

Enforcement Annual Report

Fiscal Year 2001

Office of Environmental Stewardship



Acknowledgments

This annual enforcement report is the first one that the Enforcement Office in EPA New England's Office of Environmental Stewardship has produced since its creation in October 1995. I am quite proud of the enforcement accomplishments that it describes. I am even more proud of the people in the Enforcement Office who are responsible for this important work. The Enforcement Office has an unbelievably talented and motivated group of people with a wide range of backgrounds and skills: engineers, attorneys, scientists, secretaries, managers, paralegals, analysts, administrative specialists, data managers, contractors, and interns. They combine their skills to work together on some of the most challenging environmental and public health problems facing New England, and they are achieving measurable results.

I have spent my entire twenty-four years at EPA New England working as part of the enforcement program. The accomplishments discussed in this report remind me what a privilege it is to be associated with the program and its people.

Sam Silverman
Acting Director
Office of Environmental Stewardship

Enforcement Report Team

Project Lead and Editor: Clara Chow, Assistant Director
Project Members: Joan Serra, Senior Enforcement Engineer
Amea Kantesaria, Researcher
Amir Ingram, Researcher
Michael Burke, Researcher

ANNUAL ENFORCEMENT REPORT

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INTRODUCTION

EPA's enforcement program is confronted with many critical and difficult environmental problems, and here in New England, we have been national leaders in developing creative enforcement approaches. For example, we have pioneered the use of "integrated strategies, which use enforcement, compliance assistance, and other tools in complementary ways to achieve the greatest possible improvement in environmental performance. We have used targeted enforcement cases to stimulate interest in environmental auditing and self-disclosure of violations magnifying the impact of enforcement by spurring the discovery and correction of violations at many other facilities. We have also developed close working relationships with the New England states, which allow us to align priorities, coordinate our work, and ensure the overall effectiveness of the Region's enforcement program.

EPA gives priority to violations which pose the most serious risks to the environment and public health. We focus on areas where a federal role is most important including large, complex cases with impacts that cross state lines; national enforcement priorities, such as coal-fired power plants and sewer overflows; and cases against public agencies. We also maintain a strong overall field presence in order to create a deterrent effect, which will prevent future environmental threats.

The chapters in this Annual Report will illustrate these approaches with examples of specific cases, highlighting environmental results such as the 97,000 pounds of volatile organic compound emissions reduced as a result of our Clean Air Act enforcement cases. The report will also describe creative settlements which include "supplemental environmental projects environmental work beyond that required by law. In fiscal year 2001, the total cost of these projects amounted to \$4.9 million.

Each year brings new environmental challenges and changes in regulatory requirements. Regulated facilities in both the public and private sector also adapt their operations in response to advances in technology and shifting economic conditions. These changes present an ongoing challenge to the enforcement program to be strategic and innovative in protecting the environment and public health.

— *Ken Moraff, Manager*
OES Enforcement Office

AIR ENFORCEMENT

Manager's Statement:

In our efforts to attain this Region's clean and healthy air goal, the Air Enforcement Program is responsible for conducting compliance monitoring and enforcement activities under the Clean Air Act, governing the operations of various stationary and mobile air pollution sources. In addition, we are charged with the responsibility of overseeing the performance of state air pollution compliance and enforcement programs.

Within the stationary source program, we have focused on the New Source Review (NSR) and air toxics programs, both of which were also national enforcement priorities for FY01. Under our NSR initiative, we settled several cases involving facilities that emit VOCs, a contributor to ozone formation. Regarding air toxics, we continued to resolve violations identified in the chromium electroplating and solvent degreasing sectors. Our mobile source enforcement program focused on monitoring the compliance of diesel-fueled vehicles (buses and trucks) with EPA's sulfur in fuel regulations. To protect public health, EPA regulations require the use of low sulfur diesel fuel (0.05% by weight).

– Fred Weeks

Notable Cases:

GULF OIL, L.P.:

Gulf Oil, L.P. owns and operates a bulk terminal used for the distribution and storage of gasoline and diesel fuels in New Haven, CT. In July 2001, EPA settled a judicial action against the facility for Clean Air Act (CAA) violations. The company's original violations included failing to obtain New Source Review (NSR) permits and emitting volatile organic compounds (VOCs) in excess of limits at a gasoline bulk terminal. As a result of the action, EPA required Gulf Oil to limit gasoline throughput in order to qualify as a minor source of VOC emissions and to apply to the Connecticut Department of Environmental Protection for a permit amendment restricting its potential emissions to minor source levels.

NSR Summary:

The New Source Review (NSR) program is an important component of the Clean Air Act (CAA) to protect public health and the environment. To prevent releases of millions of tons of air pollution, this program requires companies that upgrade their facilities, either by constructing a new plant or making major modifications, to install the best available or lowest achievable pollution control equipment. If the upgrades result in the emissions of pollutants above certain threshold limits, these companies must also apply for and obtain a CAA permit prior to any construction or modification.

Permits for sources located in "attainment areas (i.e., pristine areas such as national parks and wilderness areas) are called Prevention of Significant Deterioration (PSD) permits. For sources in areas not meeting certain air quality standards, those permits are non-attainment NSR permits.

Gulf paid a penalty of \$40,000 and agreed to perform supplemental environmental projects (SEPs) worth over \$421,000. The SEPs involved various upgrades to gasoline tanks at Gulf facilities throughout the New England states, New Jersey, and Pennsylvania. We anticipate that these upgrades will reduce VOC emissions by 25 tons per year for the life of the tanks, which is at least 15 years.

RYMES HEATING OILS, INC.

On December 5, 2000, the U.S. District Court for the District of New Hampshire approved a Consent Decree entered into between EPA and two individual defendants: Rymes Heating Oils, Inc. and James Rymes. Under the settlement, the defendants agreed to pay a civil penalty of \$200,000 to settle CAA claims alleged by Region I and EPA Headquarters for violations of regulations governing the sale and delivery of diesel fuel and gasoline. The case represented the Region's first judicial action for diesel violations and the largest penalty ever paid in a diesel action undertaken by our Region. Under the settlement, the defendants denied the allegations but agreed to pay the penalty within 30 days or face additional penalties.

Rymes Heating Oils is a fuel distributor in Antrim, NH with six retail gasoline outlets located elsewhere in NH. In this action, EPA specifically alleged that the defendants were aware of the compliance issues associated with the diesel fuel when they accepted the fuel deliveries from January 1995 through June 1997. This fuel contained sulfur above allowable CAA limits. In addition, the diesel fuel did not meet requirements for ozone prevention in areas where the law specified that the fuel had to be reformulated gasoline (RFG). Therefore, during 1996 and 1997, the defendants allegedly violated the CAA by selling or dispensing on at least 13 occasions "conventional gas that not only contained high sulfur levels but also was not RFG.

SHELL OIL/MOTIVA ENTERPRISES:

The Shell Company, a subsidiary of Shell Petroleum, Inc. of Houston, Texas, owned and operated a bulk petroleum terminal in Bridgeport, CT until October 1, 1998. Motiva Enterprises LLC of Houston, Texas, a joint venture that combines the refining and marketing assets of Shell, Texaco Inc. and Saudi Refining, assumed ownership and control of the bulk petroleum terminal on that date. The two companies are jointly liable for the violation of the CAA at the Bridgeport facility. More specifically, they failed to control emission of VOCs, obtain required permits for a major modification of the facility, and comply with federal standards for facility modifications. Because of the facility's location in a severe non-attainment zone for ozone, the Region wanted to send a strong enforcement message to the regulated community that it must control emission of VOCs.

The settlement provides for a civil penalty against Shell and Motiva of \$390,155 as well as an agreement with Motiva that the company will purchase and permanently retire 22.5 tons worth of NO_x emission reduction credits during an ozone season to mitigate for past emissions. Additionally, the company is permanently enjoined from loading gasoline products or other volatile compounds identified under the regulations onto barges at the terminal without use of a vapor collection and disposal system. Motiva has also agreed to cease use of an unpermitted loading bay at its gasoline loading rack. The company will not reuse the bay until it receives an appropriate permit for such use from the Connecticut Department of Environmental Protection.

Health Effects from Ozone Exposure:

Ozone is an odorless, colorless gas composed of three oxygen atoms. Ozone occurs both in the earth's upper atmosphere (stratosphere) and at the ground level. Depending on where ozone is found, it can be either good or bad.

Naturally occurring ozone in the stratosphere (10 to 30 miles above the earth's surface) forms a protective layer. This layer shields us from the sun's harmful ultraviolet rays. This is "good ozone."

Ozone can also form in the earth's lower atmosphere, near ground level. When certain sources such as cars, power plants, industrial boilers, refineries, and chemical plants emit pollutants (primarily volatile organic compounds and nitrogen oxides), these emissions react chemically in the presence of sunlight to form ozone. This is "bad ozone."

Ground-level ozone or smog (the "bad ozone") has been associated with specific human health effects. Exposure to ozone affects the respiratory system. It can reduce lung function by restricting the volume of air intake. In addition to impairing lung function, ozone can inflame and damage the lining of the lung. For asthmatics, ozone aggravates their condition.

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY:

The Massachusetts Bay Transportation Authority (MBTA) is an independent agency that operates a public transit system in metropolitan Boston. The administrative action involved violations of the urban bus retrofit/rebuild regulations under the CAA by MBTA. The urban bus retrofit/rebuild regulations require the installation of emission controls at the time certain bus engines are replaced or rebuilt. The regulations are intended to improve air quality in urban areas with population over 750,000 by reducing ambient levels of particulate matter.

EPA alleged that MBTA failed to install required equipment on 31 buses. In addition, MBTA failed to maintain records of some of its rebuilds as required by the rule.

In a Consent Agreement and final Order filed on November 27, 2000, MBTA agreed to pay a penalty of \$18,000 and to perform a \$30,000 supplemental environmental project (SEP). Additionally, the Consent Agreement required MBTA to place equipment on those buses it rebuilt without the installation of air pollution controls. MBTA will also audit its compliance with the regulations in three years.

The SEP is an 18-month project designed to prevent new respiratory problems and to mitigate existing problems, particularly asthma, among low-income children in Boston. The project will involve educating parents on air quality issues and providing pamphlets, workshops, one-on-one consultations, home visits, follow-up services, and referrals to other appropriate community resources. MBTA is coordinating implementation of this project through Crittenton-Hastings House, a non-profit provider of services to young, low-income families.

