United States Environmental Protection Agency

Office of Enforcement and Compliance Monitoring

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EPA

Summary of Enforcement Accomplishments

Fiscal Year 1986

SUMMARY OF ENFORCEMENT ACCOMPLISHMENTS

Fiscal Year 198~~6~~7

Office of Enforcement and Compliance Monitoring
U.S. Environmental Protection Agency
Washington, D.C.

~~April 1987~~ 8

FOREWORD/ACKNOWLEDGEMENT

The purpose of this report is to summarize the combined enforcement and compliance accomplishments of EPA, the Regions and the States in Fiscal Year 1986. 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 data management systems. The principal author 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.

SUMMARY OF ENFORCEMENT ACCOMPLISHMENTS REPORT

EXECUTIVE SUMMARY i

I. ~~Building Record Levels of~~ The National Enforcement PROGRAM [redacted] 1

[redacted] Building a Stable and Predictable National Enforcement Program 4

~~III.~~ II. ~~Undertaking~~ Enforcement Initiatives 9

~~IV.~~ ~~Improving~~ Strategies and ~~Developing~~ Guidance ~~for Compliance and Enforcement~~ 11

III ~~V.~~ ~~Concluding~~ Major Enforcement Litigation and ~~Establishing~~ Key Legal Precedents 17

IV ~~VI.~~ ~~Achieving Record Levels of~~ Enforcement Actions and Successful Resolution of Significant Violations in Specific Media Programs 30

EXECUTIVE SUMMARY

In Fiscal Year 1986, EPA sustained the record level of enforcement activity established in FY 1985. In FY 1986, state and federal environmental civil, criminal and administrative enforcement actions continued to be undertaken at record levels. During the year, the Agency continued to achieve high levels of compliance by enforcing the environmental laws vigorously, consistently and equitably to achieve the greatest possible environmental results. This was achieved in part by putting in place more systematic approaches to managing EPA's compliance monitoring and enforcement programs to ensure more stable, predictable and timely responses to violators and assuring effective deterrence to future violations.

Fiscal Year 1986 was a banner year for national enforcement activity. In FY 1986, the Agency referred 342 judicial actions to the Department of Justice, compared to 276 last year. The Regions referred an all time high number of 386 civil cases to EPA Headquarters. The Criminal Enforcement Program experienced its most successful and productive year since the program commenced by referring an all time high of 45 criminal cases to DOJ.

One of the ways the Agency continued to build a stable enforcement program was by improving the State/EPA enforcement relationship. The Policy Framework for State/EPA Enforcement Agreements, which serves as a blueprint for the State/EPA relationship, was revised in FY 1986 to improve upon the basic guidelines necessary for an effective working partnership with the States. In FY 1986, a report on implementation of timely and appropriate (T&A) enforcement response guidance was developed and concluded that the guidelines are generally having a favorable impact. Also, EPA strengthened the relationships between EPA, State Agencies and the State Attorneys General offices by assisting in the publication of a national environmental journal and joint sponsorship of several seminars. The Agency revised a draft report on Federal Penalty Practices during the year. The study concluded that the number of cases involving penalties and the size of penalties is increasing. EPA also developed a data base to describe and provide a profile of new civil referrals.

In FY 1986, the Agency implemented and continued several multi-case enforcement initiatives in priority areas. These initiatives included the Asbestos NESHAP, Volatile Organic Compounds (VOC), the National Municipal Policy, Underground Injection Control and Public Water Systems.

Several compliance and enforcement strategies were designed and implemented during the year. The Loss of Interim Status Enforcement Strategy supplemented earlier guidance that outlined major elements of the enforcement strategy. The Office of Water Enforcement and Permits (OWEP) issued the Pretreatment Compliance Monitoring and Enforcement Guidance which is intended to be a comprehensive guide for POTW implementation of the pretreatment program. During the year, OECM issued the EPA Guidance on the Inclusion of Environmental Auditing Provisions in Enforcement Settlements. OECM also issued draft guidance on the use of alternative dispute resolution, third party neutrals, in EPA enforcement actions.

Major enforcement civil, criminal and administrative cases were concluded during FY 1986. Following is a list of highlights of some key precedents established in FY 1986:

- One of the largest penalty settlements to date for EPA for violations of the Clean Water Act by a large municipality;

- The first agreement in the country that gives a State authority to regulate the management of radioactive mixed wastes;

- The first case in which a defendant was charged with knowingly endangering human health or life under RCRA;

- The first case in which a public official has been charged and convicted of federal environmental crimes;

- The first case to criminally convict for a violation of an Air State Implementation Plan;

- One of the first cases to construe the responsibilities of an owner or operator of a building under the asbestos regulations; and,

- Successful action against the largest uncontrolled source of sulfur dioxide in the western United States.

- The most significant criminal sentences (includes imprisonment) to date for asbestos removal and handling violations under the Clean Air Act.

- The first Federal case charging violations of the Safe Drinking Water Act's underground injection control program.

- Completion of the Federal pretreatment enforcement initiative by the end of which virtually all major municipalities had adopted acceptable local pretreatment programs regulating the discharge of industrial wastewater into municipal sewage treatment systems.

During FY 1986, EPA/States achieved successful resolution of significant violators and set record levels of enforcement actions in specific media programs. Except for those programs with changes in their significant noncomplier definition, most programs returned a higher percentage of significant violators to compliance compared to FY 1985.

I. SETTING RECORD LEVELS OF NATIONAL ENFORCEMENT ACTIVITY

National Enforcement Activity

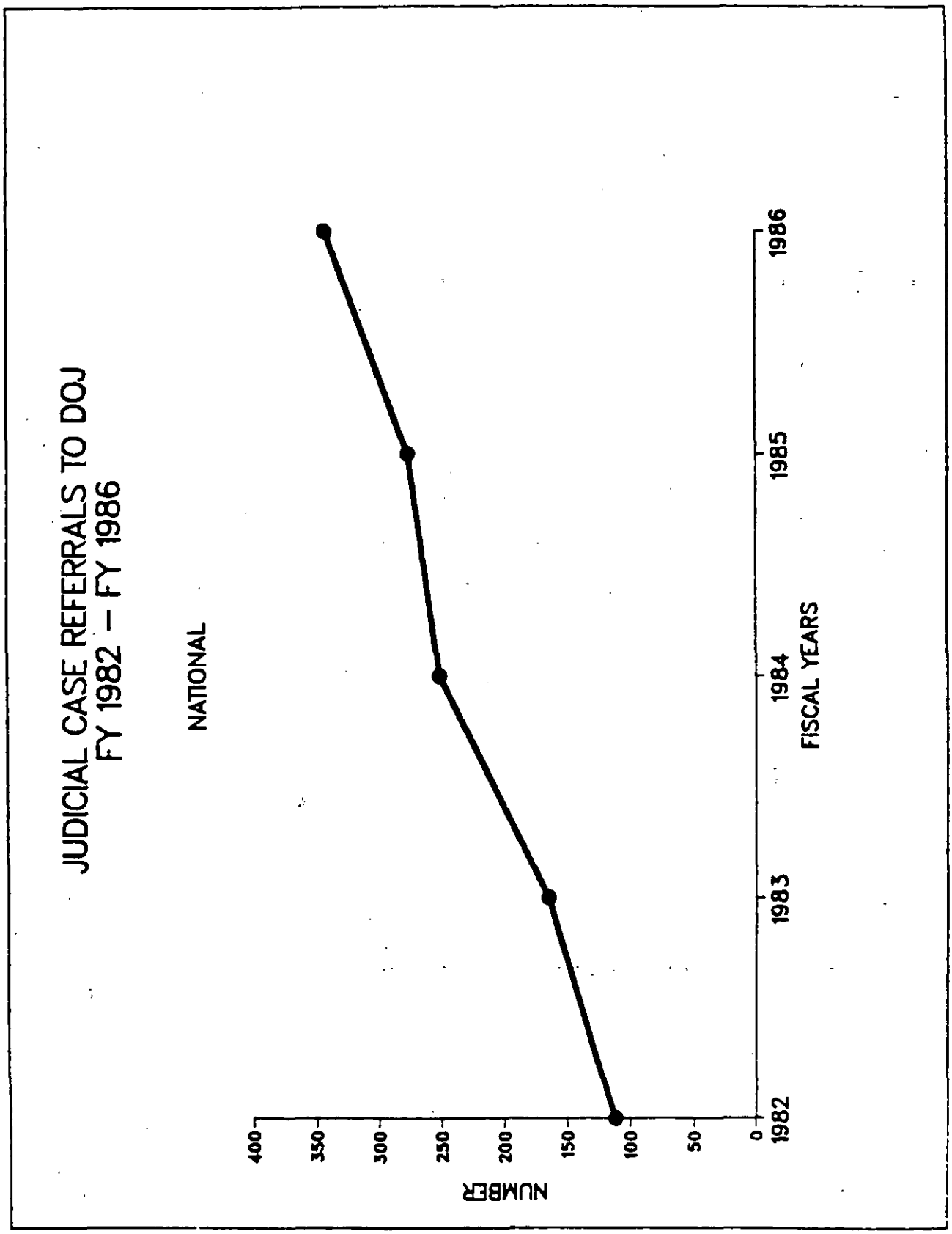
Over the past 15 years, Congress has passed a number of environmental laws and EPA intends to ensure the protection of human health and the environment to the extent that the laws provide. EPA has significantly increased its enforcement efforts to put the regulated community on notice that the Agency will not tolerate violations of the nation's environmental laws.

In Fiscal Year 1986, the Agency referred 342 judicial cases to the Justice Department, compared with 276 last year (see page 2). Cases involving violations of the federal clean air and water acts accounted for over 200 of these referrals; over 80 case referrals involved violations under federal hazardous waste laws. The Department of Justice filed 245 cases in 1986 which were referred by EPA. The year before, Justice filed 214 cases. The States referred 543 cases, compared to 513 last year.

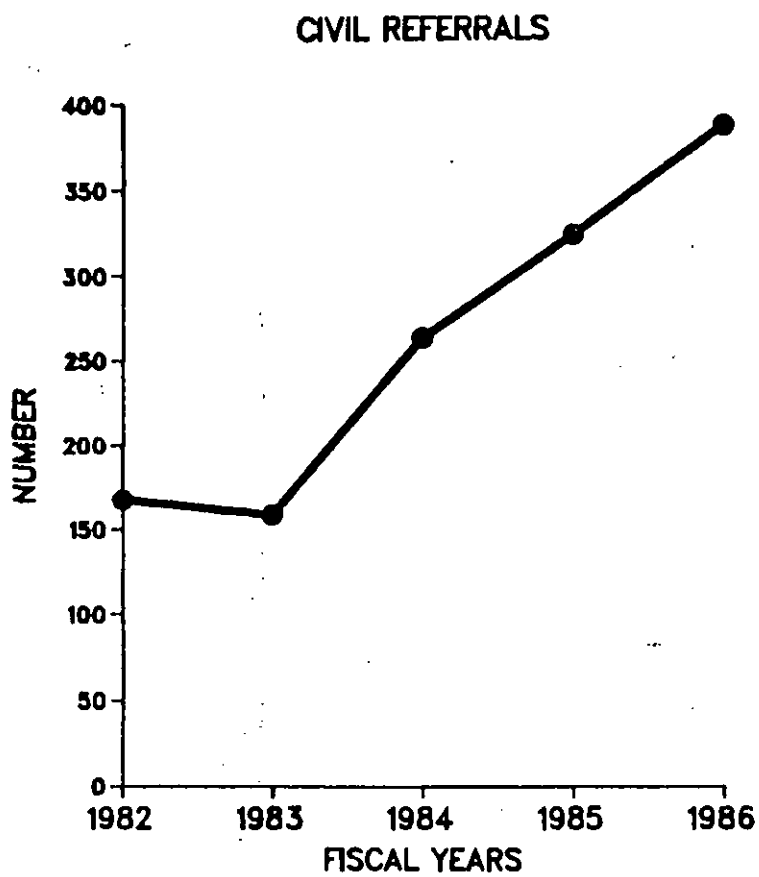
The overall level of compliance and enforcement activity continued at record levels in FY 1986. By the end of the year, 2,603 administrative orders had been issued by EPA. This is the one highest number of administrative orders issued since 1982 (see page 3). Administrative enforcement actions by States also increased compared to last year from 3,978 to 4,877.

