federal, State, and local levels were trained in more than 60 courses delivered at EPA Headquarters and the Regions, the NEIC, and FLETC. **(For further information contact OCAPO)**

Addendum on Multi-Media Enforcement

The Office of Enforcement drafted an Addendum on Multi-Media Enforcement to the Policy Framework on State/Federal Enforcement Agreements (1986). This Addendum describes EPA's approach to multi-media enforcement and encourages, but does not require, States to undertake multi-media enforcement; lays out how EPA will build state capacity; outlines general processes for advance notice and consultation including strategic planning, enforcement cluster planning, and case screening. Most importantly, the Addendum lays out principles for multi-media enforcement by EPA in delegated or approved states that reflect the criteria in the Policy Framework. Members of the Steering committee on the State/Federal Enforcement Relationship, EPA's Programs Offices and Regions commented extensively on this draft in the last quarter of FY 1991. OE will issue the final Addendum during FY 1992. **(For further information contact OCAPO)**

Contractor Listing Policy on The Role of Corporate Attitude, Policies, Practices and Procedures

EPA issued a policy statement clarifying the role of corporate attitude, policies, practices and procedures in determining whether the condition giving rise to a criminal conviction has been corrected. This policy has been applied in several recent cases. Such policies, practices and procedures will always be relevant when a facility that has been listed as the result of a criminal conviction requests removal from the List. The significance of these factors will depend upon the degree of intent involved in the violation. Cases involving fraud, concealment, falsification or deliberate deception are the most serious.

Factors which EPA will consider relevant include the existence or lack of appropriate and effective programs to prevent and detect environmental problems and violations of law; appropriate and effective training programs; effective communication of standards for employees, and enforcement of those standards; and appropriate and effective corrective action (including environmental audits in appropriate cases) after a problem or violation has been detected. **(For further information contact OCAPO)**

Penalty Calculation Models (BEN and ABEL)

The BEN model, which is used to calculate a violator's economic gain from noncompliance, was used over 4,000 times by the EPA and 36 States. It was used in two States to set all time record civil penalties in two enforcement actions. It is estimated that the ABEL model, which is used to analyze violators' claims that they cannot afford to pay for compliance or penalties, was used in a similar number of instances. The Office of Enforcement provides consultation help on inquiries and conducts training courses in the Regions, Headquarters and one local government enforcement program **(For further information contact OCAPO)**

Federal Facility Enforcement

In 1991, the Deputy Administrator approved an OE reorganization which created the new Office of Federal Facilities Enforcement (OFFE). This reorganization consolidated the Office of Solid Waste and Emergency Response's (OSWER's) Federal facilities program with those Federal facility-related functions previously assigned to the Office of Federal Activities (OFA). OFFE is charged with securing compliance by Federal agencies with all environmental laws. The creation of OFFE reflects EPA's commitment to multi-media enforcement of environment laws against Federal facilities.

The Federal government manages a vast array of industrial activities at its 27,000 installations. These activities present unique management problems from the standpoint of compliance with Federal environmental statutes. Although Federal facilities are only a small percentage of the regulated community, many Federal installations are larger and more complex than private facilities and often present a greater number of sources of hazardous waste requiring cleanup. During FY 1991, a total of 15 Federal agencies reported a combined budget of approximately $2.9 billion to be devoted to environmental programs in the various media areas. This amount, a new record, was almost double the FY 1990 record of $1.5 billion.

EPA has continued to encourage compliance at Federal facilities through a vigorous enforcement and outreach program. Nationwide, over 820 inspections were conducted at Federal facilities during Fiscal Year 1991. The cornerstone of the enforcement program dealing with the 116 Federal facilities listed on the National Priorities List (NPL) is the negotiation of an enforceable Interagency Agreement (IAG) under CERCLA at each facility, with specific schedules for cleanup of the hazardous wastes at the sites located on those installations. During FY 1991, EPA negotiated 24 agreements under CERCLA to accomplish required hazardous waste cleanups, for a total of 85 IAGs signed to date with other Federal agencies. Additionally, to date EPA has signed 70 Federal Facility Compliance Agreements (FFCA's) and issued 18 Unilateral Orders and Administrative Consent Orders with other Federal agencies under statutes other than CERCLA.

EPA took several precedent setting actions in Federal facilities cases during FY 1991. One of the most significant of these came as a result of a stipulated penalty dispute at the Department of Energy (DOE) Fernald facility. This was the first time a stipulated penalty dispute under a CERCLA IAG was elevated all the way to the EPA Administrator for resolution. In May 1991 the dispute was settled. The settlement provided that DOE pay $100,000 in fines and spend $150,000 on extra environmental projects at Fernald. This settlement received national attention by the Federal regulated community.

Another difficult and complex negotiation with DOE covered RCRA violations at the Rocky Flats Plant in Colorado. The agreement, signed in May 1991, requires DOE to take steps to come into and maintain compliance with the land disposal restrictions ("land ban") provisions of RCRA. In this case, in lieu of stipulated penalties, a system was devised whereby EPA will be able to cite violations of the agreement and declare the amount of the penalty that would have been assessed against a private party in similar circumstances. DOE, in turn, must report the violation and the penalty amount to Congress.

EPA also negotiated a federal facility compliance agreement to address TSCA violations at the DOE gaseous diffusions plants in Ohio, Kentucky, and Tennessee. Also in the TSCA area, EPA negotiated a TSCA compliance agreement with the Navy to address the large number of Naval vessels contaminated with PCBs.

On September 13, 1991, EPA signed a Federal Facility Interagency Agreement under CERCLA Section 120 with the Department of Interior, the Department of the Army, and the Illinois Environmental Protection Agency, which provides for remedial action at the Crab Orchard National Wildlife Refuge. The agreement is the first to date between the Department of the Interior and EPA pursuant to CERCLA Section 120 and it is one of the first, if not the first CERCLA Section 120 agreement to include more than one other federal agency as a PRP. It is also the first CERCLA Section 120 agreement to provide for private party participation in remedial activities pursuant to Sections 120 (e) (6) and 122 of CERCLA.

The EPA Federal facilities program also represented the Agency on the Defense Environmental Response Task Force, an interagency group tasked with reporting to Congress under the Base Closure and Realignment Act of 1988. On November 5, 1991, the Task Force submitted its report, which addressed:

a) ways to improve interagency coordination within existing laws, regulations, and administrative policies; and b) ways to consolidate and streamline, within existing laws and regulations,the practices, policies, and administrative procedures of relevant federal and state agencies in order to expedite response actions. EPA is continuing the base closure discussion. To support this effort, EPA established a formal internal workgroup on base closure issues during FY 1991.

EPA also worked during FY 1991 to develop a consistent approach to the environmental issues associated with the closure of military bases. The initial focus of this effort was on Pease Air Force Base in Portsmouth, N.H., where a proposal has been made to redevelop a portion of the base as an aircraft maintenance facility. The EPA Federal facilities program facilitated the development of an agency position that would enable the base to be redeveloped in an environmentally sound manner while at the same time ensuring that the Air Force can discharge its responsibilities under CERCLA.

EPA continues to recognize that it is far more efficient to prevent pollution problems at Federal installations through educational outreach before those problems actually occur. The Agency has continued to seek fundamental change in the behavior and understanding of Federal agency personnel regarding responsibilities in the environmental arena. To promote this change, EPA has continued to coordinate a number of important interagency educational and outreach efforts in the enforcement area to accomplish this goal. For example, during FY 1991 EPA continued to host the highly successful EPA/Federal Agency Environmental Roundtable, where representatives of approximately 50 Federal agencies meet monthly to exchange information. At the Roundtable, EPA media experts discuss existing or proposed regulatory approaches affecting compliance by the other Federal agencies. The Roundtable also provides a forum for an exchange of technological information between agencies.

EPA also continued a high-level dialogue with DOD and DOE to improve protection of the environment at installations under their control. This was accomplished through the efforts of a steering committee consisting of the Deputy Assistant Secretary of Defense (Environment), the Director of the Office of Environmental Restoration and Waste Management at DOE, the Deputy Assistant Administrator for Federal Facilities Enforcement at EPA, and seven workgroups consisting of subject matter "experts" from each of the three agencies. These workgroups are developing position papers and approaches to remove barriers to developing effective compliance and cleanup programs. These position papers will be coordinated throughout EPA.

To facilitate close coordination throughout the Agency on Federal facilities issues, the EPA Federal facilities program established a "Leadership Council" consisting of headquarters representatives, regional officials from program offices and regional Counsels as members. The Leadership Council met for the first time during FY 1991. It has focused initially on policy matters and strategic initiatives related to cleanup programs at Federal facilities. Priority topics included oversight, accelerated cleanups, technology development and base closure.

Also during FY 1991, OFFE began a pivotal national dialogue on Federal Facility Environmental Management. The participants in this effort, facilitated by the Keystone Center, met several times during FY 1991. This multi-party group includes representatives from DOD, DOE, EPA, State and tribal governments,environmental and public interest groups. The group has focused on the development of a consensus concerning priority setting for the cleanup of federal facilities. Its deliberations will continue in FY 1992. **(For further information contact OFFE)**

National Reports on FY 1991 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. **(For further information contact OCAPO)**

National Penalty Report

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. **(see Appendix)**

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 1991 report is scheduled for publication in May 1992. **(For further information contact OCAPO)**

Enforcement Four-Year Strategic Plan

As part of EPA's Agency-wide strategic planning process, the Office of Enforcement developed a comprehensive enforcement plan with both media-specific and cross-media components. The Enforcement Four-Year Strategic Plan outlines the capabilities which will be needed to enhance enforcement efforts for the future. Several of these efforts are now being implemented on a pilot basis, while others will be fully developed over the next several years. The Strategic Plan is a sound guide for the Agency's future enforcement efforts. **(For further information contact OCAPO)**

Enforcement in the 1990's

The decade of the 1990's represents a new era in environmental enforcement as the Federal, State and local governments and citizen's groups better combine their resources to vigorously enforce the nation's environmental laws. The strategic planning reflected in the Enforcement Four-Year Strategic Plan set themes and directions for the Agency's enforcement program. In FY 1991, the Office of Enforcement, other EPA personnel in Headquarters and the Regions, and, in some instances, non-EPA personnel, produced reports, collected in the Enforcement in the 1990's Project, which complement the earlier Strategic Plan. These final reports provide recommendations for action in six discrete areas: measures of success, the State/Federal relationship, environmental rulemaking, innovative enforcement techniques, compliance incentives, and the role of local governments.

The 1990's Project reports establish an agenda that points in new directions and identify numerous action steps for EPA staff at Headquarters, the Regions, the States, the local governments, and citizens. EPA has begun to implement many of these, and more will be undertaken in the near future. The Enforcement in the 1990's Project provided valuable, practical ideas whose implementation will strengthen significantly the Agency's enforcement program. **(For further information contact OCAPO)**

Intergovernmental/International Enforcement Activities

International Environmental Enforcement Training

Environmental issues have become a global concern and many countries are developing requirements to protect the environment. Without a strong program to ensure compliance with those requirements and deter violators, however, environmental requirements will not achieve their intended results.

In FY 1991, the U.S. Environmental Protection Agency, in conjunction with Poland's Ministry of Environmental Protection, Natural Resources and Forestry, the Katowice Ecological Department and the Netherlands Ministry of Housing, Physical Planning and Environment, developed a three-day environmental enforcement training course to address these issues. This course was designed for international use by many countries and cultures. The goal of the course is to develop a replicable training program on environmental enforcement principles for any country or locale interested in enhancing compliance and achieving results. By introducing policy-makers, including government officials, industry and academic leaders, and private citizens, to essential elements in the design of enforcement programs, the course will create a forum within which officials can design their own environmental management approach, write enforceable requirements and structure their own compliance monitoring and enforcement programs. **(For further information contact OCAPO)**

Mexican Border

In FY 1991, EPA released the Integrated Environmental Plan for the U.S.-Mexico Border Area for public comment. The plan is currently in the process of being revised. The integrated plan for the border is part of a larger plan by which the economies of Canada, the U.S. and Mexico will be further united in the North American Free Trade Agreement (NAFTA). The NAFTA will incorporate the integrated plan for the border as part of the Administration's commitment to help strengthen environmental protection on both sides of the border.

SEDUE (Mexico's EPA) and EPA are jointly responsible for administering the plan and have made commitments to initiate cooperative environmental protection, monitoring and enforcement activities in the coming years. Among the priorities identified in the plan are: control of municipal and industrial discharges to surface waters; tracking the movement of hazardous waste and the proper disposal of waste to prevent surface or subsurface water contamination; controlling and reducing air pollution sources; and development of joint contingency response plans for spills of hazardous materials. These initiatives will be implemented through the cooperative efforts of SEDUE, EPA and the states as embodied in the Border plans and its annexes. **(For further information contact OE-Water)**

Clean Air Act

Inspector Training Delivery Demonstration

EPA signed a multi-year, cooperative agreement with Rutgers University at Cook College and the University of Medicine and Dentistry of New Jersey Environmental and Occupational Health Sciences Institute to demonstrate and deliver quality compliance inspector training on a quarterly basis to State, local, and EPA compliance staff. The training will fulfill requirements of EPA Order 3500.1. While this training is not required of State/local personnel, State/local officials have identified the need for systematic training and indicated a strong desire to participate. Non-agency personnel may

attend if space is available. The agreement is a turn-key operation requiring communication and marketing, training delivery, and evaluation functions. **(For further information contact Stationary Source Compliance Division (SSCD))**

Lead NAAQS Attainment Strategy

The Lead NAAQS Attainment Strategy is part of the Agency Lead Strategy which is intended to lower population exposure to lead. To accomplish this goal, the Office of Air Quality Planning and Standards (OAQPS) identified 29 lead sources in non-attainment areas. These sources were inspected to determine compliance status. Enforcement actions were initiated against eight sources for violations of SIP requirements and ambient air quality standards. To ensure accurate recording of data, OAQPS has positioned two monitors at each source to monitor the ambient air quality. In addition to the monitoring efforts, OAQPS is recommending changes to SIPs in order to provide greater enforceability in regulations. **(For further information contact SSCD)**

Rule Effectiveness

The Stationary Source Compliance Division has been working to revise the Rule Effectiveness protocol. Revisions stress State involvement in the program and address calculation methods and application of the results of the studies to challenge the 80 percent effectiveness default value in the ozone strategy. The national protocol document should be issued early in FY 1992. **(For further information contact SSCD)**

Compliance Monitoring Strategy

SSCD issued the Revised Compliance Monitoring Strategy (CMS) on March 29, 1991. The revised CMS provides 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 demonstrated that a closer coordination and exchange between the Region and State was 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 requires additional reporting activities and responsibilities. Additional reporting 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. These efforts will help build a stronger State-Federal partnership. In addition to reporting activities and responsibilities, a network of CMS Regional Representatives has been established to ensure successful implementation of the strategy. **(For further information contact SSCD)**

Early Reductions - State Delegation

Under the Early Reductions Programs, a source must submit an enforceable commitment to EPA or its delegatee, pledging to achieve the required emission reductions to qualify for a six year extension of compliance with MACT.

A draft "Early Reductions Program; State Delegation Manual' was prepared to combine some of the requirements currently used by NSPS, NESHAP, and PSD programs. Recommendations are provided

on the criteria a Regional Office should consider in evaluating a State's request for delegation. **(For further information contact SSCD)**

Significant Violator/Timely and Appropriate Guidance

A substantial revision to the Agency's Significant Violator (SV) and Timely and Appropriate Guidances has been under development during the past two years to: (1) encourage a greater degree of team-building and cooperative resolution of Significant Violators by all responsible agencies, (2) encourage agencies to give priority attention to those violators which they believe are most environmentally important; (3) permit an increased degree of agency flexibility in identifying and resolving Significant Violations and, (4) provide a more accurate picture of the time and resources necessary to bring and maintain major sources into a state of continuous compliance.

The guidance specifically defines what a Significant Violator is and gives agencies two options in resolving them. They may resolve all Significant Violators or prioritize the Significant Violators with the use of a checklist provided in the guidance. The violators would then be resolved according to their ranking. The guidance is expected to be effective in mid FY 1992. **(For further information contact SSCD)**

Volatile Organic Compound (VOC) Technical Agenda Activities

Ten VOC "Technical Agenda" activities were accomplished by the Stationary Source Compliance Division during FY 1991. These projects were selected after surveys of the Regions identified where guidance and support were needed to assist Regional and State/local agencies enforce the air compliance program. The projects consisted of compilation of data bases and policy documents, development of inspection procedures and clarification of test methods so that the compliance status of VOC sources could be determined and appropriate, consistent enforcement follow-up activity determined. **(For further information contact SSCD)**

Stratospheric Ozone Protection Compliance Program

Title VI of the Clean Air Act Amendments of 1990 expands the restrictions on consumption and use of chemicals that deplete the stratospheric ozone layer; adds new chemicals to the list of those already regulated, and; accelerates the phaseout of CFCs and halons. The Amendments add carbon tetrachloride, methyl chloroform and ten previously unregulated CFCs to the list of chemicals8 controlled by the Rule to Protect the Stratospheric Ozone. The Agency built upon the existing program to ensure compliance among producers and importers of the newly regulated chemicals. The compliance program relies upon the submission and analysis of quarterly reports, production and shipping records, information from U.S. Customs and inspections to monitor compliance. **(For further information contact SSCD)**

Clean Air Act - Mobile Sources

Enforcement Provisions for Reformulated Fuels, Anti-dumping and Oxygenated Fuels of the Clean Air Act Amendments of 1990

The Office of Mobile Sources (OMS) established workgroups to draft the new enforcement provisions, through negotiated rulemaking, prescribed by the Clean Air Act Amendments of 1990. These enforcement provisions include: reformulated gasoline regulations, anti-dumping regulations, and oxygenated gasoline guidelines to be implemented through a State Implementation Plan (SIP). The purpose of the reformulated gasoline regulations is to reduce VOC and toxic emissions by at least 15% in

the nine most severe ozone non-attainment areas with the option for many other areas to enter the program as well. The purpose of the anti-dumping regulations is to prevent the dumping of "dirty" gasoline components removed in the reformulated areas into ozone attainment areas that would degrade air quality from levels below that resulting from the use of gasoline produced in 1990. The purpose of the oxygenated gasoline guidelines is to reduce carbon monoxide (CO) emissions in 39 CO non-attainment areas throughout the country during the winter months by the addition of oxygenates (e.g., alcohols and ethers) to gasoline. Enforcement of the oxygenated program will be handled by the respective state, rather than by the EPA. **(For further information contact FOSD)**

Volatility Enforcement Program

Last year OMS increased the efficiency of field inspectors by equipping each with a reliable and accurate instrument for quickly measuring gasoline volatility in the field. This eliminated the need to ship over 9,000 samples (90%) for enforcement analysis to the laboratory in Ann Arbor and resulted in an enormous cost savings. This new device enabled inspectors to inform facility operators on site of potential violations and advise that the product be removed from distribution or sale until it was brought into compliance. More importantly, EPA resources were able to reach a much larger segment of the regulated industry. **(For further information contact FOSD)**

Clean Water Act

Chesapeake Bay Enforcement Initiative

Upon assuming the chair of the Chesapeake Bay Executive Council in December 1990, EPA Administrator Reilly announced two concrete goals: 1) reducing the Clean Water Act significant non-compliance (SNC) rate of major dischargers in the Bay watershed by 50% by the end of calendar 1991 and 2) bringing all Federal facilities located in the Bay watershed into full compliance with all environmental statutes by the end of 1991. Through an enhanced enforcement effort by EPA Region III and the Bay States of Maryland, Pennsylvania, and Virginia, the 50% reduction in the SNC rate was achieved by December 1991, and nearly all the Federal facilities had been compelled to fully comply. Region III and the Bay States also executed a long-term strategy for increased enforcement in the Bay watershed. **(For further information contact OE-Water)**

