

NATIONAL PENALTY REPORT
OVERVIEW OF EPA FEDERAL PENALTY PRACTICES
FY 1990

April 1991

Compliance Policy and Planning Branch
Office of Enforcement

**NATIONAL PENALTY REPORT
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These authors and their colleagues devoted many long hours to the collection, verification, analysis and display of these data. Questions and comments concerning this report should be addressed to Margaret Berger, (202)475-8870.

I. EXECUTIVE SUMMARY

General Findings

- Fiscal Year 1990 brought the highest penalty dollars in EPA's history, with \$61.3 million in civil penalties. This represents a 74 percent increase over FY 1989. There was almost no change in the number of cases from FY 1989 to FY 1990, indicating that this increase in penalty dollars was due primarily to an increase in penalty amounts per case. Program offices are making effective and forceful use of EPA's penalty authorities.
- The single largest penalty in EPA's history was also assessed in FY 1990. The Texas Eastern Pipeline case, a multi-media case involving TSCA and RCRA, was concluded for \$15 million. Excluding the Texas Eastern Pipeline case, civil penalty dollars were over \$46 million, which still represents a record level of penalties.
- EPA has obtained over \$247 million in cash civil penalties from FY 1974 through FY 1990 in some 10,885 civil judicial and administrative cases.
- FY 1990 marks a new high-water mark in the use of both administrative and judicial cases by EPA programs. Four programs concluded substantial numbers of cases in both categories and obtained substantial penalties from both. This change, first noted in FY 1989, reflects the implementation of new statutory authorities granted by Congress, enabling programs to use the two approaches as complementary parts of an integrated enforcement effort.
- In the last three years, almost 54 percent of all civil penalty dollars in EPA's history were obtained (FY 1988-1990). These three years brought in more than \$133 million in civil judicial penalties, representing 4,664 cases. In FY 1990 alone, 25 percent of all civil penalty dollars were imposed.
- Criminal fines totaled \$5.5 million in FY 1990 (before deducting suspended sentences). Sixty-two years of incarceration were imposed (before suspension). After suspension, fines totaled \$3.7 million and 19 years were ordered by the courts. Final jail terms represented a slight increase over FY 1989 (see page 5). Total fines were lower than in FY 1989, in part due to a focus on more complex investigations which were still underway in FY 1990.
- In the four years EPA's criminal enforcement program has been tracking penalty data, \$29.7 million in criminal fines and 223 years of incarceration have been imposed before deduction of suspended sentences.
- Penalties were obtained in 90 percent of the cases concluded in FY 1990.

Program Highlights

- Most programs set new records for total and median civil judicial or administrative penalty dollars.

In descending order of total penalties assessed, these programs were the following: TSCA, Clean Water Act, RCRA, EPCRA § 313, Wetlands Protection, FIFRA, SDWA, EPCRA § 302-312, Marine and Estuarine Protection, and CERCLA § 103. The increases for these programs over last year's totals ranged from 0.6 percent for RCRA to a seven-fold increase for EPCRA § 313.

Medians reached record highs for both judicial and administrative cases in the Clean Water Act and RCRA programs. Programs with record high judicial medians were TSCA, EPCRA § 302-312, CERCLA § 103, and EPCRA § 313.

- Many programs set records for single highest penalties in EPA's history or record high penalties within program offices.

Both the largest and second largest penalties were obtained in TSCA judicial and administrative actions in FY 1990. The largest penalty was \$15,000,000, assessed in a judicial action against Texas Eastern Pipeline which also included RCRA counts. The second largest penalty, \$3,750,000, was obtained through a TSCA administrative action. Both penalties were higher than the FY 1989 highest single penalty (\$2,778,000). Top judicial penalties over \$1 million were also obtained by the Mobile Source Air program, the Clean Water Act program and the RCRA program.

Eight programs established new records for highest individual penalties within their programs in either administrative or judicial cases. These programs were Clean Water Act, Safe Drinking Water Act (UIC), Wetlands Protection, CERCLA § 103, EPCRA § 302-312, EPCRA § 313, TSCA and FIFRA.

- Penalty dollars were dominated by TSCA with 41 percent of the total, which also obtained its first judicial penalty in FY 1990. The Clean Water Act was second with 27 percent, followed by RCRA (11 percent)¹, Stationary Source Air (10 percent), and Mobile Source Air (5 percent).
- Numbers of cases were dominated by four programs. They were TSCA (22 percent), CWA (17 percent), FIFRA (17 percent), and Mobile Source Air (15 percent). All four programs rely heavily on administrative enforcement.

¹This figure does not include three multi-media cases with RCRA counts that were credited completely to the following media: \$142,000 to CERCLA, \$1,100,000 to CWA, \$15,000,000 to TSCA.

II. PURPOSE, SCOPE AND LIMITATIONS OF THIS REPORT

This overview report summarizes the penalty practices of EPA in FY 1990 in civil judicial, civil administrative, and criminal enforcement actions. Except where specifically noted, the term "penalties" is used in this overview to refer only to civil (administrative and judicial) penalties, not criminal fines.

This report does not attempt to portray a complete picture on penalties obtained during enforcement of federal environmental laws, because it does not reflect penalties obtained by state or local governments, either directly or through court actions with EPA. States conduct the vast majority of enforcement actions under these laws, working through programs approved by EPA to carry out federal requirements.

Programs Covered

Thirteen EPA penalty programs are addressed in this report. Table 1 gives their names, the types of enforcement cases each used in FY 1990, and any acronyms by which they are cited in this report.

Cases Covered

The penalties discussed in this report are cash amounts assessed in EPA enforcement cases that were concluded in FY 1990. They include final judgments by court settlements in consent decrees and consent orders and final administrative orders.

This report does not include proposed penalties or other amounts under discussion prior to the conclusion of a case, and it does not include penalties paid to entities other than the Federal Government. Contempt enforcement actions (cases seeking to invoke sanctions for a failure to comply with a prior court order, decree, or administrative order) are not included. "Stipulated penalties" and "deferred penalties" also are not included in this report; they are penalties stipulated in an administrative or court order that are due only if the violator fails to carry out certain other requirements of the order. Nor does the report include the use of other sanctions, such as contractor listing, sewer moratoriums, or the suspension or revocation of permits.

Credits, benefit projects, or non-monetary actions which parties in enforcement cases often agree to carry out as part of a settlement are also not included in this report. Such actions may yield large environmental benefits of substantial dollar value.

As in past reports, the FY 1990 Federal Penalty Report does not include penalties assessed in the Underground Storage Tank program (UST). The reason for this exclusion was because UST is primarily a state delegated program.

One element of this report is an analysis of the extent to which EPA used penalties in its enforcement cases. Some cases did not obtain penalties. The cases without penalties included in this report are enforcement actions in which a penalty is authorized by the statutes and regulations on which the case is based. If Congress did not authorize EPA to assess a penalty for a given type of violation, an enforcement action for such a violation would not be counted as a case in this report.

Table 1

Penalty Programs Covered in This Report

<u>Program</u>	<u>Types of cases</u>
Criminal Enforcement	Judicial
Clean Water Act - NPDES (CWA)	Judicial Administrative
Safe Drinking Water Act (SDWA)	Judicial Administrative
Wetlands Protection	Judicial Administrative
Marine and Estuarine Protection	Administrative
Stationary Source Air	Judicial Administrative
Mobile Source Air	Judicial Administrative
Resource Conservation and Recovery Act (RCRA)	Judicial Administrative
Emergency Planning and Community Right-to-Know Act (EPCRA § 302-312)	Administrative
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA § 103, or Superfund)	Administrative
Toxics Release Inventory (TRI, or EPCRA § 313)	Administrative
Toxic Substances Control Act (TSCA)	Judicial Administrative
Federal Insecticide, Fungicide	Administrative

Penalties are counted in this report as assessed in a final administrative action or in a court order; appeals and collection of penalties are not considered here. The word "obtained" is used in this report as a general term referring to penalties that were assessed by a court or by EPA administrative orders. Its meaning is the same as "assessed" or "imposed."

EPA increasingly is acting against violations of more than one statute at a single facility in a single cross-program enforcement action. Such cases normally have been attributed to a single lead program, thus failing to properly credit penalties to the other programs. Several such large multi media cases involving RCRA counts are cited in footnotes. In the future, insofar as the final order attributes the penalties to more than one statute and the programs track them separately, this report will attempt to report them accordingly. In fact, some cases in FY 1990 were reported more than once, resulting in overlap between the number of cases counted for different programs. The programs involved were EPCRA § 302-312 and CERCLA § 103, which concern related subject matter dealing with emergency notification following releases of hazardous chemicals.