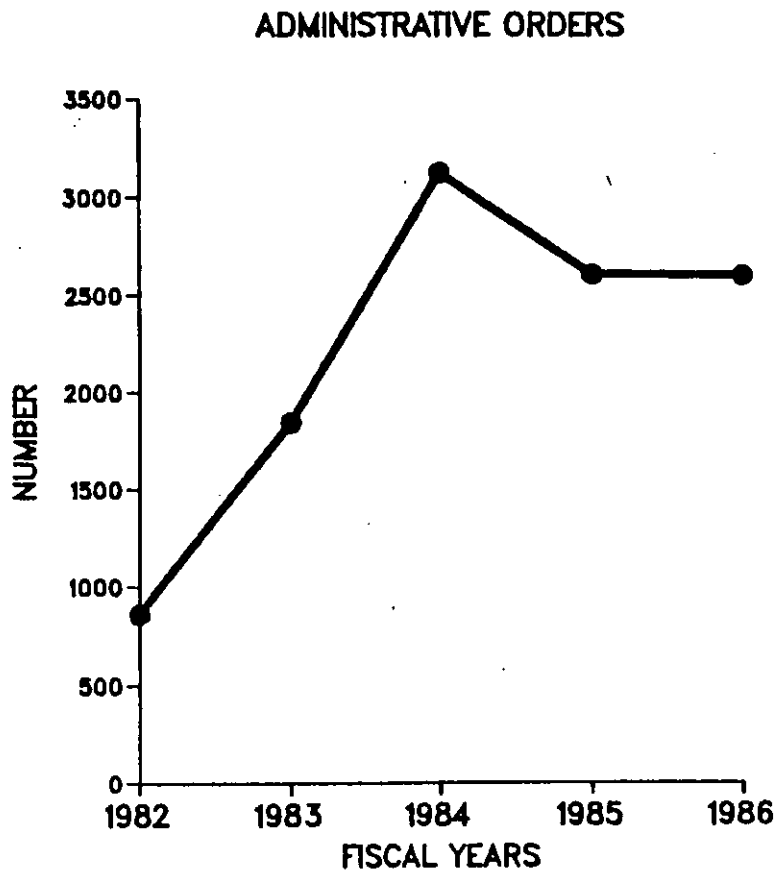
In FY 1986, the Regions referred the highest number of civil cases in the Agency's history (page 3). The national figure of 386 civil referrals represents an increase of 20% over FY 1985 and includes six air mobile cases. Since 1982, the number of civil cases referred by the Regions has more than doubled. Civil referrals are those cases referred by the Regions to EPA Headquarters and direct from the Regions to the Department of Justice.

The best measure of accomplishment of the Criminal Enforcement Program is the success of its investigations to seek and uncover environmental crime and bring those responsible to justice. Using this measure, the Program experienced its most successful and productive year since the Program commenced.


JUDICIAL CASE REFERRALS TO DOJ
FY 1982 – FY 1986
NATIONAL
NUMBER
400
350
300
250
200
150
100
50
0
1982
1983
1984
1985
1986
FISCAL YEARS

NATIONAL ENFORCEMENT ACTIVITY
FY 1982 – FY 1986





In Fiscal Year 1986, the Agency referred 45 criminal cases (an all time high) to the Department of Justice (DOJ) for prosecution, compared to 36 last year. There were 41 criminal referrals to EPA Headquarters from the Offices of Criminal Investigations and the Regions compared to 44 last year. Criminal charges were filed against 94 defendants by DOJ for environmental crimes (which includes a very small number of referrals from other federal agencies). The year before only 40 such charges were filed and 123 in all previous years combined. Sixty-seven defendants were convicted or entered guilty pleas this year, compared with 37 last year and 109 in all previous years. This and past year's investigative activities resulted in the federal courts imposing fines totalling $1.9 million against environmental criminal defendants, and prison sentences totalling more than 124 years, of which over 31 years will be served (the remaining years suspended) in Fiscal Year 1986.

It is also important to note that it is EPA's and DOJ's policy whenever appropriate to charge responsible individuals at the highest corporate level, rather than merely charging the corporation, as is done in most civil enforcement cases. The possibility of serving a prison term eliminates the corporate notion of writing-off penalties as merely a cost of doing business. Of the 94 defendants charged in FY 1986, 66 defendants were individuals. Of those 66, there were 25 presidents or owners of firms, 13 vice-presidents, 6 directors or other officers, 7 managers, 3 foremen, 3 supervisors, 1 chief chemist and 7 other employees charged.

The same is true with respect to pleas and convictions of environmental crimes in FY 1986. Of the 67 pleas and convictions, 22 were corporations. Of the remaining 45 convictions, there were 17 presidents or owners, 8 vice-presidents, 4 directors or other officers, 5 managers, 2 foremen, 1 supervisor, 1 chief engineer, 1 chief chemist and 6 other employees convicted.

II. BUILDING A STABLE AND PREDICTABLE NATIONAL ENFORCEMENT PROGRAM

State/EPA Relationship

During FY 1986, EPA continued to enhance the State/EPA enforcement relationship and build on the solid foundation established over the past three years. The Policy Framework

for State/EPA Enforcement Agreements, originally issued in 1984, along with program-specific implementing guidance, will continue to serve as the blueprint for the State/EPA enforcement relationship. The Policy Framework was revised and reissued in August of 1986, so that there is a comprehensive document that integrates all the related guidance. The revisions are primarily intended to incorporate addenda developed over the past two years in the areas of oversight of state civil penalties, involvement of the State Attorneys General in the enforcement agreements process, and implementation of nationally managed or coordinated cases. Through the process of revising the Policy Framework, with the assistance of the Steering Committee on the State/EPA Enforcement Relationship, EPA and the States clearly reaffirmed that the basic approaches put in place in 1984 for an effective working partnership are sound and that all parties continue to be committed to its effective implementation.

The Regions and States have State/EPA Enforcement Agreements for FY 1987 in place for all programs and all States. Changes in the basic agreements focused on implementing the new areas covered by the revised Policy Framework, improving the implementation and monitoring of timely and appropriate enforcement response and clarifying the involvement of the States in the Federal facilities compliance process.

A major activity in FY 1986 was the development of a report by each of the three major programs (RCRA, NPDES, and Stationary Air) on the implementation of the timely and appropriate enforcement response guidance that was set in place in 1984. The report addressed the extent to which both EPA and the States are meeting the established timeframes and taking the appropriate action. In summary, the report shows that EPA and the States have made a good start in implementing the timely and appropriate enforcement response system and that the guidelines are generally having a favorable impact. A wide variation exists among the three programs in meeting the established timeframes. The NPDES program has been the most consistent in meeting its timeframes (75%), followed by RCRA (46%) and Air (22%).

These differences appear to depend primarily on the length of the timeframe established (it varied from a possible 180-270 days in NPDES to 90 days in RCRA). When performance is compared across programs based on a set number of days (approximately 270 days) it took to formally respond to the violations, the results are: NPDES 75%; RCRA 72%; and Air 39%, (although 79% were addressed by the time of the report). It appears that the State/Federal partnership in this area is also working well, with the States' performance in meeting the timeframes in each program comparable to EPA's. EPA sought penalties in 93% of its enforcement actions for RCRA and 81% of the Air actions; while the States sought penalties in 49% of the enforcement actions for RCRA and 62% of the actions for Air.

In addition to the Agency's activities to strengthen the relationship between EPA and the State environmental agencies, the Agency tried to improve the ties between the State Agencies and the State Attorneys General and between EPA and National Association of Attorneys General (NAAG) and the State AGs. The revised Policy Framework encourages the Regions and State Agencies to improve the involvement of the State AGs in the enforcement agreements process.

OECM has also worked closely with the NAAG to increase awareness by the AGs of environmental enforcement issues. As part of an effort to exchange information among the various agencies involved in environmental enforcement, the publication of the National Environmental Enforcement Journal was started in FY 1986. This Journal reports major case decisions and settlements, indictments, federal enforcement policy, etc. It is distributed within EPA, DOJ, the U.S. Attorneys, State AGs, State regulatory agencies, etc., and is an important tool in developing stronger and more coordinated environmental enforcement efforts. With EPA assistance, NAAG has also conducted a series of seminars on waste oil enforcement which brought together both the legal and technical staffs, in an effort to develop a more cooperative and coordinated enforcement program.

Federal Penalty Practices

During FY 1986, OECM revised the draft report on Federal Penalty Practices to incorporate FY 1985 data. This study of federal penalties concluded through FY 1985 revealed that the percentage of cases involving a final penalty is increasing in nearly all programs and that the size of typical penalties is also increasing. It appears that the 1984 Uniform Penalty Policy has, in part, led to greater use of penalties. To illustrate, the draft analysis revealed that nearly one-third of all federal penalties were assessed in Fiscal Year 1985 (excluding mobile source penalties which will be added to the final report). A separate study was completed by OECM-Water in FY 1986 penalties under the NPDES program. This study revealed further, very significant increases in the size of typical penalties compared to 1985 and a large increase in the percentage of cases which were concluded with a penalty.

Strategic Profiles Data Base

OECM began developing a data base in FY 1986 to describe the major components of civil referrals, including both the main elements of the case (e.g., the types of program violations) and the major process-related elements which can influence the referral process (e.g., whether program-specific "timely and appropriate" requirements were met). This "strategic profile" data base will eventually be used during the annual strategic planning cycles, and during Regional and national program reviews, to help ensure that the civil enforcement docket continues to consist of a good mix of cases which reflect program priorities. The data base will become fully operational in FY 1987.

Improving Inspector Training and Development

The Deputy Administrator launched an Agency-wide Work Group in Inspector Training and Development, led by the Office of Enforcement and Compliance Monitoring, to establish the objectives and policy for inspector development applicable to all agency programs and to create a framework for more systematic training of EPA's field investigative personnel engaged in compliance and enforcement-related field activities. The group is addressing policy and implementation issues such as: the scope and purpose of the program, career paths and grade levels for EPA employees, long-term planning process

for cross-media and media specific training, training of EPA contract inspectors and States. An Agency policy should be issued by FY 1988, which will establish a consistent and systematic approach to training and development and will increase the credibility and effectiveness of our compliance monitoring programs. A generic, basic training course for all EPA inspectors, currently being developed by an OECM-chaired work group, will be pilot-tested next year.