Wetlands Penalty Policy

On December 14, 1990, EPA issued the final "Clean Water Act Section 404 Civil Administrative Penalty Settlement Guidance and Appendices." The document provides guidance to EPA staff on calculating an appropriate settlement penalty for Class I or Class II Section 404 administrative penalty proceedings. The guidance considers all of the statutory penalty factors and contains a matrix for environmental significance. The statutory criteria portion of the policy can also be used to calculate judicial settlement amounts. Use of the Guidance will promote more nationally-consistent settlement penalties for Section 404. **(For further information contact OE-Water)**

Publication of Proposed Non-APA Penalty Procedures

On July 1, 1991, EPA published in the Federal Register a proposed rule for assessing administrative penalties under several statutes without recourse to the Administrative Procedure Act. The proposal encompasses actions under the NPDES and Oil Pollution Act sections of the Clean Water Act, the Underground Injection Control provisions of the Safe Drinking Water Act, as well as elements of CERCLA and EPCRA. The Agency also announced its plan to use these procedures as guidance for the

Clean Water Act sections before the rule is promulgated as final. EPA is now considering the public comments received on its proposal. **(For further information contact OE-Water)**

EPA/Army Guidance on Judicial Enforcement Priorities

During FY 1991, EPA and the Department of the Army jointly issued guidance to the EPA Regions and Army corps of Engineers districts on judicial enforcement priorities for unauthorized discharges of dredged or fill material to waters of the United States in violation of the Clean Water Act. The stated purposes of the guidance are: encouraging consistency in the manner in which EPA and the Corps enforce the Act's requirements nationally, protecting the integrity of the Section 404 regulatory program, and directing limited program resources in a manner that produces the most beneficial environmental results. **(For further information contact OW-Office of Wetlands, Oceans, and Watersheds-Wetlands Division)**

Implementing the Regulatory Definition of Significant Noncompliance (SNC) for Industrials Users (IU)

In July, 1991, the EPA promulgated modifications to the General Pretreatment Regulations (40 CFR 403) which included a regulatory definition of SNC for IUs. In response to comments and questions from the regulated community, the EPA issued a policy statement which clarifies how the definition is to be properly implemented. The policy clearly establishes a rolling quarters evaluation of SNC, similar to the NPDES direct discharge program, and identifies how POTWs and EPA Regions are to use effluent data in determining SNC. This policy promotes parity in how IU SNC is determined and allows the EPA to more efficiently assess the implementation of the National Pretreatment Program. **(For further information contact OWEC)**

Guidance on Division of CWA Administrative Penalties with State or Local Governments

On September 27, 1991 EPA issued to Regions, guidance on the issue of whether the 1987 Clean Water Act (CWA) authorizes EPA to divide administrative penalties with State or local governments. The Agency had previously issued guidance on the subject of dividing judicial penalties with the States (October 30, 1985). Based on a review of the relevant statutes (the CWA and the Miscellaneous Receipts Act), the guidance finds that no authority exists under the CWA administrative penalty authority for EPA or an administrative law judge to award any portion of an administrative penalty to a State or local government. The CWA limits the administrative assessment of penalties to penalties for violations of Federal law. Further, the Miscellaneous receipts Act requires that penalties finally assessed by an administrative law judge must be paid only to the United States Treasury. **(For further information contact OWEC)**

Revised Pretreatment Compliance Inspection Checklist

On September 27, 1991, the final revised Pretreatment Compliance Inspection (PCI) checklist was transmitted to the Regions. A revised PCI guidance document and a question-by-question PCI reference guide were also transmitted with the checklist. This package was developed to replace the PCI section of the Pretreatment Compliance Inspection and Audit Manual for Approval Authorities, issued July 1986. The PCI checklist was revised to reflect the considerable evolution of the pretreatment program in the past five years. The revisions ensure that the PCI would continue to be a useful tool in accurately assessing POTW pretreatment monitoring and enforcement activities. In addition, emphasis on the interview section of the PCI checklist was reduced and the format of the file review section was revised

to encourage the inspector to better document problems. Regions and States are generally expected to begin using this revised PCI checklist in FY 1992. **(For further information contact OWEC)**

Pretreatment Enforcement Initiative

On May 1, 1991, EPA and the U.S. Department of Justice (DOJ) announced that judicial enforcement actions were filed that day against the City of Los Angeles, four other public entities, and six companies to address pretreatment violations. Those Actions were part of an ongoing Federal and State effort that addressed, through formal enforcement actions, pretreatment violations by over 250 other public entities and companies since late 1989. In 1989, EPA and DOJ launched the first phase of their pretreatment enforcement initiative against public entities which had failed to implement and enforce pretreatment requirements. EPA also announced that a $3,100,000 settlement with Pfizer, Inc. (of Easton, PA) had been lodged in court; this constituted the largest federal civil penalty which had been obtained (up to that date) under the Clean Water Act. **(For further information contact OWEC)**

NPDES and Pretreatment Inspector Training and Development

The Water Enforcement Division of OWEC presented a variety of inspector training during FY 1991. NPDES/Pretreatment program specific minimum training was presented nine times (Dallas, Denver, Cleveland, Boise, New York, Atlanta, San Francisco, Philadelphia, and Trenton). Pretreatment compliance inspection training was present five times (Denver, Buffalo, New Paltz, Philadelphia, and Boston). Two specialized training workshops were held: (1) to conduct diagnostic inspections in Florida, and (2) for offshore oil facility compliance evaluation in New Orleans. Approximately 300 EPA and State inspectors received training. More than thirty on-the-job-training (OJT) exercises held as part of compliance inspections conducted by OWEC contractors. A new class for compliance evaluation inspections (CEIs) was developed.

Five inspector training modules which address NPDES Overview, Legal Issues, Laboratory Analysis, Biomonitoring, and Sampling Procedures were presented in workshops. The sampling module was completed in December 1990 and the others earlier in FY 1990. Drafts of the Diagnostic Inspection Manual and Training Guides for Students and Supervisors were prepared during the year. A 16 minute training video on "Inspecting a Parshall Flume" was also completed. **(For further information contact OWEC)**

Safe Drinking Water Act

Underground Injection Control Initiative

On July 18, 1991, EPA announced the 5X28 Class V Proposed National Administrative Orders on Consent with ten major oil companies, (Amoco, Ashland, BP, Exxon, Marathon, Mobil, Shell, Sun Oil, Texaco, and Unocal). On September 13, 1991, the ten National Administrative Orders on Consent were issued in final. The Orders require extensive inventory information, cessation of injection, waste minimization, extensive closure, an oversight contractor for ten percent of the closures, and penalties totaling more than $800,000 for the ten oil companies. This action will lead to the permanent closure of over 1800 service station bay drain wells nationwide which had been receiving automotive-related wastes such as oil, anti-freeze, solvents, etc. This enforcement action was the first of its kind under the Underground Injection Control (UIC) Program in its use of national administrative orders to address oil company operations in 49 states and territories. **(For further information contact OE-Water)**

Resource Conservation and Recovery Act

The Revised RCRA Civil Penalty Policy

EPA issued a new RCRA Civil Penalty Policy (RCPP) in October, 1991. A 1989 Inspector General Report and a 1990 Agency review of the overall RCRA program, the RCRA Implementation Study (RIS), had concluded that the prior 1984 penalty policy did not create a sufficient deterrent effect and failed to adequately reflect the gravity and duration of violations. The new RCPP is designed to ensure that penalties reflect the gravity and duration of violations and requires that economic benefits of noncompliance (EBN) be recouped using the BEN computer model. The RCPP also includes mandatory penalty documentation requirements. Further, for the first time, the RCPP will apply to civil judicial settlements, in addition to administrative complaints and settlements.

Under the 1990 RCPP, the penalty for a violation is calculated in four steps: (1) determining the appropriate gravity based penalty (GBP) based on the "probability of harm" posed by a violation and its "extent of deviation from regulatory requirements"; (2) calculating a multiday component based on the duration of the violations (if appropriate); (3) adjusting the overall GBP based on case-specific factors; and (4) calculating and recapturing the EBN obtained by the violator.

A critical change in the new RCPP concerns the assessment of multiday penalties. Under the old penalty policy, multiday penalties were in assessed in rare, "egregious" cases only. The 1990 RCPP creates three classifications of violations based on the relative gravity of the violations. These multiday penalty classifications, which apply to days 2-180 of continuing violations, are "mandatory," "presumed," and "discretionary." Multiday penalties for days 180+ of all violations are discretionary.

To facilitate the implementation of the RCPP, the Office of Enforcement (OE) and Office of Waste Programs Enforcement (OWPE) developed a joint RCPP training course. OE and OWPE presented the course to all Regional EPA offices, Headquarters, the Department of Justice, and State representatives.

While the new RCPP has been in effect throughout FY 1991, EPA has continued to litigate and settle a significant number of older cases under the 1984 policy. Nevertheless, preliminary indications are that the RCPP is resulting in significantly higher penalties (see Section VI, pp. _ - _). Agency data show that in FY 1990, prior to the Revised RCPP, the number of proposed administrative actions or complaints totaled 122 with proposed total penalties of $18.8 million. The highest penalty collected was $550,000. After implementation of the revised RCRA Civil Penalty Policy, the number of proposed administrative actions totaled 99 with proposed total penalties of $56.7 million. The highest penalty collected was $3.3 million. EPA anticipates penalty totals in future years to continue to exceed pre-RCPP levels. **(For further information, contact OE-RCRA or OWPE).**

Pollution Prevention

The Office of Solid Waste and Emergency Response (OSWER) has been working to develop a pollution prevention action plan for RCRA, including an enforcement section which recognizes the need for several activities, including training for inspectors and guidance on the use of pollution prevention in enforcement settlements. OSWER developed a policy on the "Role of the RCRA Inspector in Promoting Waste Minimization," which was released in September, 1991. The policy provides RCRA inspectors with extensive background on pollution prevention and its relation to RCRA inspections, minimum training requirement for inspectors before conducting an inspection for pollution prevention and an outline of the inspectors' role in outreach. **(For further information contact OWPE)**

Air Emissions Training

The RCRA Enforcement Division provided training on the first phase of the Air Emission Rule to RCRA field inspectors/enforcement personnel in all ten Regions. This is the first rule under RCRA that requires TSDFs to regulate air emissions from certain types of equipment. **(For further information contact OWPE)**

Land Disposal Restrictions Handbook/ Land Disposal Restrictions

OWPE revised the LDR Handbook to include the latest LDR rule development. The handbook is designed to help the regulated community understand and comply with land disposal restrictions. This handbook was distributed in February, 1991. OWPE up-dated the original LDR Enforcement Strategy to include all of the latest LDR determinations. The strategy is intended to help the EPA Regions' and States' RCRA Enforcement Programs establish work load and violation priorities. **(For further information contact OWPE)**

Organic Toxicity Characteristic (TC) Workshop Rule Enforcement Strategy and Workshops

OWPE developed and issued a strategy on enforcing the requirements of the new TC Rule. Workshops on enforcing the TC Rule were held in ten regions and two states. **(For further information contact OWPE)**

Enforcement Policy Compendium

OWPE updated and significantly expanded RCRA enforcement policy compendium for use by Headquarters, Regional and State enforcement staff. The three-volume compendium contains guidance documents and other pertinent information, along with an extensive listing of other applicable documents not included in the compendium. **(For further information contact OWPE)**

RCRA Inspection Information Pamphlets

Two pamphlets were developed which describe three different types of RCRA compliance inspections; Compliance Evaluation Inspection; Compliance Groundwater Monitoring Evaluation; and Operations and Maintenance Inspection. The pamphlets are designed to educate owner/operators of facilities that are subject to such inspections on what is being evaluated, what EPA authority is, and what follow-up action might be expected. **(For further information contact OWPE)**

Superfund

Alternative Dispute Resolution Enforcement Program

A highly successful pilot program in Region V in the use of alternative dispute resolution (ADR) techniques in Superfund actions made major strides toward meeting Agency goals of implementing ADR into Agency practice. The pilot demonstrated the transaction costs benefits to the Agency of using mediation professionals to assist in the resolution of complex Superfund actions. The Agency is currently expanding this pilot to other Regions for use in additional Superfund actions.

In the Fall of 1990, the Deputy Assistant Administrator for Enforcement presented testimony before Congressional committees in support of passage of the Administrative Dispute Resolution Act

(subsequently enacted as Public Law 52-101). In furtherance of the Act, the Assistant Administrator for Enforcement has been appointed by the Administrator as Agency Dispute Resolution Specialist with responsibility for statutory requirements. The Office of Enforcement has established an Agency-wide task force to oversee implementation of the Act. **(For further information contact OE-Superfund)**

Model RD/RA Consent Decree

On July 8, 1991, EPA published in the Federal Register an Interim Model CERCLA Consent Decree for Remedial Design/Remedial Action Settlements. This document provides model language for drafting RD/RA consent decrees for settlements pursuant to CERCLA sections 106, 107 and 122. The model language standardizes CERCLA consent decrees and will expedite settlements by reducing the time and resources consumed by RD/RA settlement discussions. **(For further information contact OE-Superfund)**

Residential Homeowner Policy

On July 3, 1991, EPA issued a guidance document entitled "Policy Towards Owners of Residential Property at Superfund Sites", signed by Assistant Administrators of the Office of Solid Waste and Emergency Response and the Office of Enforcement. The policy provides guidance for Regional staff regarding the Agency's policy toward residential homeowners whose activities have not led to a release or threat of release of hazardous substances, resulting in the taking of a response action at the site. **(For further information contact OE-Superfund)**

Lender Liability

On June 24, 1991, EPA published in the Federal Register a proposed rule interpreting the "secured creditor" exemption in CERCLA. The proposed rule specifies a range of activities that a security holder can undertake without incurring Superfund liability. The rule also provides that a security holder can foreclose on contaminated property without necessarily voiding the exemption, provided that the foreclosing lender also seeks to sell the property within a reasonable period of time so as to recoup the loan loss. In addition, the proposed rule provides protection for federal entities such as the Resolution Trust Corporation that acquire property involuntarily. The Agency received approximately 350 public comments on the proposed rule and is in the process of finalizing the rule. **(For further information contact OE-Superfund)**

Toxic Substances Control Act

TSCA Section 8(e) Compliance Audit Program (CAP)

During FY 1991, EPA launched the TSCA Section 8(e) Compliance Audit Program (CAP), a first-of-its-kind voluntary audit program designed to achieve the Agency's goal of obtaining any outstanding Section 8(e) substantial risk information, and provide maximum encouragement for companies to voluntarily audit their files. Section 8(e) applies to any person who manufactures, imports, processes, or distributes a TSCA-covered chemical substance or mixture and who obtains new information that reasonably supports a conclusion that the substance or mixture presents a substantial risk of injury to health or the environment. Under the CAP, companies agreed to register for the program, conduct a corporate-wide audit for TSCA 8(e) reportable information, and pay stipulated penalties for each study reported up to an overall $1,000,000 ceiling. The CAP sets forth guidelines that identify - in advance - EPA's enforcement response, and allow companies to assess liability prior to electing to participate. Approximately 125 companies (excluding subsidiaries) registered for the CAP which is

not scheduled to conclude until late 1992 or early 1993. The CAP program follows closely the approach taken by EPA in the settlement of the TSCA Section 8(e) case involving Monsanto Corporation, in which Monsanto paid a record penalty of $859,000 for such violations. **(For further information contact OE-Toxics Litigation Division (TLD))**

OSHA-EPA Enforcement Memorandum of Understanding

A joint OSHA-EPA Enforcement Workplan for FY 1991 was signed by the EPA Assistant Administrator for Enforcement and the Administrator of OSHA. The workplan, and supplemental agreement covering cross-agency training and data exchange, implement the November 1990 Enforcement Memorandum of Understanding signed by Administrator Reilly and former Secretary of Labor Elizabeth Dole. The work implements ongoing efforts to inspect petrochemical facilities as part of the OSHA "PetroSEP" initiative, lead reduction initiative, and cross-agency tip and complaint reports. In addition, EPA is exploring the possibility of having OSHA monitor compliance with TSCA Section 5(e) consent orders which require manufacturers of new chemicals to implement a number of protective measures for their employees, such as dermal and respiratory equipment, and a hazard communication program. Ideally, when OSHA conducts an industrial hygiene inspection at a facility which produces, processes or uses a chemical covered by a 5(e) order, it would monitor for compliance with the 5(e) order as well as for compliance with the OSHA health standards. **(For further information contact OE-TLD)**

Inter-Agency Agreements

Two examples of Inter-Agency agreements, initiated in FY 1991, involve the Department of Defense (DOD) and the Mine Safety and Health Administration (MSHA). In December, 1990, EPA and DOD entered into an agreement that allows the import of 300,000 pounds of PCBs and PCB items into the U.S. for disposal. The agreement requires DOD to comply with the PCB Notification and Manifesting for PCB Waste Activities Final Rule and provides for a specific schedule to be followed during shipment, transport and disposal phases of the project. The Office of Compliance Monitoring (OCM) also entered into an agreement with MSHA for cooperation on inspections and targeting for PCBs in underground mines. This agreement will be implemented in FY 1992. **(For further information contact OCM)**

Compliance Monitoring Strategies

During FY 1991, EPA updated and finalized compliance monitoring strategies addressing the asbestos ban and phase out rule, and polychlorinated-biphenyls (PCBs) rule. **(For further information contact OCM)**

Federal Insecticide, Fungicide, and Rodenticide Act

Pesticide Export Enforcement Initiative

EPA issued complaints charging nine companies with unlawful export of pesticides in violation of FIFRA §17 and §12. 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".

These cases are highly significant as they represent the first cases brought since FIFRA was amended in 1978 to bring exported pesticides within the purview of the Act. They, therefore, involved highly complex legal, policy and technical issues of first impression. Furthermore, they were of great interest to the public and Congress as they were brought during the Congressional session which focused on the "circle of poison" issue, i.e., illegal pesticides returning to the US on imported food stuffs. Third, the labeling violations had the potential to result in serious illness, death or environmental contamination. Finally, settlement of these cases resulted in adoption of a tough enforcement stance of "zero tolerance" or "no mitigation" for certain violations.

