



FACTS ON

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION FIVE
1 N. Wacker Dr. Chicago, Illinois 60606 312-353-5800

The Enforcement Division

The primary activity of the Enforcement Division has been in the field of water pollution. Dating back to the 1899 River and Harbor Act and up to the most recent amendments, passed 1970, of the Federal Water Pollution Control Act, legislation and regulations have been available to the Federal Government for the abatement of water pollution. With the enactment of new legislation, specifically the Clean Air Act of 1970, and the Federal Insecticide, Rodenticide, and Fungicide Act of 1970, the legislation and regulations are now available for the Division to expand its activities into the field of air pollution and pesticides, which it is doing.

The Division is composed of two branches: the Permits Branch and the Enforcement Branch. These two branches pursue different aspects of the Enforcement program so as to provide the greatest possible abatement of pollution in the Great Lakes.

The Enforcement Branch, made up of the Technical Coordination Section, the Legal Support Section, and the Water Quality Standards Section, has primary responsibility for the preparation, review and initiation of enforcement actions. An enforcement action is initiated for the purpose of improving the level of treatment provided by municipalities and industries such that water quality in the receiving stream or lake will be improved.

Under the Federal Water Pollution Control Act, as amended, two avenues of enforcement are open to the Federal Government; enforcement conferences and water quality standards. Each avenue is composed of three steps. The first avenue, enforcement conferences, consists of the actual enforcement conference, a Hearing Board, and referral for court action. At an enforcement conference, conferees, who are representatives of the States concerned and the Federal Government, meet to hear testimony and to establish time-tables for the abatement of pollution. The recommendations of the conferees are then submitted to the Administrator of the EPA for approval. Once approved, the state time-tables established at the conference become federally enforceable. Those dischargers for which time-tables were established are then closely monitored to ensure that they comply with the requirements.

A Hearing Board may be called by the Administrator if a discharger is not in compliance with an enforcement conference requirement, and if the State has not taken sufficient action to ensure compliance. The Hearing

Board is, in effect, a trial at which the discharger and involved State and Federal agencies present testimony. The conclusions reached by the members of the Board are forwarded to the Administrator. Once issued by the Administrator, these requirements must be implemented.

If after a period of six months, significant progress has not been made by the discharger toward implementation of the imposed requirements, referral for the court action may be initiated by EPA through the efforts of the Enforcement Branch.

In Region V, numerous sessions have been held on several enforcement conference areas. These include the Lake Michigan Enforcement Conference, the Lake Superior Enforcement Conference, the Lake Erie Enforcement Conference, and the Twin Cities-Upper Mississippi River Enforcement Conference. There have been no Hearing Boards called or resultant referral for court action initiated in Region V, due primarily to the unwieldy and time-consuming procedures required by the Water Pollution Control Act for these actions.

The second avenue of enforcement open to the Federal Government under the Federal Water Pollution Control Act is the enforcement of approved water quality standards. This avenue is also composed of three steps: the enforcement of water quality standards, 180-Day Notices, and referral for court action. The first step, federal enforcement of water quality standards, is actually a two-part procedure. First, the States formulate water quality standards according to the provisions of the Water Quality Act of 1965. These standards are composed of three key elements: (1) the use to be made of a particular stretch of water, (2) the water quality criteria which set limits on pollutants, and (3) an implementation plan, i.e., a specific step-by-step plan for the construction of waste treatment facilities by dischargers. The second part of this procedure takes place once the State has formulated its water quality standards and submits the package to the EPA regional office for review. This review is made by the Water Quality Standards Section of the Enforcement Branch, an Air and Water Division program assigned to the Enforcement Division in Region V due to the interface between the review of standards and the enforcement of standards. An evaluation is made of the three elements above, their consistency with other waters, and the quality of water which they will provide. After a recommendation is made by the Water Quality Standards Section, the State's standards are sent to the Regional Administrator for approval. Once approved by the Regional Administrator, the standards become federally enforceable under the Water Pollution Control Act, as amended. The enforcement of these standards become the responsibility of the Enforcement Branch. Those dischargers for which standards were established are closely monitored to ensure compliance with the approved standards.

