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Summary of Enforcement Accomplishments

Fiscal Year 1985

SUMMARY OF ENFORCEMENT ACCOMPLISHMENTS REPORT

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Office of Enforcement and Compliance Monitoring
U.S. Environmental Protection Agency
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FOREWORD/ACKNOWLEDGEMENT

The purpose of this report is to summarize the enforcement and compliance accomplishments of EPA and the States in Fiscal Year 1985. This report was prepared by the Office of Enforcement and Compliance Monitoring (OECM) and is based on information and data from various EPA enforcement offices and management systems. The principal coordinator of the report was Robert Banks of the Compliance and Evaluation Branch of OECM. We would like to thank each of the Regional Offices and Program Offices for their valuable contributions which aided in the production of this report.

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Overview

Fiscal Year 1985 was a turning point for the national compliance and enforcement program, both for EPA and the States. It was a year in which state and federal environmental civil, criminal, and administrative enforcement actions and inspections were undertaken at record levels. More important, however, it was a year of putting in place more systematic approaches to managing EPA's compliance monitoring and enforcement programs to ensure more stable, predictable and timely responses to violations and assuring effective deterrence to future violations.

This report summarizes the accomplishments EPA and the States have made in FY 1985: (1) building a stable and predictable national enforcement program; (2) undertaking key enforcement initiatives; (3) improving strategies for compliance and enforcement; (4) achieving successful resolution of significant violations and record levels of enforcement and inspections; and (5) establishing legal precedents and achieving favorable settlement of key cases.

I. Building a Stable and Predictable National Enforcement Program

State/EPA Enforcement Relationship

Fiscal Year 1985 was the first year of implementation of the State/EPA Enforcement "Agreements" which established a systematic national approach for ensuring timely and appropriate enforcement response to significant violations. This established a basis for expediting enforcement, for ensuring penalties or other sanctions are imposed in appropriate cases to deter future violations, and for establishing appropriate State and federal roles in taking enforcement actions under parallel authorities.

As a result of these Agreements, over the last 18 months there has been a steady improvement in coordination and consultation with the States under a "no surprises" policy. The enforcement consultation process, where the States and EPA meet regularly to mutually review the status of significant noncompliers, based upon negotiated commitments for returning these sources to compliance, is now generally viewed as a constructive joint problem solving process by both the Regions and States and is considered one of the most successful features of the agreements process.

As part of the agreements process the Agency also began in FY 1985 to receive where appropriate improved state data on compliance rates, significant noncomplier status, inspections, administrative orders and civil and criminal referrals, allowing EPA for the first time to present a national picture of the combined State/Federal compliance and enforcement effort.

Beyond the formal enforcement agreements the Agency continues to assist State criminal and civil enforcement officials with funding, data sharing and technical assistance. Through a grant to the National Association of Attorneys General, the Association is periodically informing all Attorneys General and EPA of significant cases, investigations and new developments in the States. Additionally, the grant provides funding to assist groups of States to organize themselves to better coordinate criminal and civil enforcement actions through joint training, data sharing, and technical assistance. One such organization funded by the Agency is the Northeast Hazardous Waste Project, a 13-State group in the Northeastern United States that has made significant strides in environmental enforcement and continues to be a model for similar future State organizations.

Establishing Consistent Deterrence

FY 1985 also marked the first full year of implementation of the 1984 Agency's Uniform Penalty Policy. This policy, which applies to EPA imposed civil penalties, sets forth the requirement that dollar penalties recoup at a minimum, the economic benefit of noncompliance where this concept is applicable, in addition to imposing a penalty based upon the gravity of the harm. The tenet is that recouping the economic benefit of noncompliance is the most effective means of deterring future violations.

In FY 1985 new penalty policies were issued or developed in the air and NPDES programs, data systems were developed and improved to record penalty information on cases and the BEN computer model was improved to make it easy for Regions to calculate the economic benefit a violator may have derived from noncompliance. There have been extensive training programs on the use of the EPA BEN model throughout the Regions and this training will be extended to States next year. Early results show marked increases in penalties levied in federal enforcement cases.

To improve use of penalty authorities and policy, OECM completed a comprehensive study of civil penalties including a review of federal practices, state civil penalty authorities and perceptions of penalties and the role of EPA oversight in improving deterrence. This work has culminated in a more detailed policy on how EPA will oversee state civil penalty assessments in addition to improvements of EPA penalty practices.

OECM has been encouraging the use of criminal enforcement in appropriate cases to enhance deterrence, especially in areas of agency priority where civil and administrative enforcement have not significantly benefited compliance. Among other activities, OECM has sponsored legislative initiatives to increase most criminal penalties in environmental statutes from misdemeanors to felonies as an added deterrent, and has been encouraging judges and probation officials in selected cases to impose incarceration on egregious violators.

Tracking Systems for Follow-Through

Fiscal Year 1985 was the first year EPA uniformly tracked Consent Decree Compliance and enforcement follow through. It is of great concern to the Agency that once public and private resources have been expended to reach agreement on compliance, these agreements must be carefully monitored to ensure they are implemented as promised.

Improved tracking systems were also developed for Citizen Suits under the Clean Water Act, RCRA, and TSCA. Citizen suits provide an important additional impetus for regulatees to comply and decisions must be made by Agency officials on whether to join such actions and whether significant decisions rendered in citizen suits affect Agency policy.

II. Undertaking Enforcement Initiatives

A major agency goal for the enforcement and compliance monitoring functions of the Agency is to ensure they further the most important goals and objectives of Agency programs. In FY 1985, the Agency launched several multi-case enforcement initiatives in priority areas. This approach supplements the systems established for predictable enforcement by streamlining EPA referral and DOJ filing procedures for similar cases, and generating greater publicity from the filing of a number of

related cases over a relatively short time period through use of a coordinated communications strategy. EPA has taken these innovative steps to enhance the deterrence impact of individual cases on the broader regulated community. This is achieved in well targeted and planned enforcement actions. Experience to date indicates that handling a number of similar cases at one time is also more efficient as many of the technical and legal issues are similar and can be resolved in a more standardized and consistent manner. Also, several criminal enforcement initiatives are planned or underway that will have a similar deterrent effect.

Pretreatment

The first enforcement initiative was undertaken for the pretreatment program established under the CWA. In a series of well publicized waves in FY 1985 the Agency targeted for legal enforcement action those municipalities-publicly owned treatment works, (POTWs)--that had not submitted approvable local pretreatment programs. These programs are required to control pollution (including toxic pollutants) that industrial users were discharging into municipal sewage treatment systems which could either interfere with the treatment system's effectiveness or pass through directly into waters of the U.S. Early in 1985 the Agency filed lawsuits simultaneously against 7 of these municipalities. In a second wave at the end of FY 1985, the Agency filed 4 more cases. These enforcement efforts produced a surge in approved pretreatment programs - from only 20% of the subject POTW with approved programs in April 1984 to almost 90% at the end of FY 1985.

Asbestos

Throughout FY 1985 preparation was made for civil and criminal enforcement actions against violations of asbestos demolition rules under the Clean Air Act. Violation of the National Emission Standard for Hazardous Air Pollutants regarding demolitions and renovations of buildings containing friable asbestos is a significant health hazard and a requirement about which many are ignorant. On January 16, 1986 this initiative came to fruition when DOJ filed 11 cases nationwide resulting in national news coverage on the major television and radio networks.

Premanufacture Notification

In FY 1985, under TSCA, EPA issued 13 administrative complaints for violations of premanufacture notification requirements. Under these provisions, industry must notify the Agency of the manufacture of a new chemical 90 days prior to its commercial distribution. Failure to provide notice carries a maximum civil penalty of $25,000 per day. Under the enforcement initiative, penalties totaled over $15 million, three of the complaints sought penalties over $1.5 million each, among the largest assessed by the Agency over its history. Currently five of these cases have been concluded with total final assessed penalties worth $965,000.