Air Mobile Sources Enforcement Program

EPA's Mobile Source air enforcement activity experienced a major shift in program focus during FY 1986. Oversight of petroleum refineries has been expanded to assure compliance with the Lead Phasedown regulations while tampering enforcement activities have been augmented. An increased emphasis has been placed on testing in-use light-duty trucks to determine their compliance with the more stringent emission standards while new heavy-duty engines were tested on the production line for the first time.

Because of concern over violations of the lead phasedown regulations, the Agency has significantly shifted its focus to expand enforcement of the Lead Phasedown regulations during FY 1986 by instituting a refinery inspection/audit program. The office will continue that shift even further during FY 1987. These audits are critical components of efforts to assure compliance with the regulations. They are resource intensive, but will help assure that the office uncovers any violations of these regulations. Historically, such violations have resulted in multi-million dollar proposed penalties with the potential for criminal referrals as well. As a result of Lead Phasedown regulations, Federal, State and local enforcement activities and expanded refinery oversight, there has been a significant reduction in the rate of contaminated unleaded gasoline found at retail gasoline outlets. This reduction has resulted in a similar reduction, therefore, in the number of Notices of Violation (NOV's) issued by EPA.

During this transition, the Agency has been able to offset the reduced fuels NOV's by enhancing its tampering enforcement activities for FY 1986 by issuing 73 NOV's with

proposed penalties of $1.4 million compared to 23 NOV's for $600,000 during FY 1985. Similarly, the Agency settled 352 cases with penalties of $1.4 million for FY 1986 compared to 285 with penalties of $570,000 for FY 1985.

III. UNDERTAKING ENFORCEMENT INITIATIVES

A major 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 1986, the Agency implemented and continued 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.

Asbestos Multi-Case Initiatives

On January 16, 1986, EPA filed 11 civil actions throughout the country for violations of the asbestos NESHAP (National Emission Standard for Hazardous Air Pollutants) which occurred during the demolition or renovation of buildings. The purpose of the coordinated filing was to increase public awareness of EPA regulations and their applicability to both contractors and building owners, and the initiative did receive considerable media coverage. To date, of the 11 cases filed, five have been settled, with penalties totaling $112,000.

Volatile Organic Compounds (VOC) Multi-Case Initiative

On June 30, 1986, EPA initiated Clean Air Act civil enforcement actions against eight metal coating facilities located in the Los Angeles Basin for violations of California State Implementation Plan (SIP) limits on VOC emissions. The purpose of the coordinated filing was to increase awareness

within the regulated community that VOC compliance is an EPA enforcement priority. (VOC emissions are precursors to the criteria pollutant ozone.) The cases are strategically important since the Los Angeles Basin is the worst ozone non-attainment area in the nation. Settlement agreements have been reached in four of the eight cases, with civil penalties ranging from $20,000 to $50,000.

National Municipal Policy (NMP)

The NMP enforcement initiative was undertaken to emphasize the Agency's intent to carry out the Policy and to underscore the need for noncomplying communities to agree to enforceable schedules to complete their requirements under the CWA. Beginning in August 1985, OWEP and OECM worked with the Regions to bring cases against the candidates for immediate enforcement. In March 1986, the effort climaxed with a press release and briefing at which the Agency announced the filing of actions against 15 faclities in five Regions. The impact of the initiative continued well after the press release and by the end of the fiscal year, 20 additional cases were brought against major NMP facilities. At the beginning of FY 1986, approximately 580 majors were not on an enforceable schedule. By the end of the fiscal year, over 500 schedules were established in permits, administrative orders, and over 50 in judicial orders.

Clean Water Act Industrial Pretreatment Enforcement Initiatives

In FY 1986, civil cases were filed in district court against twenty-seven Region II electroplating facilities located in the New York City metropolitan area. Each of these facilities had failed to comply with applicable pretreatment standards. This massive effort served notice to the industrial community that Region II was intent on obtaining timely compliance with pretreatment standards. Four of these cases were settled in FY 1986, or shortly thereafter, for penalties ranging from $24,000 to $82,500, recouping economic benefit in each of these cases. In addition to the Region II cases, in the first quarter of FY 1986, Region IX issued thirty-six pretreatment administrative orders, in cooperation with the County Sanitation District of Los Angeles County, to electroplating facilities which had failed to comply with the applicable pretreatment standards. This effort, and the publicity which it received, provided strong incentives for industrial users to achieve compliance.

Underground Injection Control (UIC) Enforcement Initiative

The Agency initiated the UIC Enforcement Initiative in FY 1986 to establish a Federal enforcement presence. By the end of FY 1986 there were 10 referrals for a program which had only one referral prior to FY 1986.

Public Water System Enforcement Initiative

EPA sponsored a public water system enforcement initiative designed to encourage State action against systems (mostly with fewer than 1,000 users) which have persistently violated Federal requirements for the past three years. Of the 200-plus target systems, by the end of FY 1986, EPA had either "resolved" the violations, given the State statutorily-required notice to take enforcement action, or taken Federal action against all but 16. Follow-through on this initiative will continue in FY 1987.

IV. IMPROVING STRATEGIES AND DEVELOPING GUIDANCE FOR COMPLIANCE AND ENFORCEMENT

Fiscal Year 1986 was the year in which the Agency continued to design and implement 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 1986.

Loss of Interim Status Enforcement Strategy

The Loss of Interim Status (LOIS) Enforcement Strategy was issued in October, 1985, to supplement the guidance on the Loss of Interim Status Provision for Land Disposal Facilities which was issued in FY 1985. The LOIS Enforcement Strategy was developed by the Office of Waste Programs Enforcement (OWPE) and the Hazardous Waste Division of OECM. The guidance

delineated four major elements of the enforcement strategy, including a communication strategy, an inventory of facilities, the targeting of facilities for priority enforcement, and evaluation of ground-water monitoring systems of facilities which retain interim status or submit closure plans.

Interpretation of Section 3008(h) of the Solid Waste Disposal Act

This guidance was developed and issued jointly by the Office of Solid Waste and Emergency Response (OSWER) and OECM in January, 1986. Section 3008(h) was added to the Solid Waste Disposal Act by the Hazardous and Solid Waste Amendments of 1984 to address environmental problems by requiring cleanup at facilities that operated or were continuing to operate subject to RCRA interim status requirements. The purpose of the guidance was to provide guidelines on the scope of Section 3008(h) and to summarize appropriate procedures for use of the Section 3008(h) authority.

Enforcement Management System

On February 27, 1986, the Assistant Administrator for Water signed the revised Enforcement Management System (EMS) Guide. The EMS Guide establishes the basic principles for compliance monitoring and enforcement within the Clean Water Act's NPDES program. The Guide had not been maintained, new concepts and policies have been incorporated into the basic management framework. The revised Guide requires that all NPDES administering agencies (EPA and State) develop their own written EMS and include procedures and controls needed to implement each principle in the EMS Guide. The Guide covers procedures for oversight of State NPDES programs, reviewing violations (Violation Review Action Criteria), determining appropriate responses to noncompliance (Enforcement Response Guide) and managing permit compliance and enforcement information.

Pretreatment Compliance Inspection (PCI) and Audit Manual for Approval Authorities

The PCI/Audit manual, which was issued July 1986, provides EPA and State pretreatment Approval Authorities with information and material on audits and inspections of approved local POTW pretreatment programs. The manual should assist Approval Authorities in providing effective oversight of approved

pretreatment programs under their jurisdiction. The PCI and audit procedures were consolidated into one manual because the preparation and follow-up steps for the two activities are similar. Separate checklists for conducting PCIs and audits are included. Audits and PCIs are complementary means of achieving effective pretreatment program oversight. Audits, which are more comprehensive and resource-intensive than PCIs, are most useful when conducted approximately one year after program approval and again during the POTWs five-year permit term. In cases where the POTW has failed to implement important aspects of its program, the audit may also provide an opportunity to determine whether enforcement action against the POTW is needed. PCIs are less resource-intensive than audits. The PCI focuses on the POTWs compliance monitoring and enforcement activities. Optimally, PCIs should be performed annually during the interim years between audits as part of routine NPDES municipal inspections. PCIs should be included in the compliance inspection plan developed between Regions and States.

Permit Compliance System (PCS) Policy Statement

The Permit Compliance System (PCS) is the national data base for the Clean Water Act's NPDES permitting and enforcement program. It serves as the primary source of NPDES information for EPA, NPDES States, Congress, and the public. The use and support of PCS by EPA Regions and NPDES States are crucial to the effectiveness and proper oversight of the NPDES program. The PCS Policy Statement, signed by the Assistant Administrator for Water, establishes for EPA and NPDES States the key management practices and responsibilities central to PCS' ability to contribute to the overall integrity of the NPDES program and the achievement of our long-term environmental goals. One of the requirements was to have Regions and States enter all required data into PCS by September 30, 1986 and then keep the data entry current. While the aim of the policy is a consistent approach across Regional and State NPDES programs, it retains flexibility for Regions and States to tailor agreements to the unique conditions of each State.

Guidance Concerning EPA Involvement in RCRA §7002 Citizen Suits

This guidance was issued in September, 1986 and was written to establish a procedure for systematic review of RCRA citizen suit notices and to provide guidance for EPA enforcement staff to use in deciding what involvement by EPA is appropriate when a notice of intent to file suit is received or when an action is filed under RCRA §7002.

Timing of CERCLA Cost Recovery Actions

This guidance, issued jointly by OECM and OSWER on October 7, 1985, provides guidance on when cost recovery action under CERCLA Section 107 should be initiated. Its purpose is to assist Regional offices in management of cost recovery actions.

Procedural Guidance on Treatment of Insurers Under CERCLA

This guidance was issued in November 1985 and focuses attention on the defense bar's efforts to look to insurance carriers for legal representation and indemnification in CERCLA enforcement cases. The guidance is intended to assist Regional offices in developing procedures for issuing notice letters, developing referrals, and tracking CERCLA enforcement cases that may include insurers as third party defendants.

Authority to Use CERCLA to Provide Enforcement Funding to States

This guidance issued by the Office of General Counsel (OGC) February 12, 1986, provided a broader definition of state enforcement activities which may be eligible for CERCLA funding. A draft addendum of March 26, 1986, identified a number of activities which might be among allowable costs.

Revised Hazardous Waste Bankruptcy Guidance

Issued on May 23, 1986, this guidance updates previous guidance on enforcement against bankrupt parties. The Agency's recent experience in CERCLA and RCRA enforcement against bankrupt parties identified the need for updated, revised guidance. Among the topics covered are specific criteria for evaluating the merits of a potential bankruptcy

referral, policy regarding settlement with bankrupt parties, and review of recent judicial decisions on the automatic stay, abandonment, discharge, and claims of administrative expenses.