WATER ENFORCEMENT

Manager's Statement:

The Water Enforcement Office addresses two important environmental and public health concerns: wastewater and drinking water. Each area is aligned with the Agency's national and regional goals. Within the wastewater program, our primary focus has been on problems related to wet weather, such as combined sewer overflows, sanitary sewer overflows, and storm water. As many of our projects are long-term and can potentially be very expensive to resolve, we make special efforts to phase projects to maximize water quality improvements in a cost-effective manner. In terms of drinking water, we have focused primarily on the Surface Water Treatment Rule and microbial rules. All states have primacy on drinking water, and as such, we have been working with them to build better partnerships and use our "enforcement presence, whether or not we actually take action, to help them reach their environmental capacity goals.

Additionally, we have been working closely with state and municipal authorities to create more effective partnerships and achieve results more efficiently. We have also been involved in multi-media enforcement, particularly in cooperation with Spill Prevention Countermeasure and Control Program inspections at public agencies and universities.

– *Gerry Sotolongo*

Notable Cases:

CITY OF HOLYOKE, MA:

As part of a larger, multi-state effort to control untreated sewage from flowing into the Connecticut River, EPA issued an Administrative Order on April 11, 2001 to the City of Holyoke, MA which required the City to take immediate action to stop raw sewage from releasing into this river. Because of combined sewer overflows (CSOs), the sewer system in Holyoke discharged wastewater, including raw sewage and storm water runoff, directly into the Connecticut River. There are an estimated 15 CSOs which occur annually in Holyoke and pose a significant threat to water quality by carrying viruses, bacteria, and other biological pathogens as well as

Environmental Harm – Combined Sewer Overflows (CSOs):

Combined sewer overflow (CSO) discharges have widespread impacts across New England. CSOs discharge raw sewage containing bacteria, viruses, pathogens, and other pollutants harmful to public health and the environment into rivers. The impacts from these discharges have resulted in beach closures, restrictions on shellfishing and fishing, and recreational sports, such as swimming. Wildlife and aquatic habitats are also adversely affected by CSO pollutants, because these pollutants change the viability of the ecosystem due to higher water temperatures, oxygen depletion, and increased turbidity and toxin levels. The CSO problem and environmental concerns are especially acute in New England where more than 100 communities are burdened with CSO pipes that discharge hundreds of millions of gallons of untreated sewage and storm water into waterways after heavy rainfall.

industrial waste and toxic materials. EPA ordered the city to stop the flow of Day Brook to its wastewater treatment plant by diverting it directly into the Connecticut River. The city must also upgrade its wastewater treatment plant by boosting the amount of water that it can handle during rainy weather.

CITY OF NORTHAMPTON FACILITY:

On December 12, 2001, the City of Northampton and the Massachusetts Department of Environmental Protection (MA DEP) signed an agreement in the form of an Administrative Consent Order and Notice of Noncompliance. The Order required the City to provide filtration for its surface water sources. Given the public health concerns, we were very involved in this case and worked closely with MA DEP. We provided support and assistance by participating in a sanitary survey, providing testimony at the public hearing along with an editorial in the local paper, and formally notifying Northampton of the requirement for filtration, underscoring the public health risks associated with non-compliance with the Surface Water Treatment Rule. The close coordination and unity between EPA and MA DEP on this critical public health issue resulted in a solution for the drinking water that is protective for the people in Northampton.

Public Health Risks from Microbes:

There are many micro-organisms in a drinking water source, particularly if the source is surface water. Microbes potentially contaminating drinking water range from bacteria to pathogens, such as Giardia as well as the protozoan, Cryptosporidium. Many can cause dangerous waterborne diseases.

Because of these health effects, EPA has established a maximum contaminant level goal (MCLG) for exposure to specific microbes. This health based level is zero. In order to attain a “zero exposure level, EPA established treatment requirements to assure that the water is protective of public health. These treatment requirements include filtration and disinfection so that the microbes are eliminated from the consumer’s drinking water.

WAL-MART:

The recent national case against Wal-Mart, that included its store in Hadley, MA, has led to the filing of a Consent Decree between EPA, Wal-Mart, and the company’s contractors. This decree will ensure that Wal-Mart complies fully with the standards and regulations mandated by the Clean Water Act (CWA) and the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) Construction General Storm Water Permit. Under this decree, Wal-Mart is required to implement a Storm Water Management Plan that includes a quarterly notification sent to EPA Headquarters regarding all Wal-Mart sites currently under construction or under contract. In addition, Wal-Mart and the contractors are required to pay a civil penalty.

HITCHINER MANUFACTURING COMPANY, INC.

This civil judicial action involved violations of the CWA at three New Hampshire facilities of the Hitchiner Manufacturing Company, Inc. (Hitchiner). Hitchiner, a manufacturer of metal parts for use in the automotive, golf, military and aerospace industries, allegedly violated pretreatment standards and NPDES permitting requirements under the CWA. The company discharged wastewaters with concentrations of total chromium in excess of applicable categorical standards under the pretreatment regulations. The company also failed to submit to EPA monitoring reports documenting ongoing compliance with effluent standards. Violations of NPDES permitting requirements included Hitchiner's discharge of a small flow of process wastewater without a permit, Hitchiner's discharge of storm water without a permit, and the company's failure to implement a storm water pollution prevention plan.

On April 8, 2001, the District Court entered a Consent Decree that resolved the case. The settlement required Hitchiner to pay a civil penalty of \$525,000, ensure that the company's wastewater discharges comply with applicable federal pretreatment standards, submit monthly reports documenting compliance with the standards, and implement storm water pollution prevention plans at the three facilities.

RCRA ENFORCEMENT

Manager's Statement:

The RCRA Enforcement Office is committed to preserving and protecting our New England environment for the enjoyment of present and future generations. This office oversees the implementation and enforcement of the Resource Conservation and Recovery Act (RCRA), the nation's hazardous waste management laws. Our goal is to minimize or eliminate the potential impacts of hazardous wastes on human health and the environment. The RCRA "cradle to grave" framework is accomplished through proper management of all hazardous wastes from the point of generation to final disposal. The regulations also require mandatory training and emergency planning for workers, emergency response personnel, and the surrounding community and environment should an accident involving hazardous waste occur. We have focused on several strategic areas: illegal operators, hazardous air emissions (Subpart CC), and key sectors (metal finishers, colleges and universities, and public agencies).

Illegal operators are facilities that operate "outside" the system and generate hazardous wastes without regard to RCRA or are "in" the system but are in significant non-compliance. Subpart CC regulations address the control of volatile organic compound (VOC) emissions. VOCs have been linked to the creation of ground-level ozone, which impacts public health and the environment. The metal finishing sector is comprised of smaller facilities that generate a myriad of hazardous wastes, often located in neighborhoods or heavily populated areas. New England has one of the largest metal sector industries in the country, and improper management of wastes has greatly increased potential risks. The RCRA program continues to address ongoing significant waste problems in the public agencies sector.

Ken Rota

Notable Cases:

ARKWRIGHT, INC.:

We issued an Administrative Complaint to Arkwright, Inc., a manufacturer of photographic film and paper in Fiskeville, RI, for allegedly violating RCRA air emissions standards (Subparts BB and CC) for two tanks used to store volatile hazardous wastes from the company's manufacturing processes. Our citation noted that these tanks lack emission control equipment and were sources of uncontrolled releases of VOCs into the atmosphere. The September 2000 inspection uncovered these violations which had been occurring since 1996. Releases of VOCs into the ambient air contribute to the formation of ground-level ozone. Ground-level ozone or smog has been linked to a variety of human health issues. Our Complaint with Arkwright, Inc. seeks a penalty of \$376,483 and full compliance with RCRA.

Subpart CC Requirements:

Subpart CC of the Resource Conservation and Recovery Act (RCRA) sets emission standards for owners and operators of facilities that treat, store, or dispose of hazardous wastes in tanks, surface impoundments, and containers. The requirements under Subpart CC outline which waste units are subject to the regulations, the necessary standards, and the proper procedures. The main objective of this regulation is to prevent the emission of volatile organic chemicals (VOCs). VOCs are toxic to human health as well as harmful to the environment. VOCs are also "ozone precursors.

See story on Health Effects from Ozone Exposure, page 5.

UNITED OIL:

United Oil is a large commercial waste treatment and storage facility located in Meriden, CT. EPA initiated an enforcement action against the facility for alleged violations of its permit and regulatory requirements. Because of the extent of the non-compliance issues, the enforcement action included a proposed penalty of \$1,221,241.

As a permitted treatment and storage facility, compliance by this company with hazardous waste management regulations is particularly important. Failure to adequately sample and analyze incoming hazardous waste as well as failure to properly characterize that waste means that hazardous waste may have been improperly treated or disposed by the facility. Mishandling of hazardous waste, whether it is through treatment or disposal, creates a potentially dangerous situation for workers and the surrounding environment.

This company also failed to install or operate and maintain equipment required to capture the volatile organic air emissions from tank systems. Releases of air toxics greatly increase risks to human health and the environment in the immediate area. In particular, volatile organic compounds are "ozone precursors, thereby contributing to the increase of smog.

NU CHROME PLATING:

Nu Chrome Plating owns and operates an electroplating and metal finishing company located in Fall River, MA. Given the nature of this industry, the operation uses many metals and organic chemicals, resulting in toxic waste streams and hazardous wastes. Additionally, as a result of the processes, the facility generates hazardous sludge from the evaporation of chromium contaminated electroplating wastewater and spent cyanide plating baths.

During a routine inspection in March 1998, we found that Nu Chrome Plating was violating RCRA and its regulations by improperly storing, labeling, and managing its hazardous waste at the facility. More important, the company violated state and federal regulations by storing hazardous wastes on-site for more than 180 days without a permit. There were at least five 55-gallon drums, stored over five years, that were rusted with crystalized residue at the base of these drums. It was apparent that these violations presented a grave concern regarding potentially dangerous releases to the environment.