If a discharger violates federally approved water quality standards, a 180-Day Notice may be initiated by the Enforcement Branch as the second step in this particular avenue of enforcement. Notification is sent to the discharger - and interested parties - informing the discharger that it is in violation and that court action may follow if a voluntary program which will

bring it into compliance with water quality standards is not adopted. Following notification, an informal hearing is held with the discharger, the State and EPA at which EPA seeks to identify the problems and lay the groundwork for further discussions with the violator leading to a program of voluntary compliance.

If a program of voluntary compliance is agreed upon and approved, close monitoring assures that the pollution abatement program is followed. If agreement is not reached, or if the agreed upon program is not implemented, referral to the U.S. Attorney for court action may be initiated by the Enforcement Branch, thus completing the second avenue of enforcement available under the Water Pollution Control Act.

Out of 96 180-Day Notices issued by the EPA across the nation, approximately half of those have been issued in Region V. Fifty-six 180-Day Notices were issued in Region V in its one and a half years in operation. These include 180-Day Notices issued against the City of Detroit, the City of Cleveland, 30 of Cleveland's suburbs, and Green Bay Metropolitan Sanitary District.

Another avenue available for federal enforcement actions is under the River and Harbor Act of 1899. Although this Act has in the past been limited to discharges which become obstructive or hazardous to navigation, recent court decisions have allowed a broader interpretation of the Act such that discharge of any refuse matter (including all foreign substances and pollutants, even oil) may be covered by the Act. This broader interpretation has given the Federal Government a less cumbersome avenue for the abatement of pollution than either avenue available under the Water Pollution Control Act. Referrals for court action may now be made by the Enforcement Branch for either criminal or civil proceedings under the 1899 River and Harbor Act. Under civil action, the Enforcement Branch works with the Justice Department to secure injunctive relief. This may be accomplished either by a consent decree or a trial. Recently the EPA, through the Department of Justice, brought a civil suit against Reserve Mining Company in Silver Bay, Minnesota. A 180-Day Notice had been issued against this company earlier and an agreement was not reached. For that reason EPA initiated the present action against the Company.

Also due in part to the recent broader interpretation of the 1899 River and Harbor Act, the Enforcement Branch has been able to initiate an active program for the abatement of oil and hazardous material spills. Upon notification of such a spill, an investigation is made by the District Office. The data thus compiled is then reviewed in the Enforcement Branch and, if sufficient evidence is available, the matter is referred to the U.S. Attorney for prosecution under criminal proceedings of the 1899 River and Harbor Act.

A newer area into which the Enforcement Branch is extending is the abatement of air pollution. Under the Clean Air Act of 1970, all states must submit plans for achieving and maintaining federal ambient air quality standards. Once the state plan has been approved by the Administrator of

EPA, implementation of the State plan is enforceable by the Federal Government. New Source Performance Standards are also being promulgated by EPA in accordance with the Clean Air Act. If a new source is in operation and a standard is violated, federal enforcement action may be initiated; an order may be issued or injunctive relief may be sought. In the instance of a hazardous emission, i.e., a pollutant which may cause or contribute to an increase in mortality or a serious illness, the Clean Air Act provides that emission standards be promulgated. All new sources must be in compliance as of the effective date of these regulations and all existing sources have 90 days thereafter to come into compliance. If a violation of these standards occurs, then an order may be issued or injunctive relief sought by the Enforcement Branch.

Another new area in which the Enforcement Branch is extending is with respect to the interstate shipment of pesticides which have not been registered with EPA, as set forth in the Federal Insecticide, Rodenticide, and Fungicide Act. When documentation of such an unregistered shipment is obtained, it is evaluated by the Enforcement Branch for completeness and then referred to the U.S. Attorney for prosecution.

The Enforcement Branch in Region V has been quite active, as evidenced by the 115 actions initiated in its first year and a half in operation. An even stronger effort is envisioned to continue the improvement in the control and abatement of pollution in Region V.