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EPA

Toxic Substances Control Act (TSCA)

Report to Congress for Fiscal Years 1990-91

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* SARA = Superfund Amendments and Reauthorization Act (1986)
* EPCRA = Emergency Planning and Community Right-to-Know Act

INTRODUCTION

Following is a Report to Congress on the implementation of the Toxic Substances Control Act (TSCA) in fiscal years 1990 and 1991, as required under sections 9(d), 28(c), and 30 of TSCA.

TSCA FY90-91 HIGHLIGHTS

Section 4 Testing of chemical substances and mixtures

Under conditions of potential unreasonable risk or high production volume and exposure, authority is provided for the Agency to a) require manufacturers and processors to test chemicals for health and environmental effects and b) set testing standards specifying the procedures to be used in conducting the tests.

Testing required under section 4
- Tests required in FY90: 75
- Tests required in FY91: 250*

Estimate of costs to perform required chemical tests
- Costs incurred in FY90: $7.0 million
- Costs incurred in FY91: $0.5 million

Chemical testing results
- Received in FY90: 78
- Received in FY91: 95

*Includes High Production Volume Screening Information Data Set (HPV-SIDS)

Section 5 New chemical manufacturing and processing notices

Manufacturers or importers must notify EPA 90 days prior to producing new chemicals for commercial purposes.

Number of premanufacture notices (PMNs)
- Total received in FY90: 2,738
- Total received in FY91: 1,867

- Subset subject to section 4 tests in FY90: 0
- Subset subject to section 4 tests in FY91: 0

Number of section 5(g) decisions not to take action on chemicals subject to notification or data requirements
- Decisions made in FY90: 0
- Decisions made in FY91: 0

Significant New Use Rules (SNURs)
- Issued in FY90: 180
- Issued in FY91: 120

Number of 5(e) actions pending development of information
- Consent orders issued in FY90: 86
- Consent orders issued in FY91: 87

Consent decree-ordered test results
- Received in FY90: 57
- Received in FY91: 140

Section 6 — Regulation of unreasonable chemical risks

Authority is provided to EPA to prohibit or limit the manufacture, processing, distribution in commerce, use and disposal of hazardous chemicals.

- Rules issued in FY90-91:

(9/91) Proposed rule to ban acrylamide/acrylamide-based grouting compounds

(5/91) Proposed rule to regulate land application of sludge from pulp and paper mills using chlorine/chlorine-derived bleaching processes

(5/91) Advanced notice of proposed rulemaking (ANPR) on lead in the environment

(6/91) Advanced notice of proposed rulemaking (ANPR) to amend the current rules on the disposal of PCB and approximately 50 other topics dealing with the manufacture, processing and distribution in commerce of PCBs.

Section 8(e) — Notices of substantial chemical risks

This information-gathering authority requires chemical manufacturers, processors, and distributors to notify EPA of substantial risks of injury to health or environment.

- Notices received in FY90: 631
- Notices received in FY91: 847

Section 9 Coordination of TSCA authority with other laws and federal agencies

Authority is provided to EPA to refer cases of chemical risk to other federal agencies with authority to prevent or reduce risk.

Formal section 9 referrals
- Action taken in FY90: 0
- Action taken in FY91: 0

Informal referrals
- One of the most frequent outcomes of TSCA Existing Chemicals Program decision meetings is the decision to transmit information to other agencies.

Activities which highlight TSCA's multi-media role in risk reduction and pollution prevention

AIR PROGRAMS

Interagency Committee on Indoor Air Quality (CIAQ)

-- EPA required under Title IV of the Superfund Amendments and Reauthorization Act (SARA) of 1986 to establish a committee comprised of the Federal agencies concerned with various aspects of indoor air quality (IAQ) and to coordinated Federal IAQ activities.

-- The CIAQ meets on a quarterly basis as the primary Federal coordination mechanism for indoor air.

CFC Substitutes

-- Coordinated development of SNURs on two HCFCs.

-- OTS and OAR are coordinating review of new and existing chemical substitutes for the CFCs.

-- Testing results on CFC substitutes under active consideration are provided to Office of Atmospheric and Indoor Air Programs when Section 8(e) substantial risk reporting threshold is met.

-- CFC substitutes testing communique released by US, European Community, Japan, and PAFT on October 9, 1991.

MMT Proposed Unleaded Gasoline Additive

-- Coordinated with Office of Air and Radiation to evaluate toxicity/health concerns.

Indoor Air Source Characterization Project

-- Joint project with Office of Atmospheric and Indoor Air Programs (OAIAP) to identify and characterize products that are major contributors to indoor air pollution. A source ranking database is currently under development.

-- The first product category being evaluated is interior architectural paints. Initial contact with the major trade association, National Paints and Coatings, made in September 1991.

-- The OAIAP is on the work group for the Aerosol Spray Paint case being evaluated in the Risk Management One (RM1) process.

Air Toxics Testing Initiative

-- Title III of the Clean Air Act Amendments of 1990 lists 189 chemicals as hazardous air pollutants (air toxics). EPA is charged with developing maximum achievable control technology (MACT) standards for the air toxics chemicals.

-- Following implementation of the MACT standards the statute mandates residual risk determinations for each air toxic chemical.

-- In many cases, data are insufficient to support residual risk determinations.

OTS, OAR, and ORD are cooperating in:

o developing a standard set of test data needed for residual risk determinations for each air toxic chemical

o prioritizing the chemicals for testing consideration

o developing a TSCA testing program for the air toxics chemicals

HAZARDOUS WASTE

Phosphoric acid production wastes

-- Collaborative effort with Office of Solid Waste, Regions 4,6,8,10, State of Florida and Bureau of

Mines to reduce risk from phosphogypsum stacks and process wastewater resulting from phosphoric acid production.

-- Project is currently in second phase of Risk Management process (RM2).

Cyaniding

-- OTS is evaluating potential risk management options to reduce the risks associated with the use of sodium cyanide in mineral extraction operations; currently in RM2.

-- Project is being coordinated with OSW, OW, and Regions 8, 9, and 10, as well as Fish and Wildlife Service, the Bureau of Land Management, and Bureau of Mines.

WATER PROGRAM

Persistent Bioaccumulators Cluster

-- Initial phase of screening effort identified 34 chemicals for ecotoxicity testing endpoint rule under Section 4.

-- Screening and testing efforts take into account Office of Water needs, especially with respect to expected Clean Water Act amendments.

REGIONAL GEOGRAPHIC INITIATIVES

-- OTS is working with regional offices, other program offices (OAR, OSWER, OW, OPP), and other federal agencies (USDA, USDOI) to identify

local or regional environmental problems for which TSCA authorities or staff may be of assistance.

OTHER FEDERAL

ONE Committee

-- In 1990, OSHA, NIOSH, and EPA established a committee to facilitate cooperation, coordination, and exchange of information among federal authorities having responsibility for occupational issues.

-- The ONE Committee meets on a monthly basis and has provided great assistance in coordinating activities on several fronts (e.g., refractory ceramic fibers, aromatic ether diamine, formaldehyde, testing, acute hazard classification, etc.)

ATSDR Testing Program

-- Under Section 110 of the Superfund Amendments and Reauthorization Act (SARA), the Agency for Toxic Substances and Disease Registry is charged with developing profiles and identifying data needs on chemicals found at hazardous waste sites.

-- Under SARA, ATSDR is also charged to work with EPA to develop test data (using TSCA and FIFRA authorities) to meet data needs.

-- EPA (OTS, OPP, OSWER, ORD), the National Toxicology Program, and ATSDR are currently sorting through the first set of chemicals (38/275), and developing appropriate voluntary and regulatory testing mechanisms.

Federal Interagency Lead-Based Paint Task Force

-- In 1989, under a memorandum of understanding, HUD and EPA organized the Federal Interagency Lead-Based Paint Task Force to coordinate the activities of the Federal agencies engaged in lead-based paint efforts.

-- The Task Force meets approximately on a monthly basis to coordinate Federal lead-based paint efforts, to maximize the use of resources, to combine efforts to address specific issues of importance to a variety of agencies, and to avoid duplication of effort.

INTERNATIONAL/OECD

The US is involved in a number of collaborative efforts with the Organization for Economic Cooperation and Development, including:

-- High Production Volume/Screening Information Data Set (HPV/SIDS) project to cooperatively test and assess the need for action on international high volume chemicals. Testing is under way on 35 pilot chemicals, with 18 to follow shortly; HPV/SIDS rounds 2/3 will handle an additional 100 chemicals starting in September 1991.

-- Risk reduction project to explore the potential for cooperative risk reduction activities among and between OECD member countries. Efforts have been initiated on five chemicals/classes: lead; mercury; cadmium; methylene chloride; brominated flame retardants.