As a result of our enforcement action, Nu Chrome Plating will pay a \$25,000 civil penalty and will spend \$74,000 on a supplemental environmental project (SEP). The SEP involves implementation of a wastewater treatment system modification at the facility, which includes the shut-down and dismantling of the existing system. This new system will reduce significant amounts of hazardous wastes generated during the plating process. Also, once the new system is in place, the company will retain an independent contractor to conduct an environmental audit. The purpose of this audit is to evaluate the company's compliance with applicable state and federal wastewater and hazardous waste management regulations after making all of the appropriate changes to the operation and processes.

METALS RECYCLING, LLC:

EPA entered into two Administrative Consent Orders with Metals Recycling, LLC, of Johnston, RI, to resolve alleged violations of RCRA. The company processes, separates, sorts, and recycles scrap metal at its 18-acre site. On an average day, the company handles 200 tons of light iron from mainly old cars and appliances when separating non-metallic material through its processes.

The alleged violations included, but were not limited to, unpermitted storage of non-metallic material, known as auto shredder residue (ASR), which was above lead hazardous waste levels. The piles of ASR stored by the company are estimated to weigh between 10,000 and 20,000 tons. Under the first agreement finalized on September 29, 2001, the company agreed to pay a cash penalty of \$200,000. The second agreement, finalized on November 5, 2001, required the facility to reduce the lead contamination on-site by treating the ASR piles using portland cement in order to prevent leachates into the ground.

TOXICS, PESTICIDES, AND FEDERAL PROGRAMS ENFORCEMENT

Manager's Statement:

This is the first year that the Toxics, Pesticides and Federal Programs Office has existed. I began with four objectives: (1) creating cohesion and pride among staff; (2) improving our enforcement presence in the programs; (3) enhancing our Emergency Planning and Community Right-to-Know presence across New England; and (4) augmenting OES' Tribal and Federal Facility Programs. I am proud to say that we have achieved our objectives, with the greatest achievement being the cohesion as an office. This bond is reflected in a variety of successes. They include the assessment of the largest FIFRA penalty in this Region's history, the first CAA Section 112(r) cases in this Region, and the strategic focus on FIFRA cyber-fraud, worker protection, and biotechnology. We also introduced a lead enforcement and outreach program which has resulted in numerous compliance activities.

But what made this fiscal year most unique was the tragedy on September 11th. The events that followed moved Emergency Planning and Community Right-to-Know and CAA Section 112(r) from being obscure regional programs to critical elements in our preparing for future deliberate releases. Staff rolled up their sleeves and worked day and night to increase outreach to chemical industries; secured timely and accurate data from states and local governments; increase the number of risk management audits; worked with states and local officials to improve their preparedness; funded awareness programs in security-sensitive environmental justice communities; awarded Tribal Emergency Response Commission (TERC) status to a New England tribe for the first time; and improved coordination with our federal partners.

What lessons have I learned? My highest priority has to be improving the work environment for my staff. Their ability to work well beyond a day's end can best be correlated with the degree to which they feel respected.

Deborah Brown

Notable Cases:

LEAD REMOVAL IN FALL RIVER:

During some renovation work on a three-story building in Fall River, MA, a contractor sandblasted lead paint without taking proper precautions. This procedure caused lead-contaminated dust to spread throughout the building. Preliminary results from dust samples

showed high levels of lead. Because this building is used for commercial purposes, in particular a dance studio for children and adults, the exposure to the lead-contaminated dust could have posed a serious health risk, especially for the sensitive population such as the children in the dance studio.

In light of the significant health concerns, EPA issued on September 4, 2001 an Emergency Order under RCRA authority for the clean-up of this hazardous situation. The property owner immediately agreed to have a licensed lead abatement firm remove the contaminated dust from the building. In the meantime, we notified the tenants of this situation. The dance studio agreed to postpone classes until clean-up is complete and test results demonstrated that the studio and stairways to the studio are safe.

Lead Disclosure Rule:

The Lead Disclosure Rule exists to protect the public from exposure to lead from paint, dust, and soil. In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act. Under Section 1018 of this law, HUD and EPA require sellers and landlords to disclose known lead-based paint and lead-based paint hazards before the sale or lease of certain buildings. This law primarily affects housing that was built before 1978. Home buyers will have the opportunity to conduct a lead-based paint inspection or risk assessment at their own expense. Also, sales contracts and leasing agreements must include certain disclosure information. By making this information known to potential buyers or renters, the consumers are better able to take the necessary precautions against exposure and protect themselves and their families from lead-based paint hazards.

See Special Edition story on page 14.

ROLF C. HAGEN CORP.:

On August 23, 2001, EPA issued an Administrative Complaint against Rolf C. Hagen Corporation of Mansfield, MA. The Complaint was for alleged violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The company is involved in wholesale and distribution of pet care products including specialty chemicals for aquarium and pond maintenance. Under FIFRA, products that claim efficacy against any "pest" must be registered with the EPA before being offered for sale or distribution. None of the Hagen products were registered or properly labeled, making it difficult for EPA to determine whether these substances posed any risk to human health or the environment when used in accordance with the prescribed label directions. Because the company did not respond to EPA's written "Enforcement Alert" or FIFRA Notice of Warning, we filed a Complaint which proposed a penalty of \$209,000. To date, this penalty is the highest penalty ever proposed under FIFRA in an administrative action by this Region.

Special Edition (excerpts from *The Boston Globe*; January 6, 2002): “RI suit highlights lead-paint hazards” by Thomas Grillo, Globe Correspondent

A Superior Court judge in Providence is expected to decide this week whether the state of Rhode Island can proceed with its lawsuit against lead paint manufacturers. This case is being watched carefully in Massachusetts and by attorneys, general and public policy experts across the nation because dozens of similar lawsuits are pending. Of the 50 suits that have been resolved since the 1980s, paint companies have not lost or settled a single case. But that could change if Judge Michael Silverstein orders that a trial be held in the spring.

In a hearing in September, Rhode Island Attorney General Sheldon Whitehouse asked the court to decide whether lead poisoning is a public nuisance, whether the lead paint companies were responsible, and if so, to determine the amount of monetary damages.

...Last spring, the state won the first round in a battle to hold eight lead-based pigment manufacturers responsible for causing lead poisoning, when Silverstein rejected paint-industry arguments that the state had no right to sue.

Whitehouse had contended that lead poisoning caused learning disabilities and physical ailments among Rhode Island children at twice the average rate in the United States.

...In the last two years, San Francisco, Milwaukee, St. Louis, and the state of New Jersey have filed similar lawsuits against paint companies.

Attorneys for the industry say the plaintiffs are attempting to use novel legal theories to blame the former manufacturers of lead pigment, who, they maintain, have a long record of corporate responsibility.

...The industry blames landlords saying that they are failing to maintain old lead paint that still covers some buildings. Paint makers cite statements from the U.S. Environmental Protection Agency that ‘properly maintained, intact lead-based paint is typically not a hazard.’

...Federal laws requires sellers, landlords, and realtors to disclose known lead-based paint hazards at the point of sales or leases.

In November, policy makers held a summit on childhood lead poisoning to write a blueprint for ending lead poisoning by 2005 in Boston. Of an estimated 90,400 homes in Boston, 40 percent contain lead-based paint that could be hazardous. Paul Hunter, director of the state Health Public Department program to prevent lead poisoning, said that children who live in older cities with aging housing stock are the most at risk.

...In September, the EPA ordered a clean-up of lead contamination at a former mill building in Fall River that housed several businesses, including a dance studio. A contractor had sandblasted lead paint without taking the proper precautions, allowing lead-contaminated dust to spread throughout the building, the EPA said.

UNIROYAL CHEMICAL COMPANY, INC.:

During February and March 2001, Uniroyal Chemical Company, Inc. (Uniroyal) attempted to import a pesticide into the United States through the EPA Region VII office in Kansas City. This was after the company had requested and was granted a cancellation of the pesticide's EPA registration. Our Region, in concert with the EPA Region VII Office, refused to release the violating product to the Consignee unless Uniroyal agreed to correct the violations, because the pesticide was now inaccurately labeled as a result of the cancellation of its registration. The importance of proper labeling prevents the misuse and unintentional releases of a toxic substance into the environment. It also protects the workers from potentially hazardous exposure.

The company was required to re-label approximately 523 containers with the correct EPA-registered pesticide label. Because of Uniroyal's failure to properly label the product, EPA assessed an administrative penalty for the violations, but offered to reduce the proposed penalty amounts by \$1,000 for each count if the company agreed to an expedited settlement. Uniroyal agreed to settle the matter without adjudication in exchange for a final penalty of \$4,500 for each count. Also, prior to authorizing the product to the Consignee, Uniroyal must perform the following: (1) re-label the product with the correct EPA registered label, (2) maintain production records for each product re-labeled, (3) report the re-labeled product as pesticide production pursuant to FIFRA during the 2001 production report year, and (4) produce written certification to EPA that the company is in compliance with FIFRA and the terms of the Order within five days of release of the shipment to the Consignee. EPA settled this action within seven working days. The swiftness of the settlement enabled the Consignee to continue operations without impacts or loss to its business.

MULTI-MEDIA REGULATORY ENFORCEMENT

Manager's Statement:

Once the targeting and inspection work is over, it is the staff of the Regulatory Legal Office (mostly attorneys with exceptional paralegal and secretarial support) who develop, file, negotiate and, if necessary, help litigate the actual enforcement cases that are described in this report. The staff of the Regulatory Legal Office work with technical program staff to ensure that the available evidence supports any allegations of violations which are to be made. The team of legal and technical staff also develops a case strategy intended to lead to a successful resolution of the matter. The complexity of the cases handled by the Regulatory Legal Office varies considerably - from relatively simple single media, single count administrative actions to complex multi-media, multiple facility, multi-count judicial cases. While the trend in recent years has been to the more complex cases, such as those described in this chapter as well as in the following one, we strive for the highest quality in all of our cases - from a legal perspective, from a deterrence and fairness perspective and, more importantly, in terms of the impacts of our actions on New England's environment and public health.

– Joel Blumstein

Introduction

The many operational activities and processes of certain facilities often subject them to regulations under more than one environmental statute. Therefore, this situation necessitates a multi-media approach in evaluating particular facilities' environmental compliance status. Similarly, when we detect violations at these facilities, the subsequent enforcement actions also encompass all relevant statutory non-compliance issues in order to optimize environmental gains. It is environmentally beneficial to address these issues holistically and collectively. In doing so, another beneficial outcome is the ability to leverage our enforcement actions for significant supplemental environmental projects (SEPs), thereby producing even greater environmental gains.