The companies charged in these complaints and the amounts of the proposed penalties are as follows: Dow Chemical Company, $22,400; Shield-Brite Corporation, $222,000; Mobay Corporation, $314,800; Exxon Chemical Americas, $36,400; Rohm and Haas Bayport, Inc. $36,000; Sandoz Crop Protection, $1,629,200; Monsanto Chemical Corporation $562,800; NL Industries, Inc. $19,600; Chevron Chemical Company $29,200. Penalties obtained so far - $470,360. **(For further information contact OE-TLD)**

Section 6(a)(2) Reporting Requirements

In January 1991 EPA mailed a letter to over 225 persons and firms holding registrations for pesticides used on domestic animals. The letter explained the requirements of FIFRA §6(a)(2), which requires registrants to report all "additional factual information regarding unreasonable adverse effects on the environment of the pesticide..." In the course of settlement negotiations of a §6(a)(2) administrative enforcement action, EPA learned that other pet care industry registrants either misunderstand or are unaware of this section's requirements. **(For further information contact OE-TLD)**

Good Laboratory Practices

On September 30, 1991, OCM issued the Interim Enforcement Response Policy (ERP) for the FIFRA Good Laboratory Practice (GLP) Regulations. The policy sets forth the procedures for determining the appropriate enforcement response for violations of the FIFRA GLP standards. The EPA relies on data submitted by registrants as the basis for the Agency's regulatory decisions involving pesticide product registrations, tolerances, experimental use permits, special local needs registrations, emergency exemptions, or any other research or marketing permit for a pesticide. In conjunction with EPA's data audit program, the FIFRA GLPs are intended to ensure the quality and integrity of this data. Violations of the FIFRA GLPs may impact: 1) the reliability or scientific merits of test data; 2) the ability of EPA to validate or reconstruct test results, and to make sound and timely regulatory decisions regarding a pesticide; and 3) the administration of the GLP inspection and enforcement program. Therefore, noncompliance with the FIFRA GLP regulations may result in very serious harm to the EPA's regulatory mission, and ultimately, human health and the environment. **(For further information, contact OCM)**

oLawn Care Compliance Monitoring/Enforcement Initiative

During FY 1991, OCM distributed lawn care advertising compliance monitoring guidance to the Regions and States as part of an FY 1991/1992 lawn care enforcement initiative. Of approximately 1,600 lawn care advertisements collected by the EPA Regions, OCM identified approximately 267 advertisements (17%) as having potential violations. Headquarters and the Regions will followup on the violations addressing lawn care products and pursue appropriate enforcement actions. During FY 92, State pesticide enforcement grantees will be conducting use inspections focussing on lawn care, as well as reviewing advertisements. EPA Regional and State enforcement activities will be coordinated with the Federal Trade Commission, which has authority over advertising for lawn care services. **(For further information, contact OCM)**

Senior Pesticide Officials Training Program

In FY 1991, OCM and the Office of Pesticides Programs implemented the second year of a national training program to assist senior State officials managing State-delegated pesticide enforcement programs. Two hundred and fifty pesticide program leaders from 49 States, six tribal groups and two U.S. territories participated in the 1-2 week residential training session at the University of California at Davis. The goal of this program is to enhance State and Regional capabilities to develop and implement pesticide regulatory programs for the 1990's and to undertake new environmental initiatives which feature reduction, pollution prevention and innovative approaches to pesticide management and enforcement. **(For further information contact OCM)**

FIFRA §19 Procedural Rule

In FY 1991, EPA drafted the FIFRA §19 Proposed Procedural Rule, which covers procedures for: a) EPA acceptance of canceled pesticides for disposal; b) the requirements for a voluntary or mandatory recall of suspended or canceled pesticides; c) requirements for submittal of storage and disposal plans, and the Agency's procedures for review of plans; and d) indemnification procedures for suspended and canceled pesticides. **(For further information contact OCM)**

FIFRA §6(g) Policy Statement

On March 28, 1991, EPA issued the FIFRA §6(g) Proposed Policy Statement which outlines the responsibilities of persons who must submit information under FIFRA §6(g) and accompanying procedures for information submittal. Section 6(g) of FIFRA requires persons to notify the Agency and appropriate State and local officials of the quantity and location of any suspended or canceled pesticides in their possession. **(For further information contact OCM)**

Policy Statement for Pesticide Exports

In FY 1991, OCM drafted the Final Policy Statement for Pesticide Exports. The policy clarifies the requirements for labeling exported pesticides and the requirements affecting the export of research and development pesticides. It also broadens the scope of actions which will trigger international notifications and presents a new system for transmittal of international notices. The policy is expected to be published in the Federal Register in January, 1992. **(For further information contact OCM)**

Case Development Training Program

In FY 1991, OCM conducted a highly successful Case Development Training Program for Regional and State case development officers in NJ, MO, CA, VA, TX, MA and WA. The course covered a range of topics including evidence gathering and evaluation, and the civil administrative process. About 300 State and federal case officers, attorneys, and inspectors attended. Each attendee received a manual which outlines TSCA, FIFRA, and the Emergency Planning and Community Right-to-Know Act (EPCRA), as well as a TSCA case study used in a mock settlement conference. **(For further information contact OCM)**

Emergency Planning and Community Right to Know Act (EPCRA) § 313

EPCRA §313 Targeting System (ETS)

By the end of FY 1991, OCM had installed the pilot EPCRA §313 Targeting System (ETS) in nine

Regions. The system provides the Regional EPCRA §313 inspectors with a flexible, PC-based tool for creating automated inspection targeting lists based upon region-specific priorities. **(For further information contact OCM.)**

EPCRA §313 Late Reporter Initiative

On June 10, 1991, EPA issued approximately 2,429 Notices of Noncompliance to facilities which had submitted over 5,000 late reports under EPCRA §313 after the July 1 deadline in 1989 or 1990 or both years. This effort required a quality assurance review of the EPCRA files of over 400 suspected late facilities; a crosscheck, by hand, of the list of late facilities with the list of over 1500 facilities inspected by the Regions; and the creation of a d-Base file downloaded from the TRIS database, of facilities submitting late reports. EPA is now able to track the timeliness of those facilities which received an NON for late reporting; enabling EPA to assess penalties for repeated late reporting. **(For further information contact OCM.)**

VI. Media Specific Enforcement Performance and Regional Accomplishments

Clean Air Act - Stationary Sources

At the beginning of FY 1991, EPA's Stationary Source Compliance Program, in conjunction with State agencies, identified 401 Significant Violators (SV). Throughout the year an additional 660 SVs were identified. By the end of the fiscal year, 608 SVs were brought into compliance, subject to an enforceable compliance schedule, or were subject to formal enforcement action. In addition to traditional SIP, NSPS, and NESHAP inspection activity, the air compliance program conducted 1,250 inspections of wood heater manufacturing and retailing operations.

To improve efforts to return air emissions facilities to compliance, the EPA's Stationary Source Compliance Division piloted Compliance Planning and Oversight initiatives in Virginia and Maine. This program, developed with close State and EPA Regional involvement, establishes an accountability process in which the States negotiate compliance program goals and strategies.

EPA supplemented the successful asbestos NESHAP outreach program by developing and distributing brochures to asbestos removal contractors.

Under Title VII of the Clean Air Act, EPA initiated a number of regulatory activities to implement the title's enforcement provisions. These initiatives include work on Field Citations, Citizen Suits, and contractor listing.

Clean Air Act - Mobile Sources Field Operations and Support Division

EPA's Field Operations and Support Division in the Office of Mobile Sources enforces the fuels, anti-tampering, emissions warranty, and related provisions of Title II of the Clean Air Act and assists in developing enforcement policy. This enforcement program covers all phases of enforcement including: field investigating (augmented by State and local efforts and by contractor inspections), the issuance of Notices of Violation (NOVs), negotiation of settlements, referral of cases to the U.S. Department of Justice, and litigation if necessary.

Major enforcement achievements during FY 1991 include the acceptance by all participating parties of an Agreement in Principal relating to the reformulated gasoline and oxygenated fuels provisions of the Clean Air Act Amendments of 1990. The volatility enforcement program resulted in continuing high levels of compliance. Settlement of lead phasedown cases brought substantial penalties for violations. As a result of the Clean Air Act Amendments of 1990, tampering enforcement was initiated in the area of high performance modifications to vehicles.

EPA issued a total of 269 NOVs, of which 157 were for violations of the aftermarket catalytic converter policy, 56 were for fuel volatility violations, 54 were for tampering and fuel violations and two were for lead phasedown violations.

EPA settled 211 cases in FY 1991 with cash civil penalties totaling $2,246,008, and additional payments totaling $454,381 went to alternative payment projects. The largest civil penalties were generated from the settlement of five outstanding lead phasedown cases with $1,218,249 in total civil penalties.

Clean Air Act - Mobile Sources Manufacturers Operations Division

The Manufacturers Operations Division in the Office of Mobile Sources enforces the provisions of Title II of the Clean Air Act related to the manufacture of new motor vehicles, including the testing of production line motor vehicles and engines and in-use vehicles to determine conformity with Federal emission requirements. EPA conducts its own investigations, surveillance, and testing of new and in-use vehicles, and concentrates its enforcement efforts on testing of 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.

EPA's recall testing program is a key component of efforts to enforce Federal emission requirements. Since the beginning of recall activity, a total of 31 million vehicles have been recalled as a direct result of EPA investigations. In FY 1991, the motor vehicle emission recall program continued to play an important role in EPA's enforcement efforts, investigations resulting in 6 influenced recalls involving 2 manufacturers and a total of 1.2 million recalled vehicles. In addition, 830,000 vehicles were recalled voluntarily by manufacturers without specific EPA action.

In addition, EPA continued motor vehicle enforcement testing in a high altitude area (Denver, Colorado). This high-altitude program conducted in coordination with the Colorado Department of Health, was initiated to ensure vehicles in high altitude areas comply with Federal emission standards. Colorado tested 8 engine families representing 1.0 million vehicles, and 4 influenced recalls are expected as a result of this testing program.

The Selective Enforcement Auditing (SEA) program consists of production-line emission testing of new light-duty vehicles and heavy-duty engines. Less than 80 individual tests ordered during FY 1991 induced over 24,000 additional voluntary emission tests conducted by manufacturers. The heavy-duty SEA audits focused on engines that manufacturers choose to participate in the averaging, banking and trading programs. The audits targeted engines which had family emission limits either below the Federal standards or close to the engines certification level. Thirteen (13) heavy-duty engine audits were conducted and a result of these audits, EPA revoked two manufacturer's certificates of conformity for two engine families which failed the audits because the engine configurations would not meet applicable emission limits. The certificates were re-issued when the manufactures made modifications to the engines and testing demonstrated compliance with Federal standards. The manufacturers also agreed to recall previously produced engines.

EPA's Imports Program, implemented on July 1, 1988, permits only independent commercial importers (ICIs) that possess an appropriate certificate of conformity from EPA to import nonconforming vehicles. Accordingly, the ICI is solely responsible for meeting all EPA emission requirements for all nonconforming vehicles it imports. To determine compliance with the Imports program in FY 1991, MOD conducted in-office document audits of all operating ICIs conducted four on-site ICI inspections and one port of call inspection. Pursuant to these audits, numerous imports regulation violations were identified. In addition to pursuing enforcement action on these violations, investigations of four other ICIs for various imports regulations violations are continuing.

Clean Water Act Enforcement - NPDES

Record Penalties under NPDES

EPA water enforcement in FY 1991 obtained record-breaking penalty dollars, removing to the greatest extent feasible the economic benefit of non-compliance. An overview of recent water enforcement activities shows the following accomplishments:

- Nearly 25 percent ($26.6 million) of total civil penalties assessed under the Clean Water Act since 1975 ($106 million) were assessed in FY 1991;
- Five of the ten largest civil penalties ever assessed under the Clean Water Act were assessed in FY 1991;
- The top two civil penalties were obtained in FY 1991 ($6.1 million against Wheeling-Pittsburgh Steel Corp. for effluent violations and $3.1 million against Pfizer, Inc. for pretreatment violations); and
- Over half (21 of 39 cases) of civil CWA penalties in excess of $500,000 were assessed in the last three years.

Timely and Appropriate Enforcement and the NPDES Exceptions Report

The NPDES enforcement program has defined Significant Noncompliance (SNC) to include violations of effluent limits, reporting requirements, and/or violations of formal enforcement actions. 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 basis. During FY 1991, 91% of all NPDES SNCs were resolved in a "timely and appropriate" manner.

Those facilities that have been in SNC for two or more quarters without returning to compliance or being addressed by a formal enforcement action are identified on an "exceptions list". During FY 1991, 354 facilities were reported on the SNC exceptions list including 152 facilities that were unaddressed from the previous year and 202 facilities that appeared on the list for the first time during the year. Of the 354 facilities on the exceptions list, 204 returned to compliance by the end of the year, 109 were subject to formal enforcement action, and 41 facilities remained to be addressed during the upcoming year.

National Municipal Policy

Through implementation of the National Municipal Policy (NMP), over 95% of all major Publicly-Owned Treatment Works (POTW) are in compliance A total of 101 major POTWs completed construction to meet final effluent limits during FY 1991, and all but four facilities in the NMP universe have been addressed through a judicial or administrative schedule, are in the referral process to establish a schedule, or have already complied. Estimates of environmental benefits directly related to NMP requirements include removal of an additional 2.8 million lbs/day of conventional pollutants and removal of over 18,000 lbs/day (approximately 9 tons) of toxic pollutants.

Clean Water Act Enforcement - §404 (Wetlands)

EPA and the Army Corps of Engineers jointly enforce the requirements of §404 of the Clean Water Act, which prohibits the unpermitted discharge of dredged or fill material into wetlands and other waters of the United States. Under a Memorandum of Agreement between the two agencies, the Corps - as the Federal permitting agency - has the lead on Corps-issued permit violations and EPA has the lead on many unpermitted discharge cases.

A primary goal of EPA's wetlands enforcement program is environmental protection. EPA seeks timely removal of the unauthorized discharge and restoration of the site, where appropriate. Another important goal of §404 enforcement is deterrence, both with regard to the particular violator and to the regulated community as a whole. Consequently, EPA may seek monetary penalties either alone or in

addition to injunctive relief. The program also strives for fair and equitable treatment of the regulated community. EPA is committed to enforcing the requirements of §404 to ensure that violators are not allowed to profit from their illegal actions. During FY 1991, EPA continued to use the various enforcement mechanisms provided under the Clean Water Act in response to violations of §404. Nationwide, the EPA Regions issued 98 administrative compliance orders, 21 administrative penalty complaints, and referred 11 civil and criminal judicial cases to the Department of Justice. In addition, the Agency continued to build on recent efforts to strengthen coordination with the Department of the Army and the Department of Justice on §404 enforcement matters.

Safe Drinking Water Act Enforcement

Public Water System Supervision Program(PWSS)

In FY 1991, the PWSS Program strengthened and improved enforcement at the State and Federal levels. EPA Regional offices more than doubled their enforcement efforts from the previous year, with significant increases in the numbers of notices of violation (NOVs), proposed administrative orders (PAOs), and final administrative orders (FAOs) issued against violating systems. EPA issued a total of 2,448 NOVs, 443 PAOs, and 303 FAOs (as compared with 453 NOVs, 312 PAOs, and 149 FAOs in FY 1990).

Many of these enforcement actions were a result of Regional initiatives. Several Regions issued PAOs and FAOs against water system users in an attempt to address water systems in violation where no owner was identified. Regions also issued NOVs against the majority of coliform monitoring and reporting violators in selected states. Nationally, the Regions focused on violations incurred by water systems that serve over 10,000 people. Both Regions and States have issued NOVS and administrative orders (AOs) against many of these water systems.

State and EPA timely and appropriate enforcement performance continued to improve along with improvements in the rate of resolving exceptions. More SNCs were identified in FY 1991 as a result of a more stringent SNC definition that became effective during the year.

Resource Conservation and Recovery Act Enforcement (RCRA)

The primary recommendations of the 1990 RCRA Implementation Study (RIS) for the RCRA Enforcement Program included strategically targeting enforcement actions, publicizing enforcement actions, maximizing the deterrent effect of RCRA enforcement, improving the mix of civil judicial and administrative cases, seeking higher penalties, and incorporating pollution prevention into enforcement settlements. During FY 1991, the RCRA Enforcement Program implemented those recommendations.

The RCRA Enforcement Program played a significant role in three strategically targeted initiatives in FY 1991: 1) In February, 1991, EPA announced eight judicial and twenty administrative actions targeted at violators of the Land Ban Disposal Restrictions regulations. Assessed penalties from the administrative cases totaled $3.5 million. The settlement of a civil judicial action against DuPont netted a $1.85 million penalty. 2)The twenty RCRA cases (12 judicial and 8 administrative cases) filed in July, 1991 were a significant part of a multi-media initiative (total 36 cases) to enforce against a specific pollutant-lead; and 3) A multi-media initiative against exporters (generators and transporters) of hazardous waste was announced in late September, 1991. The RCRA Enforcement Program contributed sixteen of twenty-three cases to the initiative. Each of these well-publicized initiatives sought to convey the message that company non-compliance of RCRA regulations will be likely to result in enforcement actions and will involve significant monetary penalties. In addition, the

initiatives targeting exporters and violators of the Land Disposal Restrictions follow from priorities identified in OE's Enforcement Strategic Plan.

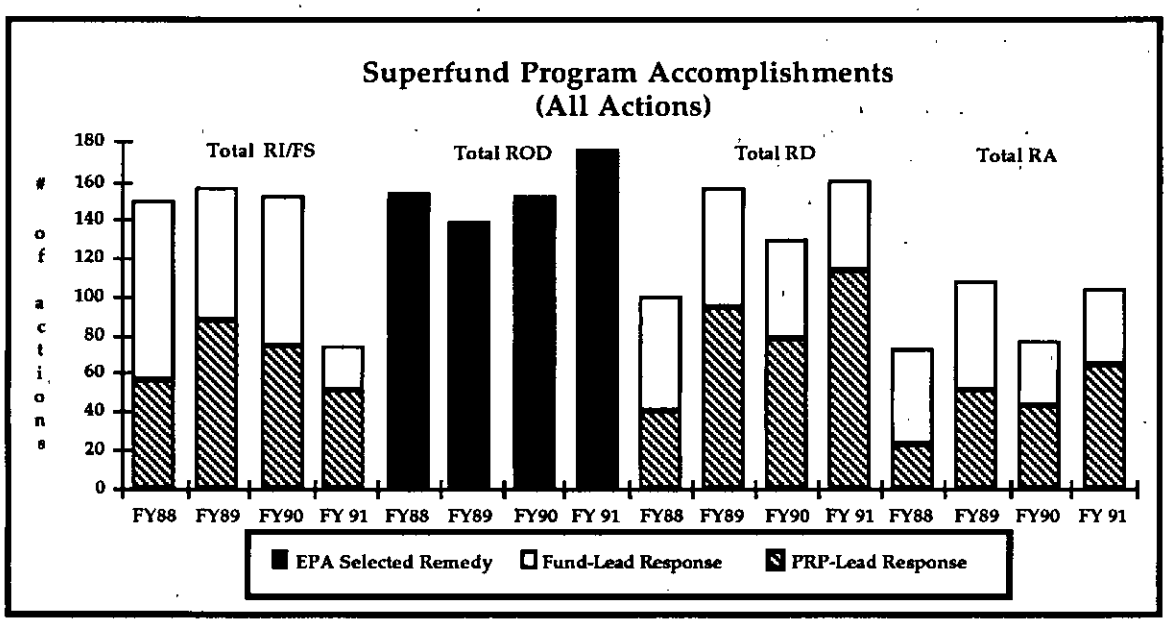
Consistent with the RIS, the RCRA program has worked to improve the ratio of civil judicial enforcement actions to administrative actions. In FY 1991, the Agency witnessed a dramatic surge in judicial referrals as part of this effort. EPA referred 34 civil judicial actions to the Department of Justice for filing in Federal District Court. This represents a significant increase over FY 1989 and FY 1990, in which the Agency referred 16 and 18 cases respectively.

The revised RCRA Civil Penalty Policy (RCPP) was implemented in FY 1991. This revised policy provided the Regions with the ability to assess multi-day penalties as well as assess higher dollar penalties. Agency data show that in FY 1990, prior to the RCPP, the number of proposed administrative actions or complaints totaled 122 with proposed total penalties of $18.8 million. The highest penalty collected was $550,000. After implementation of the revised RCRA Civil Penalty Policy, the number of proposed administrative actions totaled 99 with proposed total penalties of $56.7 million. The highest penalty collected was $3.3 million.

The Regions incorporated more pollution prevention activities into enforcement settlements. One such action in FY 1991 involved the Du Pont facility at Deepwater, NJ. As part of the enforcement settlement, Du Pont must study 15 processes for waste minimization opportunities and provide EPA data on their findings. This data will assist EPA in future efforts to promote pollution prevention. The RCRA Enforcement Program also developed a policy on the role of the inspector in promoting waste minimization. The policy included extensive background information on pollution prevention, minimum training requirements of inspectors before they could perform a pollution prevention inspection and the role of the inspector in this outreach program.