Purposes and Limitations

This overview report is not an evaluation of practices by EPA programs, and it should be viewed in the context of the total enforcement effort. The report may illuminate individual characteristics of programs and provide a helpful comparison among programs. Identifying differences may stimulate further thinking about penalties in general, advancing the goal of more effective use of penalties as part of an overall enforcement program.

The reader should bear in mind that the data presented here are historical in nature, and do not necessarily represent present penalty practices. Nothing in this report may be used as a defense or guide to future settlements of federal cases involving penalties.

The specific penalty data used in this report were obtained from several federal data systems. The data have been approved by the responsible program offices, but the quality and completeness of the data may vary.

III. GENERAL OVERVIEW

Highlights

Fiscal Year 1990 brought the highest penalty dollars in EPA's history, with \$61.3 million in civil penalties. This represents a 74 percent increase over FY 1989. There was almost no change in the number of cases from FY 1989 to FY 1990, indicating that this increase in penalty dollars was due primarily to an increase in penalty amounts per case. Program offices are making effective and forceful use of EPA's penalty authorities.

The single largest penalty in EPA's history was also assessed in FY 1990. The Texas Eastern Pipeline case, a multi-media case involving TSCA and RCRA, was concluded for \$15 million. Excluding the Texas Eastern Pipeline case, civil penalty dollars were over \$46 million, which still represents a record level of penalties.

EPA has obtained over \$247 million in cash civil penalties from FY 1974 through FY 1990 in some 10,885 civil judicial and administrative cases.

FY 1990 marks a new high-water mark in the use of both administrative and judicial cases by EPA programs. Four programs concluded substantial numbers of cases in both categories and obtained substantial penalties from both. This change, first noted in FY 1989, reflects the implementation of new statutory authorities granted by Congress, enabling programs to use the two approaches as complementary parts of an integrated enforcement effort.

In the last three years, almost 54 percent of all civil penalty dollars in EPA's history were obtained (FY 1988-1990). These three years brought in more than \$133 million in civil penalties, representing 4,664 cases. In FY 1990 alone, 25 percent of all civil penalty dollars were imposed.

In FY 1990, \$5.5 million in criminal fines were assessed (before deducting suspended sentences), down from \$12.5 million in FY 1989. After suspension, fines totaled \$3.7 million. Sixty-two years of incarceration were imposed (before suspension) and 19 years were ordered by the courts. This represents a slight increase over the number of years ordered by the courts in FY 1989 (17).

In the four years EPA's criminal enforcement program has been tracking penalty data (FY 1987-1990), \$29.7 million in criminal fines and 223 years of incarceration have been imposed, before deduction of suspended sentences. After suspension, incarceration totaled 73 years.

The total amounts of civil penalties for each program in FY 1990 are shown in Table 2. Criminal penalties are shown in Table 3. The historical picture is shown in Figures 1 and 2, displaying total penalties by fiscal year.

The relative contributions of the different EPA programs to the FY 1990 totals of civil penalty dollars and number of cases with penalties are shown in Figures 3 and 4.

Ten programs set new records for total civil judicial or administrative penalty dollars. These programs were TSCA, Clean Water Act, RCRA, EPCRA § 313, Wetlands Protection, FIFRA, SDWA, EPCRA § 302-312, Marine and Estuarine Protection, and CERCLA § 103. The penalties ranged from the high for CERCLA § 103 of \$157,000 to a high for TSCA of \$25 million. The percent increases for these programs over last year's totals ranged from 0.6 percent for RCRA to a seven fold increase for EPCRA § 313.

Both the largest and second largest penalties were obtained in TSCA judicial and administrative actions in FY 1990. The largest penalty was \$15,000,000, received in a judicial action against Texas Eastern. The second largest penalty, \$3,750,000, was obtained through a TSCA administrative action. Both penalties were higher than the FY 1989 highest single penalty (\$2,778,000). Top judicial penalties over \$1 million were also obtained by the Mobile Source Air program, the Clean Water Act program and the RCRA program.

A comprehensive summary of the programs' civil penalty data appears in Table 4.

TABLE 2

Total Amount of Civil Judicial and Administrative Penalties
in FY 1990

	<u>Total dollars</u> <u>(percent)</u>	<u>No. All Cases*</u> <u>(percent)</u>
Clean Water Act	\$ 16,354,797 (27%)	244 (16%)
Judicial	12,090,533	49
Administrative	4,264,264	195
Safe Drinking Water Act	578,501 (1%)	133 (9%)
Judicial	262,901	9
Administrative	315,600	124
Wetlands Protection	602,000 (1%)	25 (2%)
Judicial	343,800	8
Administrative	258,200	17
Marine and Estuarine Protection	168,915 (<1%)	13 (1%)
Administrative		
Stationary Source Air	5,940,581 (10%)	64 (4%)
Judicial	5,936,281	63
Administrative	4,300	1
Mobile Source Air	2,853,205 (5%)	210 (13%)
Judicial	1,007,000	4
Administrative	1,846,205	206
RCRA	6,843,350 (11%)	134 (9%)
Judicial ²	3,904,000	12
Administrative	2,939,350	122
EPCRA § 302-312 - Administrative	284,390 (<1%)	7 (<1%)
CERCLA § 103 - Administrative	157,000 (<1%)	5 (<1%)
Toxics Release Inventory		
Administrative	1,562,637 (3%)	100 (6%)
TSCA	25,396,229 (41%)	313 (20%)
Judicial	15,000,000	1
Administrative	10,396,229	312
FIFRA - Administrative	587,362 (1%)	312 (20%)
TOTAL	\$ 61,329,237	1,560

*"Number of all cases" includes all cases with or without penalties. Percentages shown here will differ from analyses presented elsewhere in this report which are based on only those cases with cash penalties.

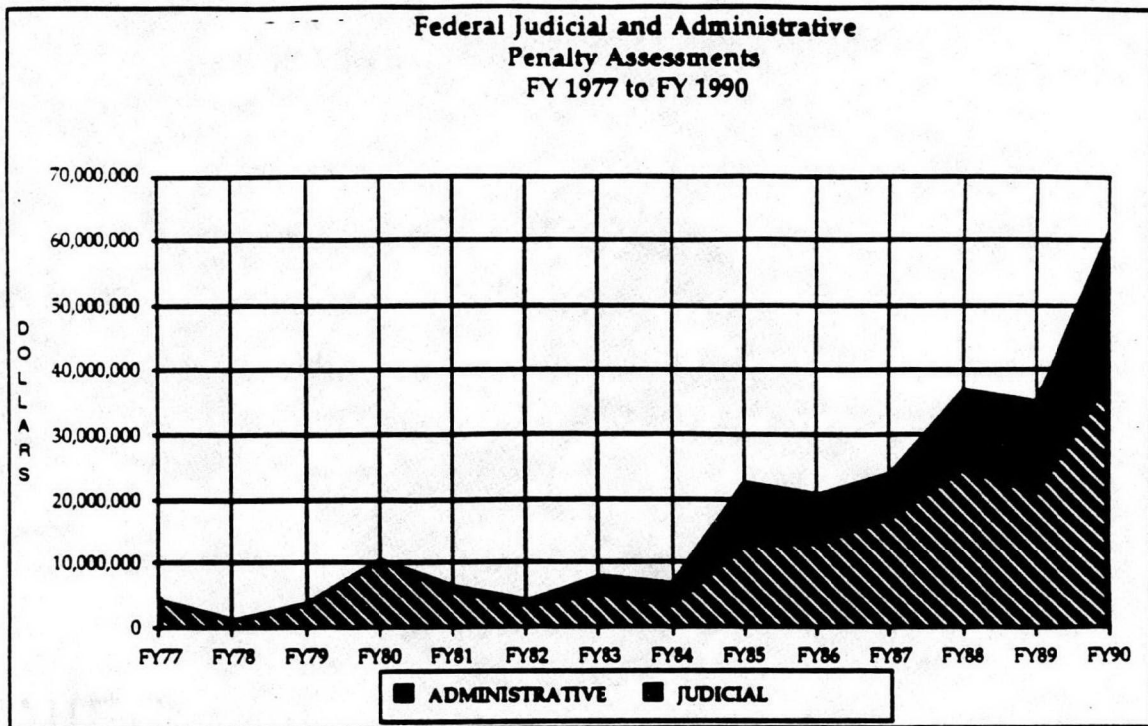
²The total RCRA judicial amount does not include three multi-media cases with RCRA counts in which the penalties assessed were credited completely to other media.