Notable Cases:

UNIVERSITY OF RHODE ISLAND (CAA/CWA/RCRA/TSCA):

During June 1997, EPA and the Rhode Island Department of Environmental Management conducted a multi-media compliance inspection at the University of Rhode Island (URI) Kingston campus. The campus generates solid and hazardous wastes from such activities as automotive maintenance, building and grounds maintenance, research and laboratory activities,

art studios, and shop operations. URI is home to approximately 15,500 students and employs at least 1,000 staff members.

The agencies found the university in violation of RCRA, the CWA, the CAA, and TSCA. In June of 1998, EPA referred URI to the Department of Justice for those violations. The case was settled on April 3, 2001. The terms of the Consent Decree require URI to pay a cash penalty of \$250,000 and to perform two supplemental environmental projects (SEPs) that will cost, at minimum, an additional \$550,000. The first SEP includes the building of an entirely new container storage area on a property located off the sole source aquifer. This new storage area will eliminate the need to transport hazardous waste on public roads as well as through populated campus areas. The second SEP is the development and installation of advanced septic sewer treatment systems in Wickford Village, RI. The goal of this SEP is to decrease or eliminate coliform from discharging into the waterways, thereby restoring the inner harbor to a fishable/swimmable state, protecting the underlying drinking water aquifer, and protecting the eelgrass beds which are critical to supporting sport and commercial fisheries. URI will also be required to perform a facility-wide environmental compliance audit.

This settlement demonstrates, as in our other enforcement actions under our College and University Initiative, that the Region is ready to bring a comprehensive civil action against a large public sector university. Public sector facilities as much as private sector facilities must comply with environmental laws in order to protect human health and the environment.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY (CAA/RCRA/CWA):

During a May 1998 multi-media inspection of the Massachusetts Institute of Technology's (MIT) Cambridge campus, EPA found numerous violations of RCRA, the CWA, and the CAA. We referred the case to the Department of Justice in September 1999. Violations largely resulted from inadequate housekeeping practices by MIT with regards to its many hazardous waste generating laboratories, research facilities, and oil storage areas. These violations pointed to a need for MIT to improve its environmental management system.

On April 18, 2001, EPA and MIT reached a settlement that required MIT to pay a civil penalty of \$150,000 and to spend a minimum of \$405,000 on three SEPs. The SEPs were:

- (1) the development of an innovative storm water management system for MIT's new Stata Center, a major research facility being built in an area of Cambridge that has severe flooding problems. This system will help improve the health of the Charles River, thus supporting EPA's goal to make the Charles River fishable and swimmable by 2005.
- (2) the development of a "Virtual Campus" compliance assistance tool that will be posted on the Campus Consortium for Environmental Excellence website and possibly linked to EPA's own website. This website will address multi-media compliance, acting as a tool to help universities and colleges all over the United States to comply with environmental laws.

(3) the collaboration with the Cambridge school system to develop and implement three different environmental projects that will focus on water quality, pollution prevention, remediation, or energy use and will have an urban theme. The Cambridge teachers and their students will share their experiences and work products with the local community, other science teachers in the region, and other interested schools around the country.

MIT was very cooperative in the negotiation process. Our enforcement action prompted the university to come into compliance, hire personnel to better manage environmental compliance, start working on environmental management system improvements, and initiate many “beyond compliance activities.

RHODE ISLAND TECHNICAL PLATING (RCRA/CAA):

On March 29, 2001, EPA announced a settlement with Rhode Island Technical Plating Inc. (RITP) over alleged violations of hazardous waste and clean air laws at the company’s Cranston facility. During the 1997 and 1998 inspections of the facility, we found significant environmental threats from RITP’s operations. These operations involved the release of hazardous solvents directly into the air, unlabeled containers holding waste acids, the release of toxic chromium to the soil at the plant, and the improper handling of hazardous chemicals. The release and mishandling of toxic chemicals, such as in this case, can lead to groundwater contamination, air pollution, increased potential for fire and explosions at the plant, and other forms of environmental contamination. In addition, there was particular concern over the fact that the facility is located in a mixed residential and industrial neighborhood.

After the settlement, further inspections found physical deterioration of the company’s property. One problematic area was a failing roof system that potentially allowed rainwater to come into contact with large stockpiles of unprotected chemicals which were stored in the plant. These chemicals were extremely reactive with water. The volatile nature of this situation prompted EPA’s Emergency Removal Program to take immediate action in order to stabilize this site. Currently, this site remains under supervised control of our Removal Program.

CROMPTON MANUFACTURING (EPCRA/CERCLA):

EPA has reached a settlement with Crompton Manufacturing Company (formerly Uniroyal Chemical) of Naugatuck, CT, for failing to provide immediate notification of chemical releases. Specific regulations under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA) require such notification to the National Response Center and to state and local emergency planning organizations. This information is critical because it allows EPA to quickly evaluate the gravity of the release and level of assistance necessary. In the months of February, March, and May 1998, our inspection of the Naugatuck facility revealed that during

that time, there were reportable quantity releases of orthoxylene and methylenedianiline, the latter a potential carcinogen. We also found deficiencies in the facility's Toxic Release Inventory submissions, an ancillary EPCRA requirement. In addition to paying a \$81,321 penalty, the settlement incorporates seven SEPs valued at \$1.3 million designed to reduce the likelihood of future chemical releases via plant, process and system upgrades.

MULTI-FACILITY REGULATORY ENFORCEMENT

Introduction

Similar to multi-media cases, multi-facility enforcement actions can also be complex and resource intensive, but for entirely different reasons. As a business grows, a parent company or corporation sometimes expands by establishing multiple facilities throughout a region or across the United States. When one facility of a company experiences a non-compliance issue, it is likely that the other branch facilities will have similar issues. Therefore, to obtain the most effective environmental solution, our enforcement actions bundle these facilities and target the appropriate corporate entity. By changing the business practices at the corporate level, our enforcement action ultimately captures all of the individual facilities for which the company is responsible. The result of this is broader and more widespread environmental outcomes.

AMTRAK (CWA):

Amtrak, the nation's largest passenger rail operator, signed an agreement with EPA and DOJ to carry out environmental audits at its facilities across the country and undertake other environmental improvements. The settlement stemmed from environmental violations discovered by EPA at nine Amtrak facilities in Massachusetts, Connecticut, and Rhode Island. Amtrak was specifically cited for alleged violations of the CWA, many of which involved storm water-related issues. Storm water discharges from rail maintenance facilities can carry oil, grease and metals into storm drains, ultimately compromising the health and quality of streams and waterways. The company will pay \$1.4 million to resolve the enforcement action \$500,000 in penalties and \$900,000 in supplemental environmental projects (SEPs). The SEPs included a project to restore coastal wetlands.

The settlement, filed as a Consent Decree in U.S. District Court in Boston in June 2001, required Amtrak to undertake comprehensive environmental compliance audits at 51 of its facilities nationwide and to voluntarily disclose and correct environmental problems that are discovered. The audits are underway and must be completed by the fall of 2003. Amtrak has also begun to implement a program for a company-wide environmental management system at a cost anticipated to exceed \$11 million. This program includes the development of an environmental audit program, a company-wide environmental information system, enhanced environmental compliance, training activities, and increased environmental compliance staffing. Amtrak has already created 27 additional environmental positions a threefold increase from previous staffing levels when the violations were first discovered.

CUMBERLAND FARMS (CAA):

The Air Enforcement Office reviewed testing records and conducted inspections at 81 Cumberland gas stations between 1995 and 2000. These gas stations are spread out in three states: Massachusetts (68), Connecticut (8), and Rhode Island (5). Because the majority of the gas stations were in Massachusetts, that state was a partner in our efforts.

The extensive investigation revealed that the company failed to comply with several State Implementation Plan (SIP) regulations. Even after a Notice of Violation in 1998 which prompted the company to increase the frequency of testing and improve its maintenance program, the company continued to have violations. In addition to the approximately 10 tons of excess emissions of gasoline that occurred due to the violations, Cumberland experienced other non-compliance issues such as its failure to perform equipment certification testing and failed to train workers.

Gasoline is made up of several volatile organic compound; thereby, their emissions contribute to ground-level ozone formation. Considering the number of gas stations, the prevention of excess emissions is crucial in protecting public health. Therefore, given the risks associated with these violations, EPA issued an Administrative Complaint with a proposed penalty of \$557,844.

INADEQUATE RISK MANAGEMENT: SECTION 112(R) ENFORCEMENT (CAA):

Understanding the risks associated with a facility that uses toxic and volatile chemicals is critical in protecting the workers and the community. Therefore, in this fiscal year, we issued Administrative Complaints against the City of Danbury, CT, the New England Confectionery Company of Cambridge, MA (NECCO), and American Seafoods International LLC of New Bedford, MA (American Seafoods) for failing to file adequate risk management plans under Section 112(r) of the Clean Air Act. Section 112(r) requires facilities that store certain hazardous chemicals over threshold amounts to submit risk management plans to EPA. The risk management plan program was created to help prevent accidental releases of hazardous chemicals from stationary sources and minimize the consequences of accidental releases that do occur. Danbury failed to file an adequate plan for its process involving chlorine at the city's West Lake drinking water treatment plant, while NECCO and American Seafoods failed to file adequate plans for their processes involving ammonia at their facilities. The Complaints propose a \$41,800 penalty against Danbury, an \$89,870 penalty against NECCO, and a \$76,000 penalty against American Seafoods.

SUPERFUND ENFORCEMENT

Manager's Statement:

The Superfund Program administers the clean-up of the worst hazardous waste sites in New England sites that pose serious risks to public health and the environment. Superfund is an "enforcement first" program. This means that whenever possible, the Superfund Legal Office in OES uses the enforcement authority provided under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to compel responsible parties to pay for or perform these clean-ups. Our enforcement tools include issuance of Administrative Orders requiring the parties to conduct specific work; negotiation of Consent Decrees through which parties agree to perform work and pay costs; negotiation of agreements for the recovery of clean-up costs already expended by EPA; and litigation where attempts at settlement fail.