Superfund Enforcement

FY 1991 was a banner year for the Superfund Enforcement Program. The estimated value of the 263 settlements reached with Potential Responsible Parties (PRPs) in FY 1991 exceeded $1.4 billion for all activities (compared with 283 settlements worth $1.3 billion in FY 1990). Of this amount, approximately $1.1 billion was for §106 or §106/107 remedial (RD/RA) settlements (versus $1.0 billion in FY 1990). In FY 1991 the Agency referred 71 §106 or §106/107 consent decrees for RD/RA to the Department of Justice (DOJ), for remedial work estimated at $834 million (60 consent decrees worth $730.6 million were referred in FY 90). In FY 1991 the Agency issued a total of 137 unilateral administrative orders (UAOs), versus 134 in FY 90, and 132 administrative orders on consent were signed with PRPs. Of the total of 137 UAOs issued, 48 UAOs were issued under §106(a) for RD/RA work (44 were issued for RD/RA in FY 90). At the end of FY 1991 PRPs were in compliance with 29 of the UAOs issued for RD/RA; these were valued at $286 million. Under §107 only, the Agency referred 73 cases to DOJ seeking cost recovery for past costs worth $164.8 million (as opposed to 79 referrals seeking $184.5 million in FY 1990). Since the inception of the Superfund Program in 1980, PRPs have committed to response actions worth over $5 billion. The percentage of PRP leads at NPL sites (under enforcement consent decrees or administrative orders) for remedial design (RD) and remedial action (RA) responses has increased to 70% for RD and 63% for RA respectively (Federal Facilities excluded). When SARA was passed in FY 1987 the percentage of PRP leads at NPL sites was 27% for remedial designs, and 37% for remedial actions.



Toxic Substances Control Act Enforcement (TSCA)

During FY 1991, OPTS launched the TSCA §8(e) Compliance Audit Program (CAP), a first-of-its-kind voluntary audit program designed to achieve the Agency's goal of obtaining any outstanding §8(e) substantial risk information, and provide maximum encouragement for companies to voluntarily audit their files. Section 8(e) applies to any person who manufactures, imports, processes, or distributes a TSCA-covered chemical substance or mixture and who obtains new information that reasonably supports a conclusion that the substance or mixture presents a substantial risk of injury to health or the environment. Under the CAP, companies agreed to register for the program, conduct a corporate-wide audit for TSCA §8(e) reportable information, and pay stipulated penalties for each study reported up to an overall $1,000,000 ceiling. The CAP sets forth guidelines that identify, in advance, EPA's enforcement response and allows companies to assess liability prior to electing to participate. Approximately 125 companies (excluding subsidiaries) registered for the CAP which is not scheduled to conclude until late 1992 or early 1993. These companies represent a wide variety of industries including those engaged in chemical production and importation, petroleum refining, paper production, the aerospace industry, and microelectronics.

During FY 1991, the EPA's toxics enforcement program included approximately 168 settlements with Environmentally Beneficial Expenditures (EBEs) (16 for FIFRA, 87 under TSCA, and 65 under EPCRA) or Supplemental Environmental Projects (SEP). . These settlements include provisions such as altering manufacturing processes to reduce waste, use of safer products, removal of PCB-containing transformers, and requirements to conduct compliance audits.

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

EPA's FIFRA program placed high priority on import/export issues in FY 1991, including participating in the Agency's import/export initiative and case filing.

Good Laboratory Practices (GLPs), which are management standards for operating laboratories

active in environmental matters, are a major factor in efforts to assure high quality data in support of pesticide registrations. A significant amount of FIFRA test data comes from abroad, and OPTS' international program, involving bilateral Memorandums of Understanding (MOUs) and multilateral activities in the Organization for Economic Cooperation Development (OECD), is an important means of ensuring the quality of the data.

In 1991, OCM implemented three MOUs with inspectional visits addressing GLPs to Germany, Switzerland, and the Netherlands. OCM initiated new MOU activities with Japan (related to toxic chemical inspections) and established contact with the European Commission and Israel. In May 1991, OCM also successfully managed the OECD Vail Consensus Workshop on the application of GLPs to field studies. The document produced by this Consensus Workshop will have a major impact on how the U.S. and our major trading partners conduct studies in the field.

B. Regional Office Accomplishments

Region I - Boston

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

During FY 1991, Region I accelerated its efforts to build a multi-media perspective into all phases of its enforcement programs. In pursuit of this goal, the Region made adjustments to many aspects of the enforcement process, including inspections, case development, negotiations, data compilation, and policy-setting.

For example, in FY 1991 the Region completed design of a facility multi-media survey form to be used by EPA inspectors conducting single-program inspections. This checklist form provides inspectors with key questions to ask under any of EPA's regulatory programs if they see evidence of possible violations of a program other than the one for which the inspection is being conducted. During FY 1991, 75 of Region I's senior inspectors received training on use of the multi-media survey form, and the Region designed procedures for ensuring that the inspectors' observations are addressed by the appropriate program.

In its Federal facilities enforcement program, the Region conducted multi-media inspections at four federal facilities posing significant environmental problems. The follow-up actions to these inspections are being coordinated among the EPA programs in which violations were uncovered and also with the affected States. Because of the success of this effort, Region I is planning to increase the number of multi-media inspections at Federal facilities in FY 1992.

Region I also made further refinements to its case screening process under which a multi-media compliance/enforcement status check is conducted for any facility slated for enforcement, and a Toxic Release Inventory (TRI) Report for the facility is reviewed. As a result of this screening process, the Region coordinated the issuance of several administrative penalty actions to facilities found to be simultaneously violating more than one regulatory program. The programs most commonly involved in these multi-media administrative actions were those under the Resource Conservation and Recovery Act, the Toxic Substances Control Act, and the Emergency Planning and Community Right-to-Know Act. The Region also has ongoing three significant multi-media judicial actions involving violations of RCRA and the Clean Water Act.

In negotiating settlements to enforcement actions, Region I continued efforts begun in FY 90 to encourage innovative forms of relief. The Region has achieved many settlements incorporating supplemental environmental projects which go beyond merely correcting the violations cited by the action. Often the ideas for such projects arose from review of the TRI report for the violating facility

and led to adoption of projects to reduce or eliminate releases of toxic air pollutants not currently regulated under Federal law. In two major judicial enforcement actions, Region I ended the year having made substantial progress toward negotiating settlements that will include comprehensive environmental auditing programs.

Region I also recognized the need for better integration of data from each enforcement program. The Region thus designed a multi-media enforcement tracking system (MMETS) which complements a national effort to integrate enforcement data. MMETS is a tickler system that contains information about current enforcement actions and planned inspections and enforcement at facilities throughout New England. In FY 92 use of MMETS will become a standard component of case screening in the Region.

To facilitate the multi-media approach to enforcement, Region I has frequently relied on an Enforcement Workgroup composed principally of managers of the Region's enforcement programs. With representatives from all the programs, the Workgroup has been effective in developing regional policies for implementation of new directions in enforcement, such as fine-tuning the multi-media case screening process. Taken together, all the changes described send a clear signal that Region I has broadly embraced the Agency's push towards a multi-media perspective in its enforcement programs.

Region II - New York

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

Region II's record for FY 1991 displays a continued strong commitment to an aggressive enforcement program. It was also a year in which the Region devoted considerable effort to a number of enforcement initiatives, including notably the multi-media enforcement program. The Region is proud of the results they have achieved: the Region carried out six major, consolidated multi-media inspections, and commenced five multi-media enforcement cases. The Region has in place an ambitious multi-media inspection program for FY 1992 to build on their current efforts. Perhaps of greater importance, the Region has created effective institutional structures in the Region for enhanced multi-media coordination, communication, and tracking.

Region II had a very strong year in the civil enforcement program. The Region sent nearly 60 civil referrals, consent decree enforcement referrals and PRN packages to Headquarters or the Department of Justice during FY 1991; the Region's second highest total ever. Region II settled or otherwise resolved fifteen non-Superfund civil cases, yielding penalties of over $3.8 million -- their highest ever, and over two and a half times the FY 1990 total. One single case -- the Dupont RCRA settlement -- accounted for $1.85 million in penalties, and included landmark pollution prevention provisions.

The Region's Superfund enforcement program accounted for 26 civil referrals and pre-referral negotiation packages, a Regional record. The total dollar value of all settlements and orders complied with, including Federal facility Inter-Agency Agreements, was over $280 million. This brings the dollar value of their Regional Superfund enforcement program to $970 million during the past three fiscal years alone, and substantially over $1 billion since its inception -- a significant and impressive milestone. Region II developed four new civil referrals in support of the national Superfund Non-Settlor/Non-complier (NS/NC) Enforcement Initiative.

Region II's administrative enforcement activity levels reached an all time high in FY 91, with over 585 new actions commenced proposing penalty assessments of over $50 million. Indeed, proposed penalties in five separate programs exceeded $1 million. Region II completed about 175 adjudicatory cases; the administrative case resolutions resulted in penalty assessments of about $4.34 million, nearly twice the FY 90 assessments.

The Region continues to closely monitor compliance with civil and administrative consent decrees

and orders, fully utilizing the Agency's Consent Decree Tracking System. Five consent decree enforcement cases in FY 1991, and some six Motions to Enforce were filed in court.

The pace and intensity of the criminal enforcement program has increased in FY 91, with six new case referrals; plea agreements in several cases (including one very significant case -- Exxon/New Jersey), and a substantial number of new investigations initiated.

Region III - Philadelphia

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

During FY 1991, Region III organized a cross-media enforcement workgroup to explore multi-media enforcement opportunities for situations involving noncompliance and risk to human health and the environment. At the close of the fiscal year, the work group had completed site characterization reports on six facilities and had brought enforcement actions against four. In addition to facility-specific actions, the work group established a model process to conduct multi-media site screening, including risk assessments, at facilities; developed and piloted the use of cross-media enforcement authorities to address significant environmental concerns; and accelerated the use of multi-media inspections in the Region. Participation in the work group was praised by both technical and legal members as a positive experience that provided cross program education.

Region III established a comprehensive case screening program which achieved its goals of identifying potential multi-media enforcement cases, improving civil/criminal coordination and enhancing docket management and the use of innovative enforcement techniques. The entire Region III significant noncompliance case inventory, over 325 cases, was screened during FY 1991 in a series of program-specific screening meetings. From these meetings, over 70 cases were evaluated for potential multi-media enforcement action during multi-program screening meetings attended by senior program enforcement managers. The case screening process played an important role in a number of successful multi-media enforcement actions issued during FY 1991 and at the close of the fiscal year the Region retained an active potential multi-media case inventory of over 25 cases.

Region III was an active participant in the national Resource Conservation and Recovery Act Land Ban Initiative which sought to focus attention and enforcement action on violators of the RCRA land disposal restriction rule. The Region completed five administrative complaints and referred one case for judicial action. All of these actions were completed and announced as part of the national Land Ban Initiative on February 22, 1991.

In a comprehensive multi-media enforcement initiative designed to address significant lead compliance problems, Region III completed four judicial and nine administrative actions as part of the national Lead Initiative announced on July 31, 1991. The penalties being sought in the administrative actions totaled over $10 million. Enforcement actions were issued as a result of violations in the Comprehensive Environmental Response, Compensation, and Liability Act,

As part of its continuing focus on multi-media compliance within the Chesapeake Bay drainage area, Region III completed many significant actions during FY 1991 to initiate compliance actions by industries, municipalities, and Federal facilities. Enforcement actions continued under the Clean Water Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, and the Clean Air Act, with notable successes attained in completing Federal Facilities Compliance Agreements for Federal facilities. Other activities included increased attention to Federal Insecticide, Fungicide, and Rodenticide Act inspections and encouragement of alternative pest control measures and Integrated Pest Management in the Bay area.

Approximately a dozen multi-media inspections were conducted or coordinated this year by

Regional Environmental Services Division staff. They were targeted mostly through the Regional cross media enforcement project or by the enforcement screening process. These inspections have provided valuable experience for Regional staff and provided excellent opportunities to enhance skills. Significant progress has been made on developing a multi-media screening protocol and it is anticipated that a pilot effort will be implemented in the second quarter of FY 1992.

The Region participated in the development of the nation-wide EPA/Occupational Safety and Health Administration Memorandum of Understanding (MOU) which calls for information exchanges, cross agency referrals, training, and joint inspections. The joint inspections are viewed as the first tangible product, and Region III was the first EPA Region to achieve this goal by conducting a joint EPA/OSHA multi-media inspection at WITCO Corporation, Bradford, PA. This facility was part of OSHA's Petroleum Special Emphasis initiative and also was consistent with EPA priorities. In addition, EPA staff have referred several potential violations to OSHA and, as a result of those referrals, OSHA investigations were initiated.

An enforcement action, initiated by Region III staff, was escalated to the Office of Drinking Water and Office of Enforcement and evolved into the first national administrative orders on consent issued by the Agency. These orders, completed following extensive negotiations with both primacy States and companies, have proven to be an effective mechanism to address violations for corporations which operate on a national basis.

The orders address the discharge of automotive wastes into injection wells (septic tanks and drywells, commonly known as Class 5x28 wells) by ten major oil companies. The generic orders for all companies had many "firsts" including distribution of outreach materials, mandatory implementation of pollution prevention and waste minimization procedures for service stations, generic closure plans, and oversight contractor services supplied by the company to certify compliance with closure.

Region IV - Atlanta
(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Region IV supported the Agency's national multi-media enforcement focus by initiating new activities and implementing institutional changes to accomplish multi-media objectives and goals. Region IV has identified five regional geographic initiatives that support the Agency's goal of increased multi-media activities. Currently, Region IV is working with the Commonwealth of Kentucky, West Virginia, and Ohio and Regions III and V on what is know as the Tri-State Initiative. The principal goal is to achieve environmental improvements through the use of regulatory and non-regulatory tools. Examples of these tools include sampling, monitoring, multi-media inspections, pollution prevention, and voluntary reduction. Other Regional geographic initiatives underway or in the planning stage are; Calvert City, KY, Chattanooga Creek Basin, (GA and TN), Tampa Bay, FL, and South Florida.

Region IV completed several other activities that provide the institutional capability to respond to multi-media requirements. These activities include:

- development of multi-media inspection and enforcement protocols;
- pollution Prevention training of key enforcement staff, to determine what is pollution prevention and when and how to incorporate it into enforcement settlements;
- development of a multi-media enforcement training course in cooperation with NEIC;

- improvement of enforcement communications that include quarterly issuances of the regional multi-media news to highlight current and ongoing regional activities; and,

- establishment of a Total Quality Management Quality Action Team (QAT) chaired with improving multi-media enforcement actions.

Region IV programs continue to make significant contributions to creating EPA's outstanding national record, including participation in several national initiatives. Notable achievements in this area include a civil case filing against American Brass, Inc., as part of the National Lead Initiative, and a filing against Grumman as part of the National Land Ban Initiative.

Region V - Chicago
(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

Region V's record of enforcement accomplishments during FY 1991 again demonstrated national leadership in environmental enforcement. The region led the national in numbers of judicial referrals, settlements, and assessed penalties by a wide margin. Region V also accelerated its efforts in implementing a risk-reduction based, cross-program perspective in its enforcement targeting, screening, case development, negotiations, and filings." The Geographic Enforcement Initiative (GEI) targets limited geographic areas with chronic non-compliance profiles and severe risks to human health and the environment. The GEI has lead to an acceleration of multi-media, risk-based targeting of facilities for enforcement actions. This geographic approach promises a greater opportunity to obtain measurable results, primarily in terms of Toxic Release Inventory (TRI) reductions. The first GEI focused its attention and resources on Southeast Cook County and Northwest Indiana. The overall goal of this GEI is 50% reduction in toxic loading to NW Indiana by 1995. Within the regulated community, GEI hopes to instill both environmental concern and momentum. Ideally, the Initiative will serve both as a deterrent to non-compliance and an inspiration for voluntary environmental improvements. Amoco Oil's voluntary testing program in NW Indiana suggests this may already be happening.

On October 16, 1991, DOJ, on behalf of Region V EPA, filed three civil enforcement cases in NW Indiana--Inland Steel Corporation's Indiana Harbor facility (RCRA, CWA, SDWA, CAA), Bethlehem Steel Corporation's Burns Harbor Facility (RCRA, SDWA), and the Federated Metal Corporation's Whiting facility (RCRA). The coordinated case filings included in the GEI not only mark a turning point in this area, but also stand out as a ground-breaking model for interdivisional cooperation and multi-media enforcement. Widespread press coverage that EPA will be seeking 50% reduction of toxic releases in NW Indiana and throughout the Great Lakes Basin promises to deter non-compliance throughout the target area.

The GEI for the Northwest Indiana/Southeast Chicago area developed very rapidly to produce tremendous results in water enforcement. A final stipulation resolved consent decree violations by the East Chicago Sanitary District. It was entered in Federal District Court on October 4, 1991. A consent decree with the bankrupt USS Lead Company designed to control contaminated run-off from the site into the Grand Calumet River was entered on May 28, 1991, and the first installment of a $40,000 penalty has been paid. An agreement in principle was reached with LTV Steel of East Chicago which will result in the payment of a $250,000 fine and a $3 million sediment remediation effort in a water intake plume that opens directly into Lake Michigan. The company is expected to sign the decree by late October 1991. Gary Sanitary District signed a Consent Decree on September 3, 1991, that calls for a $1.25 million civil penalty, the repair and proper operation and maintenance of the Gary wastewater treatment facilities and $1.7 million of sediment remediation on the Grand Calumet River immediately downstream of the USX Gary Works discharges. The decree is expected to be entered in October 1991. These cases form the foundation of the first comprehensive enforcement effort undertaken

in a specifically designated Area of Concern.

In response to public concern for the ambient air quality in this GEI area, and the nationwide interest in coke oven emissions, Region V instituted an area-wide coke oven compliance initiative. Coke oven emissions are a known carcinogen, which have been listed under §112 of the Clean Air Act as hazardous emissions. The Agency is currently developing standards for these emissions under its National Emission Standards for Hazardous Air Pollutants (NESHAPS) program. There are fifteen operating coke oven batteries in this area in Region V, representing over 50 percent of the Region's total, and almost 20 percent nationwide. Under the direction of the Region V air enforcement office, detailed inspections of all NW Indiana/SE Chicago coke oven batteries were completed in FY 1991. Violations were found at five of the coke oven batteries, and settlement negotiations to remedy the problems are underway.

Region V has actively participated in national enforcement initiatives, including the filing of eight of the 24 judicial actions filed national-wide in the Lead initiative. These complaints include actions under RCRA, CERCLA, and the Clean Water Act.

On September 26, 1991, Region V filed two administrative RCRA cases involving improper import of hazardous waste from Canada. These cases were part of a nation-wide Import/Export Enforcement Cluster filing of two judicial and 21 administrative import/export cases. An Administrative Complaint filed against Industrial Fuels and Resources South Bend, Indiana alleged that the facility failed to submit required annual reports for exporting material during the periods of 1987-8 and 1989-90. The Agency is seeking compliance with annual report regulations as well as penalties for past violations. The second regional action, brought against the Safety-Kleen Corporation, alleges that the facility failed to submit the required notifications of its intent to receive hazardous wastes from foreign sources. The Administrative Complaint entered against the facility requires the filing of such notices and seeks payment of a civil penalty.

Region VI - Dallas
(Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

The Fiscal Year 1991 enforcement accomplishments in Region VI include expansion of multi-media enforcement and intense involvement in the development of enforcement activities and environmental enforcement planning with Mexico.