TABLE 3

Total Amount of Criminal Fines and Incarceration
in FY 1990

Number of defendants convicted	71
Total fines assessed	
Before suspension	\$ 5.5 million
Ordered (after suspension)	3.7 million
Total months incarceration	
Sentenced (before suspension)	745 months (62 years)
Ordered (after suspension, before parole)	222 months (19 years)

FIGURE 1



TOTAL PENALTIES BY FISCAL YEAR

FIGURE 2

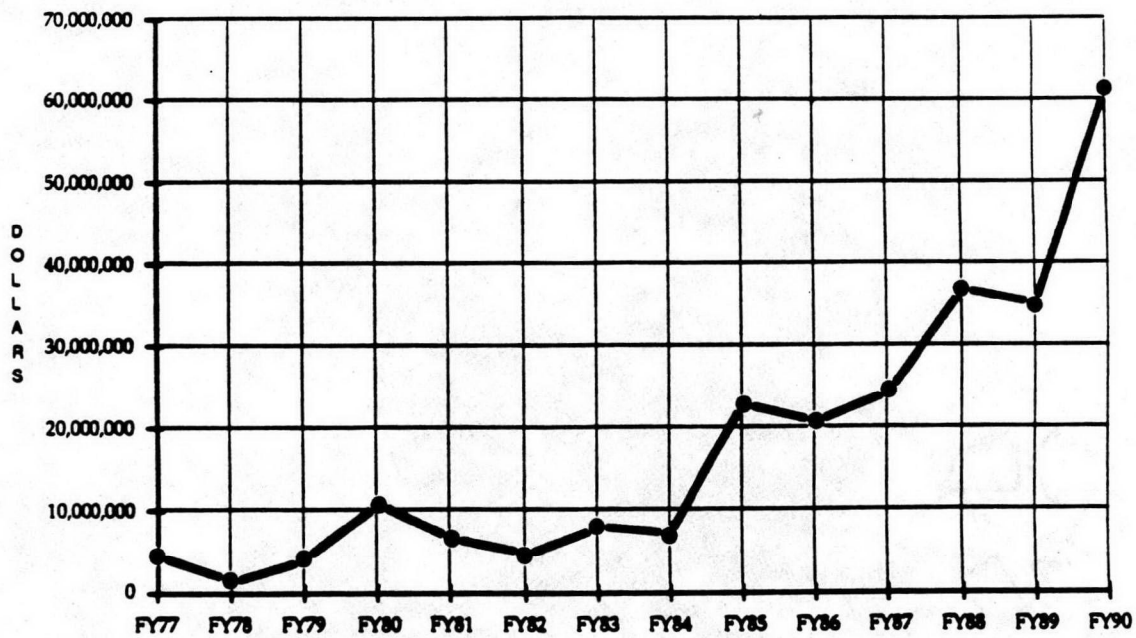
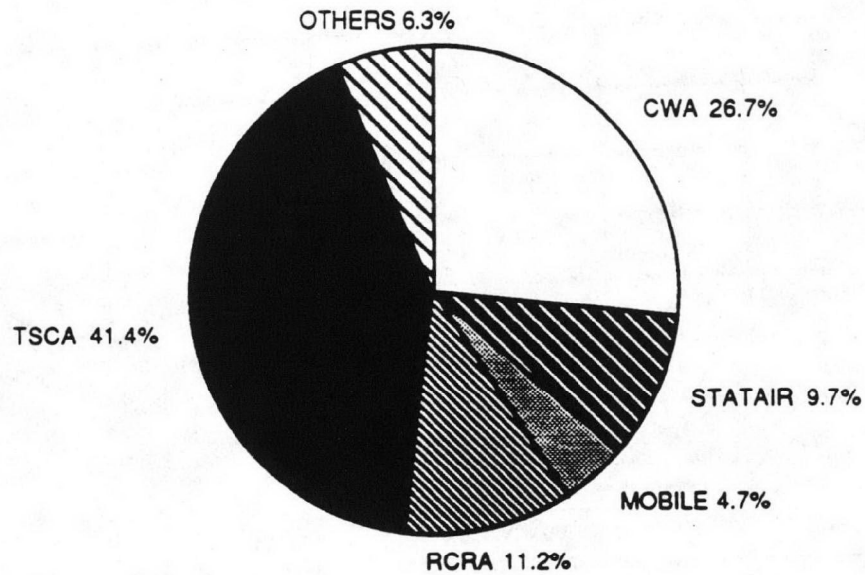
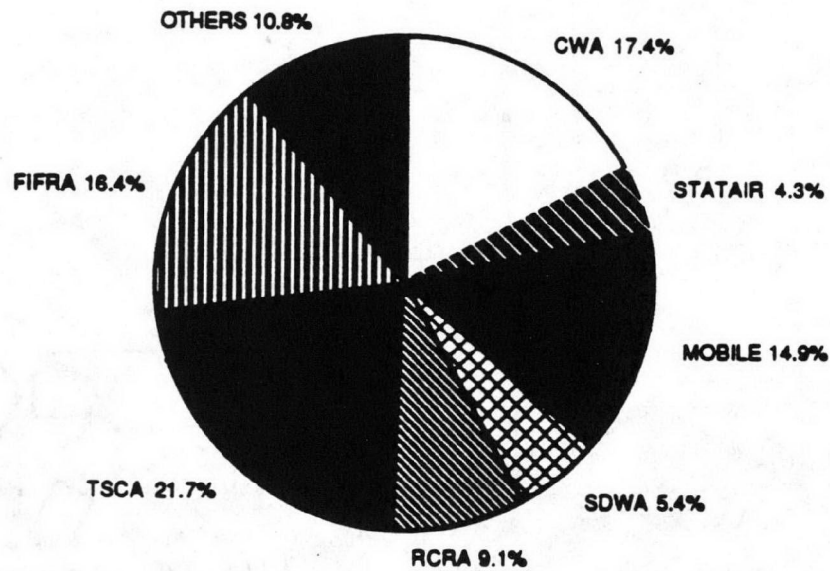


FIGURE 3**PERCENT PENALTY DOLLARS BY PROGRAM
FY 1990****FIGURE 4****PERCENT PENALTY CASES BY PROGRAM
FY 1990**

Summary of Civil Penalties by Program in FY 1990

Program	Total Dollars	Cases with Penalty	Cases w/o Penalty	Total Cases	Percent w/Penalty	Average Penalty	Avg All Cases	Median Penalty	Med All Cases	Highest Penalty
CWA ADM	4,264,264	195	0	195	100%	21,868	21,868	10,650	10,650	125,000
CWA JUD	12,090,533	48	1	49	98%	251,888	246,746	63,000	61,500	2,100,000
CWA ADM+JUD	16,354,797	243	1	244	100%	67,304	67,028			2,100,000
UIC ADM	249,190	54	56	110	49%	4,615	2,265	2,000	0	40,000
UIC JUD	239,401	5	0	5	100%	47,880	47,880	12,000	12,000	200,000
UIC ADM+JUD	488,591	59	56	115	51%	8,281	4,249			200,000
PWS ADM	66,410	14	0	14	100%	4,744	4,744	5,000	5,000	5,000
PWS JUD	23,500	2	2	4	50%	11,750	5,875	11,750	5,875	16,000
PWS ADM+JUD	89,910	16	2	18	89%	5,819	4,995			16,000
SDWA ADM	315,600	68	56	124	55%	4,841	2,545	4,000	400	40,000
SDWA JUD	262,901	7	2	9	78%	37,557	29,211	8,500	0	200,000
SDWA ADM+JUD	578,501	75	58	133	56%	7,713	4,350			200,000
WETLD ADM	258,200	17	0	17	100%	15,188	15,188	11,000	11,000	45,000
WETLD JUD	343,800	7	1	8	88%	49,114	42,875	5,000	5,000	300,000
WETLD ADM+JUD	602,000	24	1	25	96%	25,083	24,080			300,000
MARINE ADM	168,915	13	0	13	100%	12,993	12,993	19,594	19,594	25,000
STATAIR ADM	4,300	1	0	1	100%	4,300	4,300	4,300	4,300	4,300
STATAIR JUD	5,938,281	59	4	63	94%	100,615	94,227	48,000	40,000	687,224
STAT ADM+JUD	5,940,581	60	4	64	94%	99,010	92,822			687,224
MOBAIR ADM	1,846,205	206	0	206	100%	8,962	8,962	1,200	1,200	520,000
MOBAIR JUD	1,007,000	3	1	4	75%	335,867	251,750	4,000	3,500	1,000,000
MOB ADM+JUD	2,853,205	209	1	210	100%	13,852	13,587			1,000,000
RCRA ADM	2,939,350	116	6	122	95%	25,339	24,093	11,650	10,000	550,000
RCRA JUD	3,904,000	12	0	12	100%	325,333	325,333	110,000	110,000	1,550,000
RCRA ADM+JUD	6,843,350	128	6	134	96%	53,464	51,070			1,550,000
EPCRA 302-312	284,390	7	0	7	100%	40,627	40,627	20,600	20,600	69,840
CERCLA 103	157,000	7	0	7	100%	22,429	22,429	25,000	25,000	51,000
TRI	1,562,637	100	0	100	100%	15,628	15,628	13,000	13,000	74,488
TSCA ADM	10,396,229	303	9	312	97%	34,311	33,321	8,000	8,000	3,750,000
TSCA JUD	15,000,000	1	0	1	100%	15,000,000	15,000,000	15,000,000	15,000,000	15,000,000
TSCA ADM+JUD	25,396,229	304	9	313	97%	83,540	81,138			15,000,000
FIFRA	587,632	230	82	312	74%	2,555	1,883	1,056	700	96,240
TOTAL	61,329,237	1,400	162	1,562						