Below are several notable cases highlighting actions we took in FY01 to compel parties to clean up specific situations or to recover EPA's clean-up costs. These case examples underscore enforcement activity critical in our efforts to reduce and eliminate exposure from contaminations associated with hazardous waste sites.

Joanna Jerison

Notable Cases:

GENERAL ELECTRIC CO. (HOUSATONIC):

On October 27, 2000, the U.S. District Court entered the Consent Decree between the General Electric Company (GE), EPA, and several other state, federal and local agencies concerning clean-up of polychlorinated biphenyl (PCB)-contaminated sediments in the Housatonic River which resulted from GE's operation of its plant in Pittsfield, MA. While four sets of parties sought to have the Court reject the Decree, the Court determined the Decree to be fair, reasonable, and in the public interest. Under the Decree, GE will complete remediation, restoration, site redevelopment, and cost recovery, estimated to be valued at \$300-700 million.

On November 21, 2000, the Region issued an Action Memorandum for clean-up of a 1.5 mile reach of the Housatonic River. The clean-up calls for the excavation and disposal of 95,000 cubic yards of contaminated soils and sediments. On January 2, 2001, GE filed a notice of dispute regarding EPA's use of the revised indirect cost methodology for the 1.5 mile action. Our office has coordinated the United States' response to the GE challenge, which is still pending. In addition, we negotiated two sets of cost recovery agreements with GE under the Decree and recovered \$24.2 million from the company in FY01. Finally, in FY01, the Region issued 12 "comfort letters" to residential property owners assuring them that EPA would not pursue them for liability at the GE site.

WEST SITE/HOWS CORNER SUPERFUND SITE:

The West Site/How's Corner Superfund site is a 17-acre former waste oil storage and transfer facility. The facility, affiliated with the Portland/Bangor Waste Oil Company, operated from 1965 to 1980. To date, EPA has spent approximately \$6.5 million in clean-up costs. The site has received considerable political attention because many of the parties are small businesses with little experience with the Superfund program.

In March 2001, the Department of Justice (DOJ) lodged a past-cost settlement with approximately 150 parties with the Federal District Court for the District of Maine. In the beginning of November 2001, DOJ asked the court to enter this settlement. In addition, the Region negotiated an ability-to-pay settlement with approximately 60 parties to resolve all claims against them. That settlement was lodged with the court on November 30, 2001.

BEEDE WASTE OIL:

The Beede Waste Oil Superfund Site, located in Plaistow, NH, was the site of a former waste oil recycling business. The processes and operations of this business led to the Beede site being heavily contaminated with waste oil mixed with other hazardous and carcinogenic substances, including polychlorinated biphenyls, polyaromatic hydrocarbons, and lead. Our office issued approximately 2,700 letters in June 2001 to potentially responsible parties (PRPs) associated with this site. More specifically, a General Notice of Superfund Liability was sent to about 2,000 generator parties, 900 of which received "early *de minimis* cash-out offers to settle. Another 650 *de micromis* generator parties were sent "comfort letters" in an effort to keep these small volume contributors out of any enforcement proceedings. The remaining PRPs that received letters included smaller numbers of transporters and owners or operators of the site. PRPs at Beede include numerous service stations, auto dealerships, cities and towns, small businesses, non-profit organizations, and State entities, as well as large corporations and federal parties. In November 2001, the Region finalized and made effective the early *de minimis* settlement previously offered to the 900 parties in June through a CERCLA Section 122(g) Administrative Order on Consent (AOC). Out of this group, 496 of those who received offers to settle signed onto the AOC.

NATIONAL OIL SERVICES, INC.:

National Oil Services, Inc. operated a waste oil storage, treatment, transfer, recycling, and disposal facility in West Haven, CT from 1982 to 1997. For a number of years, the Connecticut Department of Environmental Protection attempted to bring the company into compliance with environmental regulations and finally ordered National Oil to cease operations in 1997. The company was evicted from the site by the property's owner in December 1997. It abandoned approximately 500,000 gallons of contaminated oil and wastewater and approximately 465 tons of sludge. In 1997, EPA conducted a site investigation and concluded that hazardous substances at the site, including methylene chloride and other halogenated solvents, posed a significant threat to human health and the environment. EPA then performed a removal action which consisted of the removal, characterization, and off-site disposal of primarily contaminated waste oil, wastewater, sludge and debris. To date, EPA has spent approximately \$1.6 million in connection with the site.

Using hazardous waste manifests, EPA identified approximately 2,000 parties that generated wastes that were sent to the site. EPA sent general notice letters and non-negotiable consent decrees to approximately 530 of those parties that had been determined to have sent more than 1,000 gallons to the site. Approximately 405 parties signed the Consent Decree. The settlement resolves the liability of the settling parties for the costs EPA incurred during the removal action. Each settling party was required to pay 8.5 cents per gallon for each gallon of waste sent to the Site, for a total reimbursement to EPA of approximately \$810,000. This first Consent Decree was lodged with the U.S. District Court in Connecticut on September 14, 2001. A second settlement with eight additional parties, recovering about \$305,000 in costs, will be lodged with the court in January 2002.

On August 17, 2001, EPA filed a cost recovery lawsuit against the limited partnership that owns the site, the general partners of that limited partnership, and the site property itself. The lawsuit requested reimbursement of EPA's remaining removal costs up to the value of the site. On October 4, 2001, EPA amended the Complaint to add the Torrington Company as a defendant. This Connecticut-based company manufactures precision bearings and motion control components and assemblies in more than 20 plants in North and South America, Europe, and Asia. According to the waste manifests reviewed by EPA, Torrington was the largest volumetric contributor to the site. The Torrington Company declined to sign the first consent decree and has objected to its entry by the court.

FLETCHER'S PAINT WORKS:

Fletcher's Paint Works, located in Milford, NH, manufactured and sold water-based latex paints and organic chemical-based solvent paints from 1949 to 1991. Contaminant releases to the environment occurred as a result of storage of hazardous substances on the properties. The Fletcher's Paint Site was placed on EPA's National Priorities List in 1989, making it eligible for federal action to address longer-term environmental impacts under the Superfund program. On September 30, 1998, the Region issued a Record of Decision (ROD) for Operable Unit I which required excavation of soils at Mill Street and Elm Street and treatment of contaminated soils by thermal desorption. Treatment of the soils will be done on the Elm Street property and will be backfilled on-site.

After years of unsuccessfully trying to obtain a voluntary agreement with GE, which is a PRP, to perform the remedy, EPA issued a Unilateral Administrative Order to the company. The Order required GE to excavate the contaminated soils at the Mill and Elm Street areas, to treat the contaminated soils at the Elm Street area, and to place the treated soil back into the excavated areas. Those areas will then be covered with clean soil and asphalt. The Order also required GE to monitor the contaminated groundwater until drinking water levels are met.

CENTREDALE MANOR:

Located adjacent to the Woonasquatucket River, the Centredale Manor Restoration Project Superfund Site in North Providence, RI was a former chemical manufacturing plant and also a former drum recycler. As a result of historic operations, contamination (including dioxin) exists in soil, sediment, groundwater, and surface water at both the site and approximately 1½ miles downstream from the site. On March 27, 2001, EPA issued a second Unilateral Administrative Order to five PRPs that required them to remove contaminated soils and sediments associated with this site. The five parties named in the Order are Brook Village Associates Limited Partnership, Centredale Manor Associates Limited Partnership, Crown Metro, Inc., Emhart Industries Inc., and New England Container Company Inc. EPA is actively seeking other possible liable parties.

Under this second Order, the five parties are required to excavate, treat, and dispose off-site about 2,500 cubic yards of dioxin-contaminated sediments and bank soils from residential and recreational properties located in the flood plain of the river. The Order also requires the parties to restore Allendale Dam, submit a design and work plan by midsummer 2002, and begin field work immediately following EPA's approval of the plans. Previously, the parties complied adequately with the first Unilateral Order issued for the site where they were required to install a second soil cap south of the Brook Village building in the spring and the summer of 2000. The vegetated caps prevent exposure of humans and wildlife to dioxin and other contaminants and also prevent migration of the contaminants to the Woonasquatucket River and other parts of the sensitive ecosystem at the site.

MCKIN SUPERFUND SITE:

On September 20, 2001, DOJ lodged with the U.S. District Court for the District of Maine a Proposed Amendment to Consent Decree for the McKin Superfund Site in Gray, ME. The original Consent Decree was entered in 1988. The proposed settlement provides for completion of remedial activity at the Site and reimburses EPA for \$650,000 of Response Costs. This settlement was achieved through a unique mediation effort which included the United States, the State of Maine, PRPs, the Town of Gray, the Gray Water District, a representative of community groups, and property owners from whom the PRPs are purchasing institutional controls.

The McKin facility operated from 1965 to 1977 as a tank cleaning and waste removal business and as a transfer facility for waste oil and industrial process waste. It was closed by the Town of Gray when laboratory analysis of groundwater samples indicated the presence of trichloroethylene and 1,1,1-trichloroethane. In 1983, EPA listed the Site on the National Priorities List. In 1985, the Region issued a Record of Decision (ROD) selecting a remedy which consisted of source control and groundwater extraction and treatment. In 1988, the United States, the State of Maine and the PRPs entered into a Consent Decree for performance of the remedy. In January 2001, based on a Finding of Technical Impracticability, EPA issued an Amendment to the ROD which changed the remedy and necessitated this Amendment to Consent Decree.

SCHAFFER LANDFILL:

The U.S. District Court in Boston entered the Consent Decree for the Shaffer Landfill portion of the Iron Horse Park Superfund Site in Billerica, MA on April 19, 2001. The Shaffer Landfill, one of three clean-up sites at the Iron Horse Park Superfund Site, was listed on the National Priorities List on September 21, 1984. Approximately 60 acres of the 106-acre site were used for commercial and solid waste disposal for over 30 years. Besides requiring the responsible parties to reimburse the government for the costs incurred by EPA and the MA DEP, the Consent Decree mandates the capping of the landfill and installation of landfill gas and leachate collection systems, groundwater monitoring, and fulfillment of operating and maintenance responsibilities.