Pretreatment Compliance Monitoring and Enforcement Guidance

In July 1986, the Office of Water Enforcement and Permits (OWEP) issued the Pretreatment Compliance Monitoring and Enforcement Guidance. This document is intended to be a comprehensive guide for POTWs to pretreatment implementation, particularly on-going compliance monitoring and enforcement activities. It provides a detailed discussion of:

1) establishing monitoring requirements for industrial users;
2) sampling and inspecting industrial users;
3) reviewing industrial user reports;
4) determining industrial user compliance status;
5) setting priorities for enforcement actions; and,
6) reporting progress to Approval Authorities.

Additionally, it establishes a definition of a Significant Industrial User for use by Control Authorities in targeting primary implementation activities and recommends a definition of Significant Noncompliance to be applied in evaluating industrial user performance in complying with effluent and reporting requirements as well as compliance schedules. This document provides POTWs with a basis for establishing and carrying out an effective program to monitor and enforce against industrial users who fail to comply with pretreatment standards--responsibilities which are new to most POTWs.

Clean Water Act Civil Penalty Policy

In February 1986, OWEP and OECM jointly issued the Clean Water Act Civil Penalty Policy to be used by EPA in calculating the penalty that the Federal government will seek in settlement of judicial actions brought under Section 309 of the Clean Water Act. This Policy was developed in response to EPA's Policy on Civil Penalties and a Framework for Statute-Specific Approaches to Penalty Assessments. This penalty policy is designed to promote a more consistent, Agency-wide approach to the assessment of civil penalties and will promote the goals of increasing the recovery of economic benefit of

noncompliance, providing a more fair and equitable treatment of the regulated community, and achieving a swift resolution of environmental problems and enforcement actions.

Administrative Order Authorities Under SDWA

The Safe Drinking Water Act Amendments of 1986 provided the UIC and PWS programs with new Administrative Order authorities. In 1986, ODW and OECM jointly developed all the necessary policies and guidelines to quickly begin to use these new authorities.

Revised PWS Compliance Strategy

During 1986, the PWS program evaluated its 1984 Compliance Strategy, and decided to develop an updated strategy. The new Strategy goes beyond the earlier revision in terms of establishing the direction of compliance and enforcement activities and incorporates the new Administrative Order authorities. The Compliance Strategy focuses on using innovative approaches to compliance promotion and discusses how to leverage other groups (such as HUD) to ensure better compliance.

Environmental Auditing

In FY 1986, OECM worked to finalize the EPA Guidance on the Inclusion of Environmental Auditing Provisions in Enforcement Settlements. The Guidance provides Agency enforcement personnel with general criteria for and guidance on selecting judicial and administrative enforcement cases in which EPA will seek to include environmental auditing provisions among the terms of settlement. The inclusion of environmental auditing provisions is expected to enable EPA to accomplish more effectively its primary mission, namely, to secure environmental compliance.

In addition, several case-specific auditing initiatives were launched by OECM during FY 1986, including an attempt to resolve compliance problems of Chemical Waste Management facilities nationwide on a comprehensive basis.

In conjunction with the multi-media audits, the National Enforcement Investigation Center (NEIC) provided training to DOD and DOE personnel on multi-media audit procedures. The training included discussions of regulation requirements,

techniques for the collection and shipment of samples, waste management practices and field safety requirements. In conjunction with EPA's compliance strategy to improve the quality and quantity of information on Federal facilities, NEIC prepared multi-media priority rankings on selected facilities in Reigons V and IX. The facilities were ranked based on their potential to cause major environmental problems.

Alternative Dispute Resolution

On December 2, 1986, OECM issued draft guidance on the use of alternative dispute resolution (ADR), and the use of third-party neutrals, in EPA enforcement actions. The draft guidance describes the various ADR mechanisms such as mediation and arbitration, suggests criteria by which enforcement personnel can nominate appropriate cases for ADR from existing caseloads, describes the method for processing case nominations, provides guidelines for the selection of neutrals, describes how to proceed upon selection of a neutral, and provides sample agreements and procedures.

V. CONCLUDING MAJOR ENFORCEMENT LITIGATION AND ESTABLISHING KEY LEGAL 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 simple success in an individual action. Examples are selected from each media program.

Air Stationary Litigation

Hope Resource Recovery, Inc. - In the first case to criminally charge a violation of a State Implementation Plan (adopted pursuant to the Clean Air Act), Hope Resource Recovery, Inc., a refuse incineration company located in the Long Island City area of Queens, New York City, was sentenced to a fine of $10,000 upon its plea of guilty entered in July to one count of violating the federally-approved New York State Implementation Plan (SIP). The SIP prohibits, *inter alia*, operation of an air pollution source without a certificate to operate. The company was charged with operating its

incinerator without such a certificate on several occasions during 1983 and 1984, despite having been issued a Notice of Violation by EPA. (Region II)

U.S. v. Geppert Brothers, Inc., and Amstar Corp. - This case is significant because it is one of the first to construe the responsibilities of an owner or operator of a building under the asbestos regulations. On June 30, 1986, the United States District Court for the Eastern District of Pennsylvania ruled that an owner of a building may be held liable for violations of the asbestos NESHAP regulations. (40 CFR Part 61, Subpart M), which occur during demolition of the building by a subcontractor. In this case, the court rejected the arguments of Amstar, the building owner, that it should not be held liable because the subcontractor, Geppert Brothers, Inc., controlled the demolition operations. The court held that both Amstar and Geppert Brothers, Inc., were subject to the requirements of the NESHAP regulations. (Region III)

U.S. v. Phelps Dodge Corp. - The largest uncontrolled source of sulfur dioxide in the western United States was the target of a successful action brought by Region IX. On July 29, 1986, the United States, Arizona, and Phelps Dodge Corporation executed a consent decree resolving Clean Air Act violations at the company's Douglas Reduction Works copper smelter, located on the U.S.-Mexican border in Douglas, Arizona. The Environmental Defense Fund was subsequently joined in the settlement as a plaintiff-intervenor. The facility, which is located in a non-attainment area for both sulfur dioxide (SO_2) and particulate matter (PM), is the only copper smelter in the United States operating without continuous controls for SO_2. The smelter has historically emitted in excess of 300,000 tons per year of SO_2 and over 4,000 tons per year of PM (sulfates, arsenic, lead, etc.), making it one of the largest sources of air pollution in the country. The consent decree requires final compliance no later than January 15, 1987 by permanent cessation of smelting, as well as stringent interim control measures and civil penalties of $400,000 for past violations.

U.S. v. Occidental Chemical Corp. - In this civil action for violations of the vinyl chloride NESHAP, the district court held that the defendant has the burden of proving its claim that relief valve discharges of vinyl chloride should

be excused as "emergencies." The court construed the emergency exception to the prohibition against relief valve discharges to be an affirmative defense. This decision is significant because there are a number of cases pending, including several in the same district, in which EPA is pursuing claims for violations of this particular provision of the vinyl chloride NESHAP regulations.

U.S. v. Jones & Laughlin Steel Corp. - This decision by the Sixth Circuit Court of Appeals is important for two reasons--it reaffirms the limited role of a trial court in reviewing a consent decree, and it adds weight to the numerous case decisions holding that EPA is not stayed by the Bankruptcy Code from enforcing environmental statutes against polluters who are in bankruptcy.

EPA appealed after a district court judge rejected a proposed judgment order because it did not provide for sharing penalties assessed against J&L with the City of Cleveland. The appellate court found that the trial court had exceeded its authority by not approving an order which met the standard of being fair and adequate and protecting the environment. The appellate court also found that the Bankruptcy Code provision which protects debtors from having to pay creditors except when the debt is owed to the government as a result of an enforcement action, applies to settlements of enforcement actions as well.

U.S. v. St. Joe Minerals - The decree in this case called for the payment of a $2.2 million penalty. The company had been violating the Pennsylvania SO_2 SIP standard applicable to coal-fired boilers for over three years and during the pendancy of the lawsuit had been pursuing a revision to the SIP standard by means of a "bubble" proposal. Under the settlement, St. Joe is converting its two coal-fired boilers to allow combustion of both natural gas and coal and will comply with the applicable SO_2 regulation by June 1, 1987. (Region III)

Water (CWA & SDWA) Litigation

City of Los Angeles - This case represents one of the largest penalty settlement to date for EPA and the only case penalty recovered from violations of the Clean Water Act by a large municipality. An amended consent decree was lodged with

the Central District Court on October 2, 1986. The settlement includes provisions that the city terminate sludge discharge to the Pacific Ocean by December 31, 1987, and that the City meet secondary treatment effluent limits at the Hyperion Treatment Plant by December 31, 1998. In order to settle the dispute over penalties for violations of the original consent decree and for violations of their NPDES permit limitations, the City agreed to pay $3,925,000 in fines. Of this amount, $625,000 will be paid to the U.S. Treasury and $3,300,000 will be spent on an assessment of and actions to reduce the pollutants entering Santa Monica Bay via storm drain effluent. (Region IX)

U.S. v. City of Key West and the State of Florida - On June 23, 1986, in U.S. District Court in Miami, Florida, Judge Scott entered a Consent Decree and a related Stipulation regarding the City of Key West. The Decree provides for the construction of a 7mgd sewage treatment plant (estimated cost $30 million), a civil penalty of $600,000, and stipulated penalties in the event of a failure to meet the milestone dates in the construction schedule or effluent limitations.

The Key West case is part of the National Municipal Policy (NMP) Enforcement Initiative. The settlement reached in this case compares quite favorably with other settlements under this initiative and, indeed, is the second highest civil penalty ever received by EPA from a municipaltiy for NPDES violations. This will be an important precedent for EPA's municipal enforcement program. (Region IV)

U.S. v. City of Moore, Oklahoma - On November 27, 1985, the Federal District Court for the Western District of Oklahoma granted the United States motion for partial summary judgment against the City of Moore for violations of the requirements in both its NPDES permit and several administrative orders issued by EPA. The defendant raised a number of defenses to the government's motion.

The court rejected all but one of the defendant's arguments against summary judgment, holding that: (1) the Clean Water Act is a strict liability statute and that the plaintiff only had to show violations of the permit or order (here, through submission of DMRs as admissions of liability). The court stated that harm and/or intent are irrelevant except where criminal liability is alleged; (2) "when engaged in the exercise of sovereign power to protect the public interest

the government is not subject to estoppel" because it did not previously enforce the permit limits at issue; (3) a municipality's "duty to comply with the Clean Water Act is not contingent on grant funding"; (4) the City cannot avoid liability for violations occurring after withdrawal of an administrative order containing less stringent interim limits where the City had clear oral notice and subsequent written notice of the withdrawal; and finally, (5) evidence of the City's progress in improving its compliance record was pertinent to the issue of the amount of the penalty but not to the issue of liability.

On the issue of whether the alleged inaccurately reported test results prevented the granting of summary judgment, the court ruled that there were sufficient issues of fact, in this particular case, to warrant a hearing as to those alleged violations. The court pointed out, however, that its ruling on this issue was different from that of other courts which had held that "a denial of the accuracy of reported data would not operate to defeat summary judgment on the issue of liability."

City of Lafayette - On December 5, 1985, the Federal District Court for the Northern District of Indiana, granted a motion for partial summary judgment against the City of Lafayette, Indiana, on the issue of liability for failure to establish a pretreatment program as required by its NPDES permit.