Section 12(b) Chemical export notices

Domestic chemical exporters must notify EPA annually of their intent to export chemicals to other countries.

	1990	1991
- Notices Received and Processed	9,305	11,954
- Companies Submitting Notices	162	165
- Letters to Foreign Governments	3,633	3,749

Section 21 Citizens' Petitions

Authority is granted to anyone to petition EPA to initiate a proceeding for issuing, amending, or repealing a TSCA rule.

(Disposition of each of the following Citizens' Petitions appears in Appendix A.)

(9/89) Browning-Ferris, Inc., petitioned EPA for rulemaking to improve monitoring-well construction materials.

(1/90) National Federation of Federal Employees Local 2050 petitioned EPA to take action to reduce new carpet emissions. A dialogue group was formed.

(2/90) Bridgeport Rental and Oil Service petitioned for a change in the definition of PCBs for disposal.

(2/90) National Solid Waste Management Association petitioned EPA to revise financial assurance criteria for commercial PCB storage facilities.

(7/90) Omega Phase Transformations, Inc. petitioned EPA to grant a new use exemption under the asbestos ban and phaseout rule.

(11/90) Vitrifix petitioned EPA to grant a new use exemption under the asbestos ban and phaseout rule.

(11/90) Greenpeace petitioned EPA to investigate Monsanto's epidemiology data on dioxin and to develop a program to eliminate dioxin use by the year 2000.

(1/91) Valley Watch, Inc., petitioned EPA to issue restrictions on 1,2,4,-trichlorobenzene as a retrofill transformer fluid.

(2/91) Walker Chemists, Inc. petitioned EPA to remove mono-, di-, and most trichlorobiphenyls from PCB definition.

(7/91) EPA received a petition to prohibit introduction of genetically engineered pesticide- and herbicide-tolerant plant species into the environment.

FY90-91 TSCA enforcement actions

- Pending or completed judicial actions taken under TSCA in FY90: 8
  FY91: 9

- Pending or completed administrative actions taken under TSCA section 16 in FY90: 531
  FY91: 422

- Penalties assessed through TSCA enforcement in FY90: $10.4 million
  FY91: $11.2 million

FY90-91 TSCA enforcement cases

(Details of individual actions appear in Appendix B.)

- In the Matter of A&D International (FY91)
- Airline Maintenance Facilities (FY91)
- In the Matter of Alcolac, Inc. (FY91)
- In the Matter of American Cyanamid Company/ In the Matter of Ruetgers-Nease Chemical Company (FY91)
- In the Matter of Bedoukian Research, Inc. (FY91)

- US v. Boliden Metech (FY90-91)
- In the Matter of Burlington Industries, Inc. (FY91)
- In the Matter of Celotex Corp. (FY90)
- US v. Chemical Waste Management (FY90)
- In re Desoto, Inc. (FY91)
- In the Matter of DSM Resins, Inc (FY90-91)
- In the Matter of General Electric (FY90-91)
- In the Matter of P.D. George (FY90)
- In the Matter of Halocarbon Products Co. (FY90-91)
- In the Matter of Jetco Chemicals, Inc. (FY91)
- Kaiser Aluminum and Chemical Corporation, Trentwood Works, Spokane Washington (FY91)
- In the Matter of Markem Corp. (FY91)
- In the Matter of Monsanto (FY90-91)
- In the Matter of Moore Business Forms, Inc. (FY91)
- In the Matter of Moses Lake Industries (FY91)
- In the Matter of New Jersey Transit Rail Corp. (FY91)
- In the Matter of Nippon Paint (America) Corp. and PPG Industries, Inc. (FY90)
- Oregon Steel Mills, Portland, Oregon (FY91)
- Port of Portland, Portland, Oregon (FY91)
- In the Matter of Rollins (FY90)
- In the Matter of Sherex Polymers, Inc. (FY90)
- In the Matter of SIKA Corporation (FY91)
- In the Matter of Standard Scrap Metal, Inc. (FY90)
- In the Matter of Leonard Strandley, Purdy, Washington (FY90)
- In the Matter of United Technologies Corp. (FY91)
- In the Matter of Wego Chemical Co. (New Jersey) (FY91)
- US v. Allied Colloids, Inc. (FY91)
- US v. Mobay Corporation (FY91)

- US v. Norristown (PA) State Hospital (FY91)
- US v. Sugarhouse Realty, Inc. and William H. Thayer (FY91)
- US v. Virginia Department of Emergency Services (FY91)
- In the Matter of 3-V Chemical Corporation (FY90)
- US v. Texas Eastern Transmission Corporation (FY90)
- US v. Transwestern Pipeline Co. (FY90)
- In the Matter of Union Camp Corporation (FY90)
- In the Matter of Union Electric Company (FY90)
- In the Matter of Upjohn (FY90)
- In the Matter of Velsicol (FY90)
- In the Matter of Worthen Industries, Inc. (FY90)
- In the Matter of US Dept. of Energy, Bonneville Power Administration (FY90)
- In the Matter of US Navy, Naval Underwater Warfare Engineering Station, Indian Island, Washington (FY90)
- In the Matter of US Dept. of Transportation, Coast Guard Support Center, Kodiak, Alaska (FY90)

FY90-91 defensive litigation

(Detailed descriptions of individual cases listed below appear in Appendix C.)

- Corrosion Proof Fittings et al. v. US Environmental Protection Agency
  (asbestos ban challenge by 8 petitioners)

- Chemical Manufacturers Association (CMA) v. US Environmental Protection Agency
  (section 4 test rule on cumene)

- Environmental Defense Fund (EDF) and National Wildlife Federation (NWF) v. US Environmental Protection Agency
  (interpretation of section 21 citizens' petition)

- Rollins Environmental Services Inc. v. US Environmental Protection Agency
  (PCB anti-dilution rule)

- Chrome Coalition v. US Environmental Protection Agency Hexavalent chromium-based water treatment chemicals
  (section 6 prohibition and section 12(b) export notice)

- Chemical Manufacturers Association v. US Environmental Protection Agency
  (PCB notification and manifesting rule)

- Chemical Manufacturers Association v. US Environmental Protection Agency
  (section 4 test rule on diethylene glycol ether)

- Chemical Manufacturers Association v. US Environmental Protection Agency
  (petition for review of CAIR revisions)

District Court litigation

- Citizens for a Better Environment et al. v. Lee Thomas (denial of southeast Chicago petition to require testing for cumulative effects of 11 chemicals)

- Service Employees International Union v. William K. Reilly
  (asbestos in public and commercial buildings)

- Dr. David G. Walker v. US Environmental Protection Agency (section 21 petition on lesser-chlorinated PCBs)

- Hirzy and Morison v. William K. Reilly
  (section 21 petition to test/regulate carpet chemicals)

- Michael D. Vanderveer and City of Evansville, Indiana v. US Environmental Protection Agency and Unison Transformer Services, Inc. and Citizens for Healthy Progress, Inc. v. US Environmental Protection Agency
  (Henderson, Kentucky PCB Disposal Facility injunction)

- Colorado Department of Institutions v. US Environmental Protection Agency
  (Colorado school AHERA exemption)

SARA/EPCRA* TITLE III COMMUNITY RIGHT-TO-KNOW

Section 313

Toxic Releases Inventory (TRI)

Facilities in Standard Industrial Classification (SIC) codes 20 through 39 that manufacture, process, or import in excess of 25,000 pounds of any of 302 designated chemicals must file reports of releases to air, water, land, and off-site transfers each year.

In April 1991, figures for reporting year 1989 became available, while figures for reporting years 1987 and 1988 were revised as follows:

	Reporting Years		
	1987	1988	1989
Number of reports	67,357	72,904	80,202
Number of facilities	19,266	20,574	22,143

*SARA = Superfund Amendments and Reauthorization Act (1987)

*EPCRA = Emergency Planning and Community Right-to-Know Act

Glossary of Acronyms

ATSDR	Agency for Toxic Substances and Disease Registry
ANPR	Advanced Notice of Proposed Rulemaking
CFC	Chlorinated Fluorocarbons
EPCRA	Emergency Planning and Community Right to Know Act
FIFRA	Federal Insecticide, Fungicide and Rodenticide Act
HPV	High Production Volume
HUD	Housing and Urban Development
IAQ	Indoor Air Quality
MACT	Maximum Achievable Control Technology
MMT	Methylcyclopentadiemyl Manganese Tricarbonyl
NIOSH	National Institute of Occupational Safety & Health
OAR	Office of Air and Radiation
OECD	Organization for Economic Cooperation and Development
OPP	Office of Pesticide Programs
ORD	Office of Research and Development
OSHA	Occupational Safety and Health Administration
OSW	Office of Solid Waste
OSWER	Office of Solid Waste & Emergency Response (Superfund)
OW	Office of Water
OTS	Office of Toxic Substances
PCB	Polychlorinated Biphenyls
PMN	Premanufacture Notices
RM	Risk Management (process)
SARA	Superfund Amendments and Reauthorization Act
SIDS	Screening Information Data Set
SNURS	Significant New Use Rules
TRI	Toxic Releases Inventory
TSCA	Toxic Substances Control Act
USDA	U.S. Department of Agriculture
USDOI	U.S. Department of the Interior