This initiative has helped EPA develop an effective "presence" to promote compliance with the information submission requirements, violations of which are difficult to discover. The regulated community has received a clear message that they can get caught, and that the cost is high.

III. Improving Strategies for Compliance and Enforcement

FY 1985 was the year in which the Agency designed and implemented an ongoing strategic planning process for refining and improving compliance and enforcement strategies and programs that is now an integral part of the Agency's overall Strategic Planning and Management System (SPMS). The process is designed to promote strategic thinking and focus on addressing emerging problems in the compliance and enforcement programs through joint meetings at the beginning of the planning cycle.

Written strategies for compliance and enforcement especially for new programs, serve as important communications tools and frameworks for program operations. Highlighted below are several example accomplishments for improved strategies in FY 1985.

NPDES Inspection Strategy/Guidance

In April 1985, the Office of Water Enforcement and Permits (OWEP) issued the NPDES Compliance Inspection Strategy and Guidance on Preparing Annual State/EPA Inspection Plans. These documents describe the major inspection priorities and make clear the mix

of inspections within each State that should be tailored to the State's needs while making proper use of inspection resources. The Guidance describes expected content of Annual State/EPA inspection plans and discusses in general terms management of resources.

Federal Facilities Compliance Strategy

In Fiscal Year 1985 in response to the Administrator's call to make federal facility compliance a model for others, OECM has been working jointly with EPA's Office of Federal Activities to revise and update the Agency's strategy. An Agencywide workgroup composed of representatives from the Headquarters program offices and the Regions, held a series of meetings to discuss the key federal facilities compliance issues and make recommendations. The draft strategy expands the scope of the current strategy providing a comprehensive approach to achieving high levels of compliance. It includes improved use of the A-106 budget review process on behalf of compliance needs, integration of the timely and appropriate enforcement response concept tailored to each media program's authorities, clarification of the involvement of States, emphasis on innovative approaches, more systematic technical assistance and training programs and clear identification of internal EPA management roles. Although not yet final, the work done on this strategy is already serving to guide improved agency response and support for the program. When completed this will be a major accomplishment, putting in place a far more effective program to gain expeditious compliance.

Clean Water Act Administrative Orders

In 1985, OWEP completed an assessment of the CWA Administrative Orders, and in July 1985 issued an Administrative Order Guidance covering recommendations on standard language and format for administrative orders issued under Section 309 of the Act. The purpose is to encourage a consistent nationwide approach to administrative order content as well as to assure legally defensible administrative orders.

Criminal Enforcement Strategy

Since FY 1982 EPA has developed and systematically expanded its criminal enforcement program. In FY 1985 OECM drafted a criminal enforcement strategy that is designed to guide the program in the short and long term future. The focus of the strategy is to foster the integration of the criminal program

with the Agency's operating priorities to assure the appropriate use of the full range of enforcement tools-- criminal, administrative, and civil-- to further agency goals. This was accomplished in large measure this year for FY 1987 Operating Guidance and FY 1986 SPMS Measures. Additionally, the strategy establishes (1) ways to set enforcement priorities, (2) a plan for incorporating the program into agency management systems, (3) plans for coordination of activities with State and local prosecutors, (4) a legislative strategy, and (5) education and training programs for the future. This strategy is now under Agency and State review.

Compliance and Enforcement Strategy for UIC

One of the first major efforts in the new UIC program was to develop a compliance and enforcement strategy, first for direct implementation by the Regions and then later in draft for state use. The strategy delivered as much useful information out to the Regions and States as quickly as possible, as they began to implement the program.

The strategy includes a section on compliance promotion and outreach programs to address the regulated community about compliance with the Safe Drinking Water Act. Examples of outreach materials developed by Region VIII were included with the compliance strategy for others to use.

Environmental Auditing

In FY 1985, OECM and OPPE cooperated in developing an Agency policy on environmental auditing to promote improved environmental management for improved compliance with environmental requirements. One innovation is the introduction of environmental auditing provisions in selected consent decrees where environmental management improvements are clearly part of the desired remedy. Extensive violations in a number of media at the same firm suggest a significant failure of management sytems to attain and maintain compliance with environmental laws. When this is the case, requesting a firm to audit and/or correct that same violation at other plants may vastly enhance the clean-up leverage of a single enforcement action. Hence, the virtue of environmental auditing, which the Agency is now testing in a few precedential decrees.

IV. Achieving Successful Resolution of Significant Violations and Record Levels of Enforcement Actions and Inspections

Addressing Significant Noncompliers

Starting in FY 1984 each program defined within some broad criteria what it considers to be its most important violations to receive highest priority in taking enforcement actions. These are called "significant noncompliers or significant violations."

In FY 1985, the EPA and States improved their ability to identify and address facilities in significant noncompliance. In FY 1984, EPA and the States addressed 87% of their BOY significant noncompliers, while in FY 1985, 95% of the significant noncompliers were addressed.

Progress in Returning Significant Air Violators to Compliance

The air enforcement program focuses on violators of State Implementation Plans (SIPS) in nonattainment areas and violators of New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Air Pollutants (NESHAPS), and Prevention of Significant Deterioration (PSD) regulations.

In FY 1985, EPA and the States made progress in returning significant air violators to compliance. At the beginning of the year, EPA/States had 513 significant air violators remaining from the previous year. At the end of the year, 391 significant violators had been addressed by returning 187 to compliance, taking enforcement action against 109, and placing 95 on acceptable compliance schedules, leaving a total of 122 to be addressed next year (graph A). During FY 1985, EPA/States identified 569 new significant violators. In responding to these new violators, EPA returned 105 to compliance and placed 42 on acceptable compliance schedules (graph B).

In comparing the air enforcement efforts in FY 1984 to FY 1985 in this area, good performance has been maintained. At the beginning of FY 1984, there were 326 significant violators versus 513 at the beginning of FY 1985 (graph C/D). In FY 1984, 126 (39%) of the BOY violators were returned to compliance, while in FY 1985, 187 (36%) were returned. A total of 51 (16%) violators were placed on acceptable schedules in FY 1984 compared to an increase to 95 (19%) in FY 1985. In taking enforcement actions,

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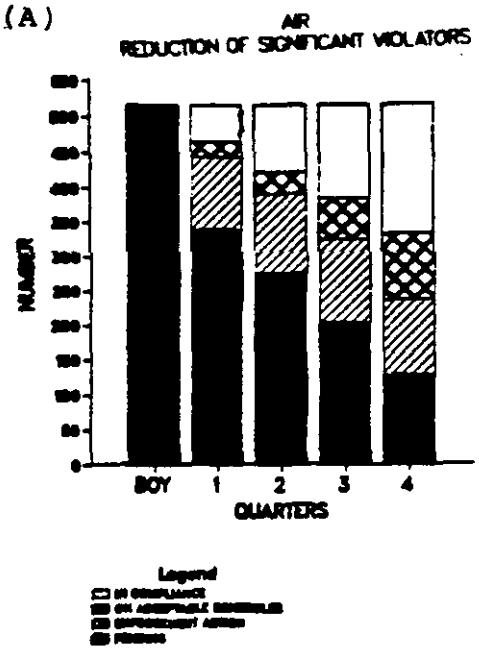