Notes: Figures are not additive in vertical columns because program totals are included as well as components of those totals. In the SDWA program, figures are also show for the UIC and PWS subprograms, followed by the combined totals for SDWA as a whole. (This is done for the sake of historical comparison, because past reports showed only SDWA as a whole.) Abbreviations not explained elsewhere: UIC = Underground Injection Control (part of the SDWA program), PWS = Public Water System Supervision (part of SDWA program), Marine = Marine and Estuarine Protection, StatAir = Stationary Source Air, MobAir = Mobile Source Air.

*Note: Figures do not include three multi-media cases with RCRA counts that were credited completely to the following media: \$142,000 to CERCLA, \$1,100,000 to CWA, \$15,000,000 to TSCA.

Median and Average Penalties

This section of the report attempts to look beyond the aggregate figures to see what the typical penalties were for each program. Average and median penalty figures represent different aspects of the program.

The average penalty is the total dollars divided by the number of penalty cases in a given program. While an average is useful in seeing overall program accomplishments, it may give a misleading picture if the penalties within that program went to extremes. One high-penalty case and a large number of low-penalty cases could produce a mid-level average, even though no cases had a mid-level penalty.

The median is useful to gain a different perspective on a program without the heavy influence of a few extremely large or small penalties. The median penalty represents the middle number in the series of all penalties for a given program arranged in order of size. That is, there were as many penalties below the median as above it.

Medians - Figure 5 shows trends in medians over several years for the largest EPA penalty programs during that period. Among the programs with five years or less of penalty history, only RCRA judicial cases are shown. In the Mobile Source Air and TSCA programs, the data reflect several different penalty authorities, including some that lead to higher-dollar penalties. However, most of the cases in both these programs are in lower-dollar categories, which results in low median penalties.

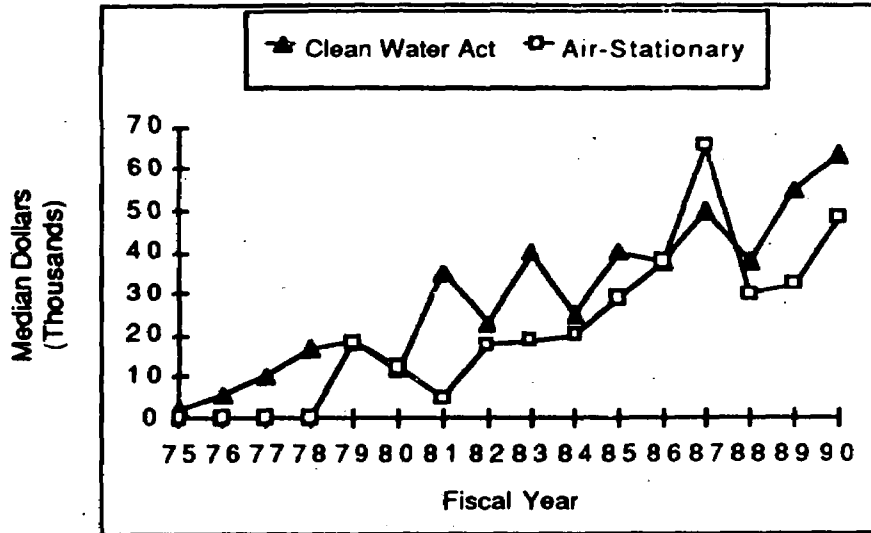
Medians increased in ten programs in FY 1990 over the previous year's levels. For the second year in a row, record high medians were achieved in the Clean Water Act program in both judicial and administrative cases. RCRA also had record high medians in judicial and administrative cases. For administrative cases alone, medians were their highest in TSCA, EPCRA § 302-312, CERCLA § 103, and EPCRA § 313. Although not all-time highs, median judicial penalties increased over FY 1989 in the Stationary Source Air program. Median administrative penalties increased in Wetlands, Mobile Source Air, and FIFRA programs.

Medians decreased in only four out of thirteen programs. Decreases were seen in the median judicial cases for the Wetlands and Mobile Source Air programs and in the median administrative cases for the Marine and Estuarine program. In SDWA, both the administrative and judicial median penalties dropped from the FY 1989 figure.

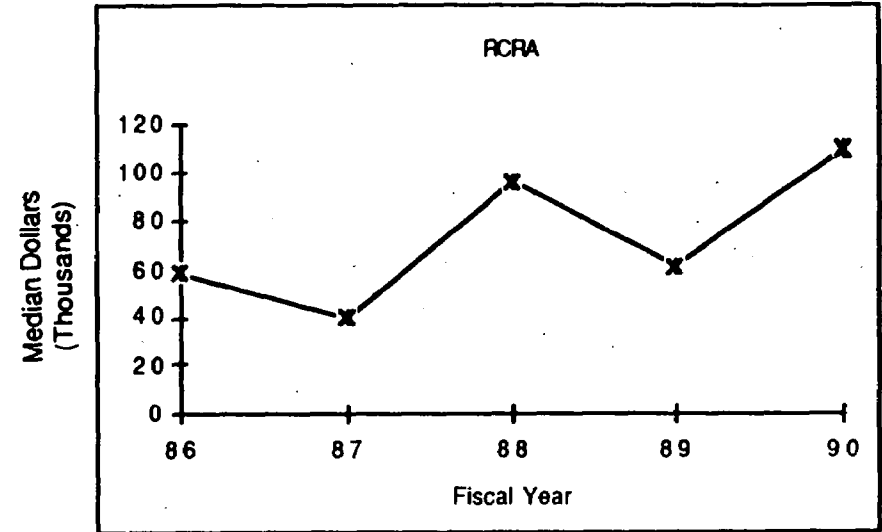
In the foregoing discussion of change in medians, there is no mention of TSCA judicial cases or Stationary Source Air administrative cases, because there were too few cases in FY 1989 or 1990 or both years to make these categories suitable for such analysis.

FIGURE 5

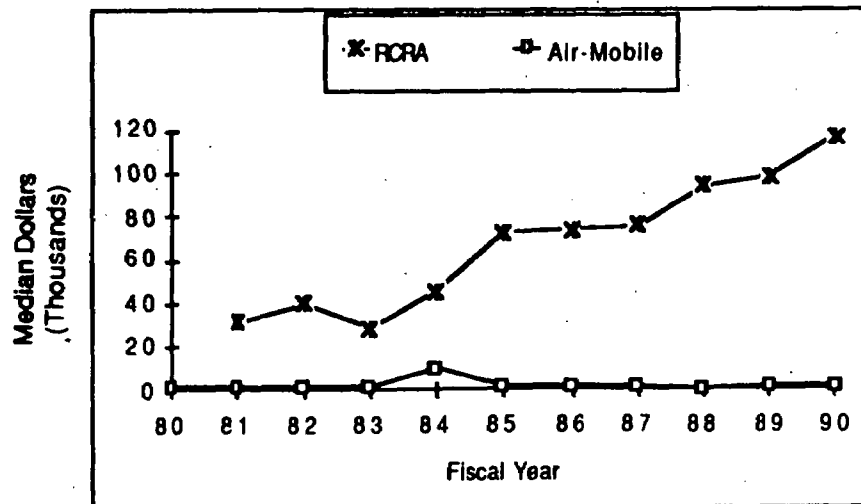
PROGRAM MEDIANS BY FISCAL YEAR
Judicial Penalties