APPENDIX A

TSCA SECTION 21 CITIZENS' PETITIONS -- FY 1990

1. **Date filed:** 9/14/89

   Who filed: Browning-Ferris, Inc. (BFI)

   What action requested: Rule-making to improve monitoring well construction materials

   EPA'S disposition: Denied

   Date of disposition: 12/26/89; 54 FR 52993

   Note: Guidance developed by OSWER under RCRA

2. **Date filed:** 1/11/90

   Who filed: National Federation of Federal Employees, Local 2050

   What action requested: Requested that actions be taken under sections 4, 6, 8 of TSCA to reduce emissions from new carpets

   EPA'S disposition: Denied

   Date of disposition: 4/24/90; 55 FR 17404

Note: Dialogue group (Industry, NFFE and EPA representatives) was formed to reach resolution

3. Date filed: 2/2/90

Who filed: BROS (Bridgeport Rental and Oil Service)-Principle Parties Responsible for Superfund Site

What action requested: Requested a change in the definition of PCBs for disposal under RCRA and Superfund

EPA'S disposition: Partial Grant

Date of disposition: June 8, 1990 letter to W.J. Walsh of Pepper, Hamilton & Sheetz, and W.H. Hyatt of Pitney, Hardin, Kipp & Szuch signed by V. Kimm

4. Date filed: 2/16/90

Who filed: National Solid Waste Management Association (NSWMA)

What action requested: To initiate proceedings to revise financial assurance criteria and mechanisms for commercial PCB storage facilities

EPA'S disposition: Denied

Date of disposition: 10/18/90; 55 FR 2463

5. **Date filed:** 7/20/90

Who filed: Omega Phase Transformations Inc., Narberth, PA

What action requested: To initiate a rule-making to amend the rule and grant a new use exemption under the asbestos ban and phase out rule

EPA'S disposition: Denied because petitioner did not submit sufficient information

Date of disposition: Petition withdrawn by Omega prior to Administrator's signing denial FR Notice and letter

TSCA SECTION 21 PETITIONS -- FY 1991

1. Date filed: October 8, 1990

Who filed: Omega Phase Transformation Inc., Narberth, PA

What action requested: To initiate a rule-making to amend the asbestos ban and phase out (ABPO) rule to grant a new use exemption under the ABPO rule

EPA's disposition: Granted

Date of disposition: January 7, 1991

2. Date filed: November 23, 1990

Who filed: Vitrifix

What action requested: To initiate a rule-making to amend the asbestos ban and phase out (ABPO) rule to grant a new use exemption under the ABPO rule

EPA's disposition: Granted

Date of disposition: February 21, 1991

3. **Date filed:** November 30, 1990

Who filed: Greenpeace Inc.

What action requested:

(1) Investigation of use of epidemiology data submitted by Monsanto and BASF

(2) Rule to prevent states from using epidemiology data on dioxin submitted by Monsanto

(3) Rule to prevent EPA from using epidemiology data on dioxin submitted by Monsanto

(4) Development of a national program to eliminate dioxin emission by the year 2000

EPA's disposition:

Denied -- EPA denied each of the specific requests made by the petitioner under section 21 of TSCA. With regard to section 555(e) of the APA, EPA found that no petitioning right applied to the Greenpeace USA requests. Although Greenpeace USA did not petition the Agency under section 553(e) of the APA, (i.e., the section authorizing citizens' petitions), EPA reviewed the petition under this provision and denied each of the petitioner's requests. The Agency did not respond under section 8 of TSCA, section 2(c) of NEPA and its administrative regulations. None of these provisions contain authority for citizens' petitions.

Date of disposition: February 28, 1991

4. Date filed: January 3, 1991

Who filed: Valley Watch, Inc.

What action requested: Issue a rule which prohibits the manufacture, processing, distribution in commerce, use and disposal of 1,2,4-trichlorobenzene as a retrofill transformer fluid.

EPA's disposition: Denied

Date of disposition: April 3, 1991

5. Date filed: February 13, 1991

Who filed: David G. Walker
Walker Chemists, Inc.
904 Fleetwood
Baytown, TX 77520
713-427-5027

What action requested: Amend 40 CFR Section 761.3 to eliminate mono-, di-, and most trichlorobiphenyls from PCB definition

EPA's disposition: Denied

Date of disposition:

Notes: Petition did not mention section 21 of TSCA.

Petitioner submitted same petition on March 27, 1987; That petition was denied on July 2, 1987

After formal denial, Walker followed-up with court action again

6. Date filed: July 17, 1991

Who filed: Henry Gluckstern, Esq.
41 Park Road
Maplewood, New Jersey 07040

What action requested: Use EPA authority under TSCA to control increased pesticide use which results from the introduction into the environment of genetically engineered pesticides tolerant plants that are permitted by the Animal and Plant Health Inspection Service (APHIS) of the US Department of Agriculture (USDA)

EPA's Disposition: Denied

Other Federal laws provide adequate authority to protect against any potential risks; regulations under TSCA would be duplicative and unnecessary.

Date of disposition: October 15, 1991

APPENDIX B

TSCA Enforcement Accomplishments

Toxic Substances Control Act (TSCA) Enforcement

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

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 Section 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 this administrative civil penalty action. The Agency had charged A&D International, Inc., (A&D) with violations of the Halogenated Dibenzo-p-dioxin/Dibenzofuran

Test Rule (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 Section 4 of TSCA. The complaint charged A&D with late submission of a notice of intent to test, late submission of test protocol, late submission of test data, failure to test in accordance with the EPA approved protocol, failure to submit statements certifying that the tests adhered to the TSCA GLPs, and failure to perform the test in accordance with the TSCA GLPs. The Agency proposed to assess a penalty of $26,500. However, in light of A&D International's demonstrated inability to pay the proposed penalty, 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. (OE-TLD)

Airline Maintenance Facilities

During FY 91, Region 2 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. (Region 2)

In the Matter of Alcolac Inc.

In September 1989 EPA charged Alcolac with violating Sections 5 and 8 of TSCA and proposed a penalty of over $500,000. The significance of the violations is that they impaired the Agency's ability to evaluate the chemical substances' 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. EPA pursued an administrative enforcement action against Alcolac Inc., a convicted exporter of illegal chemicals to Iran. During the course of settlement negotiations information was received from Alcolac which led to amendment of the complaint and the adjustment downward of the proposed civil penalty. 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 tow industry outreach programs. In accordance with the settlement agreement, EPA anticipates issuing shortly a demand letter for stipulated penalties based upon the final audit report. (OE-TLD)

U.S. v. Allied Colloids, Inc.

On June 28, 1991, Region 3 issued a complaint alleging violations of Sections 5 and 13 of the Toxic Substances Control Act to Allied Colloids, Inc., a manufacturer and importer of specialty chemicals located in Suffolk, VA. Allied Colloids imported and manufactured a variety of chemicals subject to TSCA between 1983 and 1991 and failed to submit proper notices and documentation, including premanufacture notifications, notices of commencement and import certifications. For 273 separate violations of TSCA, a penalty totaling $2,078,625 is being sought. (Region 3)

In the Matter of American Cyanamid Company/In the Matter of Ruetgers-Nease Chemical Company

These companion cases were EPA's first administrative actions involving violations of the terms of TSCA Section 5(e) Consent Orders. Under Section 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 specifying that no activity in any way inconsistent with any term of any Consent Order will be engaged in by company personnel until written permission is given by the appropriate governmental agency. (OE-TLD)

In the Matter of Bedoukian Research, Inc.

The Chief Judicial Officer signed in September 1991 a consent order settling this TSCA Sections 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. (OE-TLD)

U.S. v. Boliden Metech

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

To obtain full site decontamination, a complaint was filed in Federal District Court. The Region aggressively pursued settlement of the judicial action against Boliden Metech during FY 1990, and by the end of the fiscal year reached a settlement in principle. In a consent decree entered on January 10, 1991 in settlement of a civil enforcement action, Boliden Metech Inc. agreed to undertake a complicated 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.

This case is significant because of its technical complexities concerning shredder fluff and analytical methodologies. 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. The terms of the settlement raise a complicated international export issue which required coordination with foreign contacts and the Agency's International Affairs Office. Boliden has now shut down the shredding operation. (Region 1)

In the Matter of Burlington Industries, Inc.