In this case, the defendant's permit required that an approvable pretreatment program be submitted by November 1, 1981. After numerous delays and communications among EPA, the City and the State, an approvable program was submitted in March 1985, except for a sewer use ordinance. EPA filed suit in April 1985 and the ordinance was passed on May 28, 1985. Therefore, at the time the motion was argued, the pretreatment program had been developed and approved.

The City argued, (1) that because the program had now been approved, plaintiff's motion for summary judgment should be denied; (2) that the City had acted in good faith to comply with Federal requirements; and (3) that any delays were caused by Federal and State agencies.

In rejecting the City's arguments, the court found that the City had ample opportunity and assistance to enable it to comply with its pretreatment requirements and that it had

violated its permit, the regulations at 40 C.F.R. §403, and an administrative order issued by EPA. In addition, the court found no evidence that the City was properly implementing its program. The court held, therefore, that the Federal government was entitled to judgment on liability as a matter of law even in light of any progress the City had made.

Hazardous Waste (RCRA/CERCLA) Litigation

U.S. v. South Carolina Recycling and Disposal, Inc. (Bluff Road) - Final judgment was entered in the SCRDI Bluff Road CERCLA cost-recovery case with the United States being awarded the entire $1,561,134.55 claimed. While the Bluff Road liability decision had been and continues to be frequently cited to by the United States in other CERCLA cost-recovery cases because of its favorable language regarding the liability standards, final judgment on the issue of costs had been long awaited. With the cost judgment the Bluff Road case constitutes a significant CERCLA enforcement success. (Region IV)

Denver-Arapahoe Chemical Waste Processing Facility - FY 1986 saw the completion of a major phase of closing the Denver-Arapahoe Chemical Waste Processing Facility. This action was the result of a closure plan that was issued by EPA in 1984. This was the first RCRA administrative penalty challenged and upheld in the Federal District Court.

The closing consisted of removing approximately 34,000 drums of hazardous waste, which had been disposed in a burial cell between 1980 and 1982 at the site, as it operated as a commercial hazardous waste land disposal facility. The exhumed drums were each tested, categorized, and shipped to disposal facilities out of state. All contaminated soil was excavated, piled into a huge "mountain" and covered with a (CPER) liner, pending final disposition. The burial cell itself was then sampled, found to be "clean", and completely regraded. Also, during the closure process, the company discovered and reported to EPA that a few drums contained PCBs. Since this facility was never approved for PCB disposal, the burial of the PCBs was a violation of the PCB regulations. In March of 1986, EPA filed an administrative complaint proposing a $20,000 civil penalty for the improper disposal of PCBs. In addition, relative to the Denver-Arapahoe Chemical Waste Processing Facility, an EPA RCRA enforcement action

for violations of the interim status regulations has been in litigation for over three years. EPA finally won its case which resulted in a fine of $40,000 plus interest.

Queen City Farms - Three years of negotiations has culminated in the cleanup of three hazardous waste disposal ponds (approximately one million gallons) at the Queen City Farm site near Maple Valley, WA. This cleanup is unique in that there was very little expenditure of government resources. The $5,000,000 cleanup was completed prior to RI/FS. The PRP's did the testing of the materials in the hazardous waste ponds. The consent decree includes a perpetual trust of $100,000 to monitor the site. EPA will be negotiating with the PRP's for a RI/FS. The RI/FS will help determine if the clay cap and diversion trenches installed as part of this cleanup are effective. (Region X)

Rocky Flats - An agreement was negotiated between DOE, the Colorado State Department of Health and EPA, regarding the management of radioactive mixed wastes that are generated at Rocky Flats outside of Denver, CO (a DOE facility that manufactures trigger devices for nuclear warheads). This agreement was the first in the country that gives a state authority to regulate the management of radioactive mixed wastes. The agreement also puts DOE on a schedule to submit plans on its activities relative to managing its wastes. (Region VIII)

Feed Materials Production Center, Fernald, OH - On July 18, 1986, EPA and DOE entered into a compliance agreement requiring DOE to bring its Fernald, OH, facility into compliance with RCRA, CERCLA and the CAA. The Agreement provides for much needed oversight of DOE compliance by EPA.

Thirty (30) years of operation at the DOE, Fernald, OH, plant have caused radioactive contamination of the groundwater and nearby soils. In addition, DOE, until very recently, maintained that it was not required to comply with RCRA interim status and Part B requirements. Poor operation and maintenance (O&M) procedures at Fernald have resulted in large releases of radioactive particulates from baghouses and stacks at the plant; and several hundred tons of thorium and radium are stored in structurally unsound silos. The agreement requires DOE to develop and implement initial remedial measures to abate and prevent the release of radioactive gases from the silos;

to conduct a remedial investigation/feasibility study at the plant and off-site and to implement corrective measures selected by EPA; to bring the facility into compliance with RCRA and the NESHAPS provisions of radionuclides promulgated under §112 of the Clean Air Act; and to develop and implement effective O&M at the site. Implementation of each of these requirements is made subject to the availability of appropriated funds for such purposes. The latter provision represents agreement on funding language reached between EPA Headquarters and DOE. (Region V)

Pesticides and Toxics Litigation

Commonwealth Edison Company - In a Consent Decree filed in Federal District Court on September 29, 1986, Edison, of Chicago, IL agreed to cleanup more than 300 sites contaminated with PCBs. EPA had filed a civil suit in 1984 alleging that PCB spills resulting from capacitor ruptures constituted improper disposal and that Edison was not effective in decontaminating spill sites. Specifically, the decree requires Edison to discontinue and physically remove all pole-mounted PCB capacitors by January 1, 1987. Edison must adopt inspection and decontamination techniques to insure that spilled PCBs are cleaned up in high contact residential areas to 5 parts per million. Edison estimated that it will cost 6 to 7 million dollars to decontaminate all old spill sites. The company expects to pay an additional 20 million dollars to remove and replace the poll-mounted capacitors. (Region V)

MIBAR Inc. - On May 27, 1986, a complaint was filed in the United States District Court for the District of Colorado against MIBAR and its president, seeking an injunction against numerous violations of FIFRA including the sale and distribution of unregistered pesticides, improper formulation and waste disposal. On May 30, 1986, a Consent Decree was filed with the same court in which MIBAR agreed to comply with FIFRA, initiate a product recall, correct all label misbranding and properly dispose of a number of drums of pesticide and chemical waste. These violations of FIFRA were among the most serious ever discovered by EPA and resulted in the first use of FIFRA injunctive authority in five years.

In addition to negotiating a favorable consent decree, Region VIII negotiated a separate $60,000 civil penalty for the violations alleged in the Complaint. This was the largest FIFRA civil penalty in 10 years. (Region VIII)

Union Carbide Corporation - This administrative penalty enforcement action charged Union Carbide with failure to provide to the Agency substantial risk information, a cancer study on diethyl sulfate, as required by section 8(e) of TSCA. Following a year of administrative litigation, the innovative settlement agreement requires a comprehensive environmental audit of the company's risk information and provides for a novel alternative dispute resolution procedure (ADR), the first such use of ADR in an EPA enforcement action.

Advanced Genetic Sciences - On March 24, 1986, the Office of Compliance Monitoring filed an administrative civil complaint against Advanced Genetic Sciences (AGS), Oakland, CA, for violations of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The case, the first of its type by the Agency, involved two genetically engineered microbial pesticides. The intended use of the microbes was to prevent frost on plants. The complaint charged that AGS falsified an application for an experimental use permit and conducted experiments contrary to the conditions set forth in an experimental use permit. The complaint proposed a total penalty of $20,000.

On July 21, 1986, the Judicial Officer signed an Order assessing AGS $13,000 and upholding the Agency's charges against AGS.

DuPont Corporation - In this action, DuPont was charged with violations of TSCA Section 5 premanufacture notification requirements for new chemicals and paid a $100,000 fine. Under the terms of settlement, DuPont's Finishes and Fabricated Products Department, the Division involved in this action, is required to formalize a series of TSCA Section 5 compliance assurance procedures. These procedures were compiled into a guidance manual for employees affected by TSCA requirements. The manual has been distributed at plants and laboratories throughout the country. Training programs, with respect to the compliance procedures, have been held at many of DuPont's facilities. The settlement required DuPont to produce a broadcast quality videotape on the requirements of TSCA, to be used as part of the Company's employee education program on TSCA compliance. In addition, DuPont is developing an "artificial input" system to monitor TSCA compliance.

Under the program, test inputs will be designed to test the Company's ability to recognize and prevent the unlawful manufacturing or importation of new products containing components not on the Inventory. Results of these tests will be reported to EPA.

BASF Systems Corporation - In this action, BASF voluntarily disclosed that it imported and used chemical substances that had not been listed on the TSCA Chemical Substances Inventory. In the settlement of the subsequent enforcement action, BASF agreed to pay a fine of $80,000 and to initiate a comprehensive environmental compliance audit of its operations at Bedford, MA. BASF is required to report any violations discovered in the course of the audit to EPA within 15 days of discovery, and pay a minimum of $10,000 for each chemical violation reported for chemicals that do not represent a threat to health or the environment. For other chemicals, EPA is free to seek the maximum civil penalty. In addition to these terms, BASF agreed to conduct an evaluation of the TSCA compliance program of its parent corporation, BASF, A.G. of West Germany.

Summary of Administrative Litigation

During 1986, 38 Initial or Final TSCA and FIFRA Administrative Law Judge Decisions were rendered in response to EPA civil penalty litigation. All but two cases were rendered in favor of EPA litigators. Of the two cases, one was dismissed for insufficient evidence and the other case is currently on appeal to the Administrator.

Of the 36 favorable decisions, 15 were in TSCA and 21 were in FIFRA. Agency Administrative Law Judges upheld or imposed some of the highest penalties in the history of FIFRA: Kay-Dee, $30,000, Region VII; Custom Chemical, $21,850, Region IX; and Chemical Commodities, $20,000.

Criminal Litigation

Nabisco - A technically sophisticated night-time surveillance by EPA Special Agents involving the use of infra-red enhancement uncovered a regular dumping practice at Nabisco's yeast and vinegar plant in Sumner, WA, that had been going for years. Up to 80,000 gallons of yeast waste was discharged almost nightly into the White River. The corporation pled

guilty to Clean Water Act violations and was sentenced to pay a $450,000 fine of which $150,000 was suspended. The corporation was directed to place $150,000 into an environmental trust for the enhancement of fish and game fish resources and hatcheries in the Stuck, Pay - allup and White Rivers. In addition, the corporation was placed on three years probation on the condition that its plants nationwide commit no Clean Water Act violation for the period.

The plant manager pled guilty to mail fraud (in connection with filing false discharge reports) and conspiracy charges for his part in the nightly discharge scheme and was sentenced to one year and one day in jail, a $5,000 fine, three years and 250 hours of community service. (Region X)

Greer - A proprietor and operator of a now defunct hazardous waste handling companies based in Orlando, FL was criminally charged with multiple violations of the federal hazardous waste laws (RCRA and CERCLA), mail fraud, making false statements, and the first case in which a defendant was charged with knowlingly endangering human health or life under newly adopted provisions of RCRA. Among other acts, the defendant was accussed of dumping 1,000 gallons of principally 1,1,1-trichloroethane, intentionally mislabeling drums of hazardous waste as dirt, and endangering employees by directing them to test chemicals such as cyanide, 1,1,1-trichloroethane, toluene, methyl ethyl ketone and xylene by sniffing samples or lighting them in soft drink cans, rather than performing required chemical analysis.