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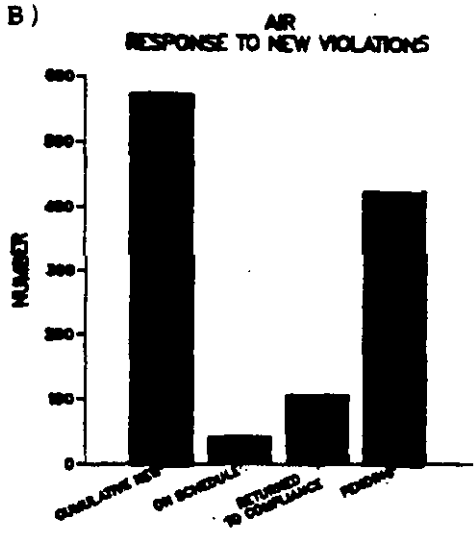
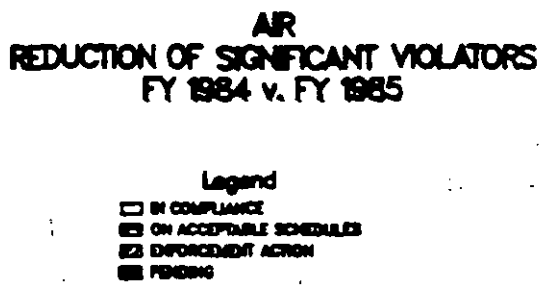
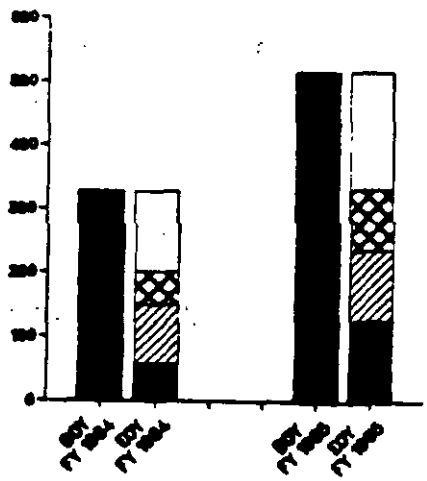


EPA/States acted against 109 (21%) in FY 1985 and 92 (28%) in the previous year. At the end of FY 1984, 57 (17%) violators were pending, versus 122 (24%) pending at the end of FY 1985. Overall, in FY 1985 EPA/States addressed 391 of the BOY significant violators compared to 269 in FY 1984.

Besides addressing a majority of the significant air violators remaining from the previous year, continued progress was made in identifying and addressing new significant violators. In responding to new violators during FY 1985, EPA/States identified 569 new significant violators. Of this universe, 105 (18%) were returned to compliance, 42 (7%) were placed on acceptable compliance schedules and 422 (74%) were pending.

(C/D)





Air Inspection Frequency and Compliance Levels

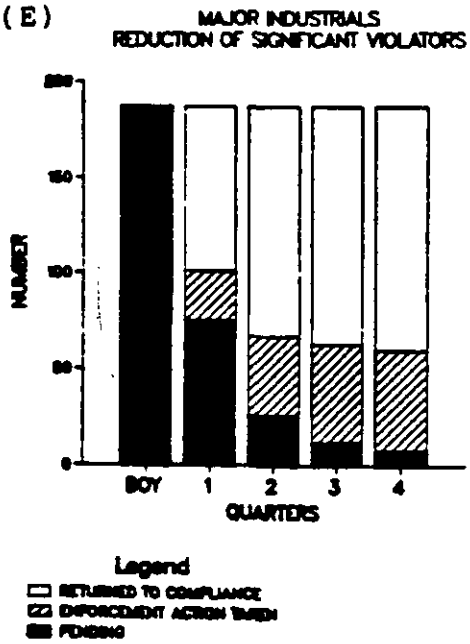
In FY 1985, eventhough inspection rates declined for SIP sources, rates improved for both NSPS and NESHAPS sources. Inspection frequency rates (States and EPA) for Class A1 SIPS were 87% of all major sources for the year, while inspection frequency rates for NSPS and NESHAP were 92% and 89% respectively. At the end of the fourth quarter FY 1984, rates were Class A1 SIPS 90%, NSPS 88% and NESHAP 87%. Of the total Class A1 SIP, NSPS and NESHAP universe in FY 1985, 90% were in compliance, 2% on compliance schedules, approximately 6% were in violation (2% were significant violators and 4% were in violation but did not meet the definition of significant violator), and 2% were of unknown compliance status. The reported compliance levels in FY 1985 for Class A1 SIP and NSPS were 90% each while the compliance level for NESHAP was 87%. At the end of FY 1984 reported compliance levels were Class A1 SIPS 91%, NSPS 90% and NESHAP 92%.

Water - Progress in Reducing Significant Noncompliance

The water enforcement program focuses on major facilities that are in significant noncompliance with compliance (construction) schedules, permit effluent limits and previous enforcement orders.

EPA and the States continued to have success in addressing significant noncompliance in FY 1985. At the beginning of the year EPA and the States identified 187 major industrial facilities in significant noncompliance. By the end of the year, 96% of the major industrials had been addressed by returning 127 to compliance and taking enforcement actions against 52 others (graph E). For

(E)



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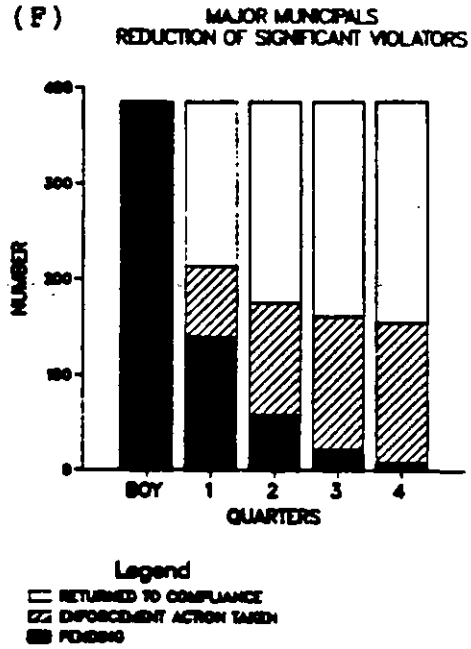
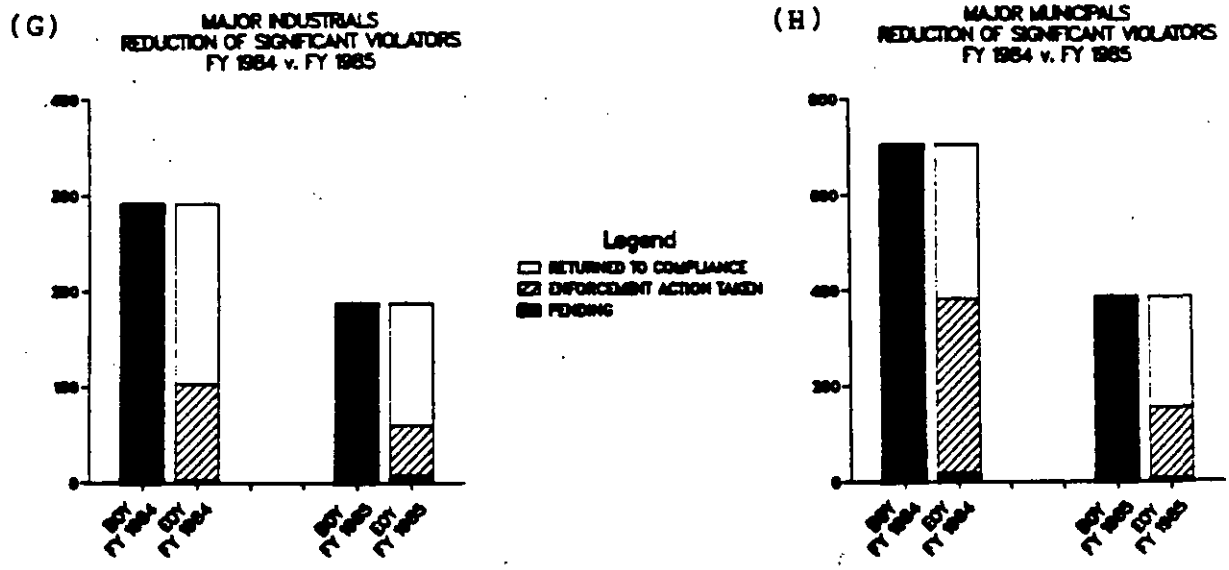


major municipal facilities, there were 384 significant noncompliers at the start of FY 1985. By the end of the year, 98% had been addressed by returning 230 to compliance and taking enforcement actions against 147 others (graph F).