Four very intensive multi-media inspections were completed in Region VI during FY 1991. These inspections included inspection and enforcement personnel from all EPA programs and from the State agencies. The inspections were designed to assure that facilities in a targeted geographic are in compliance with all environmental statutes and are not releasing toxics to the environment in violation of the law. In addition, each of these facilities was requested to and has submitted a voluntary Toxics Reduction Plan, in which the facility has outlined proposed methods of reducing the level of toxics released to the environment beyond the level required by law. The compliance status of each of these facilities in the various media is either under review or negotiations have commenced toward developing a compliance order. Toxic Reduction Plans are being completely analyzed and will be approved after the compliance status is determined for all media.

The four multi-media inspections completed during FY 1991 were completed in two phases, with Air, NPDES, and RCRA being conducted during Phase A and all other programs and sampling under Air, NPDES, and RCRA being conducted during Phase B. The phased approach allowed a more complete inspection with a second opportunity to address issues not adequately addressed or understood during Phase A. The phased approach worked better with smaller facilities due to the limited number of environmental staff the facility had available to escort EPA personnel throughout the site. The larger

facilities generally had a larger staff and more flexibility. Regardless of the size of the facility, advanced planning and knowledge of the size and expertise of the facility's environmental staff is paramount in the effective completion of a multi-media inspection.

Multi-media training is being implemented in Region VI with a module being added to the Basic Inspector Training Course which provides new inspectors with an overview and status of multi-media inspection activities in Region VI. In addition, multi-media inspection screening checklists are being developed for use in FY 1992.

In order to plan for expanded multi-media enforcement activities in FY 1992, Region VI prepared a Multi-Media Enforcement Strategy which centers on a method for targeting facilities for multi-media inspections, based on environmental risk and on the likelihood for violations in more than one program. The strategy is intended to provide for several levels of multi-media inspections, including the very intensive inspections with personnel from all programs, limited two media inspections, and the use of multi-media screening checklists in single media inspections. The FY 1992 strategy has also been provided to the States with requests for development of similar strategies in FY 1992 for FY 1993.

Four cases were filed against hazardous waste treatment, storage and disposal facilities (TSDs) for failing to provide notifications to EPA of the intent to import hazardous waste, as required by RCRA regulations. These cases were the first to be filed against violators involved in illegal hazardous waste shipments from Mexico. Two export cases were filed against hazardous waste generators for failing to comply with the terms of export notifications and Acknowledgements of Consent to export to Mexico emission control dust or sludge from the primary production of steel in electric furnaces. These two cases were part of the national cluster filing of import/export cases on September 26, 1991.

EPA Region VI met with SEDUE, EPA's counterpart in Mexico, to begin work on an import/export database integrating existing EPA/SEDUE data sources. The purpose of the database is to use as a tool for coordinated enforcement of U.S.-Mexico regulations related to hazardous waste transport and management. The Region joined with SEDUE on seven cooperative visits to U.S. and Mexican (maquiladora) facilities in order to review compliance by those facilities with U.S. and Mexico hazardous waste requirements. The United States is particularly interested in "maquiladoras", which are manufacturing plants located in Mexico in a sister city to one in the United States (e.g., Ciudad Juarez and El Paso). The raw materials are shipped from a plant in the United States to a plant in Mexico, where the manufacturing is done.

In December 1989, Presidents Salinas and Bush requested that environmental agencies draft an Integrated Border Environmental Plan (IBEP) to assure that the border environment would be protected. Region VI was the major author of the industrial source control section of this document and of the hazardous waste section of the version which was first made available to the public in 1991. The Region also participated in multiple meetings with states and local governments regarding the plan. Finally, Region VI participated with the Office of International Activities in conducting six public hearings and one public meeting on the IBEP in Texas and New Mexico.

In FY 1991, EPA Region VI co-hosted the third annual Maquiladora Conference in Tijuana, Mexico, along with SEDUE. The conference was attended by 700 participants. The purpose of the conference was to present information and discussions of the 1983 U.S./Mexico Agreement on Cooperation for the Protection and Improvement of the Environment in the Border Area. The Conference focused on the implementation of Annex III of the agreement, which concerns the transboundary shipment of hazardous wastes and and hazardous materials. The conference also addressed U.S. and Mexican regulations that govern the generation, transportation, treatment, storage and disposal of hazardous wastes generated by the maquiladoras and U.S. border facilities.

A meeting was held on September 11, 1991, with representatives of the U.S. parent companies of eight maquiladoras operating in the border region in order to discuss the latest international environmental developments and their prospective impacts on their operations. EPA explained the status and direction of the proposed Integrated Border Environmental Plan (IBEP), as well as United States federal and state initiatives planned for the remainder of 1991 through 1994. Each company was asked to sign an environmental compliance pledge committing to make every effort to ensure that its operations in Mexico, as well as the operations of all maquiladora subsidiaries or other affiliates operating in Mexico fully comply with Mexico's environmental laws. In addition, each company was requested to sign a compliance assessment pledge committing to initiation of an assessment of the compliance status of all of its operations in Mexico. The assessment would include a review of all of its operations to determine whether they are in compliance with all applicable provisions of Mexico's environmental laws. Each company was asked to submit to SEDUE, either a statement that its operations are in compliance with Mexico's environmental laws or a proposal to expeditiously come into compliance with Mexico's environmental laws and was asked to submit to Region VI a confirmation that it has transmitted the results of the assessment to SEDUE.

Region VII - Kansas City
(Iowa, Kansas, Missouri, Nebraska)

Region VII actively participated in the National Lead Enforcement Initiative. Region VII contributed to the overall effort with one judicial and four administrative enforcement actions. The judicial case was filed under the Clean Air Act, and the Region filed one CERCLA, one CWA, one EPCRA and two RCRA administrative cases. These cases were in addition to other EPA and state enforcement actions taken since 1990 to address lead contamination under state and federal environmental statutes.

Region VII filed three RCRA administrative cases on February 22, 1991, in the national effort to address violations of the land disposal regulations. One of the cases, In the Matter of Universal Rundle Corp., was settled by an order entered July 18, 1991, requiring the respondent to pay a civil penalty of $96,280.

Region VII filed its first export case under RCRA on September 26, 1991, against a facility which failed to file a notice of intent to export hazardous wastes and failed to obtain EPA approval prior to exporting the wastes.

Region VII initiated a number of enforcement actions involving two or more statutes, and negotiated several settlements which require environmental remediation in more than one media. For example, in United States v. Gates Energy Products, an action under the Clean Air Act, the defendant agreed to develop and implement an operational change to reduce lead releases into air, land, and water media. In a RCRA administrative action, In the Matter of Hallmark Cards, Inc., the respondent is required to reduce printing-related hazardous wastes by 80% and to reduce air emissions of volatile organic compounds by 80%. The Region also included requirements for multimedia environmental audits in a number of settlements of enforcement actions.

Region VII included pollution prevention and waste minimization requirements in a number of settlements of enforcement actions in FY 1991, primarily in actions under EPCRA, TSCA and FIFRA. In twelve settlements entered pursuant to EPCRA §313, the Region assessed penalties of $208,500 and required supplemental environmental projects totaling $294,150, including reductions in or cessation of the use of chemicals regulated under §313. In 33 settlements under TSCA for violations of the polychlorinated byphenyls (PCB) regulations, Region VII obtained agreements to dispose of 6,500 PCB transformers, 381 PCB-contaminated transformers, 265 capacitors, and to test and eliminate PCBs in 65,919 transformers.

Region VIII - Denver
(Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Organizational Improvements

During FY 1991, Region VIII implemented several organizational changes designed to enhance the Region's media-specific enforcement activities as well as to expand multi-media capabilities. An important modification has been the implementation of a two person team: the Regional Enforcement Officer and the Regional Enforcement Coordinator, whose fulltime duties center on multi-media and other enforcement issues. Their duties include: (1) monitoring new directions in the national enforcement program and strengthening the Region's ability to address these new directions (2) promoting the Administrator's multi-media program by developing the multi-media aspects of various enforcement processes, such as case screening and inspection targeting; (3) assisting with regional initiatives (geographic, industrial, or pollutant-specific); (4) supporting the Enforcement Standing Committee in addressing enforcement issues and activities, such as case screening and inspection targeting.

Region VIII also broadened and strengthened the role of the Enforcement Standing Committee which is responsible for making Regional enforcement-related decisions. The committee is chaired by the Deputy Regional Administrator, and made up of the Division Directors and their Deputies, the Enforcement Branch Chiefs, the Regional Enforcement Officer, the Regional Enforcement Coordinator, the Office of Regional Counsel, the Office of Criminal Investigations, the Office of External Affairs. The Committee meets at least once each month to review and screen potential cases according to the national case screening guidance. For Regional issues, the committee establishes subcommittees (which function as a Quality Action Team) to research specific topics and/or to develop options. To date this method has successfully redesigned the screening process, targeting, enforcement strategic planning, communications, and financial analyst support. In pursuing the multi-media processes, the Region has seen value added in the improved communication and coordination between EPA Regions and programs and Region VIII and its States. Region VIII's involvement in multi-media efforts has increased knowledge of other program requirements, and and it has improved working relationships among the people who manage the programs. Many of the Region VIII programs reported that the multi-media efforts have given them an extra set of ears and eyes in the field, resulting in more efficient use of resources and more comprehensive correction of environmental problems.

To enhance multi-media capabilities, Region VIII established a new branch and a new office: the Multi-Media Enforcement Branch (MMEB) and the Office of Strategic Integration (OSI). The MMEB, which is housed in the Environmental Services Division, focuses on multi-media and cross-program inspections and coordinates the Region VIII multi-media field work. The OSI, which is housed in the Policy and Management Division, focuses on ambient and compliance data for effective targeting of enforcement resources across programs, coordinates policy activities and data integration in support of multi-year planning and inspection targeting and supports multi-media efforts through use of the Agency's new Integrated Data for Enforcement Analysis (IDEA) system and the Geographic Information System (GIS). Region VIII has been a national leader in the use of IDEA. Activities in FY 1991 included: (1) in June 1991, the Region sponsored a demonstration for managers and staff and training for enforcement data personnel on the Integrated Data for Enforcement Analysis (IDEA) system; (2) the Region used the IDEA system to develop FY 1992 inspection targets; (3) IDEA is routinely used in the Regional case screening process which has resulted in identification of additional multi-media components to cases.

Region VIII's Sand Creek Enforcement Pilot Project is a multi-media, cross-program, geographic initiative designed to survey and inspect facilities in the Sand Creek area near metropolitan Denver. This initiative, includes not only EPA Region VIII but also the State of Colorado and local entities. It has provided experience in the use of inspection checklists, multi-media inspection coordination, multi-

media enforcement, the use of the GIS for initiatives, and multi-agency coordination. This initiative was designed to be performed in three phases. Phase One, involving selection of the study area, preparation of the workplan, and preparation of the communications plan, is complete. Phase Two consists of two parts. The first portion consists of initial "survey" inspection performed by teams of inspectors from individual programs as well as the State and local Health Departments. Each program prepared its own checklist and trained the state and local personnel in its use. Evaluation of the checklists used during the inspections will help to target inspections where information obtained during the inspections indicated potential violations. Eighteen (18) inspectors were trained to use survey forms which outlined the basic requirements for each of 13 regulatory programs. The results of these "surveys" will indicate which facilities require more in-depth program specific inspections at a later date. The second portion of Phase Two consists of follow-up inspections. The planning stage for these inspections began in the first quarter of FY 1992. and the actual field work is scheduled for the second quarter of FY 1992. The lead inspection and /or enforcement role will go to either Colorado Department of Health or EPA Region VIII with the lead depending on which agency has authorization for the regulations. Phase Three will be the wrap-up phase where the Region looks at the costs versus the benefits and lessons learned. Thereafter a comprehensive enforcement strategy between the State and EPA will be developed.

Region IX - San Francisco
(Arizona, California, Hawaii, Nevada, Trust Territories)

Region IX concluded a geographically based Enforcement Pilot Project which focused the Pretreatment Program, Spill Prevention Control and Countermeasure Program and Wetlands Protection Program to preserve and protect the unique environmental character of San Francisco Bay. Both referrals and administrative enforcement actions resulted from the Region's intensive Pretreatment Program Evaluations which were conducted at three south bay wastewater treatment plants. Enhanced coordination with the U.S. Army Corps of Engineers San Francisco District office for Clean Water Act, §404 permitting, and multi-agency training in wetlands enforcement will support this initiative well into the future. The SPCC efforts verified substantial compliance levels which reflect the deterrence established by the 1989 Shell Oil, Martinez case. Additional geographically based multi-media enforcement initiatives will be considered as part of the Region's enforcement management process.

Region IX enforcement efforts produced landmark settlements with the signing of Clean Water Act Consent Decrees with two northern California pulp mills (Louisiana Pacific and Simpson Paper Company), achieving $5.8 million in penalties, commitments to alter processes, provide treatment, and extend discharge structures as necessary to comply with their NPDES permits, notably chronic toxicity limits. These nationally publicized settlements incorporate our concern for chronic toxicity, coastal protection, and pollution prevention.

Aggressive Region IX enforcement on the US/Mexico border continues. Elpower Corporation, a battery manufacturer with facilities in San Diego and in Mexico, was found to have violated EPCRA at one of their U.S. based facilities. In negotiating a settlement of the administrative action, Elpower agreed to reduce the lead usage at their Mexican based facilities by 88,561 pounds per year.

Assuring proper operation and maintenance at major electric power plants was supported by recent Region IX settlement agreements reached with Nevada Power Company (NPC) and Arizona Public Services Company (APSC). These coal-fired steam generating facilities continued to operate NSPS-affected units during periods of malfunction without employing good air pollution control practices for minimizing emissions. NPC will pay $400,000, APSC will pay $1,310,000, and both companies agreed to significant stipulated penalty provisions. These cases are the first time that failure to comply with good operations and maintenance requirements was used successfully as the principal cause of action.

The Department of Justice on behalf of EPA filed a major lawsuit against the owner and operators of the Casmalia Landfill, a commercial hazardous waste land disposal facility in Santa Barbara County, California. This is the largest case filed under RCRA in the State of California. EPA is seeking penalties in excess of six million dollars and injunctive relief for conducting clean-up activities at the site. Costs for closure and cleanup of the site are expected to exceed $20 million.

Region X - Seattle
(Alaska, Idaho, Oregon, Washington)

Five multi-media inspections were conducted by Region X during FY 1991. The Region inspected pulp and paper mills, and also focused on the Longview, Washington geographic area. Region X learned that multi-media inspections can be a very effective method to establish the baseline compliance status of a source and to look at a facility from a more holistic viewpoint. Even when civil enforcement actions were not taken, procedures to ensure continuous compliance, such as establishing formal operation and maintenance programs, helped to increase awareness and promote an integrated view of environmental programs. The Region believes the effort brought about a strong deterrence effect since other mills, as well as other companies in the area, heard about the "new" EPA inspection approach. Inspections were conducted at Weyerhaeuser, Longview, WA; Boise Cascade, St. Helens, OR; Kalama Chemical, Longview, WA; Reynolds Aluminum, Longview, WA; and Port Townsend Paper, Port Townsend, WA.

Criminal enforcement in Region X produced three landmark actions. In U.S. v Exxon Corporation and U.S. v Exxon Shipping Corporation, as part of a global settlement of Federal enforcement actions arising from the discharge of over 10 million gallons of crude oil from the tanker "Exxon Valdez" in Prince William Sound on March 23, 1989, the two corporate defendants entered into a new plea agreement with the government on September 30, 1991. In the new agreement, Exxon Shipping agreed to plead guilty to three counts and Exxon Corporation agreed to plead to one count of the indictment returned against them in Anchorage, on February 27, 1990. Exxon Shipping will plead to a misdemeanor violation of the Clean Water Act, 33 U.S.C. §1311(a) and §1319(c)(1)(a), for the negligent discharge of oil without a permit; a misdemeanor violation of the Refuse Act for the illegal discharge of refuse (oil) from a ship, 33 U.S.C. § 407 and §411; and a violation of the Migratory Bird Treaty Act, 16 U.S.C. §703 and §707(a) for the unpermitted killing of over 36,000 migratory birds; and pay a fine of-10-$20 million. The Exxon Corporation will plead guilty to the one Migratory Bird Act count and pay a fine of $5 million. Both defendants also agreed to make a remedial payment of $50 million to the State of Alaska and $50 million to the federal government for restoration projects relating to the oil spill. The plea agreement was accepted in Federal District Court on October 8, 1991.

The second was a RCRA guilty plea in U.S. v. Rogue Valley Circuits, Inc. On March 25, 1991 Henry Broughton, on behalf of his corporation, Rogue Valley Circuits, Inc. of Medford, Oregon, pled guilty to both felony counts of the indictment that had been issued on March 20, 1991. Rogue Valley had been charged with violation of RCRA as a result of its illegal transportation and disposal of hazardous wastes. The company manufactures circuit boards and had disposed of its electroplating wastes on Broughton's rural ranch in southwestern Oregon. On April 24, 1990, agents executed a federal search warrant authorizing the excavation of buried sludge by EPA's Superfund contractors at the ranch. Based on the analysis of this sludge, EPA and Broughton signed a consent order under CERCLA which holds Broughton liable for the clean-up costs amounting to about $800,000.

In pleading guilty, Rogue Valley Circuits, Inc. also entered into a plea agreement with the U.S. Attorney's Office. Under the agreement, the company will bear all cleanup costs, which have been estimated to range between $500,000 and $800,000. On May 28, 1991, Rogue Valley Circuits was sentenced to pay a $1 million fine.

In the third criminal case, Weyerhaeuser Company agreed to enter a plea of guilty to five misdemeanor counts for violations of the federal Clean Water Act. The criminal charges stem from the unpermitted discharge of paint wastes, solvents and wash water into Shannon Slough, a tributary of the Chehalis River, from the end seal and stencil painting operation at the company's Aberdeen, Washington, sawmill.

As a result of an inspection and a subsequent search warrant executed on October 6, 1989, the agents learned that Weyerhaeuser had discharged these wastewaters directly into the Shannon Slough for almost nine years. As part of the plea agreement, Weyerhaeuser paid a total of $500,000 in a combination of fines and restitution. Of this half million dollar amount, $125,000 was paid by Weyerhaeuser as a criminal fine. This represented a fine of $25,000 per count, the maximum possible fine under the Clean Water Act. The remaining $375,000 was placed in a trust fund controlled by public officials as a form of restitution to the citizens of Grays Harbor County. The money from the fund was used for cleaning up and eradicating all pollution sources along the Shannon Slough. Since the federal involvement commenced in July 1989, Weyerhaeuser has spent almost $1.4 million to clean up the property adjacent to the Shannon Slough, and to remedy historic pollution problems at the plant. The $375,000 for the trust fund was in addition to this amount.

As a result of their criminal convictions, both Exxon and Weyerhaeuser were mandatorily listed for violation of the Clean Water Act under provisions of the EPA's contractor listing process pursuant to 40 CFR 15.10 et seq.