More than 30 responsible parties representing landfill owners and operators, generators and transporters, will reimburse over \$1.5 million to the United States Government and nearly \$150,000 to the Commonwealth of Massachusetts. The capping of the landfill will be completed by the end of 2002 at an estimated cost of \$15 million to the responsible parties, and the leachate collection system will collect, treat, and dispose of up to 10,000 gallons per day of leachate. To ensure that clean-up goals are being met, the responsible parties will conduct groundwater monitoring for up to 15 years, after which MA DEP will assume monitoring responsibility. Forty years of operating and maintenance costs will be borne by the responsible parties. Thereafter, the costs will be assumed by the State.

CRIMINAL ENFORCEMENT

Introduction

In addition to civil regulatory enforcement activities, there are environmental violations that are the result of criminal activities. These cases are handled by the Criminal Investigation Division (CID) of the Office of Enforcement, Forensics, and Training in EPA Headquarters. Our office works closely with CID, often providing legal and technical support for the criminal cases. This chapter highlights several noteworthy cases that occurred in FY01.

Notable Cases:

TWO MEN PLEAD GUILTY IN CONNECTICUT IN COMPLEX CFC SCHEME:

On October 10, 2000, William Barlen of Madison, CT pled guilty to making a false statement to federal authorities and Alfredo Vega of Hato Rey, Puerto Rico, pled guilty to conspiracy in U.S. District Court for the District of Connecticut in Hartford. Between 1995 and 1998, the defendants were engaged with others in a scheme to illegally import into the United States in the names of several shell entities and evade taxes on hundreds of tons of highly restricted chlorofluorocarbons (CFC). The scheme involved a \$24 million tax fraud, wire fraud, and money laundering operation. The importation of CFCs is restricted under the Clean Air Act, because the release of CFCs into the atmosphere damages the earth's ozone layer which protects people from the harmful effects of ultraviolet light such as skin cancer and cataracts and destroys plant life, including crops. Four other individuals, Pavel Perlov of Chelsea, MA; Juan Carlos Gorbea of San Juan, Puerto Rico; and Rudi Endres and Alicia Keigwin, both of Berwyn, PA previously pled guilty as a result of this investigation and other defendants await trial. When sentenced, Barlen and Vega each face maximum sentences of up to five years in prison or fines of up to \$250,000 or both. The case was investigated by EPA's Criminal Investigation Division, the Internal Revenue Service's Criminal Investigation Division, and the U.S. Customs Service. It is being prosecuted by the U.S. Attorney's Office in New Haven and the Environmental Crimes Section of the U.S. Department of Justice.

OWNER OF SEWAGE HAULING FIRM SENTENCED FOR FRAUD:

Frederick Fish of Ipswich, MA was sentenced to two years in prison, a \$50,000 fine, and two years supervised release on May 25, 2001, in U.S. District Court for the District of Massachusetts in Boston, for mail fraud in connection with the disposal of over 10 million gallons of sewage. The defendant is the owner and President of Raggs, Inc., a sewage hauling business located in Concord, MA. Between January 1996 and September 1998, Fish disposed of sewage pumped from residential septic tanks and restaurant grease traps by discharging it into manholes connected to municipal sewers. This dumping, often done under the cover of darkness, was allegedly done to avoid paying treatment fees. Fish allegedly charged his

customers \$0.10 per gallon, claiming that the sewage was being properly disposed of at a local treatment facility. Such facilities in Massachusetts usually charge \$0.045 per gallon to accept sewage, and the defendant pocketed the money that should have been paid to the treatment facilities to defray the costs of treating the sewage. The case was investigated by EPA's Criminal Investigation Division, the FBI, and the Concord, Massachusetts Police Department. It was prosecuted by the U.S. Attorney's Office in Boston.

CONNECTICUT CHEMICAL COMPANY, PLANT MANAGER, AND PLANT ENGINEER CONVICTED OF DATA MANIPULATION:

MacDermid, Inc. (a chemical manufacturer located in Waterbury, CT) and two of its former managers pleaded guilty to criminal violations of the Clean Water Act (CWA) arising out of a lengthy practice of selective sampling and the submission of unrepresentative discharge monitoring data. MacDermid pleaded guilty to four felony counts and was sentenced to pay a \$2 million fine. Under the terms of the plea agreement, MacDermid also agreed to make a \$1 million donation to the United Way to be used for environmental projects in the City of Waterbury. John Miele, a plant manager for MacDermid, and William Schweikher, a plant engineer, each pleaded guilty to CWA misdemeanors for failing to stop the data manipulation scheme. Miele was sentenced to two years probation, 200 hours of community service, and a \$25,000 fine. Schweikher received two years probation, 200 hours of community service, and a \$10,000 fine.

MacDermid manufactures over 1,000 different chemicals that are used for metal treating, plating, and other purposes. Manufacturing wastewater at MacDermid's facility is required to be pre-treated before it is released into the Waterbury city sewer system, and the company is required to submit discharge monitoring reports (DMRs) to the Connecticut Department of Environmental Protection (CT DEP) concerning the level of chemicals contained in the treated wastewater it releases. From at least 1992, MacDermid engaged in a set of data manipulation practices that deprived the CT DEP of important data on the true nature of the company's wastewater discharges. These practices included discarding and diluting wastewater samples that had high levels of pollutants and destroying copies of in-house analyses of such samples. The case was investigated by EPA's Criminal Investigation Division with the assistance of EPA's National Enforcement Investigations Center and was prosecuted by the U.S. Attorney's Office.

STRATEGIC PARTNERSHIPS

Introduction

To achieve greater environmental gains, we recognize that strategic partnerships are necessary. We look to both internal as well as external parties for these critical alliances. Below are some of our key partners.

★ **OES ASSISTANCE AND POLLUTION PREVENTION (A&P2) OFFICE**

In developing our yearly enforcement strategy and establishing our priorities, risk is an important factor. Utilizing risk to define the right problems is one thing, matching those problems with the right solution is another. Therefore, we select the appropriate tools based on the strategic approach. At times, the problems call for creative or integrated strategies where there is a blend of traditional (i.e., enforcement) with non-traditional (i.e., assistance) techniques.

Working hand in hand with our Assistance and Pollution Prevention (A&P2) Office, our partnership made important contributions towards the Clean Charles 2005 goal. We also had, and continue to have, compliance improvements and broader environmental gains as a result of the Colleges and Universities Initiative. During FY01, in collaboration with our A&P2 Office and in partnership with the New England States and the New England Chapter of the American Public Works Association (APWA), we made significant advances in an incentive program targeted for all municipal Departments of Public Works (DPW) in this Region.

DPW Initiative:

Over recent years, there were several key enforcement actions against municipal DPWs. Subsequently, APWA approached EPA to partner with them to improve regulatory compliance at these facilities. Working with APWA, our Enforcement Office and A&P2 developed an incentive program under EPA's Audit Policy. Under this program, the participating facilities voluntarily conduct environmental compliance audits of their operations. In accordance with the Audit Policy, the facility must disclose and correct the violations in a timely manner. By participating in this program, the facilities become low inspection priority for a limited time by EPA. Additionally, if these facilities meet all of the conditions of the Audit Policy, we would eliminate or substantially reduce the penalty for the violations.

We are also coordinating with our states by sharing audit disclosures. By doing so, these facilities will receive similar penalty relief from the states. More important, the goal of this coordination is for the municipalities to comply not only with federal requirements but also with state regulations.

★ NEW ENGLAND STATES

The six New England states are key partners in accomplishing our enforcement goals and maintaining the necessary enforcement presence. Fostering a strong partnership includes support as well as accountability, from both parties. Our relationship with the states has evolved to a situation where the federal “oversight” role is one of open communication. This is particularly important when there are discussions of program performance and resource utilization.

Program Reviews:

This Region began its Multimedia Compliance/Enforcement Program Review of the Vermont Department of Conservation (VT DEC) and the Vermont Agency of Natural Resources’ Enforcement Division in FY01. The review encompassed a detailed evaluation of the environmental enforcement and compliance assistance programs under VT’s jurisdiction. Recognizing that each state is unique, we worked with the state in designing the evaluation. Prior to the review, we provided the state with topics of interest ranging from their enforcement escalation process to resource utilization. Input from the state is important at this point, because we want to assure that we capture the full essence of that state’s program in an evaluation process. We expect to send the draft VT program review report to the state sometime in mid-FY02. Vermont is the last New England state to receive a comprehensive program review. There are a number of lessons learned from our review of the many different state multi-media compliance/enforcement programs. Reflecting on our experiences in this process, we are now working with our states to develop a new protocol for the next round of multi-media program reviews. The protocol should be complete in FY02.

Support and Assistance:

We continued to provide support and assistance to the New England States in various areas such as regulatory interpretation, training, and enforcement. Our Air Program Office coordinated with our states on Title V implementation. In FY01, this Region reviewed all annual Title V compliance certifications that the regulated facilities submitted. For those certifications which identified compliance issues, we held follow-up discussions and resolved those issues with the states during our routine enforcement coordination meetings.

Another support and assistance activity, in which we work closely with the states, is in the area of data management. The ability to have an effective enforcement program hinges on sound compliance data. Therefore, we continued to manage a national grant designed to significantly upgrade a universal interface. This interface is a critical vehicle that would allow states to more efficiently and accurately transfer the new mandatory data requirements (MDRs) in the recently revised Compliance Monitoring Strategy from state data systems to the national Air Facility System (AFS). With this application, it eliminates the need for duplicate data entry into multiple systems. Three Region I states (New Hampshire, Maine, and Connecticut) and one Region VI state (Oklahoma) are participating in this data initiative. This Region plans to use

this application to transfer Title V program data to AFS, thereby enhancing our data quality and ultimately our enforcement efforts.

Information exchange is also another mechanism to strengthen a partnership as well as program implementation. In FY01, we have provided training to the states on key enforcement topics. There were training activities that related to data management and data systems. Since the states are an extension of an overall enforcement presence, it is important to maintain the skills of the field staff. Therefore, we continued to invest in training for state inspectors during FY01.

★ **TRIBES**

Because Tribes have jurisdiction over their own territory, partnership with Tribes is crucial in attaining the Agency's environmental goals. Much of our efforts have been in providing support and assistance to Tribal members. During FY01, we organized the Region's first health and safety training specifically designed for this Region's federally recognized Tribes. To augment this training, we will work with the participating Tribes to develop a risk management plan (Section 112(r) of CAA) in order to understand and be better prepared regarding their individual environmental concerns.