In February 1991, EPA filed a $3,061,000 TSCA administrative complaint alleging violations of the Section 5 premanufacture notification requirements by Burlington Industries. Settlement negotiations are pending at this time. (OE-TLD)

In the Matter of Cavedon Chemical Company

In January 1991, the Chief Judicial Officer executed a Consent Order settling the TSCA Section 5 administrative civil penalty action against Cavedon. Cavedon agreed to pay a civil penalty of $21,000, which equalled 4 percent of their average gross

sales for the past four years as provided in the TSCA Civil Penalty Policy. Cavedon successfully demonstrated to the Agency a documented inability to pay all of the proposed civil penalty. (OE-TLD)

In the Matter of Celotex Corp.

In a strong precedent for increasing penalties for prior knowledge of regulatory requirements and bad attitude, Administrative Law Judge Yost, on April 12, fined Celotex Corp. $31,900 for PCB violations at their Peoria, Illinois facility. Region 5 successfully presented a prima facie case concerning the failure of Celotex to maintain annual inventory records, visual inspections of transformers for leaks and improper marking and storage of PCBs. A total penalty of $45,550 was proposed.

While Judge Yost rejected EPA's attempt to use a prior PCB settlement as evidence of a "history of prior violations" to increase the penalty by 50 percent, he did agree with Region 5 to raise the fine by 10 percent because Celotex had knowledge of the PCB regulations, failed to provide certain documents the inspector requested and failed to correct certain violations identified by the inspector.

U.S. v. Chemical Waste Management

Region 5 and Chemical Waste Management (CWM) Chemical Services, Inc. signed a consent agreement and consent order calling for payment of a $3.75 million civil penalty for violating the PCB disposal requirements of TSCA. The $3.75 million penalty is one of the largest administrative penalties ever imposed on a single facility in EPA's history. The complaint was based on a review of CWM's operating records, the company's own internal investigation, and inspections by NEIC and Region 5. This case is significant because it involves violations of the PCB disposal and permit

requirements of the regulations. Violations of these requirements by commercial storage or disposal operators are the highest priority of the PCB enforcement program and maximum penalties will be sought.

In re DeSoto, Inc.

On April 24, 1991, the Region concurrently filed a two count complaint and Consent Agreement and Final Order resolving the administrative action against DeSoto, Inc. in DesPlaines, IL for violations for the Toxic Substances Control Act (TSCA) manufacturing notice and Notice of Commencement regulations. In mitigating the $2,299,000 proposed penalty, the Region cited the Respondent's voluntary disclosure of the violations and its compliance status. The settlement included a $600,000 civil penalty and the Region's exercise of enforcement discretion in allowing materials manufactured with the chemicals at issue to be introduced into commerce. (Region 5)

In the Matter of DSM Resins, Inc.

Region 2 has continued its active enforcement of TSCA Import and PMN requirements. In September the Region issued an administrative complaint to DSM Resins, Inc., (DSM) citing violations of §5 and §13, and proposing a penalty of $2.3 million. DSM is a subsidiary of a large Dutch-based chemical conglomerate. After Region 2 inspected the firm's import operations, the company "self-confessed" to many violations including failure to file pre-manufacturing notifications prior to importation and failure to submit notices of commencement of import immediately after import. The complaint also cites instances of failure to certify or improper certifications to the Customs Service at the times of importation. This 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. In addition to agreeing to the penalty, one of the highest collected by Region 2 under the TSCA program, the company has now implemented a computerized tracking system to ensure that all of its imports comply with TSCA rules. (Region 2)

In the Matter of General Electric

Regions 1, 3, 5, 6, and 10 issued five administrative complaints against General Electric for violating the disposal requirements for PCBs under TSCA 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. EPA proposed to assess a total civil penalty of $4,057,275 for operating a solvent distillation system without a permit in the above regions.

In March 1991, General Electric Co. agreed to pay a $150,000 penalty to settle Region 1's complaint. 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. (Region 1)

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 Section 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 Section 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 use of acrylonitrile, 1,3-butadiene, various phenols, 1,1,1-trichloroethane, and methylene chloride, which are some of the Agency's top 25 chemical candidates for pollution prevention targeting. (OE-TLD)

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 2 issued administrative complaints to these three companies for violations of the TSCA regulations and approvals relating to the handling and disposal of PCB-contaminated wastes. The proposed penalties in the three related cases total about $35 million. 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. The complaints seek about $14 million each against GM and CECOS, and about $7 million from CWM. (Region 2)

In the Matter of P.D. George

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

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

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

Therefore, the proposed gravity-based penalty was revised to equal $1,261,000.

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

In the Matter of Great Lakes Chemical Company

In March 1991 EPA filed an administrative complaint against Great Lakes alleging violations of a TSCA Section 5(e) Consent Order and proposing $1,227,000 in penalties. The complaint arose out of an NEIC inspection of an Arkansas facility where Great Lakes failed to notify customers in writing of the potential health risks of the chemical prior to shipment as required by the consent order. This matter is still pending. (OE-TLD)

In the Matter of Great Northern Nekoosa Corp.

In the first joint effort in Region 1 under the Toxic Substances Control Act and the Superfund Removal Program to address violations of TSCA and subsequent remedial work relating to the clean-up of PCB spills, Region 1 entered into an administrative settlement on September 30, 1991 with Great Northern Nekoosa Corp. under which 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. In 1987, EPA filed an administrative complaint against Great Northern Nekoosa Corp. for violation of the federal regulations controlling the recordkeeping, storage for disposal, and marking of PCBs at the company's facilities in Millinocket and East Millinocket, Maine. In addition, spills of PCBs were discovered on the ground outside the East Millinocket facility. The cleanup performed by Great Northern Nekoosa Corp. was completed in January 1991. (Region 1)

In the Matter of Halocarbon Products Co.

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

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

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

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 Section 8(e), the substantial risk information reporting provision of TSCA. The ruling came through an Order granting EPA's Motion to Strike

Affirmative Defense. The case is still pending and a Hearing date has not yet been set. (OE-TLD)

In the Matter of Jetco Chemicals Inc.

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

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 in the Toxic Substances Control Act PCB Regulations regarding disposal, recordkeeping, and inspections and proposing a penalty of $62,000. (Region 10)

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 in a multi-media settlement of an administrative complaint filed by EPA for the company's violations of the federal PCB regulations. This settlement is unusual in the sense that the three SEPs each involve reduction or elimination of a different pollutant. The projects are the following: 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 result in the elimination or reduction of a pollutant and are therefore beneficial for the environment. The total combined estimated cost of these three projects is $210,500. These projects were not required by law, but were agreed to be undertaken by Markem Corp. as conditions of settlement of the case. This settlement is the culmination of an action begun by EPA in June 1990 when the agency filed an administrative complaint against Markem Corp. for violations of the federal regulations promulgated under the Toxic Substances Control Act controlling the use and recordkeeping of polychlorinated biphenyls. Markem Corp. produces industrial printing and marking machines and related supplies. (Region 1)

U.S. v. Mobay Corporation

On June 28, 1991, an administrative complaint was filed against Mobay Corporation for multiple violations of Toxic Substances Control Act Sections 5, 8, and 13. The violations include importation of chemical substances not on the TSCA Inventory, false certification that these shipments were in compliance with TSCA, improper reporting of chemical substances to the TSCA Inventory, submission of premanufacture notices (PMNs) with incomplete listings of trade names and intended uses, submission of false notices of commencement (NOCs) for importation for chemical substances which had already been imported long before the date stated on the NOCs, and submission of inaccurate or unsupported TSCA Inventory update information. A penalty of $4,755,000 is being sought. (Region 3)

In the Matter of Monsanto

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

On August 4, 1989, the Office of Compliance Monitoring filed a $253,200 complaint against the Monsanto Company alleging that Monsanto had failed to report the study in a timely manner. EPA alleged that the study was TSCA 8(e) toxicological data and the Respondent was required to have submitted the study within 15 working days of its receipt. On January 3, 1990, the Chief Judicial Officer approved a Consent Agreement in which Monsanto was required to pay $198,000 and conduct an extensive TSCA §8(e) audit. Studies submitted under the audit were subject to stipulated penalties. In August of 1990, Monsanto completed its TSCA 8(e) audit and paid an additional $648,000 in stipulated penalties. (OE-TLD)

In the Matter of Moore Business Forms, Inc.

On June 27, 1991, EPA and Moore Business Forms, Inc. signed a consent agreement settling a Toxic Substances Control Act (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 Sections 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. EPA's Chief Judicial Officer signed the Consent Order on July 1, 1991.

Moore self-disclosed violations of TSCA Sections 5 and 8 to EPA in April. 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. Section 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. (OE-TLD)

In the Matter of Moses Lake Industries

In this administrative civil penalty action, Moses Lake disclosed to the Agency that it had violated TSCA Section 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 Section 13. This matter was settled for $130,000 following issuance of an administrative complaint. (OE-TLD)

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 retrofitting or rebuilding of transformers as its means of coming into compliance; this is environmentally more sound than having the transformers drained and refilled. (Region 2)

In the Matter of Nippon Paint (America) Corp. and PPG Industries, Inc.