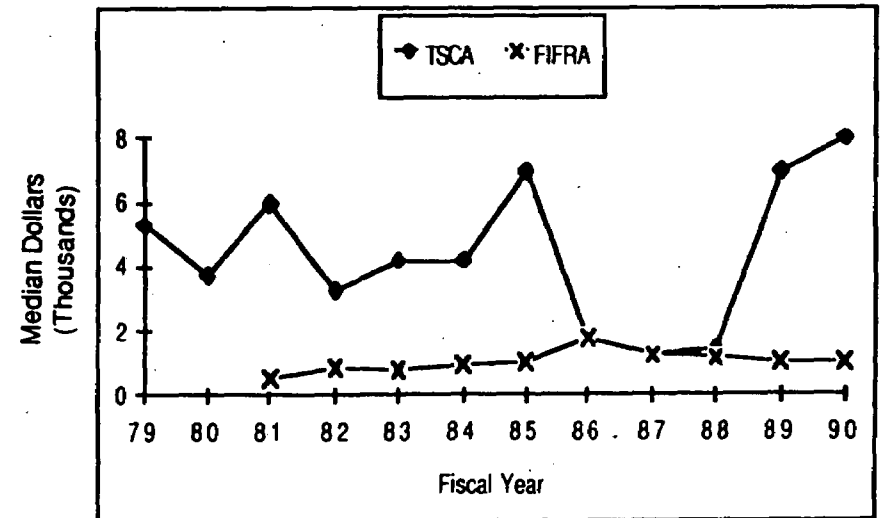
PROGRAM MEDIANS BY FISCAL YEAR
Judicial Penalties



PROGRAM MEDIANS BY FISCAL YEAR
Administrative Penalties



PROGRAM MEDIANS BY FISCAL YEAR
Administrative Penalties



- Clean Water Act: The median judicial penalty rose from its FY 1989 level of \$55,000 to a record high of \$63,000 in FY 1990. The median administrative penalty also rose to a new high of \$10,650 from \$10,000 in FY 1989.
- Safe Drinking Water Act: The median judicial penalty dropped from a record high of \$16,000 in FY 1989 to \$8,500 in FY 1990. (This reflects FY 1990 medians of \$12,000 for five UIC cases and \$11,750 for two PWSS cases.) The median administrative penalty dropped from \$5,000 in FY 1989 to \$4,000 in FY 1990. (The subprogram medians in FY 1990 were \$2,000 for 54 UIC cases and \$5,000 for 14 PWSS cases.)
- Wetlands Protection: In this third year of administrative cases concluded by the program, the median rose to \$11,000, compared to the FY 1989 level of \$8,000. The median judicial penalty was \$5,000, a decrease from \$25,000 in FY 1989, although only seven cases were concluded. (This is the third year Wetlands judicial penalties have been presented separately in this report. They were included as part of Clean Water Act data in penalty reports prior to FY 1988.)
- Marine and Estuarine Protection: This program is in its second year for cases concluded and has dropped from a median administrative penalty of \$30,000 in FY 1989 to \$19,594 FY 1990.
- Stationary Source Air: The median judicial penalty rose from \$32,253 in FY 1989 to \$48,000 in FY 1990. This is the second highest median judicial penalty in the program's history. The record was set in FY 1987 with a median of \$65,750.
- Mobile Source Air: The median judicial penalty was \$4,000, reflecting only three cases. This is a drop from the FY 1989 level of 16 cases and \$35,875 in penalties. The median administrative penalty rose from \$1,000 in FY 1989 to \$1,200 in FY 1990.
- RCRA: The median judicial penalty of \$110,000 was the highest to date in this program. The median administrative penalty continued rising for the seventh year in a row, also attaining a new record of \$11,650.
- EPCRA § 302-312: In the second year of concluded cases, this program surpassed its first year median with a penalty of \$20,600 compared to \$13,958 in FY 1989.
- CERCLA § 103: In the second year of concluded cases, this program also surpassed its first year median with a penalty of \$25,000 compared to \$3,334 in FY 1989.
- Toxics Release Inventory: In this second year of concluded cases, this program also surpassed its first year median with a penalty of \$13,000 compared to \$4,500 in FY 1989.
- TSCA: The median administrative penalty attained a record high of \$8,000, rising from \$7,000 in FY 1989. Prior to FY 1986, TSCA medians were not calculated on a program-wide basis.
- FIFRA: The median penalty rose slightly from \$1,014 in FY 1989 to \$1,056 in FY 1990, rising for the first time in four years. The record high penalty was in FY 1986 at \$1,852.

Averages - Average civil judicial or administrative penalties increased in twelve programs in FY 1990 as compared with five in FY 1989. Declines were evident in six programs. However, it should be noted that averages may be influenced by a few large cases. A year with one or two extremely large cases may have a much higher average penalty than a year without any, even though the latter may have had larger penalties in most enforcement cases.

Averages rose to record highs in the Clean Water Act in both judicial and administrative cases. For judicial cases only, averages rose to new highs in the Safe Drinking Water Act programs (UIC judicial and PWSS administrative) and the Wetlands program. In five other programs, record high administrative penalties were also achieved, although three of the five programs are only in their second year of concluded cases. These programs are TSCA, EPCRA § 302-312, CERCLA § 103, EPCRA § 313, and FIFRA. Although the RCRA program did not achieve a record high average this year, there was an increase over the FY 1989 average administrative penalty. Average judicial penalties increased for Stationary Source Air and Mobile Air programs.

Lower average penalties were reported in judicial cases in the RCRA and SDWA (PWSS) programs. Lower averages were noted for administrative cases in the Wetlands, Marine and Estuarine, SDWA (UIC) and Mobile Source Air programs.

In the foregoing discussion of change in averages, the following categories are not mentioned because there were too few cases in either FY 1989 or FY 1990 or both years to make this analysis productive: administrative cases in Stationary Source Air, and judicial cases in the TSCA program.

- Clean Water Act: The average judicial penalty rose to a record high of \$251,886. In the third year of administrative penalties, the average attained a record of \$21,868.
- Safe Drinking Water Act: The average judicial penalty rose to a new high of \$37,557. However, the average administrative penalty dropped to \$4,641 from the record high of \$10,590 in FY 1989.
- Wetlands Protection: The average judicial penalty rose to \$49,114, compared to \$30,000 in FY 1989. In the third year of administrative penalties, the average dropped slightly in FY 1990 to \$15,188 from FY 1989 (\$16,454), although cases went up slightly from 12 to 17.
- Marine and Estuarine Protection: In this second year of administrative penalties, the average dropped from \$30,000 in FY 1989 to \$12,993 in FY 1990. However, this may be expected since the number of cases rose from 2 to 13.
- Stationary Source Air: The average judicial penalty rose from \$69,674 in FY 1989 to \$100,615 in FY 1990, nearing the FY 1988 average after a decline in FY 1989.
- Mobile Source Air: The average administrative penalty declined for the second year, from \$9,082 in FY 1989 to \$8,962 in FY 1990. The average judicial penalty rose sharply from \$144,526 in FY 1989 to \$335,667 in FY 1990, although cases dropped from 16 to three.
- RCRA: The average judicial penalty dropped slightly from the FY 1989 average to \$325,333, although still higher than the average penalty in FY 1988 (\$209,791). The average administrative penalty rose to \$25,339, compared to \$17,208 in FY 1989.

- EPCRA § 302-312: In this second year of concluded cases, the average penalty rose from \$15,979 to \$40,627.
- CERCLA § 103: In this second year of concluded cases, the average penalty rose sharply from \$7,295 to \$31,400.
- Toxics Release Inventory: In this second year of concluded cases, the average penalty rose from \$12,899 to \$15,626.
- TSCA: The average administrative penalty rose substantially to a new high of \$34,311 compared to \$13,563 in FY 1989. (Averages were not calculated on a TSCA program-wide basis before FY 1986.)
- FIFRA: The average penalty rose to a new high of \$2,555. For the FIFRA program, this is a substantial increase over the FY 1989 average of \$1,341 (the lowest average since 1981).

Percentage of Cases Concluded with a Penalty

A high percentage of cases were concluded with a penalty in all programs except one (UIC). Excluding this one program from the calculation, 93 percent of all FY 1990 cases were concluded with a penalty, holding the percent at the FY 1989 level. (See Table 4 for each program's percentage with penalty.)