As Tribal capacity increases, one complex issue is providing credentials for Tribal inspectors. While this is a multi-year process that will involve a great deal of training and mentoring, it would be strategic for Tribes to receive EPA credentials for certain media programs like FIFRA. Even after receiving credentials, their inspection authority would be limited to their lands. Nevertheless, providing inspection credentials benefits all parties. In fact, some Regions have already given FIFRA inspector credentials to some Tribes for inspections on Tribal lands.

★ **LOCAL COMMUNITIES**

Emergency Planning & Community Right-To-Know (EPCRA):

The EPCRA Team in our Enforcement Office partnered with the six New England states' emergency response commissions (SERCs) in a continuing effort to have every local emergency planning committee (LEPC) fully functional. The initial efforts focused on outreach to the industries within each community for the purpose of educating them on their reporting and planning obligations under EPCRA.

One of our outreach activities in FY01 was to sponsor and conduct 40 workshops on the basics of EPCRA. These workshops had close to 2,000 participants. This clearly demonstrated the interest and the importance of the subject matter. We also targeted manufacturing sectors to educate them on the "new reporting requirements for persistent bioaccumulative toxics. In addition to these workshops, we expanded our outreach and disseminated our message at a variety of regional conferences and training programs. These outreach efforts resulted in more reporting, better quality data, and several self-disclosures under EPA's Audit Policy and Small Business Policy. With better data about the facilities and their chemical specific information, the LEPCs are able to: (1) review the adequacy of their

community response plans, (2) train and exercise for chemical events, (3) protect the community, and (4) prevent potential accidents.

In terms of preparedness, we worked closely with individual communities by providing a number of exercises to LEPCs on our computer-aided management of emergency operations (CAMEO) and integrated contingency planning. These computer tools simulate a host of scenarios using information about the facilities within a specified community. Through these simulations, the LEPCs are better able to plan, prepare, and protect the community from chemical accidents.

In addition to our outreach efforts, we play a crucial role as facilitators. We work with several communities in Massachusetts and New Hampshire to assist in the formation of regional LEPCs. Given the fact that several contiguous communities share mutual fire and police resources, it is advantageous for them to pull their collective resources together and formally become a regional LEPC.

APPENDICES

Appendix A: Enforcement Contacts

Appendix B: FY01 Inspection and Enforcement Actions

Appendix C: FY01 Enforcement Data

Appendix A: Enforcement Contacts

Address: U.S. Environmental Protection Agency
One Congress Street (Suite 1100) – SEE
Boston, MA 02114
Voice: 617-918-1700 Fax: 617-918-1809

ENFORCEMENT IMMEDIATE OFFICE

Manager Name/Phone Number:

Ken Moraff, 617-918-1721

Names and Phone Numbers of Senior Staff:

Enforcement managers: see individual office contact information
ADR specialist: Ellie Tonkin, 617-918-1726

List of Programs Covered:

Overall program direction for the Enforcement Office

Liaison with EPA Headquarters, other regional enforcement programs, state partners, and external stakeholders

CRIMINAL ENFORCEMENT (Out of Criminal Investigation Division)

CID Manager/Phone Number:

Michael Hubbard, Director, 617-918-2310

Names and Phone Numbers of OES Attorneys:

Peter Kenyon, 617-918-1723
Dianne Chabot, 617-918-1868
Andy Lauterback, 617-918-1724

AIR ENFORCEMENT OFFICE

Manager Name/Phone Number:

Fred Weeks, 617-918-1855

Names and Phone Numbers of Senior Staff:

Senior Enforcement Coordinator: Denny Dart, 617-918-1850

State Liaison - ME, NH, RI: Tom McCusker, 617-918-1862

State Liaison - CT, MA, VT: Arnie Leriche, 617-918-1748

List of Programs Covered:

- Stationary Sources - New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPs), air toxics ("MACT" standards), Stratospheric Ozone Protection ("CFC program"), state implementation plan (SIP) sources, Section 183(e) Consumer Product Rules, Acid Rain, Title V Operating Permits, and New Source Review (PSD and NSR) programs
- Mobile Sources - tampering, diesel, and urban bus retrofit programs

RCRA ENFORCEMENT OFFICE

Manager Name/Phone Number:

Ken Rota, 617-918-1751

Names and Phone Numbers of Senior Staff:

Lisa Papetti, 617-918-1756

Drew Meyer, 617-918-1755

Rich Piligian, 617-918-1757

Mel Cheeks, 617-918-1752

List of Programs Covered:

- RCRA Program Compliance
- RCRA Authorization & Permits located in OEP (Gary Gosbee, Chief, 617-918-1641)
- RCRA Corrective Action located in OSRR (Matt Hoagland, Chief, 617-918-1361)

WATER ENFORCEMENT OFFICE

Acting Manager Name/Phone Number:

Steve Couto (November 2001 to January 2002), 617-918-1765

Michael Wagner (February to April 2002), 617-918-1735

Beth Deabay (May to July 2002), 617-918-1793

Karen McGuire (August to October 2002), 617-918-1796

Names and Phone Numbers of Senior Staff:

Drinking Water and Pretreatment: Beth Deabay, 617-918-1793

NPDES: Mike Fedak, 617-918-1766

Planning and ICIS Lead: Joan Serra, 617-918-1881

List of Programs Covered:

- Drinking Water Enforcement
- NPDES Enforcement
 - Direct Discharge
 - Storm Water
 - Combined sewer overflow (CSO)/ sanitary sewer overflow (SSO)
 - Concentrated Animal Feeding Operation (CAFO)
 - Pretreatment Enforcement
- Oil Spill Enforcement
- NPDES Data Management

REGIONAL MUNICIPAL COORDINATOR

(Part of the OES Immediate Office)

Manager Name/Phone Number:

Sam Silverman, 617-918-1731

Coordinator Name/Phone Number:

Nancy Barmakian, 617-918-1016

WETLANDS ENFORCEMENT PROGRAM
(Part of the Enforcement Immediate Office)

Manager Name/Phone Number:

Ken Moraff, 617-918-1721

Names and Phone Numbers of Senior Staff:

Denise Leonard, 617-918-1719
Dan Arsenault, 617-918-1562
Doug Thompson, 617-918-1543

List of Programs Covered:

Wetlands enforcement (Clean Water Act § 404)

TOXICS, PESTICIDES, AND FEDERAL PROGRAMS OFFICE

Manager Name/Phone Number:

Deborah Brown, 617-918-1706

Names and Phone Numbers of Senior Staff:

Senior Enforcement Coordinator: Donald Mackie, 617-918-1749
Federal Facilities: Anne Fenn, 617-918-1805
TRI, Small Business Ombudsman, and OES PBT contact: Dwight Peavey, 617-918-1829
TSCA PCB: Marianne Milette, 617-918-1854
Core TSCA: Rose Toscano, 617-918-1861
FIFRA, Asbestos and AHERA, Wayne Toland, 617-918-1852
CAA 112(r): Ray DiNardo, 617-918-1804

List of Programs Covered:

- TSCA (Core, PCB, Asbestos, and Lead)
- Emergency Planning and Community Right-to-Know (EPCRA 313 and Non313)
- Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)
- Asbestos Hazard Emergency Response Act of 1986 (AHERA), as amended by the Asbestos School Hazard Abatement Reauthorization Act of 1990 (ASHARA)
- Clean Air Act 112(r) – Risk Management Plans
- Federal Facilities (Enforcement and Assistance)
- Tribal (Assistance, capacity building, and enforcement)

REGULATORY LEGAL OFFICE

Manager Name/Phone Number:

Joel Blumstein, 617-918-1771

Names and Phone Numbers of Senior Staff:

Water – Edith Goldman, 617-918-1866

RCRA – Andrea Simpson, 617-918-1738

Air and Toxics – Thomas Olivier, 617-918-1737

List of Programs Covered:

Provide legal support for all administrative and civil judicial enforcement matters in all EPA regulatory programs (CAA, CWA, SDWA, RCRA [except corrective action], TSCA, FIFRA, EPCRA). Also, oversee implementation of EPA Audit Policy.

SUPERFUND LEGAL OFFICE

Manager Name/Phone Number:

Joanna Jerison, 617-918-1781

Names and Phone Numbers of Senior Staff:

Team Leaders:

Cindy Catri, 617-918-1888

Marcia Lamel, 617-918-1778

Gretchen Muench, 617-918-1896

RuthAnn Sherman, 617-918-1886

Audrey Zucker, 617-918-1788

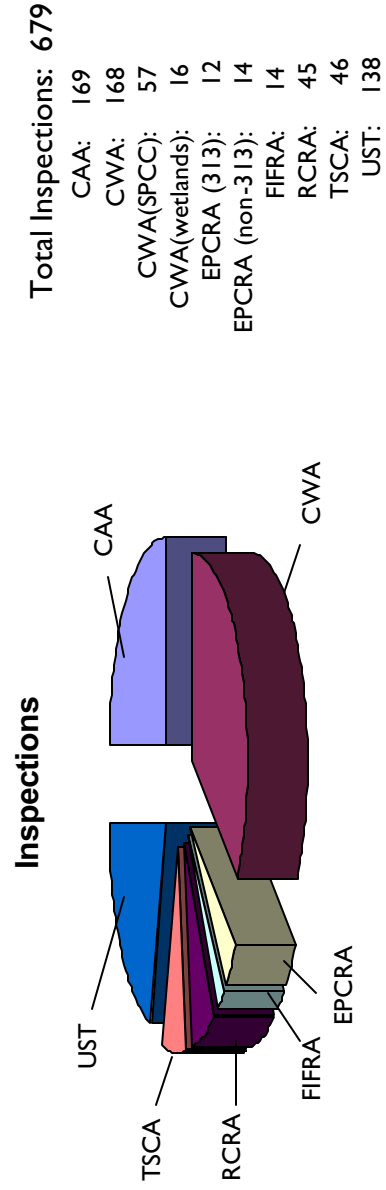
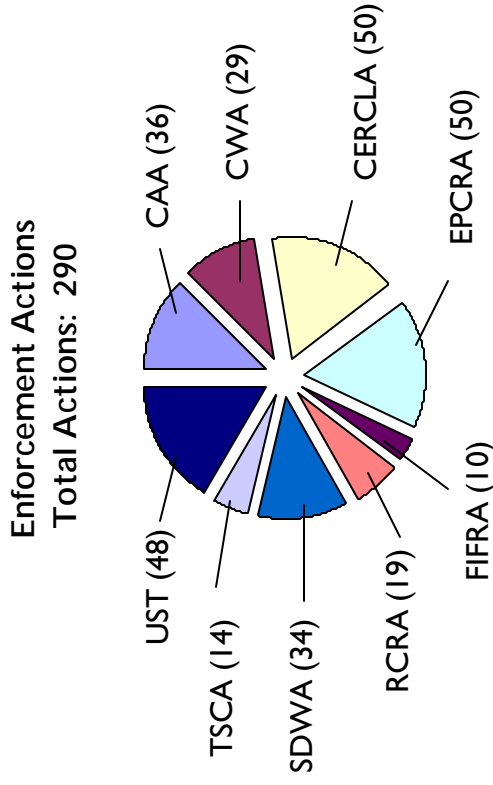
List of Programs Covered:

Superfund: Enforcement, Legal Review of Remedies, Brownfields and Superfund
Redevelopment

RCRA Corrective Action Enforcement

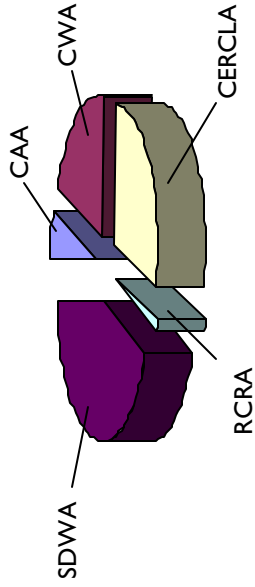
Appendix B

FISCAL YEAR 2001 INSPECTION AND ENFORCEMENT ACTIONS



Appendix B (continued): FY01 Enforcement Actions

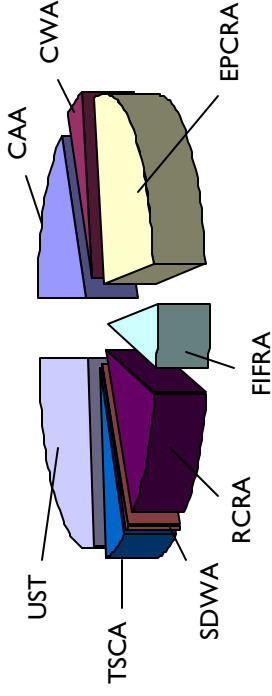
Administrative Orders



Total AOs: 73

CAA: 4
 CWA(NPDES): 15
 CERCLA: 21
 RCRA: 1
 SDWA: 32

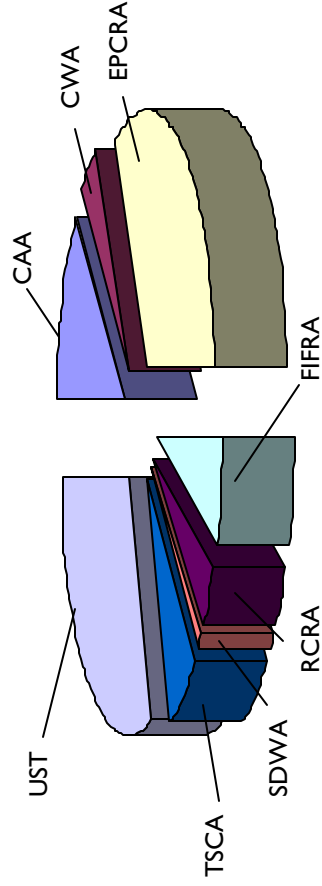
Administrative Penalty Orders



Total APOs: 97

CAA: 16
 CWA (NPDES): 3
 CWA (SPCC): 2
 EPCRA (313): 26
 FIFRA: 5
 RCRA: 12
 SDWA: 1
 TSCA: 6
 UST: 26

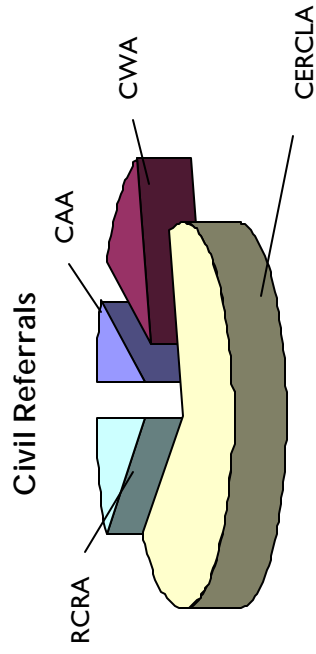
Consent Agreement Orders



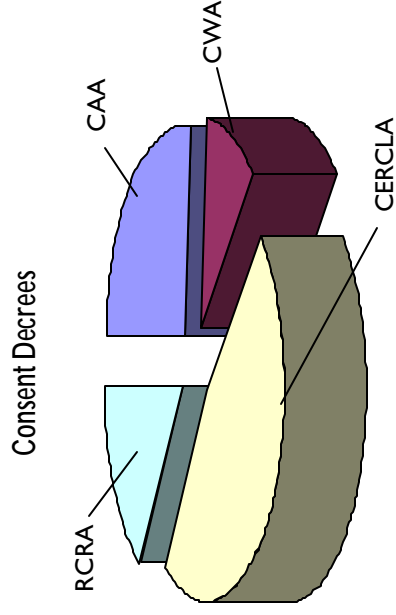
Total CAOs: 72

CAA: 9
 CWA(NPDES): 3
 EPCRA (313): 24
 FIFRA: 5
 RCRA: 3
 SDWA: 1
 TSCA: 5
 UST: 22

Appendix B (continued): FY01 Enforcement Actions



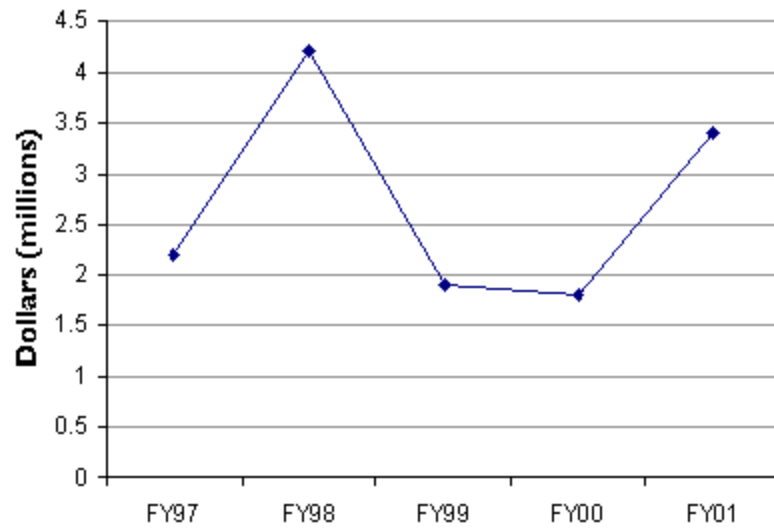
Total Civil Referrals: 29 CAA: 2
 CWA (NPDES): 4
 CERCLA: 20
 TSCA: 3



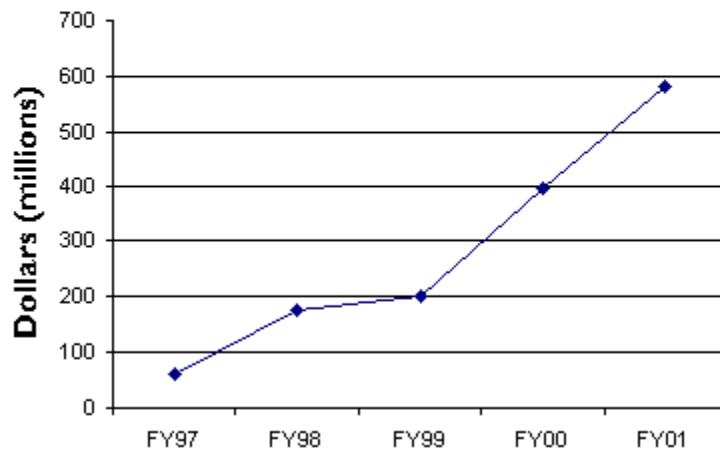
Total Consent Decrees: 19 CAA: 5
 CWA (NPDES): 2
 CERCLA: 9
 RCRA: 3

Appendix C: Enforcement Data

Final Penalty Amounts

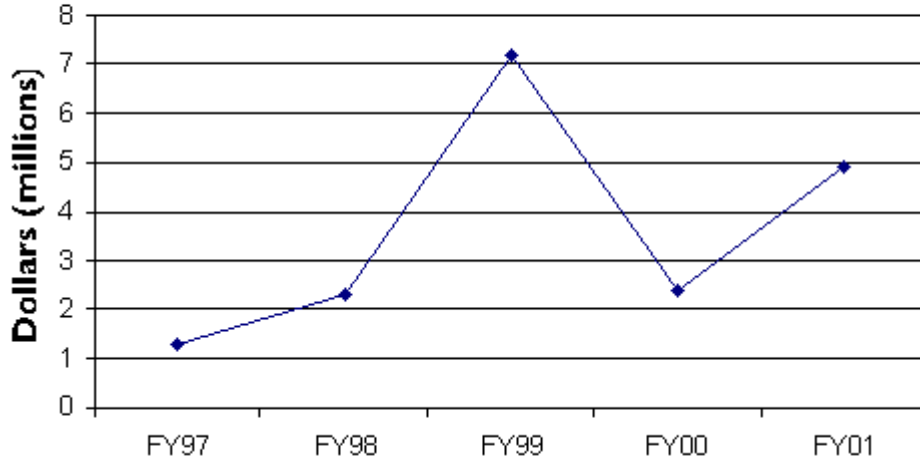


Cost of Compliance Actions (Injunctive Relief)



Appendix C (continued): Enforcement Data

Cost of Supplemental Environmental Projects



Superfund -- Cost Recovery Amounts