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

U.S. v. Norristown (PA) State Hospital

On September 27, 1991, Region 3 issued a complaint alleging violations of Section 2614 of the Toxic Substances Control Act

to Norristown State Hospital. This is the first Region 3 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. The complaint seeks penalties totaling $9,500. (Region 3)

Oregon Steel Mills, Portland, Oregon

As a result of an administrative complaint issued in May 1991 proposing a penalty of $370,000, a consent agreement was signed on August 1, 1991, assessing a penalty of $286,000, in the largest TSCA PCB penalty ever assessed in EPA Region 10. 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 Toxic Substances Control Act (TSCA) PCB Regulations, including improper disposal, storage, marking, recordkeeping, and failure to register PCB Transformers. (Region 10)

Port of Portland, Portland, Oregon

As part of a Consent Agreement between the Port and EPA, the Port documented that it had spent $43,506 to dispose of PCBs in use at the facility, the disposal of which would not otherwise have been required. The Port had been issued an administrative complaint in March 1991. The complaint alleged that the Port of Portland violated the Toxic Substances Control Act (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 for disposal. (Region 10)

In the Matter of Rollins

In 1988, Region 2 issued an administrative complaint to Rollins Environmental Services, Inc., for violation of the regulations governing PCB disposal. The complaint sought a penalty of $25,000 for Rollins' failure to properly incinerate PCB-contaminated rinsate. Rollins declined to settle, and in 1989 the Region filed a motion for accelerated decision on the issue of liability, which was granted by the Administrative Law Judge (ALJ).

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

In the Matter of Sherex Polymers, Inc.

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

The GBP was adjusted downward by 50 percent to reflect Sherex's prompt self-confession of the violations to EPA. This

resulted in an adjusted proposed penalty of $420,000. For purposes of settlement, consistent with other similar TSCA §5 settlements, EPA further reduced the adjusted proposed penalty by 15 percent for taking all steps reasonably expected by EPA to mitigate the violations. EPA reduced the civil penalty in this case by an additional 5 percent ($42,000), to $252,000, in consideration of Respondent implementing a pollution prevention project at its Lakeland, Florida facility. Respondent agreed to complete all design and construction work within 12 months of receipt of the executed Consent Agreement, and that it would replace the existing filtration and recycling system by the end of this period. The pollution prevention project generally consists of replacing an existing filter system on a dimer fatty acid production unit at the Sherex Polymers Lakeland, Florida facility. The project shall result in waste reduction of at least 500,000 pounds of filter cake annually and increase the recovery of reusable fatty acid material by over 250,000 pounds annually (based on current production volumes and laboratory studies of the equipment). Respondent stipulated that the total cost of the pollution prevention project would exceed $525,000. Respondent submitted to EPA a written interim status report within 6 months of its receipt of the executed Consent Order. The latest cost estimate is that the project would cost approximately $700,000. Respondent shall submit a final status report within one month of the commencement of active operations of the new filtration system, that is, no more than 13 months after receipt of the executed Consent Order.

In the Matter of SIKA Corporation

In September 1991, the Agency issued an administrative complaint against SIKA for violations of TSCA's Section 5 premanufacture notification and import requirements. The Agency proposed to assess a civil penalty of $13,118,500, but reduced this amount by 50 percent, to $6.6 million, to reflect SIKA's timely and voluntary disclosure of the

violations to the Agency in accordance with the TSCA Section 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. (OE-TLD)

In the Matter of Standard Scrap Metal, Inc.

A recent decision involving Region 5's case against Standard Scrap Metal, Inc. strengthens EPA's enforcement capability concerning PCB spills. Prior to February 17, 1978, PCB spills were considered "in service," and not regulated unless they were removed from the site. Based on this interpretation, Region 5 lost its case against Standard Scrap Metal, who claimed that PCBs found in soil on its property were spilled prior to 1978. Region 5 appealed the case. On August 2, 1990, the Chief Judicial Officer ruled that the prior interpretation of the regulations was applicable solely to landfills or disposal sites, and that a facility does not become a disposal site or landfill merely because PCBs have been spilled on it. Thus, the disposal site exemption for PCB spills which occurred prior to 1978 was not available to Standard Scrap Metal. Under this ruling, respondents can no longer rely on the occurrence date of PCB spills to avoid PCB cleanup responsibility.

In the Matter of Leonard Strandley, Purdy, Washington

Administrative Law Judge Greene issued an Order on October 31, 1989, which assessed a penalty of $103,500 against the respondent, Leonard Strandley. The Order resulted from a Complaint dated November 15, 1984--and amended January 19, 1988--which had been before the ALJ for several years. This case alleged PCB disposal, storage, marking, and recordkeeping violations associated with Mr. Strandley's (now defunct) scrapping and oil recycling operations at the Purdy,

Washington site. The Order acknowledged EPA's desire to structure the penalty assessment to support the cleanup of the Purdy, Washington site, which is currently being cleaned up under CERCLA, and permanently remitted all but $5,000 of the assessed penalty on the condition that the Respondent document that an amount equalling at least the remitted amount had been expended towards cleanup of the site.

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 cleanup under the Toxic Substances Control Act, a District Court granted a motion by the United States and ordered the appointment of a receiver to manage the cleanup 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 cleanup. The United States requested this relief after defendants' repeated failure to comply with terms of consent decrees requiring cleanup of the site. (Region 3)

U.S. v. Texas Eastern Transmission Corporation

In October 1989, the District Court for the Eastern District of Texas entered a Consent Decree in settlement of a civil action by the United States charging Texas Eastern with the illegal disposal of PCBs and other hazardous wastes at 89 natural gas pipeline compressor sites in 14 states. The violations involve TSCA, CERCLA, and RCRA. In the settlement, Texas Eastern agreed to pay a civil penalty of $15 million. This is the largest fine ever collected by the United States for any environmental violation. In addition, Texas Eastern agreed to decontaminate the spilled PCBs and chemicals at a cost estimated to exceed $500 million. Texas Eastern will also pay EPA more than $18 million for oversight

costs including the services of a contractor who will work for EPA to supervise site operations and sampling data. The cleanup program is expected to take more than 7 years.

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

U.S. v. Transwestern Pipeline Co.

This company operates a number of compressor stations on an interstate pipeline. Region 6 has successfully negotiated with the company for the first regional consent decree under TSCA to address polychlorinated biphenyl (PCB) contamination of a natural gas pipeline and associated compressor stations. The consent decree was filed June 13, 1990, in the U.S. District Court in New Mexico. The consent decree provides for assessment of the extent of the PCB contamination and cleanup standards for soil and equipment contamination. The cleanup costs are estimated at $60 million. The consent decree requires that the company provide an oversight contractor for use by EPA to determine compliance with the consent decree. Additionally, a penalty of $375,000 was collected.

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

program, in that RCRA constituents have been found in the ground water at one of the sites. The TSCA program has been keeping the RCRA program informed of all information concerning the contamination.

In the Matter of Union Camp Corporation

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

In the Matter of Union Electric Company

This case is an example of how Region 7 used administrative enforcement under TSCA to obtain environmentally beneficial expenditures to dispose of PCBs. In 1983, EPA Region 7 issued an approval to the Union Electric Company (UE), St. Louis, Missouri, to dispose of its own PCB oils in a high efficiency boiler. In 1988 and 1989, Region 7 inspected the boiler facility and discovered violations of the UE approval. Two administrative complaints were issued. The upfront civil penalty obtained was $79,500. In the settlement, UE agrees to disposal of its 173 remaining askerol transformers containing 22,000 gallons of askerol oil by March 1992. UE provided financial assurance for the closure of its Labadie PCB burn facility in accordance with a closure plan submitted.

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

In the Matter of 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 the Toxic Substances Control Act 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 1.

UTC facilities cited include the Pratt and Whitney Aircraft Division, the Wilgoos Test Laboratory, and the United Technologies Research Center in East Hartford, CT, and the Hamilton Standard Division in Windsor Locks, CT. The agreement also settled PCB violations at The Essex Group Inc., in Newmarket, NH, a facility no longer owned by UTC.

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. (Region 1)

In the Matter of Upjohn

A complaint was issued against the Upjohn Company of Kalamazoo, Michigan on July 10, 1989, alleging one count of submitting a chemical to the original TSCA inventory, even though the company never manufactured the chemical, and four counts of manufacturing new chemical substances without going through the PMN process. The proposed penalty was $771,000. Upjohn voluntarily disclosed the alleged violations in a meeting held at Upjohn's request. EPA and Upjohn agreed to settle the case with Upjohn paying a $400,000 penalty.