The atypical program was the Underground Injection Control program (one of the two programs under the Safe Drinking Water Act), which obtained penalties in 51 percent of its cases. This figure reflects a return to previous years' low levels from 62 percent in 1989. The low percentage figure for administrative penalties is in part a result of the structure of the SDWA, which does not separate EPA's authority for non-penalty UIC administrative orders from the authority for penalty orders, as was done in the Clean Water Act, the Public Water System provisions of SDWA, and the Clean Air Act. In this report, every UIC administrative order is counted as a potential penalty case, while in some other programs the only orders counted are the ones issued under the statute's penalty provisions. The agencywide figure including the UIC cases is almost 90 percent.

The percentage of cases with a penalty ranged from 51 percent in UIC administrative cases to 100 percent in Clean Water Act administrative, SDWA Underground Injection Control judicial, SDWA Public Water System Supervision administrative, Wetlands administrative, Marine and Estuarine, Stationary Source Air administrative, Mobile Source Air administrative, RCRA judicial, EPCRA § 302-312, CERCLA § 103, EPCRA § 313, and TSCA judicial.

Range of Penalty Amounts

This section examines how EPA's penalties in FY 1990 ranked along the scale from low dollars to high dollars. The penalty cases are sorted into eight ranges from no-penalty cases ("zero dollars") to cases of \$1 million or more.

Figure 6 shows the penalty distribution of all FY 1990 cases. Overall, the profile is similar to that in FY 1989. The biggest change in number of cases was a drop in the penalties under \$5,000,

attributable almost entirely to a drop in administrative penalties in this category. The biggest percentage changes were increases in cases above \$1 million (150% increase over FY 1989), and cases between \$25,000 and \$50,000 (42% increase over FY 1989). Judicial penalties dropped in five categories, but administrative penalties increased from the under \$10,000 category through the \$1 million or greater category, with the biggest increase in the \$25,000 to \$50,000 range. The overall distribution shown in Figure 5 is dominated by the large number of cases brought by the TSCA, FIFRA and Mobile Source Air programs, in which the penalties are generally lower than in other programs.

Figure 6 omits the two programs with the lowest medians, FIFRA (median of \$1,056) and Mobile Source Air administrative cases (median of \$1,200), to better show the distribution of penalties in the other programs. The distribution of penalties in most programs maintained position approximately in the profile established in FY 1989.

Though the changes in distribution of penalties between FY 1989 and FY 1990 were slight, they were the following: growth in the zero-penalty category, due to an increase in UIC cases with no penalties; a large drop in the under \$5,000 category, due to Mobile Sources, TSCA, FIFRA and RCRA administrative penalties; a 40% increase in the number of cases with penalties between \$25,000 and \$50,000, due to Clean Water Act, EPCRA § 313 and TSCA administrative penalties; a slight decline in judicial penalties between \$50,000 and \$100,000, due primarily to a slight drop in Clean Water Act judicial penalties; an increase in penalties over \$1 million, due to TSCA judicial and administrative penalties, and RCRA judicial penalties.

To show trends in the distribution of penalties, graphic examples below compare combined data from FY 1985-1989 with FY 1990 data for selected programs. Figures 7 and 8 show the distributions for Clean Water Act, SDWA, Stationary Source Air and RCRA cases in FY 1990 and FY 1985-1989. In FY 1990, the Clean Water Act penalty distribution shows growth in all categories except the zero-penalty range. The greatest increases come in penalties under \$5,000 (88% of FY 1985-1989 total), over \$1 million (67% of FY 1985-1989 total), and between \$50,000 and \$100,000 (66% of FY 1985-1989 total). The increases reflect growth in judicial penalty amounts and the rapidly growing use of administrative enforcement cases in the Clean Water Act program. For Stationary Air, the shift continues to be toward higher penalties in the judicial program. No administrative penalties were assessed in FY 1990, except in the \$5,000 or under category, but greater than average increases in judicial penalties occurred in two categories besides the zero-penalty category: under \$5,000 (32% of FY 1985-1989 total) and under \$1 million (27% of FY 1985-1989 total). SDWA showed substantial growth in the lower penalty categories with slight growth in all other categories above \$10,000 except under \$100,000. In RCRA, the shift in distribution of penalties is toward the upper range (<\$5,000 to <\$1 million), as compared with the FY 1985-1989 distribution, due primarily to larger judicial penalties. The huge increases were in penalties for \$1 million or over (67% of FY 1985-1989 total), and under \$1 million (45% of FY 1985-1989 total). Modest growth also occurred in the middle ranges, <\$10,000 to <\$100,000, due to an increase in administrative cases.