Appendix

Historical Enforcement Data

National Penalty Report

List of Headquarters Enforcement Contacts

List of Regional Enforcement Information Contacts

EPA CIVIL REFERRALS TO THE DEPARTMENT OF JUSTICE
FY1972 TO FY1991

	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

	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	FY91
AIR	36	69	82	116	115	122	86	92	102	86
WATER	45	56	95	93	119	92	123	94	87	94
SUPERFUND	20	28	41	35	41	54	114	153	157	164
RCRA	9	5	19	13	43	23	29	16	18	34
TOXICS/PESTICIDES	2	7	14	19	24	13	20	9	11	15
TOTALS	112	165	251	276	342	304	372	364	375	393

EPA ADMINISTRATIVE ACTIONS INITIATED (BY ACT)
FY1972 TO FY1991

	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

	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	FY91
CAA	21	41	141	122	143	191	224	336	249	214
CWA/ SDWA	329	781	1644	1031	990	1214	1345	2146	1780	2177
RCRA	237	436	554	327	235	243	309	453	366	364
CERCLA	0	0	137	160	139	135	224	220	270	269
FIFRA	176	296	272	236	338	360	376	443	402	300
TSCA	101	294	376	733	781	1051	607	538	531	422
EPCRA									206	179
TOTALS	864	1848	3124	2609	2626	3194	3085	4136	3804	3925

EPA CRIMINAL ENFORCEMENT
FY1982 TO FY1991

	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	FY91
Referrals to DOJ	20	26	31	40	41	41	59	60	65	81
Cases successfully prosecuted	7	12	14	15	26	27	24	43	32	48
Defendants charged	14	34	36	40	98	66	97	95	100	104
Defendants convicted	11	28	26	40	66	58	50	72	55	82
o Months sentenced			6	78	279	456	278	325	745	963
o Months served			6	44	203	100	185	208	222	610
o Months probation		534	552	882	828	1410	1284	1045	1176	1713

STATE ENVIRONMENTAL AGENCIES
JUDICIAL REFERRALS AND ADMINISTRATIVE ACTIONS
FY 1985 TO FY 1991

ADMINISTRATIVE ACTIONS

	FY85	FY86	FY87	FY88	FY89	FY90	FY91
FIFRA	8,899	6,055	5,922	5,078	6698*	4,145	3,245
WATER	2,936	2,827	1,663	2,887	3,100	3,298	3,180
AIR	448	760	907	655	1,139	1,312	1,687
RCRA	459	519	613	743	1,189	1,350	1,495
TOTAL	12,742	10,161	9,105	9,363	12,126	10,105	9,607

JUDICIAL REFERRALS

	FY85	FY86	FY87	FY88	FY89	FY90	FY91
WATER	137	221	286	687	489	429	297
AIR	182	162	351	171	96	156	190
RCRA	82	25	86	46	129	64	57
TOTAL	401	408	723	904	714	649	544

Prior to FY 1990, the State FIFRA Administrative Action total included warning letters.

NATIONAL PENALTY REPORT

OVERVIEW OF EPA FEDERAL PENALTY PRACTICES

FY 1991

March 1992

Compliance Policy and Planning Branch
Office of Enforcement

ACKNOWLEDGEMENTS

This report was coordinated by the Compliance Policy and Planning Branch of the Office of Enforcement. Ann DeLong was the project manager and principal author. Robert Banks provided the graphs. The following contributed the program-specific data:

Criminal Enforcement	Howard Berman, OE
Clean Water Act	
Judicial	David Drelich, OE
Administrative	Ken Keith, OWEP
Safe Drinking Water Act	
UIC	Peter Bahor, ODW
PWSS	Anne Jaffe Murray, ODW
Wetlands Protection	John Goodin, OWOW
Marine and Estuarine Protection	Catherine Crane, OW
Stationary Source Air	Jerry MacLaughlin, OE
Mobile Source Air	Marcia S. Ginley, OMS
RCRA	
Judicial	James Chen, OE
Administrative	Robert Small, OWPE
EPCRA § 302-312 and CERCLA § 103	Joe Schive, OWPE
Toxics Release Inventory, TSCA and FIFRA	Jerry Stubbs, OCM

These authors and their colleagues devoted many long hours to the collection, verification, analysis and display of these data. Questions and comments concerning this report should be addressed to Ann DeLong, (202) 260-8870.

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY 3

General Findings
Program Highlights

II. PURPOSE, SCOPE AND LIMITATIONS OF THIS REPORT 4

Programs Covered
Cases Covered
Purposes and Limitations

III. GENERAL OVERVIEW 6

Highlights
Median and Average Penalties
Percentage of Cases Concluded with a Penalty
Range of Penalty Amounts
Highest Penalties
Types of Cases
Criminal Enforcement
Relative Contributions

I. EXECUTIVE SUMMARY

General Findings

- Overall, this Administration has assessed some 55% of all civil penalties and criminal fines, combined, assessed in EPA history ($200.7 million for FY 1989-1991 compared with $166.1 million for FY 1972-1988).

- *Fiscal Year 1991 brought the highest penalty dollars in EPA's history, with $73.1 million in civil* penalties. This represents a 21 percent increase over FY 1990. There was only a slight increase in the number of cases from FY 1990 to FY 1991, indicating that this increase in penalty dollars was due primarily to an increase in penalty amounts per case. Program offices are making effective and forceful use of EPA's penalty authorities.

- EPA has obtained almost $320 million in cash civil penalties from FY 1974 through FY 1991 in some 12,530 civil judicial and administrative cases.

- In FY 1991 alone, 23 percent of all civil penalty dollars in EPA's history were obtained.

- In the last three years, 53 percent of all civil penalty dollars in EPA's history were assessed.

- The FY 1991 total includes a civil judicial penalty for $220,000 assessed under the Lead Control Contamination Act. This Act, designed to prevent excessive lead from drinking water coolers, was a 1988 amendment to the Safe Drinking Water Act. This penalty reflects the first case brought by the Agency under this Act.

- Criminal fines totaled $14.1 million in FY 1991 (before deducting suspended sentences). This represents a two and a half fold increase from FY 1990 and is the highest amount ever assessed by EPA for criminal cases. Seventy-five years of incarceration were imposed (before suspension).

- In the five years EPA's criminal enforcement program has been tracking penalty data, $43.8 million in criminal fines and 298 years of incarceration have been imposed before deduction of suspended sentences. One third of all criminal fines in EPA's history were assessed in FY 1991.

- Penalties were obtained in 85 percent of the cases concluded in FY 1991.

Program Highlights

- Most programs set new records for total civil judicial and administrative penalty dollars.

  In descending order of total penalties assessed, these programs were the following: CWA, RCRA, Stationary Source Air, EPCRA §313, UIC, FIFRA, EPCRA §302-§312 and Marine and Estuarine Protection. The increases for these programs over last year's totals ranged from 22% for Stationary Air to 214% for UIC.

  Medians reached record highs for both judicial and administrative cases in the CWA and UIC, and for administrative cases alone in Wetlands*.

---

* Throughout the report, Wetlands actions refer to CWA §404. CWA §402 and pretreatment actions are referred to as CWA actions.

- Many programs set records for highest penalties within program offices.

  The largest penalty assessed in FY 1991 was $6,184,220 obtained in a CWA judicial case. The second largest penalty was assessed in a RCRA judicial case which settled for $5,405,000*. Both penalties were higher than the second highest penalty assessed in FY 1990 ($3,750,000)**. Additional programs with highest penalties greater than $1 million included Stationary Air judicial, RCRA administrative and TSCA administrative.

- Federal penalty dollars were dominated by CWA with 36% of the total. RCRA was second with 24%, followed by TSCA (15%), Stationary Air (10%) and EPCRA 313 (5%).

- Numbers of cases were dominated by five programs. TSCA had the highest number of cases with 20% followed by Mobile Source Air (16%), CWA (15%), FIFRA (13%) and EPCRA 313 (12.7%). All five programs rely heavily on administrative enforcement.

II. Purpose, Scope, and Limitations of this Report

This overview report summarizes the penalty practices of EPA in FY 1991 in civil judicial, administrative, and criminal enforcement actions. Except where specifically noted, the term "penalties" is used in this overview to refer only to civil (administrative and judicial) penalties, not criminal fines.

This report does not attempt to portray a complete picture on penalties obtained during enforcement of federal environmental laws, because it does not reflect penalties obtained by state or local governments, either directly or through court actions with EPA. States conduct the vast majority of enforcement actions under these laws, working through programs approved by EPA to carry out federal requirements.

Programs Covered

Thirteen EPA penalty programs are addressed in this report. Table 1 gives their names, the types of enforcement cases each used in FY 1990, and any acronyms by which they are cited in this report.

Cases Covered

The penalties discussed in this report are cash amounts assessed in EPA enforcement cases that were concluded in FY 1991. They include final judgments by court settlements in consent decrees and consent orders and final administrative orders.

This report does not include proposed penalties or other amounts under discussion prior to the conclusion of a case, and it does not include penalties paid to entities other than the Federal Government. Contempt enforcement actions (cases seeking to invoke sanctions for a failure to comply with a prior court order, decree, or administrative order) are not included.*** "Stipulated penalties" and "deferred penalties" also are not included in this report; they are penalties stipulated in an administrative or court order that are due only if the violator fails to carry out certain other requirements of the order. Nor does the report include the use of other sanctions, such as contractor listing, sewer moratoriums, or the suspension or revocation of permits.

---

* The RCRA judicial penalty contains $5 million in contempt actions.

** The highest penalty in FY 1990 was $15 million assessed under TSCA and RCRA in the Texas Eastern Pipeline case. This was the single highest penalty in the Agency's history.

*** With the exception of a RCRA judicial case in Region V which includes $5,000,000 in contempt actions.

Table 1
Penalty Programs Covered in this Report

Program	Types of Cases
Criminal Enforcement	Judicial
Clean Water - NPDES (CWA)	Judicial Administrative
Safe Drinking Water Act (SDWA)	Judicial Administrative
Wetlands Protection	Judicial Administrative
Marine and Estuarine Protection	Administrative
Stationary Source Air	Judicial Administrative
Mobile Source Air	Judicial Administrative
Resource Conservation and Recovery Act (RCRA)	Judicial Administrative
Emergency Planning and Community Right-to-Know Act (EPCRA §302-§312)	Administrative
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA §103, or Superfund §103)	Administrative
Toxics Release Inventory (TRI, or EPCRA §313)	Administrative
Toxic Substances Control Act (TSCA)	Judicial Administrative
Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)	Administrative

Credits, benefit projects, or non-monetary actions which parties in enforcement cases often agree to carry out as part of a settlement are also not included in this report. Such actions may yield large environmental benefits of substantial dollar value. Narrative description of specific cases can be found in the FY 1991 Enforcement Accomplishments Report.

As in past reports, the FY 1991 Federal Penalty Report does not include penalties assessed in the Underground Storage Tank program (UST). The reason for this exclusion was because UST is primarily a state delegated program.

One element of this report is an analysis of the extent to which EPA used penalties in its enforcement cases. Some cases did not obtain penalties. The cases without penalties included in this report are enforcement

actions in which a penalty is authorized by the statutes and regulations on which the case is based. If Congress did not authorize EPA to assess a penalty for a given type of violation, an enforcement action for such a violation would not be counted as a case in this report.

Penalties are counted in this report as assessed in a final administrative action or in a court order; appeals and collection of penalties are not considered here. The word "obtained" is used in this report as a general term referring to penalties that were assessed by a court or by EPA administrative orders. Its meaning is the same as "assessed" or "imposed."

Purposes and Limitations

This overview report is not an evaluation of practices by EPA programs, and it should be viewed in the context of the total enforcement effort. The report may illuminate individual characteristics of programs and provide a helpful comparison among programs. Identifying differences may stimulate further thinking about penalties in general, advancing the goal of more effective use of penalties as part of an overall enforcement program.

The reader should bear in mind that the data presented here are historical in nature, and do not necessarily represent present penalty practices. Nothing in this report may be used as a defense or guide to future settlements of federal cases involving penalties.

The specific penalty data used in this report were obtained from several federal data systems. The data have been approved by the responsible program offices, but the quality and completeness of the data may vary.

III. GENERAL OVERVIEW

Highlights

- Fiscal Year 1991 brought the highest penalty dollars in EPA's history, with $73.1 million in civil penalties. This represents an 21 percent increase over FY 1990. There was only a slight increase in the number of cases from FY 1990 to FY 1991, indicating that this increase in penalty dollars was due primarily to an increase in penalty amounts per case. Program offices are making effective and forceful use of EPA's penalty authorities.

- EPA has obtained almost $320 million in cash civil penalties from FY 1974 through FY 1991 in some 12,530 civil judicial and administrative cases.

- In FY 1991 alone, 23 percent of all civil penalty dollars in EPA's history were obtained.

- In the last three years, 53 percent of all civil penalty dollars in EPA's history were assessed.

- The FY 1991 total includes a civil judicial penalty for $220,000 assessed under the Lead Control Contamination Act. This Act, designed to prevent excessive lead from drinking water coolers, was a 1988 amendment to the Safe Drinking Water Act. This penalty reflects the first case brought by the Agency under this Act.

- Criminal fines totaled $14.1 million in FY 1991 (before deducting suspended sentences). This represents a two and a half fold increase from FY 1990 and is the highest amount ever assessed by EPA for criminal cases. Seventy-five years of incarceration were imposed (before suspension).

- In the five years EPA's criminal enforcement program has been tracking penalty data, $43.8 million in criminal fines and 298 years of incarceration have been imposed before deduction of suspended sentences. One third of all criminal fines in EPA's history were assessed in FY 1991.

- Penalties were obtained in 85 percent of the cases concluded in FY 1991.

The total amounts of civil penalties for each program in FY 1991 are shown in Table 2. Criminal penalties are shown in Table 4. The historical picture is shown in Figures 1 and 2, displaying total penalties by fiscal year. The relative contributions of the different EPA programs to the FY 1991 totals of civil penalty dollars and number of cases with penalties are shown in Figures 3 and 4.

Seven programs set new records for total civil judicial or administrative penalty dollars. These programs were CWA, Marine, Stationary Air, RCRA, EPCRA §302-§312, EPCRA §313 and FIFRA. The penalties ranged from the high for FIFRA of $932,925 to a high for CWA of $26.6 million. The percent increases for these programs over last year's totals ranged from 22% for Stationary Air to a 214% increase for UIC.

A comprehensive summary of the programs' civil penalty data appears in Table 3.

Table 2

Total Amount of Civil Judicial and Administrative Penalties in FY 1991

	Total dollars (%)	No. All Cases*(%)
Clean Water Act	**$ 26,623,930 (36%)**	**205 (12%)**
Judicial	23,109,832	57
Administrative	3,514,098	148
Safe Drinking Water Act	**$ 2,035,734 (3%)**	**161 (10%)**
Judicial	570,514	8
Administrative	1,465,220	153
Wetlands Protection	**$ 504,200 (1%)**	**23 (1%)**
Judicial	172,500	8
Administrative	331,700	15
Marine and Estuarine Protection		
Administrative	**$ 264,200 (<1%)**	**5 (<1%)**
Stationary Source Air - Judicial	**$ 7,346,481 (10%)**	**65 (4%)**
Mobile Source Air	**$ 2,334,008 (3%)**	**212 (13%)**
Judicial	9,800	3
Administrative	2,324,208	209
RCRA	**$17,671,457 (24%)**	**142 (8%)**
Judicial	10,026,594	18
Administrative	7,644,863	124
EPCRA §302-§312 - Administrative	**$ 631,218 (<1%)**	**23 (1%)**
CERCLA §103 - Administrative	**$ 258,450 (<1%)**	**20 (<1%)**
Toxics Release Inventory - Administrative	**$ 3,910,210 (5%)**	**194 (12%)**
TSCA - Administrative	**$10,591,315 (15%)**	**336 (20%)**
FIFRA - Administrative	**$ 932,925 (1%)**	**278 (17%)**
TOTAL	**$ 73,104,128**	**1,664**

* "Number of all cases" includes all cases with or without penalties. Percentages shown here will differ from analyses presented elsewhere in this report which are based on only those cases with cash penalties.