In the Matter of Velsicol

EPA initiated an administrative enforcement action against Velsicol on July 17, 1990. EPA alleged that Velsicol failed to maintain all of the records required under 40 CFR Part 720.78 to support the PMN that was submitted for one chemical, manufactured another chemical on two separate occasions prior to the end of the PMN review period, and used and distributed the last chemical on one occasion prior to the end of the PMN review period. The complaint proposed $51,000 and collected the full amount. Although this company is headquartered in Region 5, Velsicol's corporate officials contacted EPA's Headquarters directly in order to process their concerns about the manufacture of the chemicals. EPA's Headquarters conferred with the Regional

staff and jointly processed the case which resulted in a collection of the full penalty.

U.S. v. Virginia Department of Emergency Services

On September 4, 1991, Region 3 issued a Toxic Substances Control Act complaint to the Virginia Department of Emergency Services, the Virginia Department of Emergency Fuel Storage Facility near Williamsburg, VA. The complaint alleges violations of the storage, recordkeeping, disposal, and fire registration provisions of the PCB Rule and proposes a penalty of $162,500.

In the matter of 3-V Chemical Corporation

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

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

that 3-V had failed to properly certify the TSCA status of its importations. The failure to comply with the import certification requirements is a violation of TSCA §15(3)(B).

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

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

In the Matter of Wego Chemical Co. (New Jersey)

EPA Administrative Law Judge Frank Venderheyden issued a ruling in June 1991 holding Wego liable for violations of TSCA §8(a) reporting rules. The ruling followed a 2-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. (Region 2)

In the Matter of Worthen Industries, Inc.

On December 10, 1986, an EPA/NEIC inspector lawfully inspected Respondent's Nashua, New Hampshire facility to review Respondent's compliance with TSCA §5 and §8. On March 16, 1989, EPA filed a civil administrative complaint against Worthen Industries, Inc. seeking a civil penalty in the amount of $3,429,500 for failing to properly submit PMNs and NOCs for the chemical substances. Based upon records and information submitted by Worthen subsequent to the issuance of the Complaint, EPA concluded that certain chemical substances were manufactured, processed, and distributed in commerce as indirect food additives for the time period alleged in the Complaint. Thus, these chemical substances were not subject to the PMN requirements of TSCA §5. The Agency amended the complaint and reduced the total proposed penalty to $175,000. During settlement negotiations, EPA agreed to reduce the proposed civil penalty by 15 percent to $148,750. The 15 percent reduction reflected the cooperation and good faith demonstrated by Worthen in addressing the alleged violations and in negotiating this Consent Agreement, and Worthen's good faith willingness to conduct an annual educational program on the TSCA §5 and §8 requirements. On May 14, 1990, the Chief Judicial Officer signed the Consent Order assessing the $148,750 civil penalty and providing for the TSCA educational program.

Federal Facilities - TSCA

In the Matter of U.S. Department of Energy, Bonneville Power Administration

A Memorandum of Agreement was signed on March 22, 1990, between EPA Region 10 and the U.S. Department of Energy, Bonneville Power Administration, Portland, Oregon, to address extensive PCB contamination at four major substations along the Pacific Northwest/Pacific Southwest Electric Intertie in Oregon. All PCB equipment at the substations will be disposed of and PCB contamination at the substations will be characterized and cleaned up. The Agreement will result in the disposal of approximately one-fourth of all PCB Capacitors in the BPA system.

In the Matter of U.S. Navy, Naval Underwater Warfare Engineering Station, Indian Island, Washington

A Memorandum of Agreement (MOA) was signed on December 1, 1989, between EPA Region 10 and the U.S. Department of the Navy, Naval Sea Systems Command, to bring the Navy into compliance at the Naval Undersea Warfare Engineering Station, Indian Island, Washington. The MOA arose from an enforcement action against the Navy concerning the illegal use of PCB-contaminated mine cable. (This cable is used to tether undersea mines; however, such use is not currently authorized under the PCB Regulations and provides direct introduction of PCBs into the environment.) The Agreement provided for the elimination of all PCB-contaminated mine cable at the Indian Island facility and documentation of the disposal of the mine cable. In addition, the Department of the Navy agreed to enter into discussions with EPA Headquarters to develop a program to identify all PCB-contaminated mine cable presently in use by

the Navy throughout the world and to bring the use of such cable into compliance with the PCB Regulations.

In the Matter of U.S. Dept. of Transportation, Coast Guard Support Center, Kodiak, Alaska

A Memorandum of Agreement (MOA) was signed on November 27, 1989, between EPA Region 10 and the U.S. Department of Transportation, United States Coast Guard. The MOA resolved two enforcement actions which alleged that the Coast Guard illegally distributed PCBs in commerce and improperly disposed of PCBs by allowing PCBs to leak from in-service equipment. The Agreement provides for total remediation of extensive PCB contamination throughout the U.S. Coast Guard Support Center Kodiak in Kodiak, Alaska. The contamination occurred primarily as a result of equipment leakage in the electrical distribution system at the Support Center. The distribution system has been sold to the local electrical utility, Kodiak Electric Association. The Agreement provides for the proper disposal of all electrical equipment regulated under TSCA.

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

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

In the Matter of All Regions Chemical Labs, Inc.

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

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

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

In the Matter of The Boeing Company, Seattle, Washington

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

In the Matter of BP Oil Company

In April 1990, Region 2 completed a consent order with the BP Oil Company for release notification violations at its Paulsboro, New Jersey facility. The agreement provided for payment of $102,000 in penalties, a record at that time.

In the Matter of Champion International Corporation

Through a coordinated effort of the Maine Department of Environmental Protection, the Maine State Emergency Response Commission, and Region 1, an EPCRA administrative complaint

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

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

Region 4 issued an administrative complaint in response to a spill which was not properly reported and exceeded the reportable quantity (RQ) for ammonia. The case was part of a headquarters initiative to emphasize the importance of timely and accurate reporting under §103 of CERCLA and §§304(a), (b), and (c) of the Emergency Planning and Community Right-to-Know Act (EPCRA). The RQ for ammonia is 100 lbs. and the quantity reportedly spilled by Citrus Hill was 300 lbs. There was no known negative impact to the offsite population or environment.

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

In the Matter of Columbia Corrugated Box, Portland, Oregon

Columbia Corrugated Box is the corporate parent of Packaging Resources, a manufacturer of foam insulation and packaging material. An analysis of information provided by the company revealed that the facility failed to file required Toxic Release Inventory reports for Dichloromethane for reporting years 1987 and 1988 and for an isocyanate resin for 1987. A Civil Complaint proposing a penalty of $51,000 was issued to Columbia Corrugated on May 5, 1990. Following receipt of the complaint, Columbia Corrugated produced additional documentation which was not available during the inspection. This new information indicated that, contrary to the information produced at the inspection, the company did not meet the reporting thresholds for two of the three counts listed in the complaint. In mitigation of the penalty for the remaining violation, the company proposed Environmentally Beneficial Expenditures (EBEs) in the form of equipment and process chemical changes to avoid use of CFC materials. Further, the company made another equipment change which greatly reduced the amount of solvent used in the manufacture of the foam packaging. A settlement agreement was signed on August 22, 1990, providing an assessed penalty of $14,450 but with a further reduction to $10,200 on completion of the EBEs.

In the Matter of Eutectics Metals Co.

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

In the Matter of Hercules, Inc. Brunswick, GA

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

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

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

An investigation also revealed other violations under EPCRA §304 and were combined with previous CERCLA §103 violations, resulting in one of the highest penalties ($355,000) assessed by Region 4 to any single facility. The complaint will cite Clean Water and Air violations and represents another example of the Region's multi-media enforcement initiative.

In the Matter of Seekonk Lace

Seekonk Lace was the Region 1's first EPCRA settlement providing for environmentally beneficial expenditures by a company. As part of the $15,000 settlement of this

$25,000 §313 case, the respondent agreed to spend approximately $95,000 to convert an acetone-based solvent system used in lace production at its Rhode Island facility to a mechanical system which used no solvents. The use of the toxic chemical acetone was completely eliminated.

In the Matter of Wyman-Gordon Company, Inc.

On September 28, 1990, Region 1 initiated one of the largest enforcement actions brought to date under EPCRA. This action, which combined for the first time in the Region both the §§313 and 302-312 components of the program, proposed total penalties of $478,000 against the Wyman-Gordon Company of North Grafton, Massachusetts. The Region coordinated inspections between the two EPCRA programs, resulting in the development of a joint complaint which comprehensively addressed all violations of EPCRA at this facility, including failure to file Toxic Release Inventory forms and failure to submit chemical inventory information to local and state authorities.