PENALTY DISTRIBUTION - ALL PROGRAMS

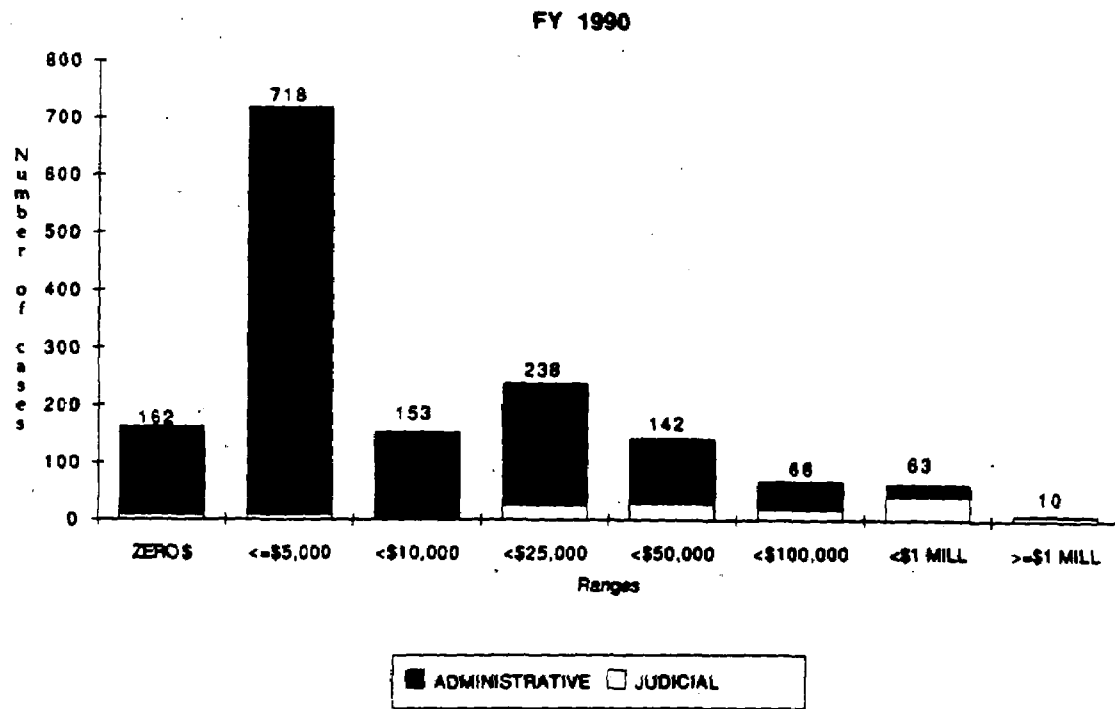


FIGURE 6

PENALTY DISTRIBUTION - FY 1990 Minus Mobile and FIFRA Administrative

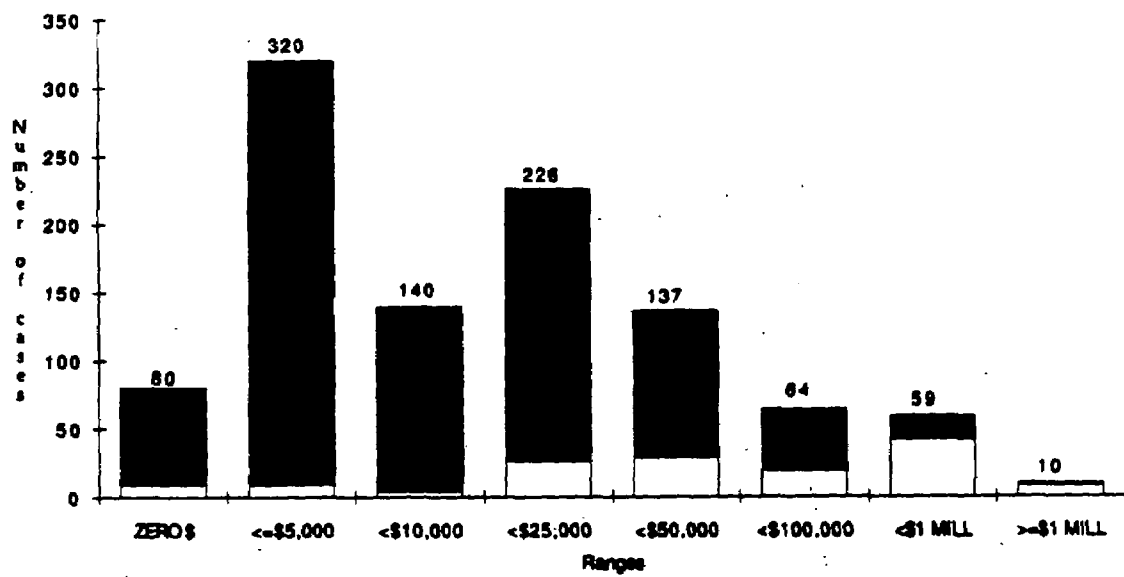
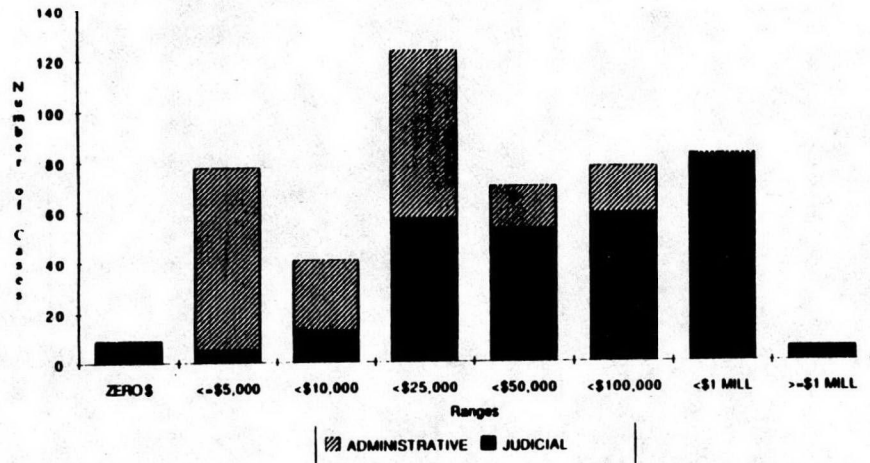


FIGURE 7

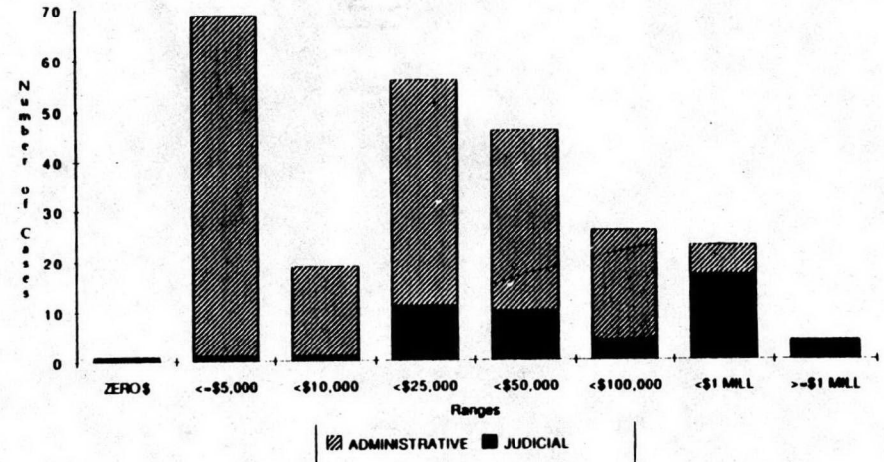
PENALTY DISTRIBUTION - CWA

FY 1985-1989



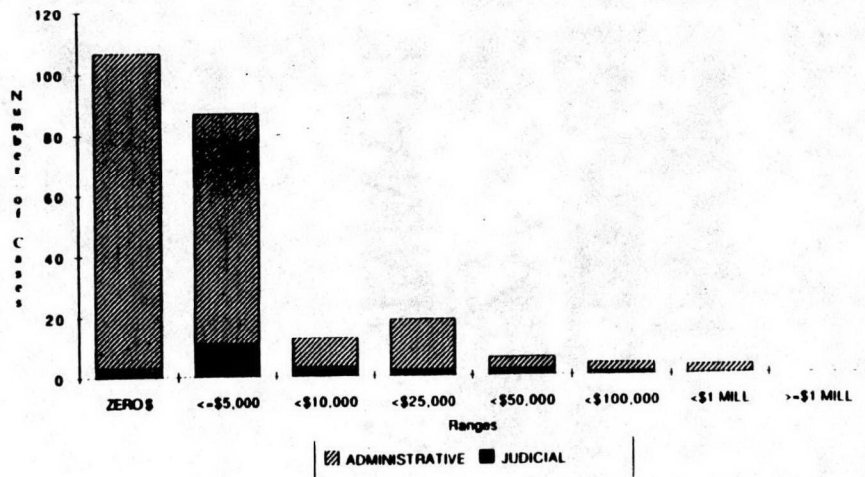
PENALTY DISTRIBUTION - CWA

FY 1990



PENALTY DISTRIBUTION - SDWA

FY 1985-1989



PENALTY DISTRIBUTION - SDWA

FY 1990

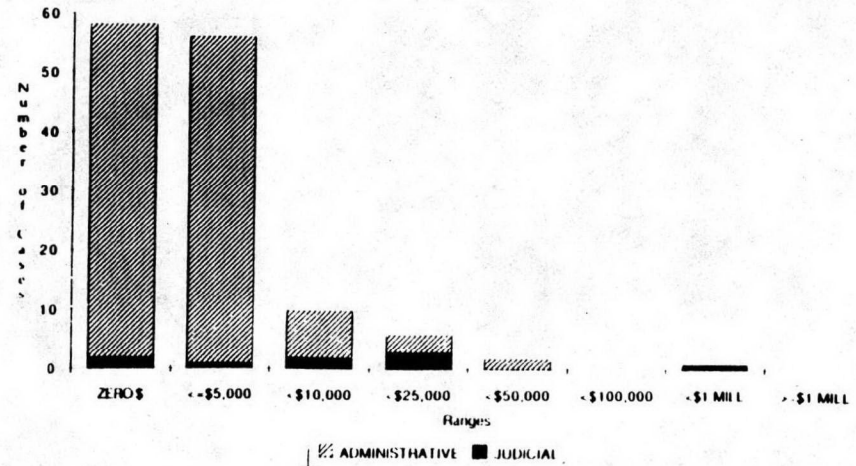
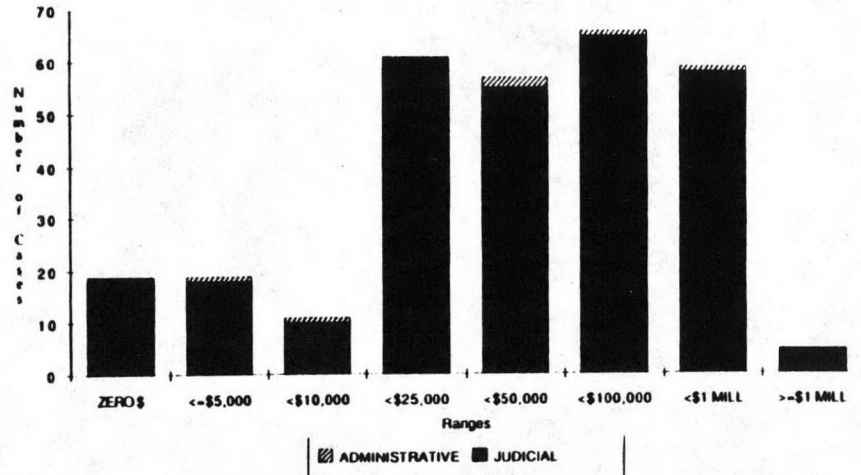


