



November 17, 2003

NEW EPA METHODOLOGY FOR CIVIL ENFORCEMENT CASE INITIATION COUNTING

With the end-of-year count of Fiscal Year 2003 enforcement activities, EPA is changing its methodology for counting enforcement case initiations. This change will impact comparisons between the FY 2003 enforcement figures and similar figures produced by EPA for the past 12 fiscal years.

Background

- From FY 1991 through FY 2002, the Agency, as a part of the process of counting the number of cases that EPA had initiated during the fiscal year, granted extra-credits for certain categories of enforcement cases. Extra-credits were granted for cases:
 - involving multiple significant violating facilities, such as one company operating multiple power plants;
 - alleging significant violations under multiple environmental statutes, such as a chemical plant with violations of both the Clean Water and Clean Air Acts;
 - seeking to amend a previously referred enforcement case (to allege additional violations or to add additional parties);
 - involving enforcement of a final court order in an earlier concluded case, when the defendant has violated the court order.
- The practice of granting extra-credits was initiated by EPA in 1991 as a way of giving the EPA Regions full credit for the larger and more complex cases, particularly those involving violations of multiple statutes and/or multiple facilities (referred to herein as “multi-program” and “multi-facility” cases). At that time, EPA had just begun to redefine its environmental enforcement role to focus on large-corporate cases that involved multiple facilities and often violations of multiple federal statutes, and that often crossed state and regional boundaries. EPA sought to encourage the EPA Regions to bring these more complex and difficult cases by giving them extra-credits that would make one difficult multi-facility or multi-program case worth as much as two, three or more simpler single media/facility cases.
- When a case fell into one of these categories and was granted an extra-credit, that case would be counted by EPA as if it were two cases; if it was granted two extra credits, it would be counted as three cases, and so on. As a result, over the past 12 years when EPA has announced the number of civil enforcement cases it has initiated, this number included both actual enforcement cases and extra-credits that had been granted for some of those cases.

FY 2003

- In FY 2003, EPA is discontinuing the practice of granting extra-credits. EPA has concluded that granting extra-credits for complex civil cases is no longer an effective accounting methodology. It has produced EPA enforcement case initiation numbers that do not reflect the actual, raw numbers of case initiations and could cause confusion in publications and other uses where the context is not adequately explained. Further, by rolling up all of the information about multi-program and multi-facility cases into extra-credits, EPA has missed the opportunity to separately identify these cases and activities and to use this information for better managing and articulating the success of our enforcement program.
- The result of EPA's accounting change will be a more transparent count of EPA's civil enforcement activities and the production of more complete information on the types and qualities of EPA enforcement actions.
- EPA will now produce and announce the actual numbers of enforcement cases initiated by EPA, and not a number increased by addition of extra-credits.
- To improve our enforcement case management, EPA will now capture in separate tables critical case information that was formerly captured only as extra-credits. These new tables will display information on:
 - the number of multi-program and multi-facility cases
 - the media/programs that make up EPA's multi-program cases
 - the total number of facilities that are the subject of EPA's enforcement actions;
 - the number of EPA actions to amend our enforcement actions to add parties and/or violations; and
 - the number of EPA actions to enforce our judicial settlements.

Comparisons of FY 2003 Enforcement Figures to Previous Years'

- The figures for EPA's enforcement case initiations for FY 2003 and for prior years are displayed in the attached table. The figures are calculated using both the former counting methodology, which included granting extra-credits, and the new methodology, which does not involve extra-credits. We have produced four years of historical data for civil judicial referrals and two prior years data for administrative enforcement cases. The intent is to portray a comparable set of numbers for the years portrayed.
- In recalculating the civil enforcement case initiation numbers, we eliminated the extra-credits that had been granted and separately counted cases involving multiple programs in a new "multi-program" category (as we are doing for the FY 2003 numbers).
- In addition, to further assist in annual comparisons, we have estimated the number of extra-credits that would have been granted for FY 2003 judicial referrals and administrative penalty complaints had we still been employing the old extra-credit methodology.

Application of Old Counting Methodology (FY 91-02) vs. New Counting Methodology (beginning FY 03)
EPA Civil Enforcement Case Initiations FYs 1999-2003:
Civil Judicial Referrals, Administrative Penalty Complaints (APCs), Administrative Compliance Orders (ACOs)

	FY 1999		FY 2000		FY 2001		FY 2002		FY 2003	
	Old Counting Method (incl. extra credits)	New Counting Method (w/o extra credits)	Old Counting Method (incl. extra credits)	New Counting Method (w/o extra credits)	Old Counting Method (incl. extra credits)	New Counting Method (w/o extra credits)	Old Counting Method (incl. extra credits)	New Counting Method (w/o extra credits)	Old Counting Method (incl. extra credits)	New Counting Method (w/o extra credits)
Referrals	403	323	368	250	327	238	322	252	359	268
APCs	1654	NA	1763	NA	1582	1510	1441	1395	1781	1707
ACOs	1516	NA	3388	NA	1494	1476	1251	1250	NA	1582

NA: Not Available

The “Old Counting Methodology” included the addition of extra credits for multi-facility and multi-program cases and for supplemental referrals.

The “New Counting Methodology” does not include the calculation or addition of extra-credits.

Field Citations: In prior years, EPA counted field citations separately from administrative penalty complaints (APCs). In an additional change for FY 2003, EPA is now adding field citations to our count of APCs (as well as our count of administrative penalty settlements) as field citations are, in fact, simply an expedited form of an APC. *The enforcement case counts on this page do not include the addition of field citations to APCs in order to keep clear the impact from the cessation of counting extra-credits.*

(A “field citation” is an administrative enforcement action issued “in the field,” typically during a facility inspection, that assesses a small penalty for specific violations identified during the inspection.)

	FY2001	FY2002	FY2003
Field Citations	150	138	181