The judge directed a verdict against the knowing endangerment counts before trial over the objection of the prosecutors. After a multi-day trial the jury found the defendant guilty of 13 counts of mail fraud, one false statement count, one of failure to notify of a release of a reportable quantity of a hazardous substance under CERCLA, one mislabeling count and one count of illegal disposal. On September 16, 1986, the defendant was sentenced to five years imprisonment (all but three months suspended), four years and nine months probation, 1,000 hours of community service and $23,000 fine.

The defendant has appealled the jury verdict and the government has appealled the directed verdict against the knowing endangerment counts. (Region IV)

Hoflin - In the first case in which a public official has been charged with federal environmental crimes, the former city public works director of Ocean Shores, WA, was found guilty, after a five-day jury trial, of burying drums of old road stripping paint at the City's sewage treatment plant (in violation of RCRA) adjacent to a national wildlife refuge in sandy soil next to the ocean, and dumping 3,500 gallons of raw sewage into a sandy depression (in violation of CWA) also next to the ocean. The defendant was sentenced to two years probation and 200 hours of community service.

Waterbury House Wrecking - The most significant sentences to date for asbestos removal and handling violations under the Clean Air Act were handed down by the United States District Court for the District of Connecticut.

Waterbury House Wrecking Company was contracted by the Old Pin Shop in Oakville, CT, to demolish its building. The building was demolished without removing substantial amounts of asbestos nor wetting the material to prevent its being carried in the air.

After pleading guilty the president of Waterbury was sentenced to a 1 year suspended sentence, five years probation, $25,000 fine, 1,000 hours of community service, and must attend, at his own expense, seminars on disposal of asbestos. The owner of the Old Pin Shop was sentenced to one year imprisonment (all but 30 days suspended), five years probation, $25,000 fine and 1,000 hours of community service.

Mardikian - From mid-1984, the defendants in this case, used a California-based luxury automobile import and sales enterprise and an emission testing facility, to carry-on a scheme to defraud the government. During that time over 2,000 European-version high performance cars were supposedly imported, modified to meet American emission and safety requirements and tested by the Mardikian facility. Tests by EPA's Office of Mobile Sources of over 500 of those vehicles showed that the test data submitted to EPA was erroneous and that on many occasions dummy test results were submitted without the required test being conducted.

On the second day of trial two defendants pled guilty. On November 25, 1985, one was sentenced to five years imprisonment (all but six months suspended), five years probation, plus 2,080 hours of community service, consisting of at least eight hours per week over a five-year period teaching under-privileged individuals how to improve job seeking skills, and to place no fewer than 20 individuals each year into jobs, plus restitution to the injured parties. Another defendant was sentenced to five year imprisonment (all but 30 days suspended and to be served on weekends), five years probation plus an indefinite amount of community service.

The third defendant was charged with one count of making false statements to the government, pled guilty and was sentenced to five years imprisonment (all but 20 days suspended and served on weekends), five years probation, plus 2,500 hours of community service.

Derecktor - During fiscal year 1986, a widely-publicized major indictment was returned against a large ship-building and dry-dock company in Rhode Island and its owner. The 46-count indictment charged violations of TSCA (PCB violations), CERCLA (failing to report releases of PCB's and asbestos), Clean Water Act (discharging pollutants from a dry-dock without a permit), RCRA (illegal storage and disposal of hazardous wastes), Clean Air Act (asbestos removal and handling violations), and the Hazardous Materials Transportation Act (illegal transportation of hazardous wastes). This was one of three cases charged in fiscal year 1986 against shipyards for discharges of sandblasting pollutants into the water.

Assisted Cases - Besides the environmental criminal cases investigated and referred for prosecution soley by EPA, special agents gave invaluable assistance in several other major environmentally-related criminal investigations. In one case, the defendants were sentenced to 13 years imprisonment each for shipping a waste solvent mixture instead of the ordered chemicals to an import business in Zimbabwe. In another, the defendant was sentenced to two years imprisonment (all but 180 days suspended) for dumping hazardous wastes into unlined pits. EPA also assisted with a case where large quantities of hazardous wastes were shipped from California and dumped in Mexico and are suspected of causing illness to Mexican residents.

VI. ACHIEVING RECORD LEVELS OF ENFORCEMENT ACTIONS AND SUCCESSFUL RESOLUTION OF SIGNIFICANT VIOLATIONS IN SPECIFIC MEDIA PROGRAMS

In Fiscal Year 1986, the Agency achieved record levels of enforcement actions in specific media programs, as well as on the national level.

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 enforcement actions. These are called "significant noncompliers or significant violations."

Air Enforcement Activity

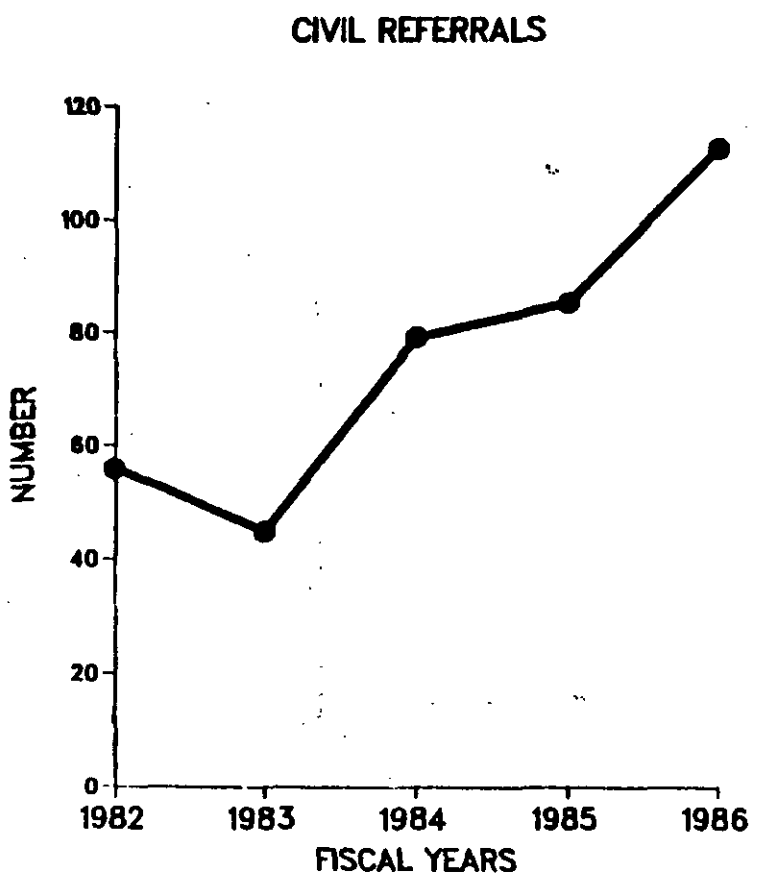
EPA's stationary air enforcement activity has remained at a consistently high level during FY 1986. EPA issued 123 administrative orders during the year. The Regions referred 112 civil cases, the highest number of referrals in the last five years (see page 31). Also in FY 1986, three criminal cases were referred in the air enforcement program.

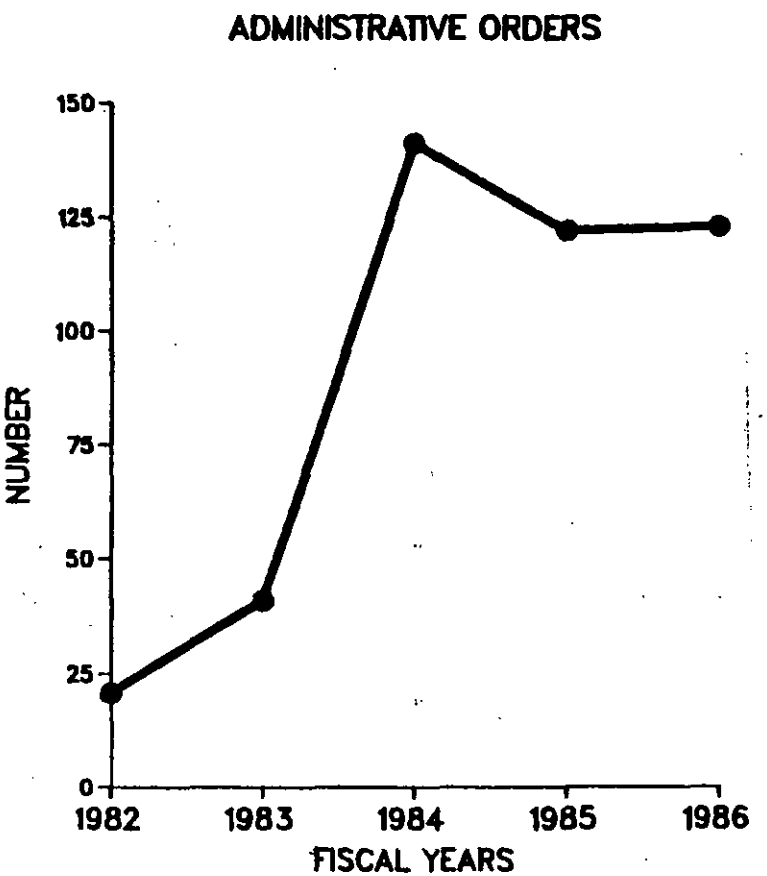
In the air mobile sources enforcement program, civil referrals decreased to six in FY 1986 from 22 in FY 1985 and 14 in FY 1984. The Federal program to regulate lead in gasoline and automobile inspection and maintenance programs relies heavily on administrative settlements to address violations. In FY 1986, EPA initiated approximately 400 administrative cases proposing penalties of nearly $4 million. EPA settled about 350 of the cases and assessed total penalties of about $1.3 million. Where no settlement is reached Mobile source matters are referred to the Department of Justice for prosecution, thus the decline in civil referrals is in large part due to the success of the program via administrative settlements.

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.