APPENDIX C

TSCA Judicial and Administrative Actions

DEFENSIVE JUDICIAL ACTIONS UNDER TSCA

EPA defended its rule banning the future production of asbestos products before the Court of Appeals for the 5th Circuit. On October 18, 1991, the Fifth Circuit vacated and remanded most of the rule to the Agency.

The Court of Appeals has also issued two opinions interpreting important provisions of TSCA §§4 and 21. In other cases in the Court of Appeals, the D.C. Circuit decided an appeal from a polychlorinated biphenyl (PCB) enforcement case; and cases are being held in abeyance pending settlement discussions on EPA's PCB manifesting rule, an information gathering rule, and a rule banning use of hexavalent chromium-based water treatment chemicals in air conditioning cooling towers. Other §4 testing rule cases in the Court of Appeals reported in previous Annual Reports are no longer active.

Federal district court litigation has mainly involved suits under the TSCA §21 citizens' petition provision. Two district court suits issued first time interpretations of §21 provisions. In other §21 suits, a suit to compel EPA to initiate rulemaking on asbestos in public and commercial buildings is ongoing and a suit to compel rulemaking to test and regulate chemicals in carpet and associated products was dismissed.

In other district court litigation, a district court in Kentucky upheld EPA's approval of a PCB disposal facility, and a suit in the district court in Denver between EPA and Colorado regarding asbestos in schools was settled.

DISCUSSION OF DEFENSIVE LITIGATION CASES U.S. COURT OF APPEALS

Corrosion Proof Fittings et al. v. EPA, No. 89-4596 (5th Cir. Oct. 18, 1991)

Petitioners challenged EPA's rule that banned the future manufacture, importation, processing, and distribution in commerce of most asbestos-containing products, and that required labeling for certain products.

On October 18, 1991, the court vacated and remanded most of the rule to EPA. Subsequently, the court clarified its decision and held that the rule continued to govern asbestos-containing products that were not being manufactured, imported, or processed on July 12, 1989, when the rule was issued.

The court agreed with EPA's determination that asbestos is a toxic material, and that certain exposure to asbestos can cause cancer. The court, however, interpreted TSCA to require EPA to conduct a more extensive evaluation of regulatory alternatives to a ban, and of the risks of likely asbestos substitutes, than EPA had previously conducted. The court also found that EPA had failed to comply with a procedural requirement that gave the public an opportunity to comment on one of the methods used to calculate some of the benefits of the rule.

Chemical Manufacturers Association (CMA) v. EPA, 899 F.2d 344 (5th Cir. 1990)

On September 26, 1988, CMA and five manufacturers and processors filed a petition for review of a §4 rule requiring testing of the chemical, cumene. EPA issued this rule under TSCA §4(a)(1)(B), which authorizes the Agency to require testing if it finds that a chemical is released into the

environment in substantial quantities or that there is, or may be, substantial exposure to the chemical.

On April 12, 1990, the court remanded the rule to EPA for further consideration. The court did sustain, as a proper basis for supporting regulation, EPA's extrapolations to determine the amount of cumene released to the environment (3 million pounds per year) and the numbers of people exposed (13.5 million). However, the rule was remanded because the Agency had not articulated at the time of rule promulgation criteria for determining the meaning of the statutory term, "substantial," as it applies to these quantities of chemical production and numbers of humans exposed. Criteria articulated in Agency legal briefs were inapplicable in view of the failure to articulate criteria at promulgation.

The court did allow the rule to remain in effect, however, because much testing had already been completed and because the court could not say there were no conceivably appropriate criteria under which EPA could properly require cumene testing.

The court also provided guidance for the Agency to develop the criteria for determining the meaning of "substantial." The court recognized that substantial is an inherently imprecise word and that room must be left for judgment on different sets of facts. The court also indicated that, contrary to plaintiff's suggestions, it is not necessary to adopt a construction of substantial that requires affirmative evidence and findings of toxicity of a chemical or persistence of that chemical in the environment.

In response to the remand, EPA proposed in the Federal Register of July 15, 1991 (56 FR 32294) criteria to be used for testing of cumene and for subsequent test rules promulgated under TSCA §4(a)(1)(B).

Environmental Defense Fund (EDF) and National Wildlife Federation (NWF) v. EPA, No. 88-5325 (D.C. Cir. 1990)

On July 27, 1990, the Court of Appeals for the D.C. Circuit decided that, when EPA denies a citizen's petition for rulemaking under TSCA §21, the petitioner may not sue the Agency simultaneously under §21 and the citizens' petition provision of the Administrative Procedure Act (APA).

Section 21 authorizes any person to petition EPA for certain rulemaking under TSCA. EPA must respond within 90 days. If EPA denies the petition, the petitioner may sue the Agency in Federal district court within 60 days and is entitled to a de novo proceeding. A de novo proceeding may mean that all evidence must be presented before the court as though nothing had happened before the Agency. This could involve lengthy discovery and a trial.

The APA has a general authorization for citizens to petition Federal agencies for rules. The APA only requires a response within a reasonable time, which could be considerably longer than 90 days. Judicial review, however, is generally conducted on the administrative record created by the Agency (no trial).

The district court case from which the appeal was taken, EDF & NWF v. Reilly, which has been the subject of previous Reports to Congress, resulted from the Agency's denial of the plaintiffs' §21 petition on dioxin. EDF and NWF, wishing to avoid the de novo proceeding, argued early in the case that EPA's denial violated the APA. The court, at EPA's urging, held that plaintiffs were only entitled to de novo review. The parties, then, began the de novo proceeding, which was eventually settled by a Consent Decree in July 1988, just before trial was to begin. Under the Consent Decree each of the Agency's major offices is considering whether to regulate particular dioxin risks. The denial of APA review was set aside for appeal.

The Court of Appeals affirmed the district court's judgment holding that, since plaintiffs had already litigated the case under §21, the APA could not apply because its procedures and standards for review were inconsistent with, and contradictory to, §21 procedures and standards. The court did not, however, decide whether persons could petition under §21 and claim judicial review exclusively under the APA.

Rollins Environmental Services Inc. (NJ) v. U.S. Environmental Protection Agency, No. 90-1508 (D.C. Cir. 1991)

This appeal of an enforcement case involved the applicability of the EPA polychlorinated biphenyl (PCB) "anti-dilution rule" to the disposal of container rinsate.

Rollins had used a solvent to clean a container that originally had concentrations of PCBs greater than 500 parts per million (ppm). The actual concentration of the rinsate after several washings was less than 50 ppm, however, when Rollins disposed of it in a facility not permitted for PCB disposal under TSCA. Disposal of materials under 50 ppm PCB concentration is not subject to TSCA regulations.

EPA determined in an administrative enforcement proceeding that the anti-dilution rule applied and that the rinsate was required to be disposed of according to the original concentration of PCBs in the container. Materials with PCB concentrations greater than 500 ppm must be incinerated in a TSCA-permitted incinerator. A penalty of $25,000 was assessed.

On appeal, the court sustained EPA's interpretation of its regulation but set aside the penalty assessment, finding that the application of the anti-dilution rule was not clear with respect to disposal of container rinsate.

Chrome Coalition v. EPA, No. 90-1138 (D.C. Cir.)

On January 3, 1990, EPA promulgated a final rule under TSCA §6 prohibiting the use of hexavalent chromium-based water treatment chemicals in air-conditioning cooling towers. This rule automatically triggered TSCA §12(b), under which persons who export or intend to export a chemical substance regulated under §6 are required to notify EPA of such export. The preamble to the rule states that notification is required under §12(b) whenever a shipment contains hexavalent chromium, not just hexavalent chromium-based water treatment chemicals. The petitioner challenges this interpretation. The Court has stayed the briefing of this case pending settlement discussions.

Chemical Manufacturers Association (CMA) et al. v. EPA (Nos. 90-1127, 90-1469, 90-1121)

CMA, the National Solid Wastes Management Association (NSWMA), and General Motors filed petitions for review challenging the PCB Notification and Manifesting Rule (54 FR 52736, December 21, 1989). The rule establishes requirements for notifying EPA of PCB activities, manifesting PCB waste, and seeking approval for the commercial storage of PCBs. Petitioners challenged a number of the rule's provisions as being arbitrary and capricious. EPA has settled the suit brought by General Motors and one of CMA's suits. EPA, CMA and NSWMA are currently discussing settlement of the remaining lawsuit.

Chemical Manufacturers Association v. EPA, No. 88-1352 (D.C. Cir.)

On February 26, 1988, EPA issued a testing rule for diethylene glycol ether and its acetate (DGBE/DGBA). The rule requires three tests to be conducted initially ("first tier"),

and would require a "second tier" developmental neurotoxicity study if the results of the first tier tests are positive. CMA challenged the requirement for the second tier study. Since the first tier tests were not due until July 1989 and would not necessarily trigger the second tier test, the parties requested and received a stay of the litigation until September 1, 1989.