At the beginning of FY 1984, there were 291 major industrial facilities in significant noncompliance, versus 187 at the beginning of 1985 (graph G). In FY 1984, 65% of the BOY major industrial significant noncompliers were returned to compliance, while in FY 1985, 68% were returned. A total of 100 (34%) significant noncompliers had enforcement action taken against them in FY 1984, compared to 52 (29%) in FY 1985. For major municipal facilities, there were 703 significant noncompliers at the beginning of FY 1984 and 384 at the beginning of FY 1985 (graph H). In FY 1984, 321 (46%) were returned to compliance while in FY 1985, 230 (60%) significant noncompliers were returned. A total of 363 (52%) major municipals had action taken against them in FY 1984 compared to 147 (38%) in FY 1985.



In FY 1985, EPA and the States introduced an exceptions reporting mechanism for responding to newly found significant noncompliers. Only those significant noncompliers that are in violation for two or more quarters are reported by EPA and the States. During FY 1985 a cumulative total of 98 major industrial facilities were identified as being in significant noncompliance for 2 or more quarters without an enforcement action taken. Of these, 32 were returned to compliance and 26 had enforcement actions taken, leaving a pending balance of 40. For major municipal facilities, a cumulative total of 239 facilities were identified as being in significant noncompliance for 2 or more quarters without an enforcement action taken. Of these, 78 were returned to compliance and 84 had enforcement actions taken, leaving a pending balance of 77.

NPDES Compliance Status

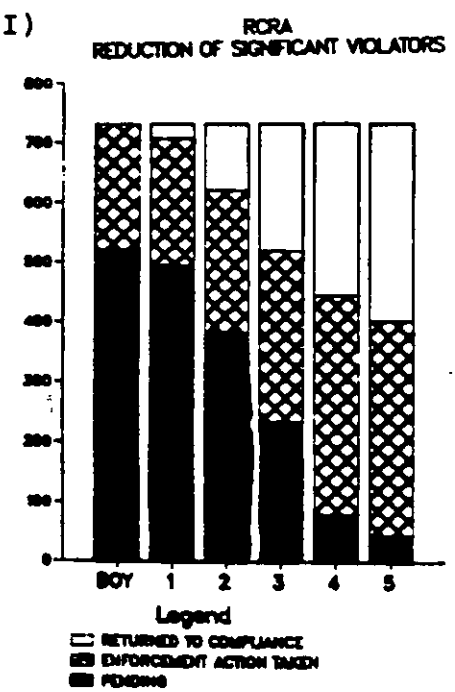
In FY 1985, EPA made further progress in achieving greater compliance in its National Pollution Discharge Elimination System (NPDES) program. In FY 1984 and FY 1985, 94% of the major industrial facilities completed the construction needed to achieve final effluent limits while 6% needed additional construction. But, the overall compliance rate for major industrials increased from 93% in FY 1984 to 95% in FY 1985. For major municipal facilities in FY 1984, 62% completed the construction needed to achieve final effluent limits while 38% needed additional construction. Compliance status improved in FY 1985 showing that 67% of the major municipal facilities completed the construction needed to achieve final effluent limits while 33% needed further construction.

RCRA - Progress on Addressing Major Handlers in Significant Noncompliance

The RCRA program considers a significant noncomplier as a land disposal facility with one or more Class I violations of regulatory or statutory requirements related to groundwater, closure, post-closure, or financial responsibility.

At the beginning of FY 1985, EPA and the States had 729 major handlers in significant noncompliance remaining from the previous year. By the end of the year, 684 had been addressed including 327 which were returned to compliance, 357 against which an enforcement action was taken, leaving 45 to be addressed in FY 1986 (graph I). During the year, EPA and the States identified 551 major handlers as new significant noncompliers. Of this number, 144 had formal enforcement actions initiated against them and 112 were returned to compliance (graph J).

(I)



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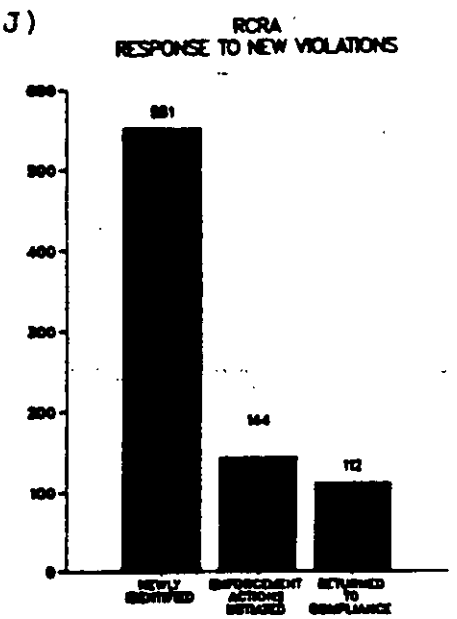


In FY 1985, EPA and the States substantially increased their efforts to address significant noncompliance over the levels achieved in the previous year. During FY 1985, EPA and the States addressed a higher percentage (94% compared to 81%) of significant noncompliers than in FY 1984 on a base that was 150% larger (729 compared to 535).

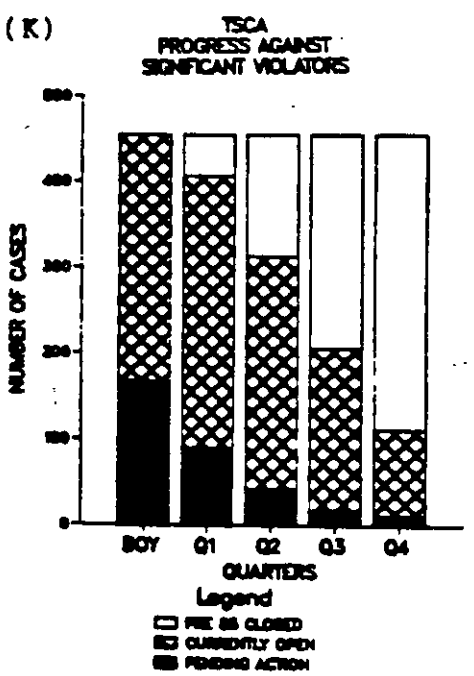
RCRA - Inspections of Major Handlers

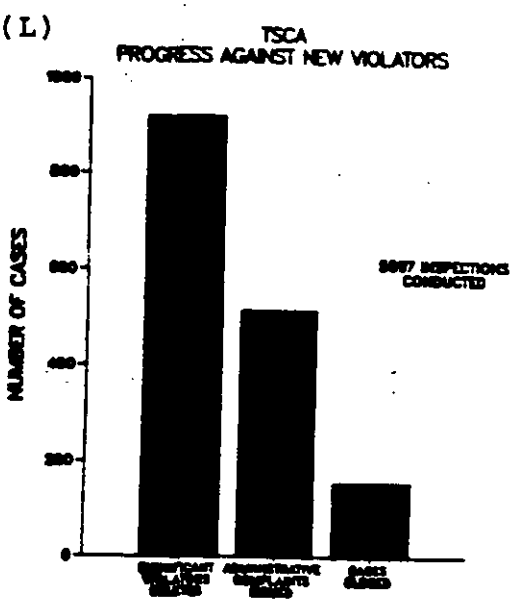
In FY 1985, EPA and the States conducted 34% more inspections of major handlers than in FY 1984 (5,497 compared to 4,115). EPA and the States completed 1,104 record reviews for closure plans and cost estimates in FY 1985 while completing 953 in FY 1984.