FIGURE 8

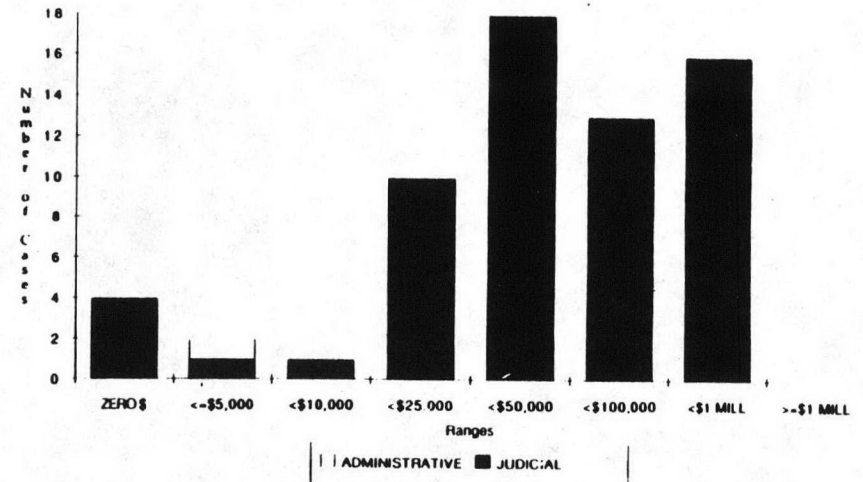
PENALTY DISTRIBUTION - STATIONARY AIR

FY 1985-1989



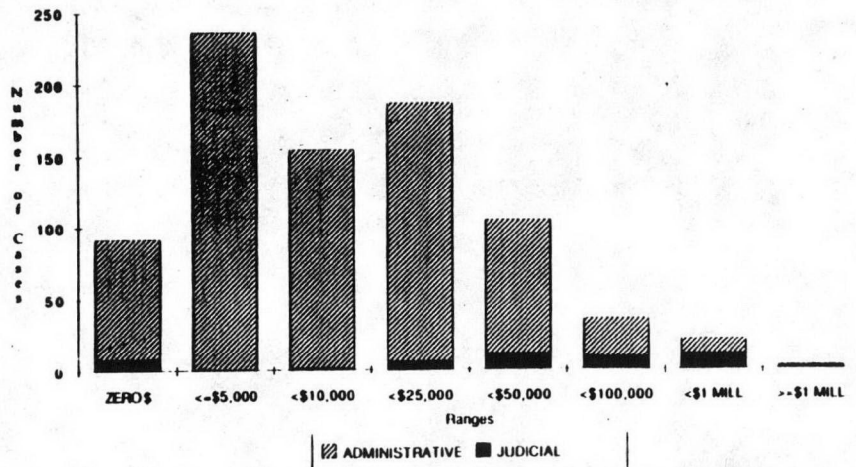
PENALTY DISTRIBUTION - STATIONARY AIR

FY 1990



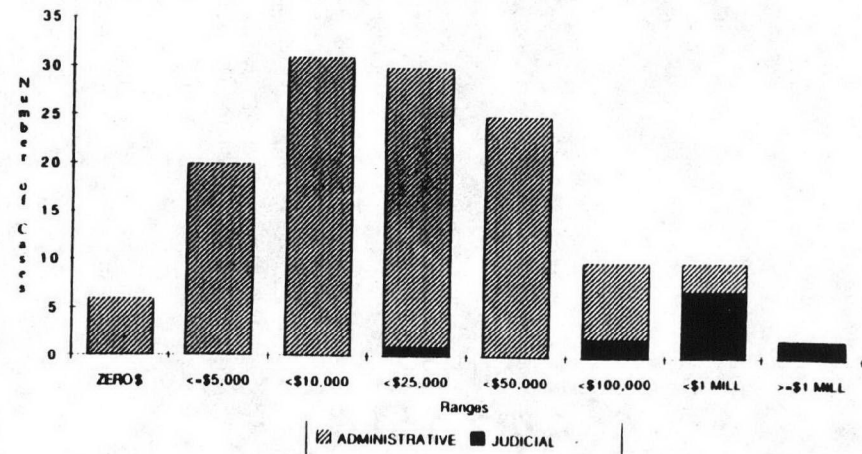
PENALTY DISTRIBUTION - RCRA

FY 1985-1989



PENALTY DISTRIBUTION - RCRA

FY 1990



Highest Penalties

Eight programs established new records for highest individual administrative or judicial penalties -- that is, the highest penalty assessed in a single case. Record judicial penalties were set in FY 1990 in the Safe Drinking Water Act (UIC) and Wetlands programs. Record administrative penalties were set in the Clean Water Act, EPCRA § 302-312, CERCLA § 103, Toxics Release Inventory (EPCRA § 313), and FIFRA. TSCA set the highest administrative and judicial penalties in FY 1990. The highest penalties in each program are shown in Table 5.

Table 5.

Highest Penalty in FY 1990 by Program

	<u>Judicial</u>	<u>Administrative</u>
Clean Water Act	\$ 2,100,000	\$ 125,000
Safe Drinking Water Act	200,000	40,000
Wetlands Protection	300,000	45,000
Marine and Estuarine Protection	--	25,000
Stationary Source Air	687,224	4,300
Mobile Source Air	1,000,000	520,000
RCRA	1,550,000	550,000
EPCRA § 302-312	--	69,840
CERCLA § 103	--	51,000
Toxics Release Inventory	--	74,488
TSCA	15,000,000*	750,000
FIFRA	--	96,240

* Texas Eastern, a multi-media case involving TSCA and RCRA counts, credited completely to TSCA.

Types of Cases

About \$37 million, or 63 percent, of all EPA federal penalty dollars in FY 1990 came from judicial cases. The remaining \$22 million (37 percent) came from administrative cases.

There were more administrative cases than judicial cases. Some 90 percent (1,140) of all cases with penalties were administrative enforcement actions, compared to 10 percent (124 cases) that were judicial actions.

In general, the penalty is likely to be higher in a judicial case than in an administrative case, but the ranges overlap. For instance, among EPA's larger penalties in FY 1990, the highest administrative penalty was \$3.7 million brought by the TSCA program, and the highest judicial penalty (excluding Texas Eastern for \$15 million) was \$2.1 million brought by the Clean Water Act program.

Considered on an agencywide basis, the proportions of dollars and cases from the judicial and administrative categories in FY 1990 are similar to those in the past four fiscal years. The percentages within that period varied within a range of 15 percentage points for penalty dollars, and 4 percentage points for cases. Although the big picture has remained the same, the roles of these two types of cases have changed in some programs, with dramatic results.

An example is the Clean Water Act program, which first received administrative enforcement penalty authority in the Water Quality Act of 1987. In FY 1990, 192 cases were concluded for a total of over \$4 million in penalties. To compare this with previous years, FY 1988 saw the first 40 administrative cases concluded with penalties totaling about \$500,000. Then in FY 1989, 165 cases were concluded, with penalties of \$2.8 million. This fiscal year was a dramatic increase over FY 1989, as FY 1989 was a substantial increase over FY 1988. This growth in dollars from administrative cases in FY 1990 in addition to the increase in judicial dollars and cases, brought the Clean Water Act program to highest total in the program's history (\$15.4 million dollars and 234 cases).

A contrasting example is the TSCA program, which until FY 1990, had no judicial penalties. The first judicial case was concluded in FY 1990 for a record high penalty of \$15,000,000, assessed against Texas Eastern Pipeline.

New Penalty Authority

The Clean Water Act program received new penalty authority this fiscal year with the enactment of the Oil Pollution Act of 1990 (OPA) on August 18, 1990. The result was to strengthen the enforcement provisions of Section 311 of the Clean Water Act, which concerns oil or hazardous substance spills and spill prevention. However, these amendments to the law were not implemented during FY 1990 by the Agency and no cases were concluded under the OPA.

Criminal Enforcement

The Criminal Enforcement program operates on a cross-media basis, serving all the major programs that have been authorized by Congress to use criminal sanctions against violators. Most criminal cases include charges under more than one environmental law, but for statistical purposes each case is listed under one predominant statute. On this basis, the programs with the largest numbers of defendants

convicted in FY 1990 were RCRA (25), Clean Water Act (19) and Clean Air Act (16), followed by TSCA (8), FIFRA (2) and CERCLA § 103 (1). (The foregoing numbers are sums of corporations and individuals convicted.)

Relative Contributions

The TSCA program dominated civil penalty dollars in FY 1990, with 41 percent of the total (see Figure 2). It was followed by Clean Water Act (27 percent), RCRA (11 percent), Stationary Source Air (10 percent) and Mobile Source Air (5 percent). This reflects a notable gain in share over FY 1989 by TSCA (up from 12 percent).

The majority of cases with penalties in FY 1990 were concluded by programs that made heavy use of administrative cases (see Figure 3): TSCA (22 percent), Clean Water Act (17 percent), FIFRA (17 percent), and Mobile Source Air (15 percent). These shares changed very little from program shares in FY 1989.