Upon receipt of the first tier studies, EPA decided not to require the second tier tests. In January 1990, CMA withdrew its petition for review.

Chemical Manufacturers Association (CMA) v. EPA, No. 89-1153 (D.C. Cir.)

CMA filed a petition for review of the CAIR, which EPA issued pursuant to TSCA §8(a). CAIR establishes a general framework for detailed reporting on chemicals by their manufacturers, importers, and processors. As initially promulgated, CAIR requires the submission of information for 19 chemicals. EPA intends to conduct future rulemakings to require reporting on other chemicals as the need arises.

On July 19, 1989, EPA issued a request for additional comments on certain revisions to the CAIR in response to comment and concerns raised by CMA and other industry groups. The litigation has been stayed since November 1989 pending the outcome of EPA's rulemaking to revise the CAIR.

DISTRICT COURT LITIGATION

Citizens for a Better Environment, et al. v. Lee M. Thomas, No.85 C 08000 (N. Ill. 1991)

In September 1985, two public interest groups challenged EPA's decision denying their petition filed pursuant to §21 of TSCA in April 1985. The petition had requested EPA to identify business

entities in the southeast area of Chicago which were releasing 11 named chemical substances into the environment and to initiate rulemaking under TSCA §4(a) to require testing on the chemical substances individually, as well as in combination with the other identified substances.

EPA denied the petition, in part, because there are no available test standards for studying cumulative effects of chemical substances. To the extent the petition requested testing on the individual substances, EPA determined that their toxicological properties were already documented and regulatory decisions concerning them could be made without requiring further testing. Finally, the notice stated that EPA had already identified 44 businesses in southeast Chicago which emit pollutants into the air, and that EPA was conducting a variety of environmental investigations in southeast Chicago.

In May 1991 the court dismissed the lawsuit. The court decided that it is implicit in §21 that plaintiffs must convince the court that testing will actually develop the data needed to evaluate the chemicals of concern before it will order EPA to initiate test rules. The court derived this interpretation from the fact that §4(a) of TSCA requires such a showing before EPA may issue a test rule. Thus, the court was reluctant to order EPA to initiate a test rule that could never be issued in final.

EPA argued that testing for cumulative effects of the chemicals in question was not scientifically feasible. Plaintiffs tried to rely upon statements by EPA experts to show that such testing is feasible. The court, however, found that plaintiffs did not accurately characterize these statements, which, according to the court, showed the testing requested by plaintiffs was not scientifically feasible. In addition, EPA experts indicated that the individual substances have been evaluated and toxicity data are available to permit risk assessment. Plaintiffs did not provide their own evidence to contradict the EPA witnesses.

Accordingly, the court determined that plaintiffs did not prove their case under §21.

Service Employees International Union (SEIU) v. Reilly, No. 89-0851 (D.D.C.)

In November 1988, SEIU filed a citizens' petition under TSCA §21 requesting EPA to issue rules controlling asbestos in public and commercial buildings (other than schools). This petition flowed from a long history of asbestos litigation between SEIU and EPA on asbestos in schools and other buildings. This litigation has been extensively discussed in previous Annual Reports.

On March 28, 1989, EPA denied the petition because important information was lacking, but did not permanently rule out a regulatory response. Consequently, EPA announced a June 1989 public meeting to gather data and hear arguments to assist in assessing the need for further Agency action on asbestos in public and commercial buildings.

On March 31, 1989, SEIU sued under TSCA §21 to compel initiation of a rulemaking. However, the June public meeting convinced EPA to hold further meetings. As a result, SEIU asked that its suit be held in abeyance, expressing its belief that the meetings might result in EPA's voluntarily initiating rulemaking. The meetings resulted in consensus among the parties on some issues, but not on major rulemaking matters.

At the conclusion of the meetings SEIU again pressed the Agency for a decision on rulemaking. EPA indicated to SEIU that it would decide definitively whether to commence rulemaking on inspection of asbestos in public and commercial buildings after evaluating three important sets of information expected to be available within the first few months of 1991. This information was (1) public comments on an asbestos rule proposed by the Occupational Safety and Health Administration, (2) an EPA evaluation of its program on asbestos in schools

under the Asbestos Hazard Emergency Response Act, and (3) a literature review of scientific studies on the risks of asbestos being conducted by the Health Effects Institute (HEI). HEI is a private organization for which Congress has specifically appropriated funds to study certain issues affecting asbestos in buildings. The Agency indicated it expected to make its rulemaking decision by July 1991, assuming the information arrived as planned.

At a status conference in December 1990, the court, upon agreement between EPA and SEIU, issued an order holding the case in abeyance until the July 1991 decision. There have been, however, unforeseen delays in completion of the HEI report. In June 1991, EPA informed SEIU that the Agency expects to make the rulemaking decision within 45 days of receiving the report. The report was received by EPA on September 25, 1991. SEIU has not instituted further proceedings in this case pending a decision by the U.S. Occupational Safety and Health Administration on its asbestos regulations.

Dr. David G. Walker v. EPA, No. H-87-3552 (S.D.Tex., Houston) and Dr. David G. Walker v. EPA, No. H-91-1798 (S.D.Tex., Houston)

In March 1987, Dr. Walker filed a petition under TSCA §21 asking EPA to exclude from its current regulations on polychlorinated biphenyls (PCBs) containing three chlorine atoms or less ("lesser chlorinated PCBs"). EPA denied the petition on two grounds. First, in previous proceedings involving PCBs the Agency had already considered, and rejected, the arguments raised by Dr. Walker. Second, Dr. Walker had previously submitted a §21 petition and had failed to file suit within the 60-day statutory time frame. Thus, EPA did not have to consider a subsequent, identical petition and Dr. Walker was precluded from filing suit on the subsequent petition.

The court granted EPA's motion to dismiss the petition, finding that EPA had articulated an adequate rationale for its decision not to treat the subsequent petition as a separate/new petition, and that allowing Dr. Walker's second petition would circumvent the statutory limitations under §21. The court did not reach the merits of Dr. Walker's argument on lesser chlorinated PCBs.

Dr. Walker, thereupon, filed another §21 petition on February 6, 1991, asking for the same relief but excluded one isomer from his list of lesser chlorinated PCBs. EPA denied the petition on May 13, 1991, again, based on the fact that the Agency had already considered, and rejected, the arguments raised by Dr. Walker. Dr. Walker filed another suit on July 8, 1991. The Court ruled in EPA's favor in 1992.

Hirzy and Morison v. Reilly, No. 90-1435 (D. District of Columbia)

This case was brought after EPA denied a §21 petition to test and regulate certain chemicals found in carpet and associated products. The petition was filed by EPA's professional employees union, Local 2050 of the National Federation of Federal Employees (NFFE). Although EPA denied the petition, the Agency instituted a series of public meetings to consider remedies other than rulemaking for a number of the issues raised by Local 2050.

Shortly after the Complaint was filed, EPA submitted a motion to dismiss arguing that only the petitioner, NFFE Local 2050, could file this complaint and that it was improper for Hirzy and Morison, two union officers filing on their own behalf, to bring this action. EPA also argued that the Complaint was not filed within the deadline required by statute and made other procedural arguments. Hirzy and Morison were not able to obtain counsel to represent NFFE in this case and did not file a reply. Instead, they requested a voluntary dismissal to which

EPA did not object. The judge, instead, granted EPA's motion to dismiss on October 31, 1990, without giving any reasons.

Michael D. Vanderveer and City of Evansville, Indiana v. EPA and Unison Transformer Services, Inc., No. EV86-183C (D.C.Ind.) and Citizens for Healthy Progress, Inc. v. EPA, No. 86-0155 (D.C. Kentucky)

These two consolidated suits were filed against EPA's approval in January 1987 of a PCB disposal facility in Henderson, Kentucky. At this facility, operated by Unison Transformer Services, Inc. (Unison), PCBs are chemically separated from transformer fluid and are then shipped to other facilities where permanent disposal takes place.

Plaintiffs requested a permanent injunction against operation of the facility, arguing that EPA needs to consider criteria applicable under the Resource Conservation and Recovery Act (RCRA) in addition to criteria under TSCA when approving the Unison facility. Plaintiffs also argued that EPA lacks authority to issue a permit for the Unison process as an "alternative disposal facility" under TSCA regulations. Plaintiffs also argued that the Agency's determination that separation processes like Unison's requires a disposal permit under TSCA was effectively a rule that was promulgated in violation of the notice and comment requirements of the Administrative Procedure Act (APA) and that this determination, moreover, was arbitrary and capricious.

On December 27, 1989, the court upheld EPA's decision under TSCA, but withheld decision on the RCRA issues pending action by the State of Kentucky, which has been delegated authority to administer the RCRA program. The

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