Response to TSCA Significant Noncompliance

The TSCA program significant noncomplier is any violation of a PCB, asbestos, or premanufacturing notice rule which warrants the issuance of an administrative complaint for penalties.

The Regions had a beginning of year inventory in FY 1985 of 454 TSCA significant noncomplier cases. During the year the Regions closed 342 (75%) cases on the inventory (graph K) by completing an agreement and final order. In FY 1984, 183 (74%) cases were closed against a beginning of year inventory of 247. During the year, EPA made progress in identifying and initiating actions against new significant violators. Of the 5,097 inspections conducted, 919 (18%) significant violators were detected. More than half of these, a total of 514, had action taken; 156 of these were closed, leaving 358 new cases open at the end of the year (graph L). In FY 1985, EPA instituted a major enforcement





effort in the Asbestos-in-Schools program. Of the 919 new significant violators, 59% were asbestos-in-schools violators. In response to significant noncompliance in asbestos-in-schools, EPA issued 383 administrative complaints in FY 1985, over four times the 82 issued in all of FY 1984.

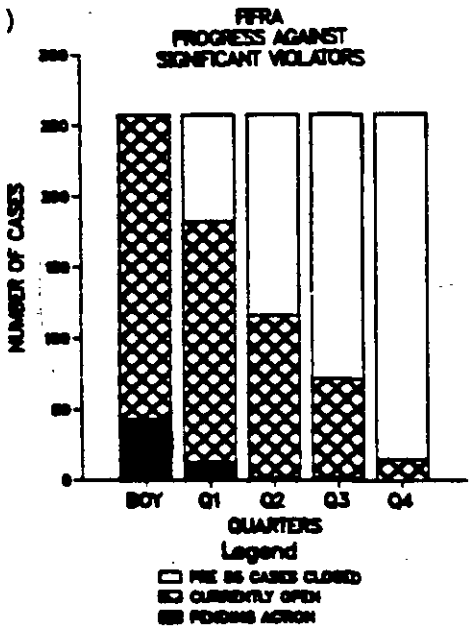
Regional TSCA Inspection and Compliance Levels

In FY 1985, of the 3,083 inspections (compared to 2,022 for FY 1984) conducted for PCB and other violations, 31% were pending review for a compliance determination at the end of the year. Of the 2,110 inspections reviewed during the year, 74% were found in compliance and 26% were in violation, minor and significant (344 with enforcement action taken; 242 with enforcement action pending). For asbestos-in-schools, the Regions conducted 2,014 inspections compared to 1,918 in FY 1984. Nine percent were pending for a compliance determination at the end of the year. Of the 1,835 inspections reviewed in FY 1985, 32% were in compliance, 68% were in minor and significant violation (1,083 with enforcement action taken; 162 with enforcement action pending).

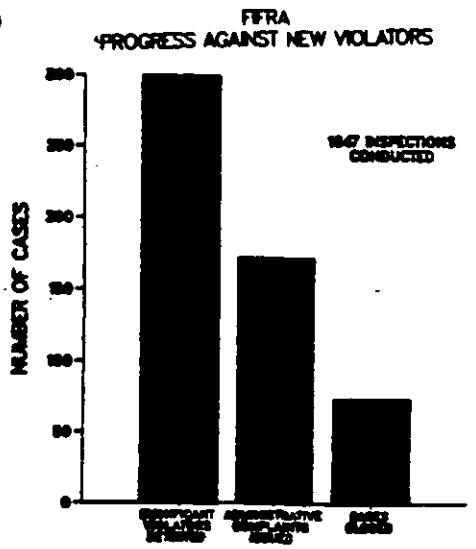
Response to FIFRA Significant Noncompliance

The Regions had a beginning of year inventory in FY 1985 of 257 FIFRA significant noncompliers. During the year, the Regions nearly cleared their backlog of cases by closing 242 (94%) cases on the inventory (graph M). In FY 1984, 137 (64%) cases were closed against a beginning of year inventory of 214. During FY 1985, the Regions and States made good progress against new significant violators. The Regions conducted 1,647 inspections and detected 299 significant violations. A total of 172 of these violations had action taken; 74 of these were closed, leaving 98 cases open at year end (graph N). In closing FIFRA significant noncomplier cases, 113 cases remain open at the end of FY 1985, compared to the inventory of 214 open cases at the end of FY 1984.

(M)



(N)

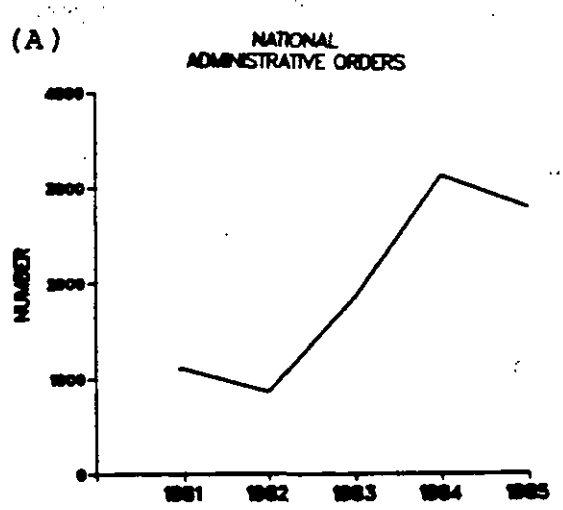


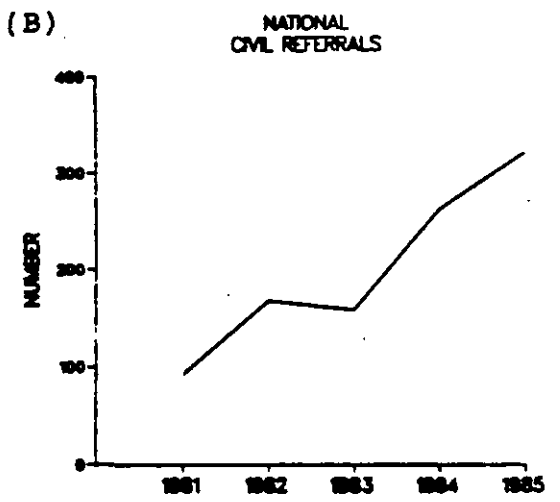
National Enforcement Activity

The overall level of compliance and enforcement activity continued at record levels in FY 1985. By the end of the year, 2,785 administrative orders had been issued by EPA. This is the second highest number of administrative orders issued since 1981 (graph A).

In FY 1985, the Regions referred the highest number of civil cases in the Agency's history (graph B). The national figure of 323 civil referrals represents an increase of 23% over FY 1984 and includes 22 air mobile cases. Since 1981 the number of civil cases referred by the Regions has increased 247%. Civil referrals are those cases referred by the Regions to EPA and direct to the Department of Justice.

FY 1985 was also a record year for criminal referrals. An all time high of 44 criminal cases were referred by the Regions to Headquarters. Of these, 22 (50%) were through the RCRA program. Criminal referrals to DOJ only were also at an all time high with 36 referred in FY 1985, as compared to 31 in FY 1984, 26 in FY 1983, 20 in FY 1982 and 26 in FY 1981.