** The total RCRA judicial amount includes $5,000,000 in contempt actions.

FIGURE 1

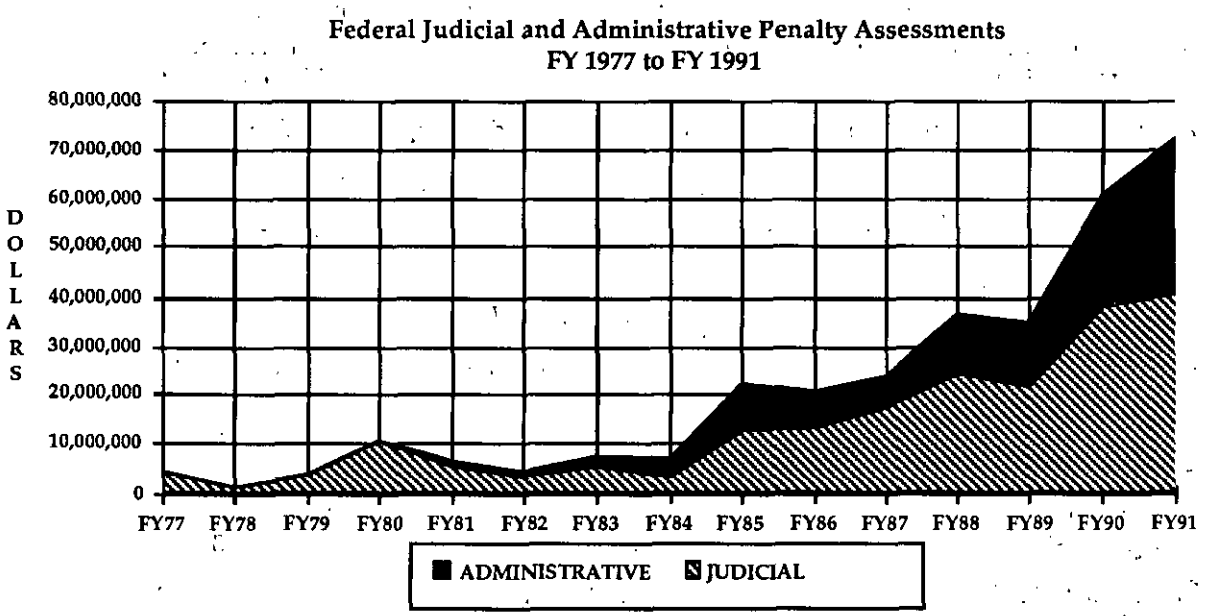


FIGURE 2

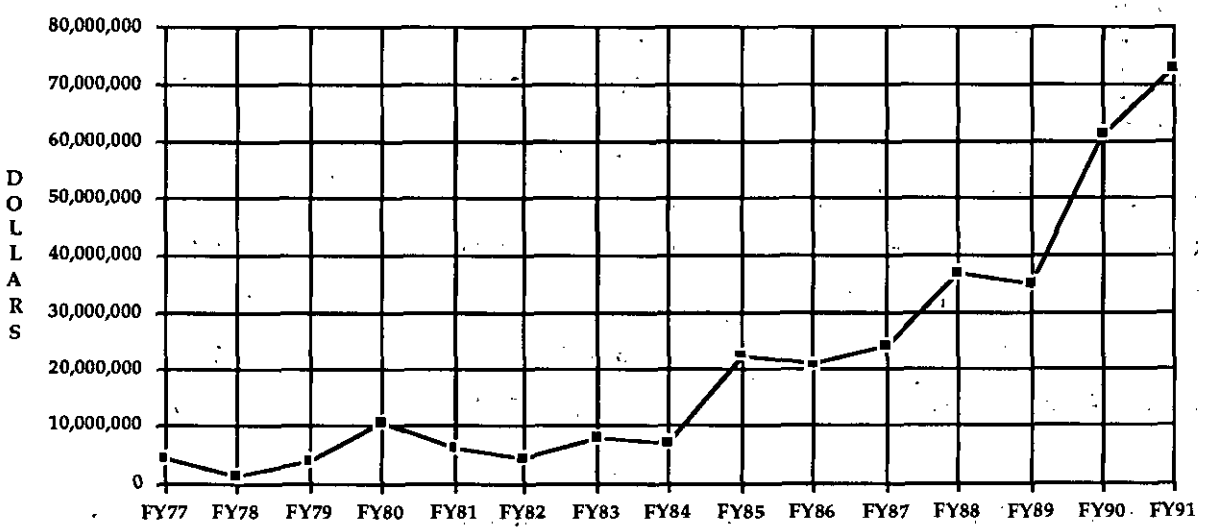


TABLE 4

SUMMARY OF CIVIL PENALTIES BY PROGRAM IN FY 1991

Program	Total Dollars	Cases with Penalty	Cases w/o Penalty	Total Cases	Percent w/Penalty	Average Penalty	Avg All Cases	Median Penalty	Med All Cases	Highest Penalty
CWA ADM	3,514,098	147	1	148	99%	23,905	23,744	12,000	12,000	125,000
CWA JUD	23,109,832	57	0	57	100%	405,436	405,436	63,000	63,000	6,184,220
CWA ADM+JUD	26,623,930	204	1	205	100%	130,509	129,873			6,184,220
UIC ADM	1,432,560	67	73	140	48%	21,381	10,233	6,000	0	125,000
UIC JUD	104,414	4	0	4	100%	26,104	26,104	14,000	0	74,874
UIC ADM+JUD	1,536,974	71	73	144	49%	21,648	10,673			125,000
PWS ADM	32,660	11	2	13	85%	3,378	2,512	4,000	5,000	5,000
PWS JUD	246,100	4	0	4	100%	61,525	61,525	11,250	11,250	220,000
PWS ADM+JUD	278,760	15	2	17	88%	18,584	16,398			220,000
SDWA ADM	1,465,220	78	75	153	51%	18,785	9,577	4,000	400	125,000
SDWA JUD	570,514	8	0	8	100%	43,814	43,814	8,500	0	200,000
SDWA ADM+JUD	2,035,734	86	75	161	53%	23,671	12,644			200,000
WETLD ADM	331,700	15	0	15	100%	22,113	22,113	5,000	5,000	100,000
WETLD JUD	172,500	6	2	8	75%	28,750	21,563	0	0	50,000
WETLD ADM+JUD	504,200	21	2	23	91%	24,010	21,922			100,000
MARINE ADM	264,200	5	0	5	100%	66,050	66,050	19,594	19,594	150,000
STATAIR ADM	0	0	0	0				4,300	4,300	0
STATAIR JUD	7,346,481	64	1	65	98%	114,789	113,023	48,250	46,500	1,500,000
STAT ADM+JUD	7,346,481	64	1	65	98%	114,789	113,023			1,500,000
MOBAIR ADM	2,324,208	208	1	209	100%	11,174	11,121	1,200	1,200	875,000
MOBAIR JUD	9,800	2	1	3	67%	4,900	3,267	4,900	4,800	5,000
MOB ADM+JUD	2,334,008	210	2	212	99%	11,114	11,009			875,000
RCRA ADM	7,644,863	116	8	124	94%	65,904	61,652	21,475	20,000	3,375,000
RCRA JUD	10,026,594	15	3	18	83%	668,440	527,245	157,942	55,047	2
RCRA ADM+JUD	17,671,457	131	11	142	92%	134,897	124,447			3,375,000
EPCRA 302-312	631,218	21	2	23	91%	30,058	27,444	20,600	20,600	82,250
CERCLA 103	258,450	14	6	20	70%	18,461	12,923	13,900	13,900	60,000
TRI	3,857,435	186	8	194	96%	20,739	19,884	12,000	12,750	142,800
TSCA ADM	10,591,315	285	49	334	85%	37,163	31,711	7,775	12,500	2,220,000
TSCA JUD	0	0	2	2	0%		0	0	0	0
TSCA ADM+JUD	10,591,315	285	51	336	85%	37,163	31,522			2,220,000
FIFRA	936,823	192	86	278	69%	4,879	3,370	450	1,920	287,920
TOTAL	72,835,251	1,419	245	1,664						

FIGURE 3

FY 1991
PERCENT PENALTY DOLLARS BY PROGRAM

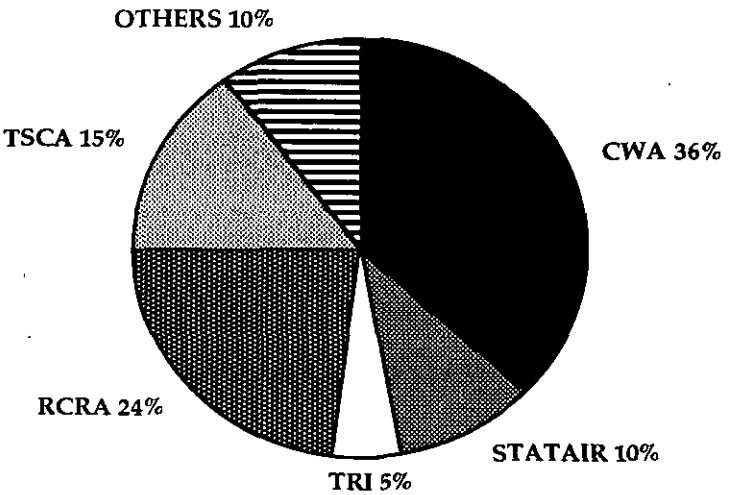


FIGURE 4

FY 1991
PERCENT PENALTY CASES BY PROGRAM

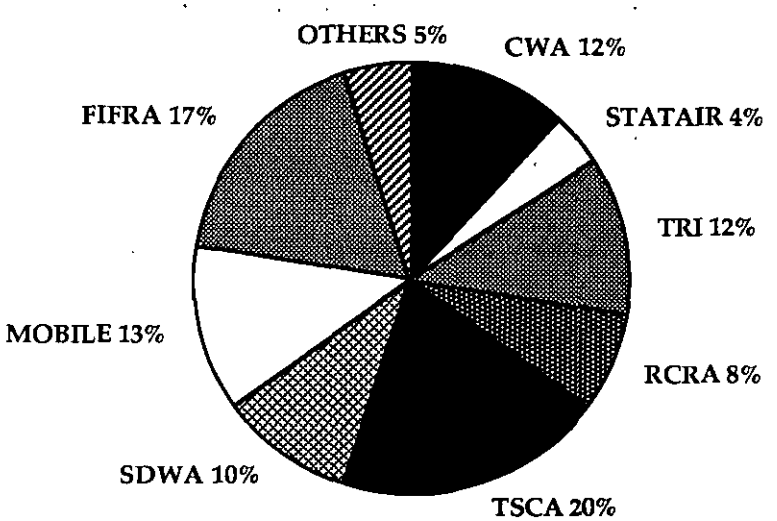


Table 4

Total Amount of Criminal Fines and Incarceration in FY 1991

Number of defendants convicted	72
Total fines assessed	
Before suspension	$14.1 million
Total months incarceration	
Sentenced (before suspension)	963 months (80 years)
Ordered (after suspension, before parole)	610 months (51 years)

Median and Average Penalties

This section of the report attempts to look beyond the aggregate figures to see what the typical penalties were for each program. Average and median penalty figures represent different aspects of the program.

The average penalty is the total dollars divided by the number of penalty cases in a given program. While an average is useful in seeing overall program accomplishments, it may give a misleading picture if the penalties within that program went to extremes. One high-penalty case and a large number of low-penalty cases could produce a mid-level average, even though no cases had a mid-level penalty.

The median is useful to gain a different perspective on a program without the heavy influence of a few extremely large or small penalties. The median penalty represents the middle number in the series of all penalties for a given program arranged in order of size. That is, there were as many penalties below the median as above it.

Medians - Figure 5 shows trends in medians over several years for the largest EPA penalty programs during that period. Among the programs with five years or less of penalty history, only RCRA judicial cases are shown. In the Mobile Source Air and TSCA programs, the data reflect several different penalty authorities, including some that lead to higher-dollar penalties. However, most of the cases in both these programs are in lower-dollar categories, which results in low median penalties.

Medians increased for both administrative and judicial cases in the RCRA program and remained the same for judicial cases in the Water and Stationary Source Air programs. The median for administrative cases in the Mobile Air program remained at the same level as FY 1990. Decreases were seen in the median penalties in administrative cases in both the TSCA and FIFRA programs in FY 1991.

In the foregoing discussion of change in medians, there is no mention of TSCA judicial cases or Stationary Source Air administrative cases, because there were too few cases in FY 1990 or 1991 or both years to make these categories suitable for such analysis.

- **Clean Water Act:** The median judicial penalty rose from its FY 1990 level of $63,000 to a record high of $100,000 in FY 1991. The median administrative penalty also rose to a new high of $12,000 from $10,650 in FY 1990.

- **Safe Drinking Water Act:** The median judicial penalty remained at $8,500, the same level as in FY 1990. (This reflects FY 1991 medians of $14,000 for four UIC cases and $11,250 for two PWSS cases.) The median administrative penalty remained at $4,000 in FY 1991, the same as in FY 1990. (The subprogram medians in FY 1991 were $6,000 for 140 UIC cases and $4,000 for 14 PWSS cases.)*

*This does not include the $220,000 Lead Control Contamination Act penalty.

• **Wetlands Protection:** In this fourth year of administrative penalty cases concluded by the program, the median dropped to $5,000, compared to the FY 1990 level of $11,000. The median judicial penalty was $42,500, an $5,000 increase from $5,000 in FY 1990. (This is the fourth year Wetlands penalties have been presented separately in this report. They were included as part of Clean Water Act data in penalty reports prior to FY 1988.)

• **Marine and Estuarine Protection:** This program is in its second year for cases concluded and median administrative penalty from $19,594 in FY 1990 to $66,050 FY 1991.

• **Stationary Source Air:** The median judicial penalty rose slightly from $48,000 in FY 1990 to $48,250 in FY 1991. The record was set in FY 1987 with a median of $65,750.

• **Mobile Source Air:** The median judicial penalty was $4,900, reflecting only three cases. This is a slight increase from the FY 1990 level of $4,000 for three cases. The median administrative penalty remained at 1,200 in FY 1991, the same level as FY 1990.

• **RCRA:** The median judicial penalty of $157,942 was the highest to date in this program. The median administrative penalty continued rising for the eighth year in a row, also attaining a new record of $21,475.

• **EPCRA § 302-312:** In the third year of concluded cases, this program surpassed its first two years median's with a penalty of $40,500 compared to $20,600 in FY 1990.

• **CERCLA § 103:** In the third year of concluded cases, this program's median penalty decreased from the FY 1990 level of $25,000 to $13,900 in FY 1991.

• **Toxics Release Inventory:** In this third year of concluded cases, this program's median penalty also decreased slightly from $13,000 in FY 1990 to $12,750 in FY 1991.

• **TSCA:** The median administrative penalty attained a record high of $12,500, rising from $8,000 in FY 1990. Prior to FY 1986, TSCA medians were not calculated on a program-wide basis.

• **FIFRA:** The median penalty rose from $1,056 in FY 1990 to $1,920 in FY 1991, setting a new record for FIFRA medians.

Averages - Average civil judicial or administrative penalties increased in seven programs in FY 1991 as compared with twelve in FY 1990. Declines were evident in five programs. However, it should be noted that averages may be influenced by a few large cases. A year with one or two extremely large cases may have a much higher average penalty than a year without any, even though the latter may have had larger penalties in most enforcement cases.

Averages rose to record highs in the Clean Water Act in both judicial and administrative cases. For judicial cases only, averages rose to new highs in the Stationary Source Air and RCRA programs. For administrative cases, increases in the averages were seen in the Safe Drinking Water Act program, Wetlands program, RCRA, TRI and FIFRA programs.

Lower average penalties were reported in the SDWA and Wetlands programs in judicial cases and in administrative cases in the Mobile Air, EPCRA and CERCLA §103 programs.

• **Clean Water Act:** The average judicial penalty rose to a record high of $405,258. In the fourth year of administrative penalties, the average attained a record of $23,937.

• **Safe Drinking Water Act:** The average judicial penalty dropped to $21,152 compared to a high of $37,557 in FY 1990. However, the average administrative penalty rose to $9,566 in FY 1991.*

• **Wetlands Protection:** The average judicial penalty dropped to $21,563, compared to $49,114 in FY 1990. In the fourth year of administrative penalties, the average rose in FY 1991 to a record high of $22,113.

• **Marine and Estuarine Protection:** In the third year of administrative penalties, the average rose to a record high of $66,050 in FY 1991 with five cases concluded.

• **Stationary Source Air:** The average judicial penalty rose from $100,615 in FY 1990 to $112,217 in FY 1991.

• **Mobile Source Air:** The average administrative penalty rose for the first time in two years, from $8,962 in FY 1990 to $11,121 in FY 1991. The average judicial penalty dropped sharply from $335,667 in FY 1990, to $3,267 in FY 1991 based on only three cases.

• **RCRA:** The average judicial penalty increased from the FY 1990 average of $325,333, to $527,245 setting a record. The average administrative penalty rose substantially to $37,129, compared to $25,339 in FY 1990 (this excludes one very large penalty of $3,375,000 from the average).

• **EPCRA § 302-312:** In this third year of concluded cases, the average penalty dropped from $40,627 to $29,709.

• **CERCLA § 103:** In this third year of concluded cases, the average penalty dropped sharply from $31,400 to $8,550.

• **Toxics Release Inventory:** In this third year of concluded cases, the average penalty rose from $15,626 to $20,464.

• **TSCA:** The average administrative penalty decreased slightly to $33,867 compared to $34,311 in FY 1990. (Averages were not calculated on a TSCA program-wide basis before FY 1986.)

• **FIFRA:** The average penalty rose to a new high of $3,350. For the FIFRA program, this is an increase over the FY 1990 average of $2,555.

Percentage of Cases Concluded with a Penalty

A high percentage of cases were concluded with a penalty in all programs except one (UIC). Excluding this one program from the calculation, 84 percent of all FY 1991 cases were concluded with a penalty, a decrease from the FY 1990 level of 93%. (See Table 4 for each program's percentage with penalty.)

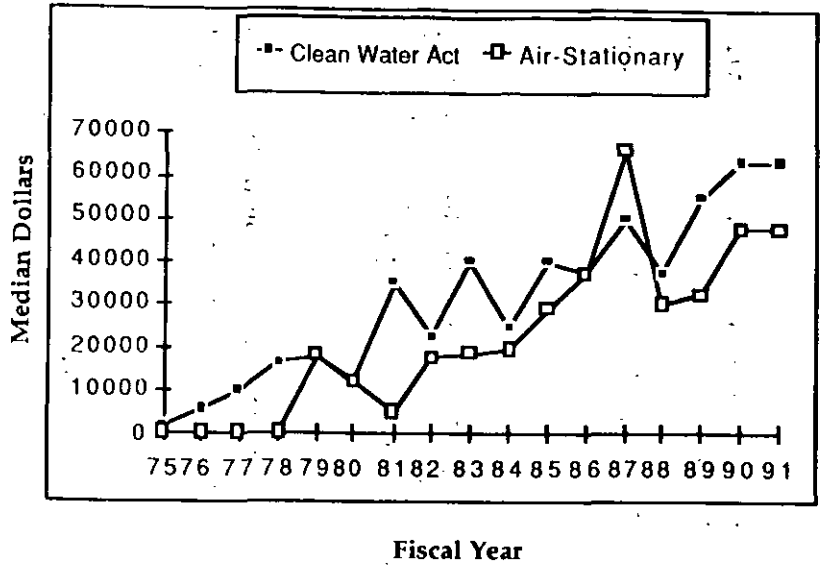
Range of Penalty Amounts

This section examines how EPA's penalties in FY 1991 ranked along the scale from low dollars to high dollars. The penalty cases are sorted into eight ranges from no-penalty cases ("zero dollars") to cases of $1 million or more.

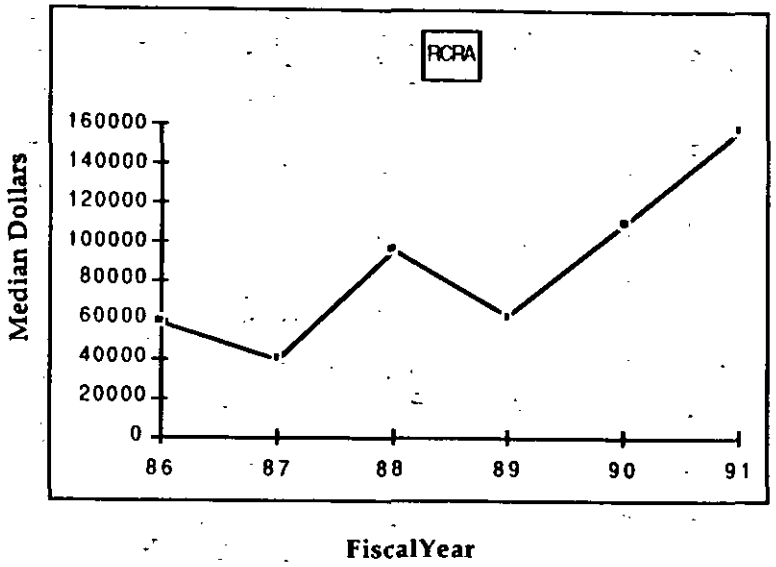
Figure 6 shows the penalty distribution of all FY 1991 cases.

*This does not include the $220,000 Lead Control Contamination Act penalty.