AIR (STATIONARY) ENFORCEMENT ACTIVITY
FY 1982 – FY 1986





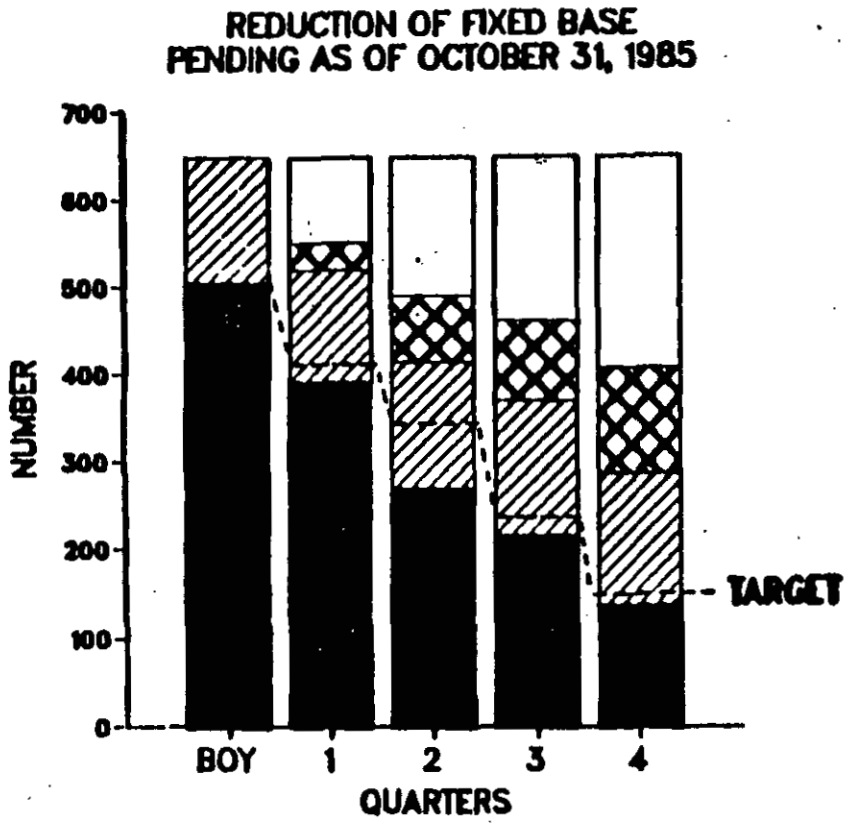
In FY 1986, EPA and the States made progress in returning significant air violators to compliance. At the beginning of the year, EPA/States had 647 significant air violators remaining from the previous year (fixed base). At the end of the year, 509 significant violators had been addressed by returning 241 to compliance, taking enforcement action against 148, and placing 120 on acceptable compliance schedules, leaving a total of 138 to be addressed next year (see page 33). During FY 1986, EPA/States identified 472 new significant violators. In responding to these new violators, EPA returned 89 to compliance and placed 41 on acceptable compliance schedules.

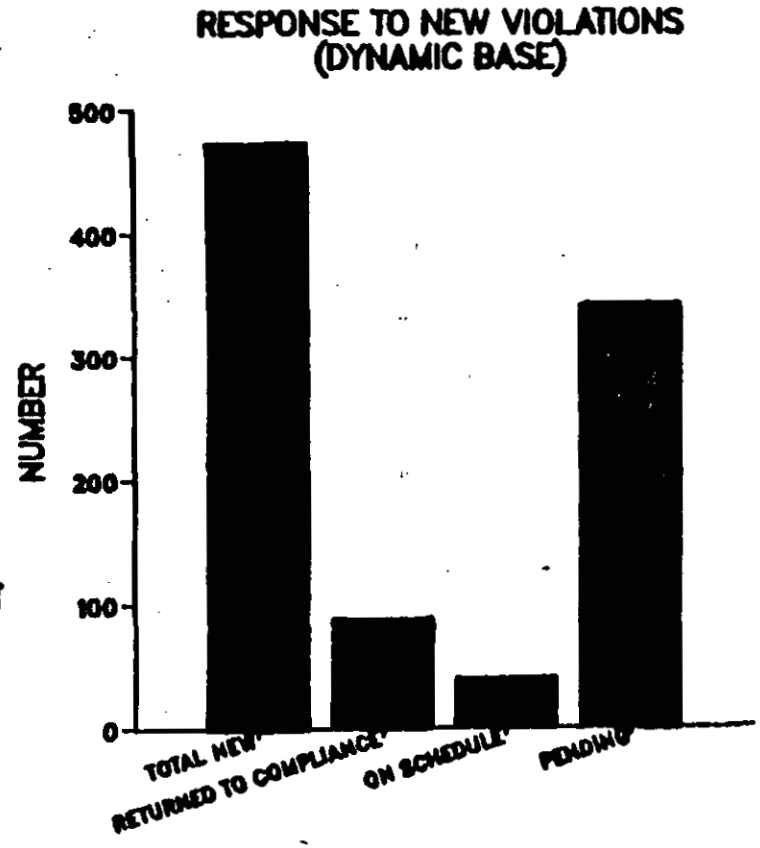
In comparing the air enforcement efforts in FY 1985 to FY 1986 in this area, good performance has been maintained. At the beginning of FY 1985, there were 513 significant violators versus 647 at the beginning of FY 1986. In FY 1985, 187 (36%) of the BOY violators were returned to compliance, while in FY 1986, 241 (37%) were returned. A total of 95 (19%) violators were placed on acceptable schedules in FY 1985 compared to an increase to 120 (19%) in FY 1986. In taking enforcement actions, EPA/States acted against 148 (23%) in FY 1986 and 109 (21%) in the previous year. At the end of FY 1985, 122 (24%) violators were pending, versus 138 (21%) pending at the end of FY 1986. Overall, in FY 1986 EPA/States addressed 509 of the BOY significant violators compared to 391 in FY 1985.

Water Enforcement Activity

EPA's NPDES enforcement efforts continued at a high level of activity for issuance of administrative order and civil case referrals. EPA issued 988 administrative orders and the Regions referred 107 civil cases, which is the second highest number of referrals in the last five years (see page 35). This is a 9% decrease in the number of referrals from FY 1985. The Safe Drinking Water enforcement program doubled the number of civil referrals from eight in FY 1985 to 17 in FY 1986. The Regions also made 15 criminal case referrals in FY 1986. The States filed two criminal cases in their courts. The SDWA did not provide for Federal administrative order authority for regulatory violations in FY 1985 and FY 1986. The three orders issued in FY 1985 were for emergency orders related to drinking water systems. The SDWA totals should increase in FY 1987 once administrative order authority is delegated to the Regions.

PROGRESS IN RETURNING SIGNIFICANT AIR VIOLATORS TO COMPLIANCE
As Of September 30, 1986





LEGEND

- IN COMPLIANCE
- ON ACCEPTABLE SCHEDULES
- ENFORCEMENT ACTION
- PENDING

OCAPO 10/86

Water - Response to Significant Noncompliance - Exceptions Report

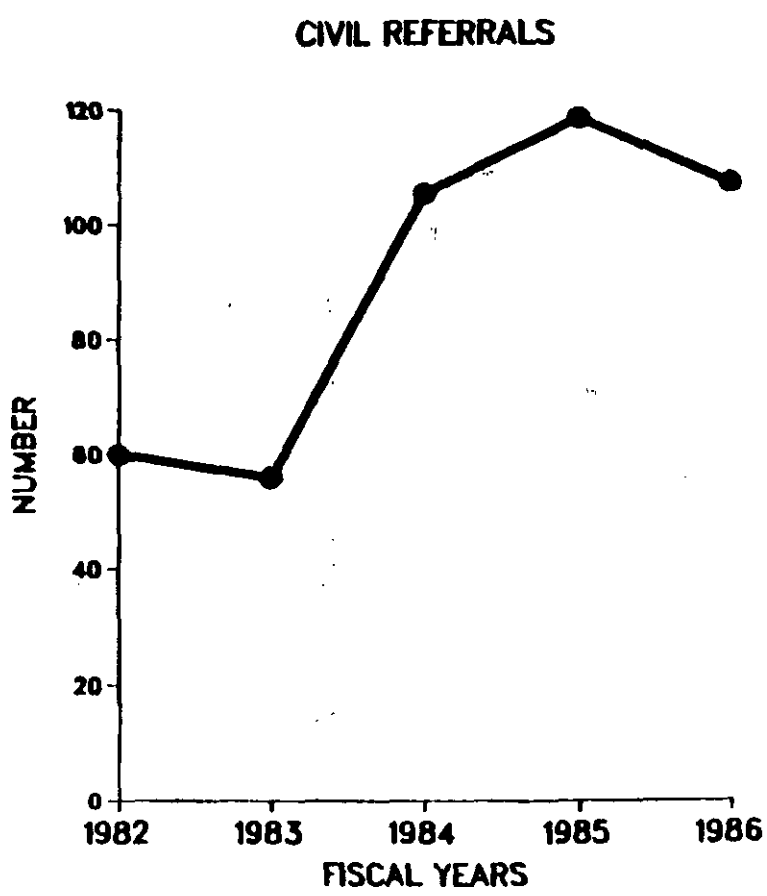
At the beginning of FY 1986, the NPDES program implemented Quarterly Noncompliance Report regulations and modified its definition of SNC to promote greater consistency in noncompliance reporting and to clarify quantifiable and qualitative violations. This major change involved how to report permit effluent violations, as well as a stronger emphasis on violations of reporting requirements and violations of formal enforcement orders.

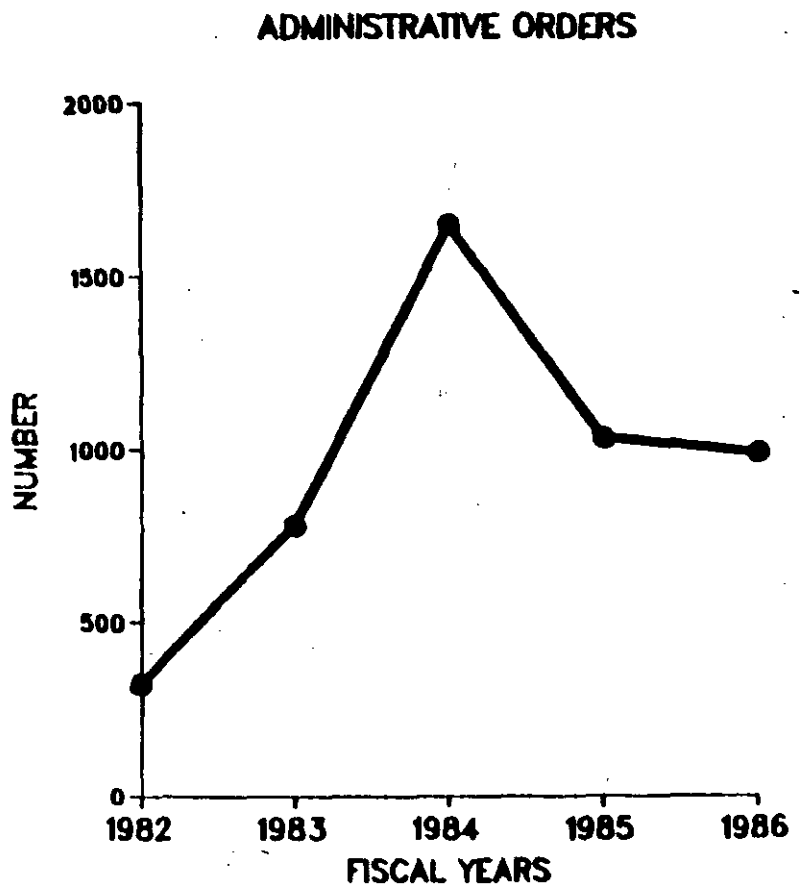
Unlike the other Agency enforcement programs, the NPDES program no longer tracks SNC against a "fixed base" of SNC that is established at the beginning of the year. Instead, it uses the Exceptions List to track instances of SNC as they are reported throughout the fiscal year. The exceptions report identifies those facilities that have been in SNC for two or more quarters without returning to compliance or being addressed by a formal enforcement action. At the beginning of FY 1986, there were 139 major municipal industrial or Federal Facility permittees unaddressed from FY 1985 or newly identified. During FY 1986, there were 542 permittees identified on the exceptions report. The Regions and/or the States returned 204 of them to compliance and took enforcement actions against 176 others leaving 301 facilities on the exceptions report unaddressed at the end of FY 1986. The number unaddressed represents about 4% of all major NPDES permittees.