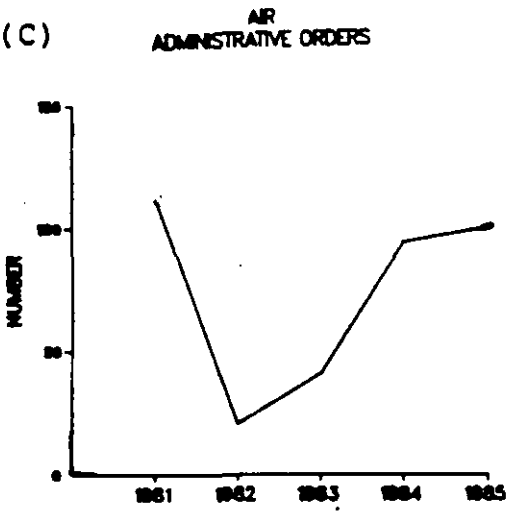




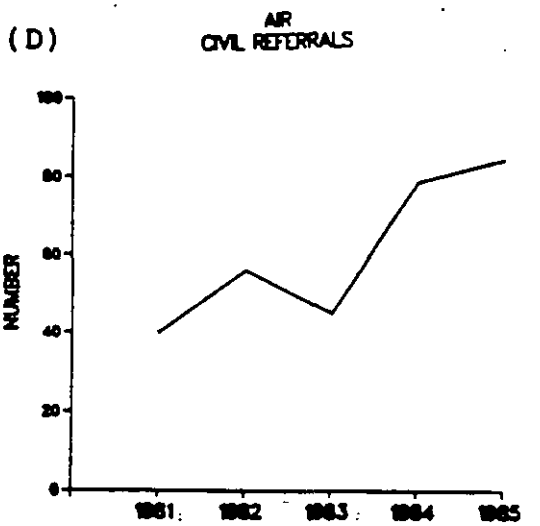
Air Enforcement Activity

EPA's air enforcement activity has remained at a consistently high level during FY 1985. EPA issued 100 administrative orders during the year (graph C). The Regions referred 85 civil cases, one of the highest number of referrals in Agency history (graph D). FY 1985 civil referrals surpassed the end of year target of 79 and also represented a 7.5% increase over FY 1984. Also in FY 1985, 8 criminal cases were referred in the air enforcement program.

(C)



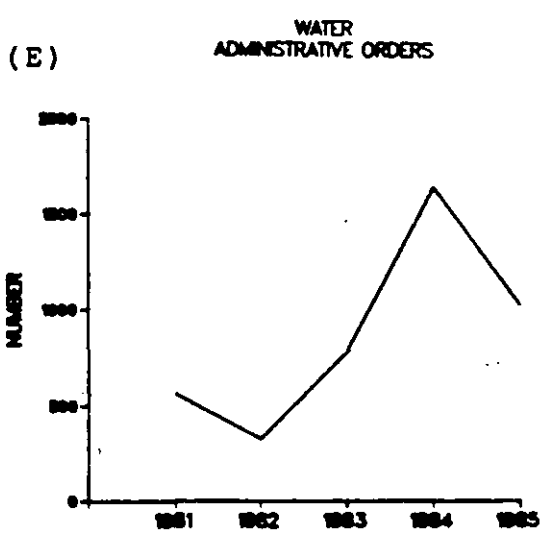
(D)



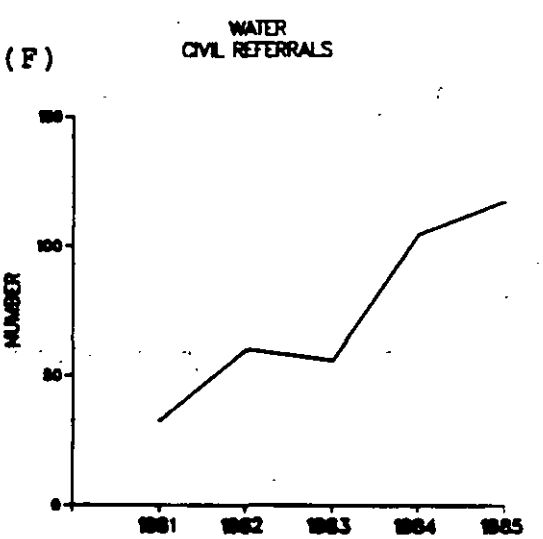
Water Enforcement Activity

EPA's water enforcement activity remained at a high level for administrative orders and reached an all time high for civil case referrals. EPA and the States issued 1,028 administrative orders, which is the second highest total in the last five years (graph E). During FY 1985, the Regions referred 118 civil cases, the highest number of referrals in the last five years (graph F). This represents a 12% increase in the number of referrals from FY 1984. The Regions also made 7 criminal case referrals in FY 1985.

(E)



(F)

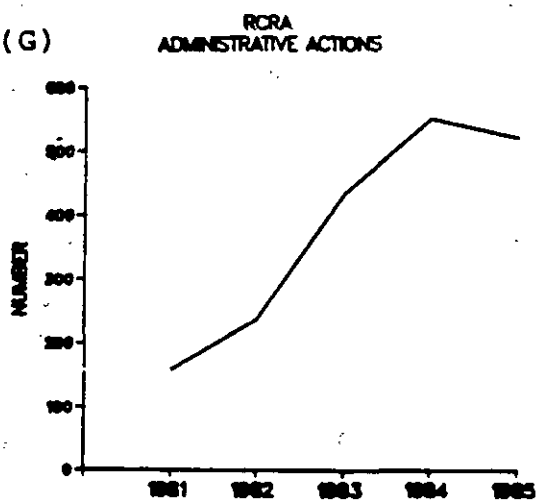


Superfund and RCRA Enforcement Activity

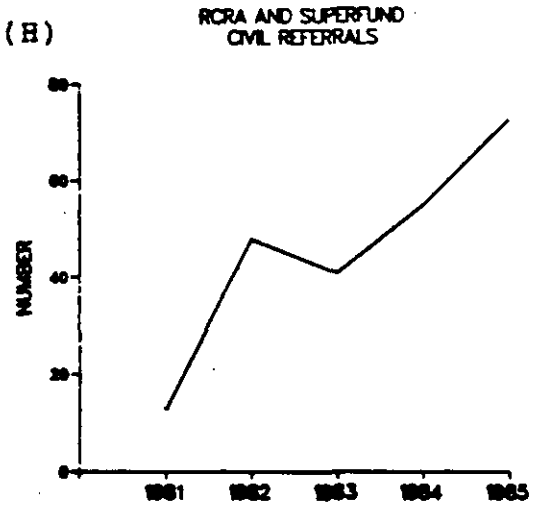
Additional progress was made in Superfund and RCRA enforcement activity in FY 1985 over the previous year. Under Superfund, in FY 1985, 39 enforcement managed RI/FS were initiated as compared to 35 in FY 1984. By the end of FY 1985, 160 administrative orders had been issued, a 17% increase over the 137 issued in FY 1984. For RCRA, 525 administrative complaints and consent agreement and final orders were issued in FY 1985. This is the second highest number in the last 5 years (graph G).

Under the Superfund program, 54 civil referrals were made in FY 1985, representing a 38% increased over the previous year. In FY 1985, 19 RCRA civil cases were referred compared to 16 in FY 1984. RCRA and Superfund combined for a total of 73 civil referrals. This is the highest number of referrals in the Agency's history (graph H). There were 22 RCRA criminal referrals (50% of all criminal referrals) and 1 Superfund criminal referral in FY 1985.

(G)



(H)



TSCA Enforcement Activity

In FY 1985, the Regions nearly doubled the number of administrative complaints, the primary enforcement tool of the program, issued in FY 1984. A total of 733 administrative complaints were issued in FY 1985 compared to 376 in FY 1984. The increase resulted from the Asbestos-in-Schools program, which issued 443 (60%) of the complaints in FY 1985. There was a total of 6 civil referrals in FY 1985, compared to 7 in FY 1984. Also, in FY 1985, 5 criminal cases were referred.

FIFRA Enforcement Activity

The Regions initiated 236 administrative complaints for significant violations in FY 1985, only slightly below the total of 272 in FY 1984. There were 11 civil judicial referrals in FY 1985 and 1 criminal referral from the Regions. In FY 1985 the States conducted 52,409 compliance inspections and took 8,899 enforcement actions.