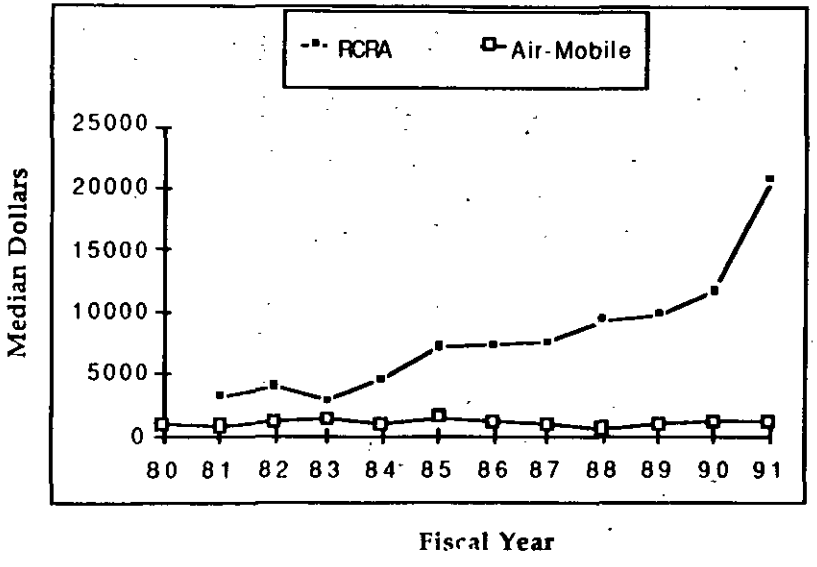
PROGRAM MEDIANS BY FISCAL YEAR
Judicial Penalties



PROGRAM MEDIANS BY FISCAL YEAR
Judicial Penalties



PROGRAM MEDIANS BY FISCAL YEAR
Administrative Penalties



PROGRAM MEDIANS BY FISCAL YEAR
Administrative Penalties

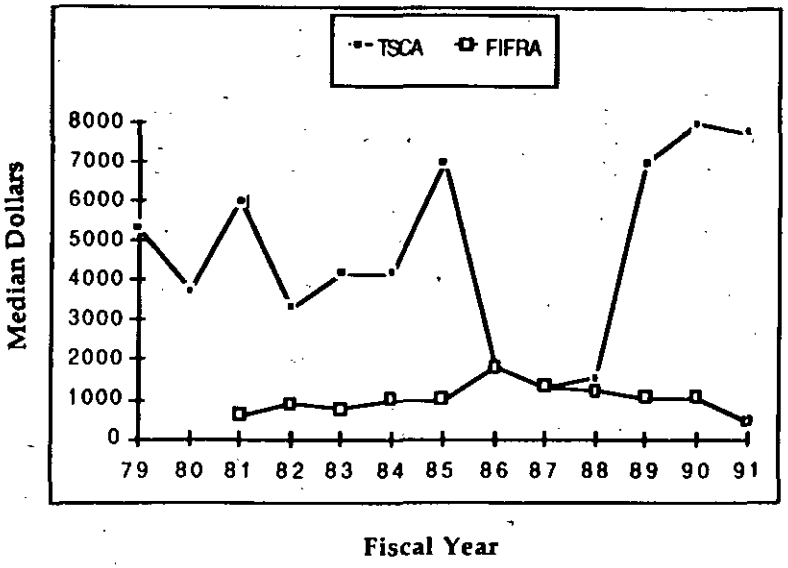
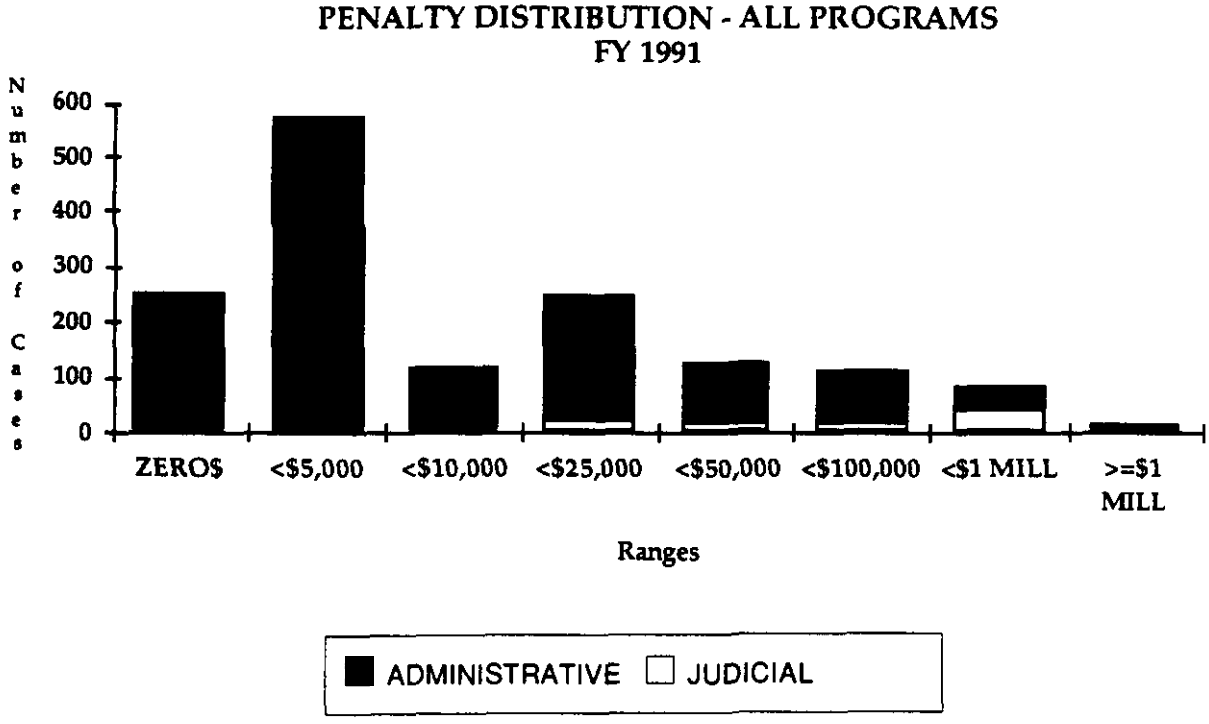


FIGURE 6


PENALTY DISTRIBUTION - ALL PROGRAMS
FY 1991
Number of Cases
600
500
400
300
200
100
0
ZERO$
<$5,000
<$10,000
<$25,000
<$50,000
<$100,000
<$1 MILL
>=$1 MILL
Ranges
ADMINISTRATIVE
JUDICIAL

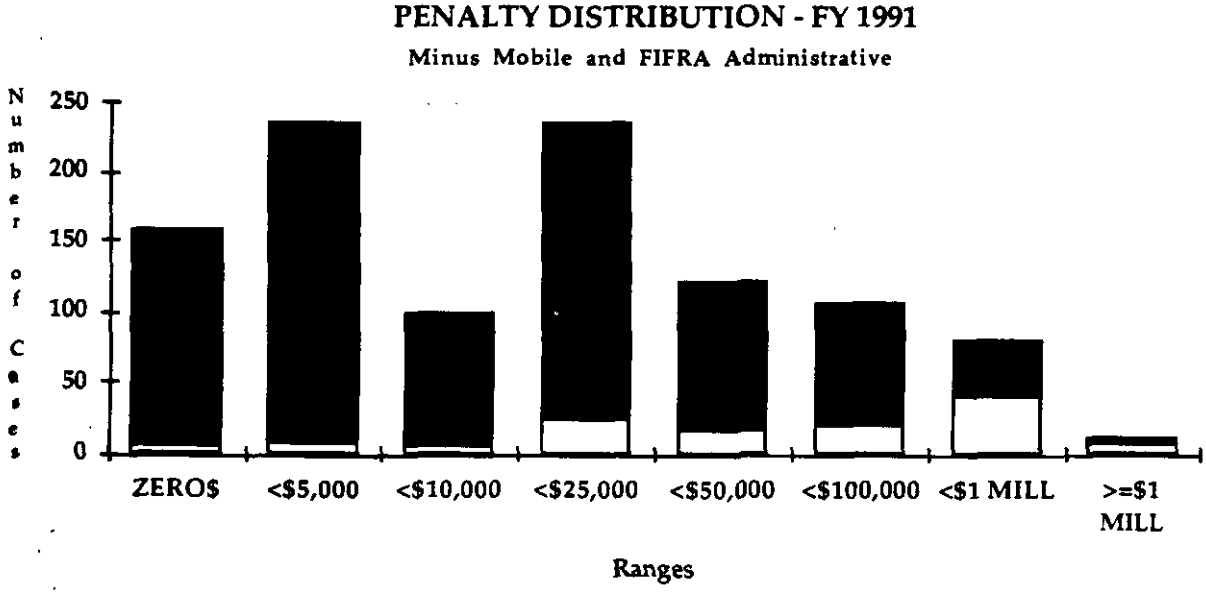

PENALTY DISTRIBUTION - FY 1991
Minus Mobile and FIFRA Administrative
Number of Cases
250
200
150
100
50
0
ZERO$
<$5,000
<$10,000
<$25,000
<$50,000
<$100,000
<$1 MILL
>=$1 MILL
Ranges

FIGURE 7

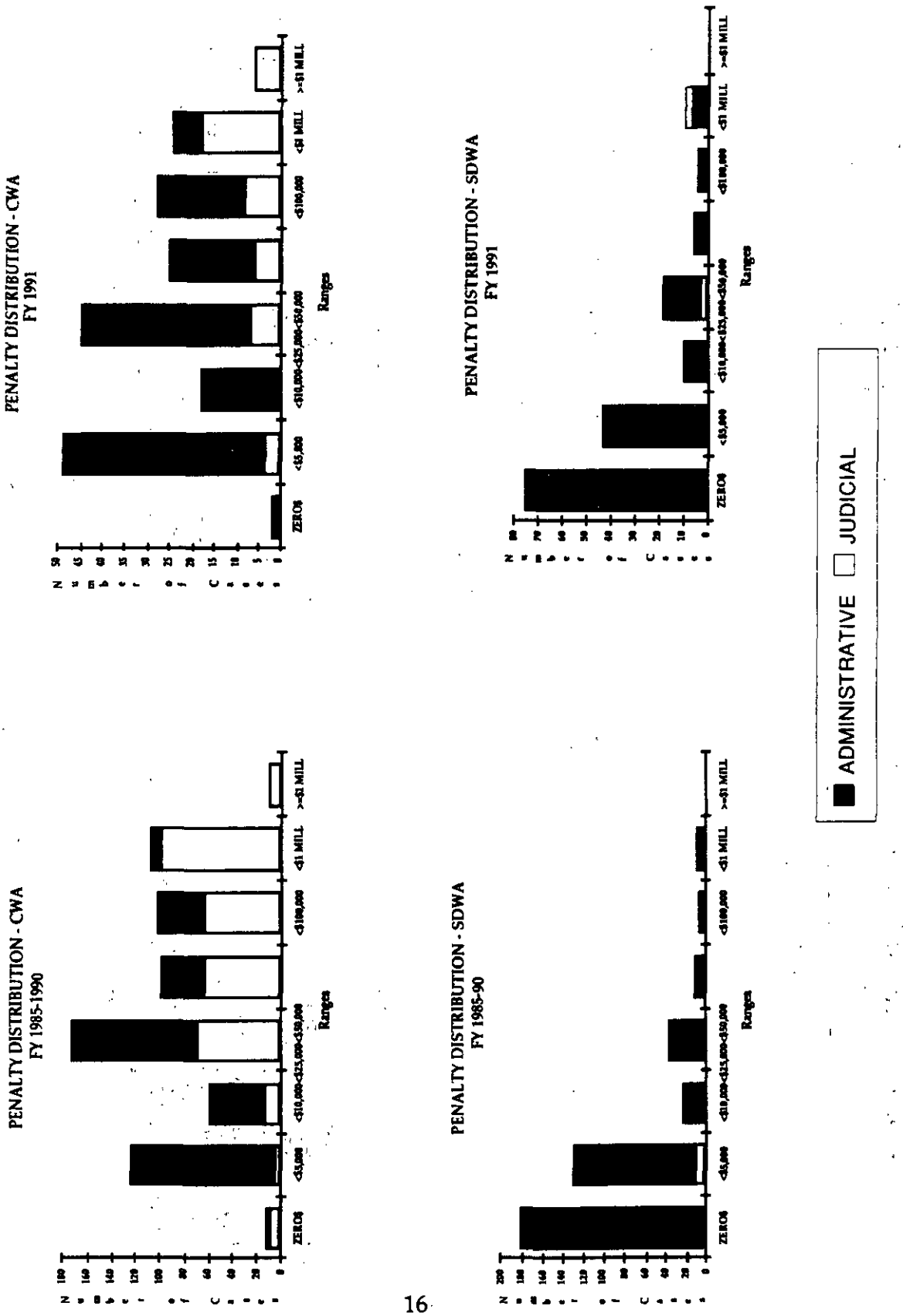
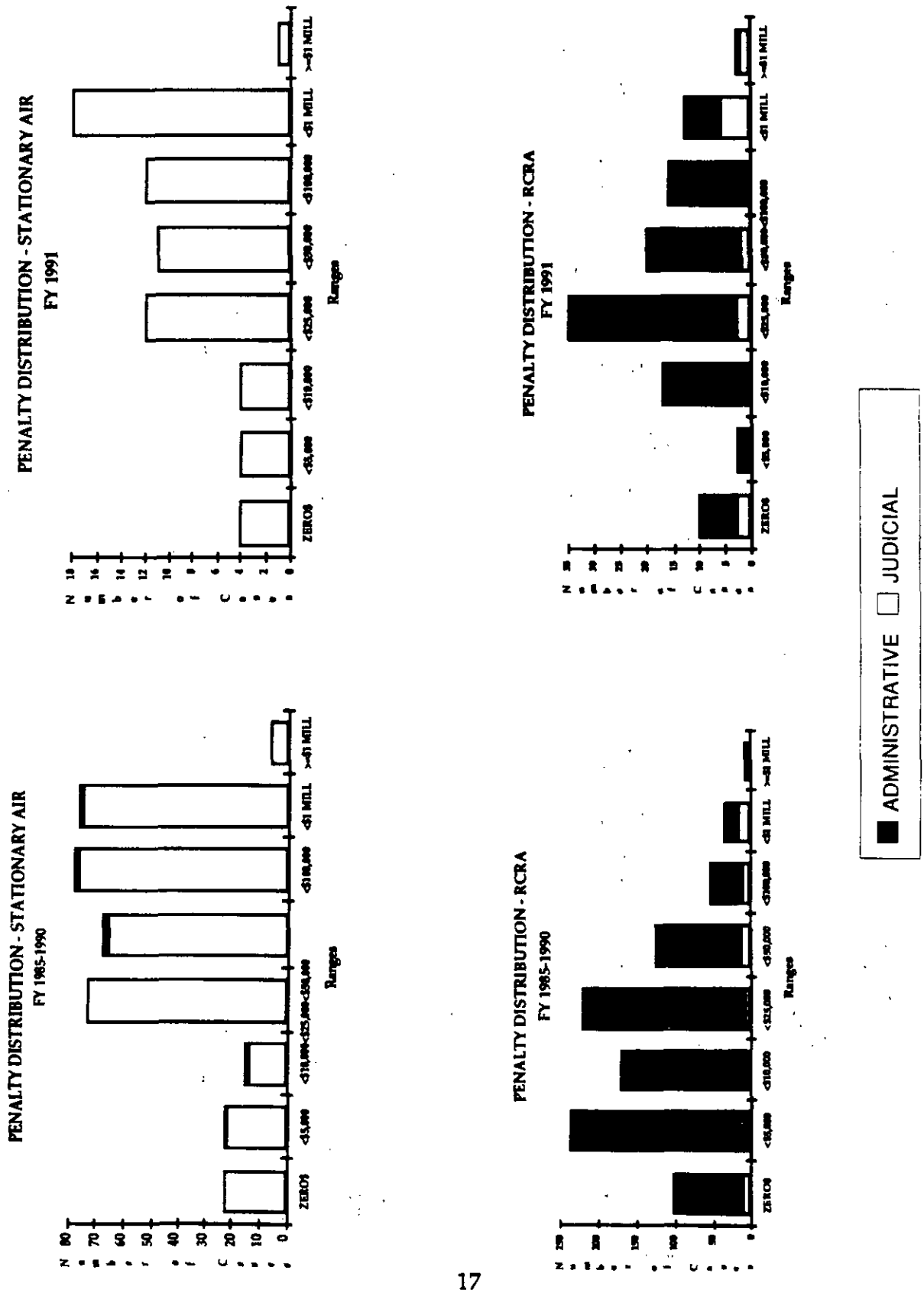

PENALTY DISTRIBUTION - CWA
FY 1991
PENALTY DISTRIBUTION - SDWA
FY 1991
PENALTY DISTRIBUTION - CWA
FY 1985-1990
PENALTY DISTRIBUTION - SDWA
FY 1985-90
Ranges
ADMINISTRATIVE
JUDICIAL

FIGURE 8


PENALTY DISTRIBUTION - STATIONARY AIR
FY 1991
PENALTY DISTRIBUTION - RCRA
FY 1991
PENALTY DISTRIBUTION - STATIONARY AIR
FY 1985-1990
PENALTY DISTRIBUTION - RCRA
FY 1985-1990
ADMINISTRATIVE
JUDICIAL

Highest Penalties

Eight programs established new records for highest individual administrative or judicial penalties -- that is, the highest penalty assessed in a single case. Record judicial penalties were set in FY 1990 in the Safe Drinking Water Act (UIC) and Wetlands programs. Record administrative penalties were set in the Clean Water Act, EPCRA §302-312, CERCLA §103, Toxics Release Inventory (EPCRA §313), and FIFRA. TSCA set the highest administrative and judicial penalties in FY 1990. The highest penalties in each program are shown in Table 5.

Table 5
Highest Penalty in FY 1991 by Program

	Judicial	Administrative
Clean Water Act	$ 6,184,220	$125,000
Safe Drinking Water Act	$ 220,000	$ 125,000
Wetlands Protection	$ 50,000	$ 100,000
Marine and Estuarine Protection	--	$ 150,000
Stationary Source Air	$ 1,500,000	--
Mobile Source Air	$ 5,000	$ 875,000
RCRA	$ 5,405,000*	$ 3,375,000
EPCRA §302-312	--	$ 82,250
CERCLA §103	--	$ 60,000
Toxics Release Inventory	--	$ 142,800
TSCA	--	$ 2,220,000
FIFRA	--	$ 287,920

* Includes $5,000,000 in contempt actions.

Types of Cases

About $41.2 million, or 56 percent, of all EPA federal penalty dollars in FY 1991 came from judicial cases. The remaining $31.9 million (44 percent) came from administrative cases.

There were more administrative cases than judicial cases. Some 89 percent (1,250) of all cases with penalties were administrative enforcement actions, compared to 11 percent (152 cases) that were judicial actions.

In general, the penalty is likely to be higher in a judicial case than in an administrative case, but the ranges overlap. For instance, among EPA's larger penalties in FY 1991, the highest administrative penalty was $3.4 million brought by the RCRA program, and the highest judicial penalty was $6.2 million brought by the Clean Water Act program.

Considered on an agency-wide basis, the proportions of dollars and cases from the judicial and administrative categories in FY 1991 are similar to those in the past five fiscal years. The percentages within that period varied within a range of 15 percentage points for penalty dollars, and 4 percentage points for cases.

Criminal Enforcement

The Criminal Enforcement program operates on a cross-media basis, serving all the major programs that have been authorized by Congress to use criminal sanctions against violators. Most criminal cases include charges under more than one environmental law, but for statistical purposes each case is listed under one predominant statute. On this basis, the programs with the largest numbers of fines assessed in FY 1991 were RCRA ($8.7 million), CWA ($5.2 million) and CAA ($.3 million).

Relative Contributions

The Clean Water Act program dominated civil penalty dollars in FY 1991, with 36 percent of the total (see Figure 3). It was followed by RCRA (24 percent), TSCA (15 percent), Stationary Source Air (10 percent) and Toxics Release Inventory (5 percent) programs.

The majority of cases with penalties in FY 1991 were concluded by programs that made heavy use of administrative cases (see Figure 4): TSCA (20 percent), FIFRA (17 percent), Mobile Source Air (13 percent). These shares are very similar to FY 1990 program shares.

EPA Headquarters Enforcement Offices

Office of Enforcement (OE)

Assistant Administrator	202-260-4134
Deputy Assistant Administrator	202-260-4137
Deputy Assistant Administrator-Federal Facilities	202-260-4543
Director of Civil Enforcement	202-260-4540
Enforcement Counsel for Air Enforcement	202-260-2820
Enforcement Counsel for Water Enforcement	202-260-8180
Enforcement Counsel for Superfund Enforcement	202-260-3104
Enforcement Counsel for RCRA Enforcement	202-260-3050
Enforcement Counsel for Pesticides and Toxic Substances Enforcement	202-260-8690
Office of Criminal Enforcement	202-260-9660
Office of Compliance Analysis and Program Operations (OCAPO)	202-260-4140
Office of Federal Activities (OFA)	202-260-5053
Office of Federal Facilities Enforcement (OFFE)	202-260-9801
Contractor Listing Program	202-475-8780
National Enforcement Investigations Center (NEIC - Denver)	303-236-5100

Office of Air and Radiation (OAR)

Stationary Source Compliance Division (SSCD)	703-308-8600
Field Operations and Support Division (FOSD)	202-260-2633
Manufacturers Operations Division (MOD)	202-260-2479

Office of Water (OW)

Office of Wastewater Enforcement and Compliance (OWEC)	202-260-5850
Office of Drinking Water (ODW)	202-260-5543
Office of Wetlands, Oceans and Watersheds	202-260-7166

Office of Solid Waste and Emergency Response (OSWER)

Office of Waste Programs Enforcement (OWPE - CERCLA)	703-308-8404
Office of Waste Programs Enforcement (OWPE - RCRA)	202-260-4808

Office of Pesticides and Toxic Substances

Office of Compliance Monitoring (OCM)	202-260-3807

U.S. Environmental Protection Agency Regional Offices Enforcement Information Contacts

Region I - Boston

Connecticut, Maine, Massachussetts,
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