The enforcement activity for TSCA and FIFRA combined, 969 administrative complaints and 11 civil referrals, is the highest level of activity in the last five years.

V. Highlights of Key Cases and Precedents

Each enforcement action, be it administrative, civil or criminal judicial is important in bringing a violator back to compliance, deterring future violations by that source or others and establishing useful legal precedent. Following are highlights from key cases which go beyond just success in an individual action. Examples are selected from each media program.

Air Enforcement

In FY 1985, EPA continued to be successful in litigating and settling major air enforcement cases while also establishing some valuable legal precedents and obtaining large penalties for cleanup. Cases 1 and 2 below are examples:

Case 1: In September, a U.S. district court in Texas (Region VI) imposed one of the largest civil penalties in EPA history against Chevron, Inc., for Clean Air Act violations of prevention of significant deterioration (PSD) requirements, sulfur dioxide emission requirements, and permit requirements in the Texas State Implementation Plan. Over $4.5 million was awarded to the United States and over $1.5 million to the State of Texas and City of El Paso. Without specifically noting that it was doing so, the court assessed penalties for violations that occurred prior to EPA's issuance of the Notice of Violation (NOV). The ruling may help to assess such penalties in future cases.

Case 2: In July and August, EPA and LTV Steel Corporation filed three settlement documents in federal court resolving environmental litigation involving four of the company's iron and steel-making facilities in Ohio and Illinois (Region V). The company was required to spend a total of approximately $4,000,000 for additional air and water pollution control equipment to achieve compliance, pay $1,000,000 in civil penalties and spend $2,225,000 for environmentally beneficial projects. Several governmental entities and a citizens group joined in the settlement.

Enforcement of volatile organic compounds (VOC) emission limitations in State Implementation Plans has been identified as a top priority by EPA's Office of Air and Radiation. As a result, more VOC enforcement cases were initiated in FY 1985. Approximately one-third of the Clean Air Act stationary source civil judicial enforcement docket in FY 1985 was made up of VOC enforcement actions. In addition to judicial actions, EPA was also active in administratively enforcing compliance with VOC emissions requirements. Approximately one-half of the section 120 administrative enforcement actions pending at the end of FY 1985 concerned violations of VOC requirements. Case 3 below was the first adjudicated §120 action which EPA won and is a typical example of a successful administrative action in this area:

Case 3: On July 19, and Administrative Law Judge issued an Initial Decision in favor of EPA with regard to liability initiated under Section 120 of the Clean Air Act, against American Cyanamid. In September 1984, Region VI issued a Notice of Noncompliance (NON) to the company for violations of the Louisiana State Implementation Plan (SIP). The NON alleged that volatile organic compound emissions were not being controlled by any means set forth in the SIP. The company petitioned for reconsideration on grounds that it was in compliance with the SIP by virtue of a "bubble" that had been approved by Louisiana. The bubble has been submitted to, but not approved by EPA. The judge held that since EPA had not approved the bubble as a SIP revision, the company was, in fact, in violation of the SIP at the time the NON was issued. The judge also held that a Section 120 proceeding may proceed even when EPA has failed to approve or disapprove a proposed SIP revision for more than four months after submittal by the State.

Case 4 is an example of one of EPA's successful efforts in the air criminal enforcement program in FY 1985:

Case 4: After three days of trial, on August 8, 1985, Albert Mardikian pled guilty to nine felony counts of making false statements to EPA and one felony count of mail fraud. Garabet Mardikian pled guilty to three counts of mail fraud on the same day. The charges arose out of a scheme by the defendants and their company, the largest U.S. importer, modifier and emissions tester, to falsely certify the non-conforming ("gray market") motor vehicles imported into this country were modified to meet U.S. emission standards. Subsequently, Albert Mardikian was sentenced to 5 years imprisonment (with all but 6 months suspended), 5 years probation, and to do a minimum of 8 hours of community service per week for 5 years teaching under privileged individuals to improve job seeking skills, and must place at least 20 individuals per year in jobs. He must also make restitution. Garabet was sentenced to 3 years imprisonment (with all but 30 days suspended), 3 years probation and to perform community service for 5 years.

Water Enforcement

Case 1: In FY 1985, EPA successfully settled a nationally-coordinated pretreatment case for violations by an industrial user of the newly effective federal categorical pretreatment standards for electroplaters. The consent decree required Chrysler Corporation to establish a compliance schedule for several of its plants across the country and pay a civil penalty of $1.5 million, one of the largest cash settlements in the history of EPA's water enforcement program. In all, EPA filed actions against 26 industrial users who failed to comply with categorical standards.

Case 2: Region II undertook a major initiative during FY 1985 to enforce industrial user pretreatment standards in the New York metropolitan area. The initiative involved the identification of and referral for civil action against 28 integrated and non-integrated electroplating and metal finishing facilities. These facilities discharged cyanide and various heavy metals, including lead and cadmium into publically owned treatment works. The cases were filed in FY 1986.

In FY 1985, the Office of Enforcement and Compliance Monitoring and the Office of Water began a jointly-sponsored case initiative to support the National Municipal Policy and its July 1, 1988 deadline. Schedules have been coordinated with the Regions, and EPA is planning for a group of referrals during the first quarter of FY 1986 with participation by the majority of Regions.

Case 3: In Region I's Boston Harbor cleanup litigation, EPA won a judgment against the Metropolitan District Commission and the Commonwealth of Massachusetts, establishing their liability for violating NPDES permit provisions. Of particular significance was the court's rejection of the defendants argument that there was no liability for violating secondary treatment requirements because defendants were pursuing a Section 301(h) waiver. This marked the first time that a court ruled on this issue in an enforcement case. The total cleanup involved will cost approximately $2 billion.

Case 4: In FY 1985, Region VI settled a total of nine major municipal cases in Arkansas, Louisiana and Texas. These settlements require compliance with the appropriate NPDES permit limitations on or before July 1, 1988, with or without Federal Grant Funds. The cumulative up-front penalties from these settlements will exceed $660,000, including three of the largest cash penalties ever to be collected from municipalities in the NPDES program. In two Louisiana cases alone the settlements require construction that will contribute to the clean up of several coastal oyster beds, currently closed to harvesting due to high bacterial counts in the estuaries.

Case 5: On September 6, Eric D. Roth, the owner of a private water testing laboratory, was sentenced to 8 months imprisonment on two misdemeanor counts of falsifying Discharge Monitoring Reports in violation of Section 309(c)(2) of the Clean Water Act after pleading guilty. He also pled guilty to one felony count of making a false statement. Sentencing on the felony count was suspended pending Roth's completion of 5 years probation and 200 hours of community service.

Hazardous Waste Enforcement

In FY 1985, several nationally significant hazardous waste cases were litigated and/or settled with major corporations such as the following cases (Region V served as the lead region in Cases 1, 2, and 3):

Case 1: U.S. v. Chem-Dyne, Inc. involved a multi-party long-term cleanup of significant groundwater contamination. This was one of the first decrees to provide for long-term remedial work for groundwater contamination.

Case 2: U.S. v. Westinghouse required $1 million in reimbursement for past response costs in evacuating PCB-contaminated waste from six sites plus incineration of waste in a fully permitted incinerator. EPA estimated the value of the negotiated remedy at $75 to $100 million.

Case 3: U.S. v. Berlin and Ferro required 87 settling defendants to perform extensive surface removal action estimated by EPA to cost $14 million and the reimbursement of $350,000 to U.S. for past costs.

Case 4: In the Diamond Shamrock case EPA received 100% of $2 million in past costs.

Further examples of hazardous waste enforcement accomplishments in FY 1985 include the following examples:

Case 5: Region X obtained it's first criminal conviction resulting in imprisonment of a company's president. In FY 1985, the Department of Justice obtained a twelve-count indictment against the president of Wyckoff Company and three supervisors for alleged conspiracy, disposing of hazardous waste without a permit, making false statements to the government, and discharging pollutants without a permit. The case resulted in fines, imprisonment, and sentences to perform community service while on probation.

Case 6: Region I was involved in the first liability trial involving multiple off-site generators. In the case, U.S. v. Ottati and Goss, et al., the court found that the generator defendants and owners and operators of the sites were jointly and severally liable for costs incurred at the sites and for harm that may result from the sites, and that such liability is strict.

Case 7: In Region VII, the National Industrial Environmental Services Facility, a subsidiary of Chem Waste, entered administrative orders on consent under CERCLA and RCRA, committing the company to approximately $12.5 million dollars in corrective action. The cleanup plan requires development and implementation of groundwater extraction wells, monitoring wells, and closure of surface impoundments. The orders were issued on May 24, 1985, and implementation has commenced, with groundwater extraction activities underway.

Case 8: On November 14, 1984, a 14 count indictment was filed charging John Suerth, president of QuVoe Chemical Industries, Inc., with transportation of hazardous waste to an unpermitted facility; treatment, storage and disposal of hazardous waste without a permit, and submitting a false statement to the government. After a plea agreement, the court on May 24, 1985, sentenced Suerth to 9 months imprisonment plus 5 years probation and a $25,000 fine. This is the longest actual jail time (not suspended) imposed on an individual from a case investigated and referred by the Agency.

Pesticides and Toxic Substances Enforcement

In FY 1985 total enforcement activity for the Toxic Substances and Pesticides programs was the highest it has been in the last five years including the filing of two criminal cases. Several policy and management initiatives were also undertaken in FY 1985 to enhance this effort.

Under FIFRA, emphasis was given to the use and enforcement of Stop Sale, Use and Removal orders and tracking data call-ins in keeping with the Agency priority on controlling the use of existing chemicals. A new National Evaluation Protocol was developed by Headquarters to evaluate enforcement programs in primacy states.

For several years, the bulk of TSCA cases has been composed of PCB marking, disposal, and storage violations. In FY 1985 such complaints accounted for only about 30% of total cases. EPA caseload has been expanded by the dramatic increase in the Asbestos-in-Schools program and the developing enforcement programs for the recently implemented sections of TSCA. Development of these new areas continue to raise complex and novel enforcement

issues. Thirty million dollars in total penalties for TSCA and FIFRA violations were assessed in FY 1985 with over $6 million collected on completed cases. This record amount included several precedentially large penalties. The largest civil administrative penalty in the history of EPA was collected in FY 1985. In addition, for the first time, full scale environmental audits were included in Agency case settlements. Among the most significant TSCA civil administrative actions in 1985 were the following:

Case 1: On December 19, 1984, an Order was issued enforcing the Administrative Consent Agreement entered by EPA, the State of Alabama and Chemical Waste Management, Inc. (CWM) in resolution of a 1984 enforcement action involving violations of PCB storage and disposal rules. The Agency's action alleged that the company illegally stored PCB's at its Emelle, Alabama facility beyond the one year time limitation of TSCA and that the company violated several RCRA monitoring provisions. The litigation constitutes the most comprehensive administrative enforcement action taken under TSCA. The Consent Agreement establishes several important and precedential provisions. The Agreement requires the company to perform a full-scale environmental audit of its storage and disposal facilities, the first such requirement to be obtained by the Agency under any statute. The settlement assesses a precedentially large penalty of $600,000, with $150,000 accruing to the State of Alabama, and requires compliance-related performance costing about $14 million. In addition, the company is required to meet a schedule for the disposal of 2.8 million gallons of PCB's, conduct an innovative technology demonstration for mechanical waste solidation, establish a compliance officer program, and provide a dioxin sampling, analysis and disposal plan.

Case 2: In a settlement against Diamond Shamrock Corporation, (Irving, Texas) EPA obtained a penalty of $900,000, the highest single penalty ever collected under TSCA §5 Premanufacture Notification requirements. In addition, the company will conduct TSCA compliance audits at forty-three facilities nationwide.

Case 3: In September, OECM, working closely with Region V, negotiated a Consent Decree and Final Order in resolution of a 1982 FIFRA enforcement action involving misbranded hospital disinfectants manufactured and sold by Huntington Laboratories, Inc. In this action, EPA charged that seven batches of the tested products, Quanto and Hi-Tor, failed to meet federal standards for control of organisms when tested in accordance with the A.O.A.C. Use Dilution Test at EPA's Beltsville, Maryland

laboratories. The company vigorously contested the Agency's enforcement action and challenged the accuracy of the A.O.A.C. Use Dilution Test Method. Huntington spent over $400,000 dollars contesting EPA's data and test methodology. In settlement, the company agreed to cease manufacture of Quanto and Hi-Tor and to register new and more effective formulations of the products using a modification of the disputed A.O.A.C. test method acceptable to EPA. In addition, the company agreed to pay a civil penalty of $5,000.

The settlement is significant for a number of reasons. First, substantial public health benefits accrue from the elimination of ineffective products. The company's products command over 40% of the domestic hospital disinfectant market. Second, the Agency's future enforcement efforts were enhanced by the pioneering coordination and involvement of the Registration Division of the Office of Pesticides Program and OECM. Third, future litigation will be eliminated by the agreement between industry and EPA in this case on the need for refining and modifying the A.O.A.C. Use Dilution Test to include certain scientific refinements.

Case 4: Chemical Waste Management (Vickery, Ohio) - This settlement, negotiated by EPA Region V staff, concerned TSCA and RCRA violations. These violations included the illegal sale and distribution in commerce of over 6,000,000 gallons of PCB-contaminated waste oils. The settlement required the suspension of additional waste receipts at the facility for a period of 10 months, construction of a toxic chemical waste landfill, implementation of a comprehensive groundwater monitoring program, an environmental management audit, and the payment of a civil penalty in the sum of $2,500,000. This is the largest civil administrative penalty ever collected in the history of EPA.

Case 5: Commonwealth Edison Corporation -- Chicago, Illinois. This settlement, negotiated in January, 1985, by Region V staff, settled an administrative penalty action involving improperly disposed of PCBs, which had been spilled from polemounted electrical capacitors. Edison decontaminated each spill site, demonstrated the cleanup levels through verification sampling and analysis, and paid a civil penalty of $80,000, the largest penalty ever paid by an electrical utility.

In addition to the above enforcement actions brought in FY 1985, the Agency also undertook four enforcement initiatives in areas of high priority to the toxics and pesticides program. In June, EPA simultaneously filed six civil administrative complaints under TSCA's PMN requirements seeking penalties ranging from $6,000 to $3.7 million. The simultaneous filings of these actions by Headquarters and by Region V were intended to promote the visibility of the Agency's chemical assessment program.

A similar effort followed in July with respect to TSCA reporting requirements. As part of a Headquarters-coordinated effort, EPA regional personnel filed administrative cases assessing civil penalties totaling $160,000 against six companies for reporting violations.

These cases all concerned major violations of the reporting requirements with respect to commercial and industrial uses of asbestos. These were the first such cases ever brought by EPA concerning asbestos reporting under TSCA.

The Agency followed with two additional enforcement initiatives in September, 1985, both undertaken by Region II attorneys. First, the Region filed three civil administrative actions under TSCA seeking total penalties of $75,000. Section 4, a test rule, requires manufacturers to submit notices of intent to test shipments of certain chemicals or to submit an application for exemption from the test rule at the time of manufacture. These cases represented the first EPA enforcement actions ever taken under TSCA section 4.

Also in September, Region II filed twelve administrative complaints seeking total penalties of $90,000 for failure to comply with the import certification requirements of TSCA. This provision requires a chemical importer to either certify the compliance of shipments with TSCA requirements, or to declare that shipments are exempt from TSCA requirements. These were the first enforcement actions to be taken by the Agency for import violations.