Superfund and RCRA Enforcement Activity

Additional progress was made in Superfund and RCRA enforcement activity in FY 1986. Under Superfund, by the end of FY 1986, 139 administrative orders had been issued, a decrease from the 160 issued in FY 1985. Superfund civil referrals also decreased slightly from 54 in FY 1985 to 45 in FY 1986. The somewhat lower levels of Superfund enforcement activity are attributable to the effects of the delays in obtaining reauthorization of the program. The program exceeded its Agency commitments for referring §107 Cost Recovery cases.

WATER (NPDES) ENFORCEMENT ACTIVITY
FY 1982 – FY 1986





For RCRA, 235 administrative complaints and consent agreement and final orders were issued. In FY 1986, 66 RCRA civil cases were referred compared to 19 in FY 1985. The more than threefold increase in the number of RCRA referrals is largely attributable to vigorous enforcement of the Loss of Interim Status (LOIS) provisions of HSWA. Most of the referrals were to land disposal facilities listed on the Strategic Planning and Management System's Significant Noncomplier List. RCRA and Superfund combined for a total of 111 civil referrals. This is the highest number of referrals in the last five years (see page 37). There were also 20 criminal referrals in the RCRA program.

RCRA - Progress on Addressing Land Disposal Facilities 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.

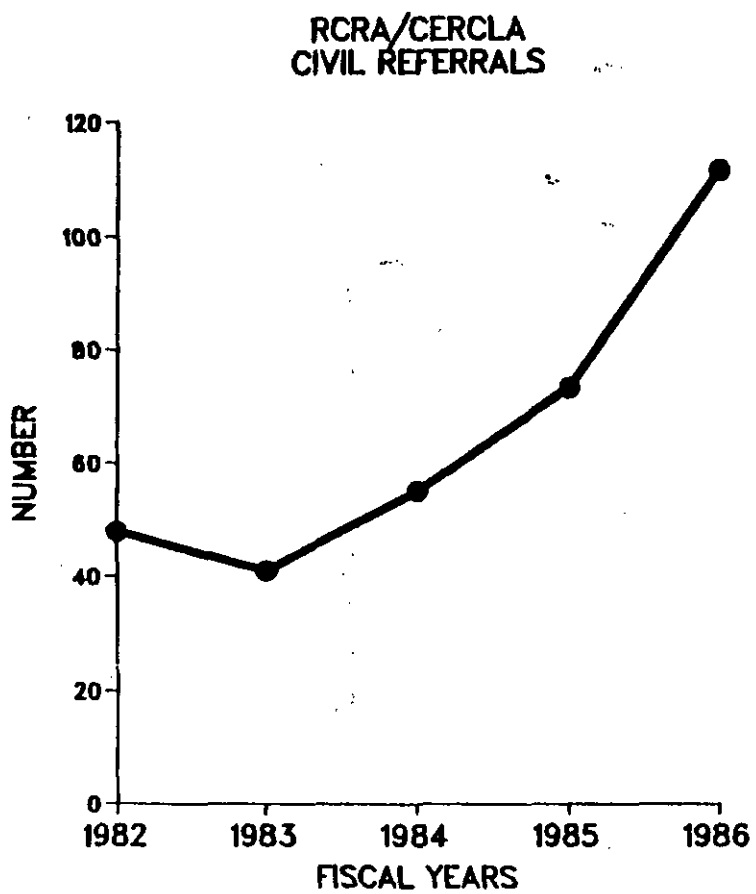
In FY 1986, EPA and the States substantially increased their efforts to address significant noncompliance over the levels achieved in the previous year. At the beginning of FY 1986, EPA and the States identified 792 land disposal facilities as significant noncompliers. By the end of the year, 772 had been addressed including 331 which were returned to compliance, 219 were under a final, effective administrative order, court judgment or consent decree, 222 received an initial administrative or judicial complaint, leaving only 20 pending (see page 39). During FY 1986, EPA and the States addressed a higher percentage (97% compared to 94%) of significant noncompliers than in FY 1985.

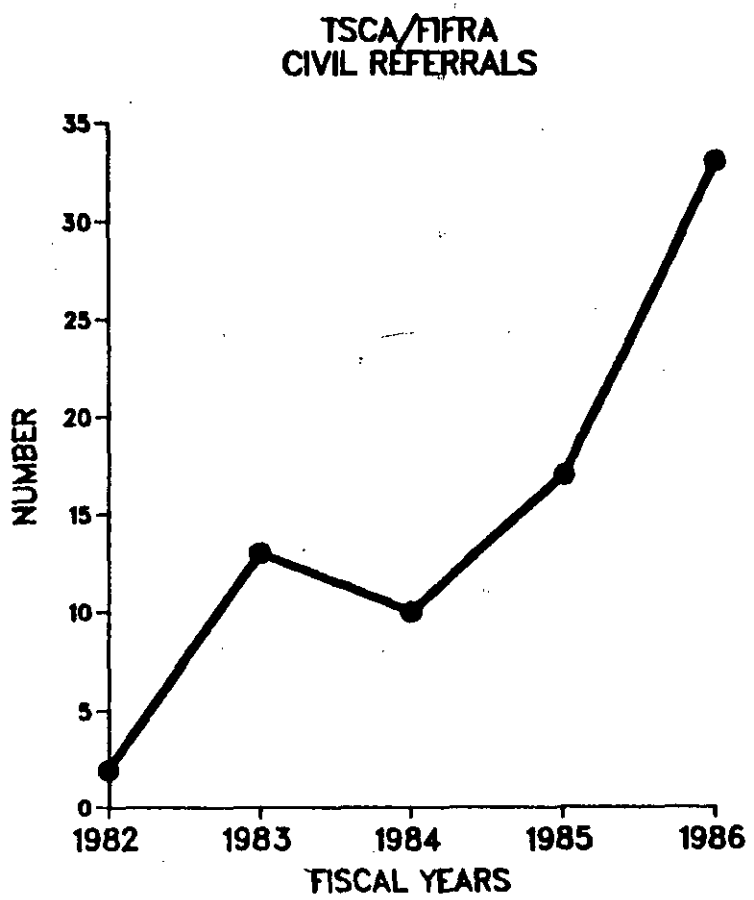
TSCA and FIFRA Enforcement Activity

In both the TSCA and FIFRA enforcement programs, each issued the highest number of administrative orders in the last five years (see page 40). For TSCA, 781 administrative orders were issued compared to 733 in FY 1985. FIFRA administrative orders rose dramatically from 236 (FY 1985) to 337 (FY 1986).

Also, both programs approximately doubled the number of civil case referrals. For TSCA, civil referrals increased from six to 13 in FY 1986. FIFRA civil referrals increased from 11 to 20 in FY 1986. The levels of both judicial and administrative action rose in both programs during FY 1986.

ENFORCEMENT ACTIVITY
FY 1982 – FY 1986





The rise in judicial enforcement is largely attributable to an increase in the number of collection actions for penalties assessed in previously issued administrative orders. There were two TSCA criminal referrals and one FIFRA criminal referral in FY 1986.

Response to TSCA Significant Noncompliance

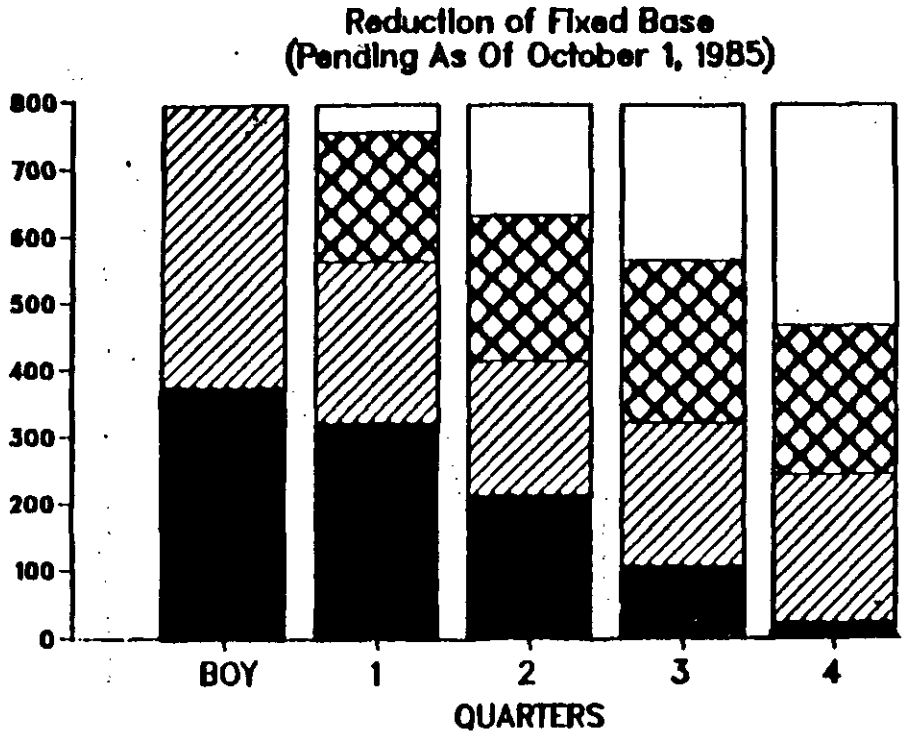
The TSCA program significant noncomplier is any violator of a PCB, asbestos, or premanufacturing notice rule which warrants the issuance of an administrative complaint for penalties.

The Regions had a beginning of year inventory in FY 1986 of 782 TSCA significant noncomplier cases. During the year, the Regions closed 614 (78%) cases on the inventory (see page 41) by completing an agreement and final order. In FY 1985, 342 (75%) cases were closed against a beginning of year inventory of 454. During the year, EPA made progress in identifying and initiating actions against new significant violators. Of the 5,985 inspections conducted, 913 (15%) significant violators were detected by the end of the year. More than half of these, a total of 527, had action taken; 118 of these were closed, leaving 409 new cases open at the end of the year.

Response to FIFRA Significant Noncompliance

Beginning in FY 1986, FIFRA significant noncompliance was redefined to focus on pesticide misuse violations and to reflect the major role of the States in enforcing these types of violations. EPA Regions and each of their States agreed on significant violation categories, given patterns of use unique to each State. They also established timeframes for investigating and taking enforcement actions against these significant violations. During the year, 274 significant violations were identified. Of these, 182 (66%) were addressed within the agreed-upon timeframes. Only 14 (5%) of violations were carried beyond the timeframes; 12 of these were addressed and two were not addressed by the end of the year. The remaining 78 (29%) were pending action within timeframes at the end of the year. In addition, 56 significant use violations were identified for action by the EPA Regions during FY 1986. Of the 56, 45 (80%) were addressed within timeframes. Seven

RCRA—PROGRESS ON ADDRESSING LAND DISPOSAL FACILITIES IN SIGNIFICANT NONCOMPLIANCE
As Of September 30, 1986

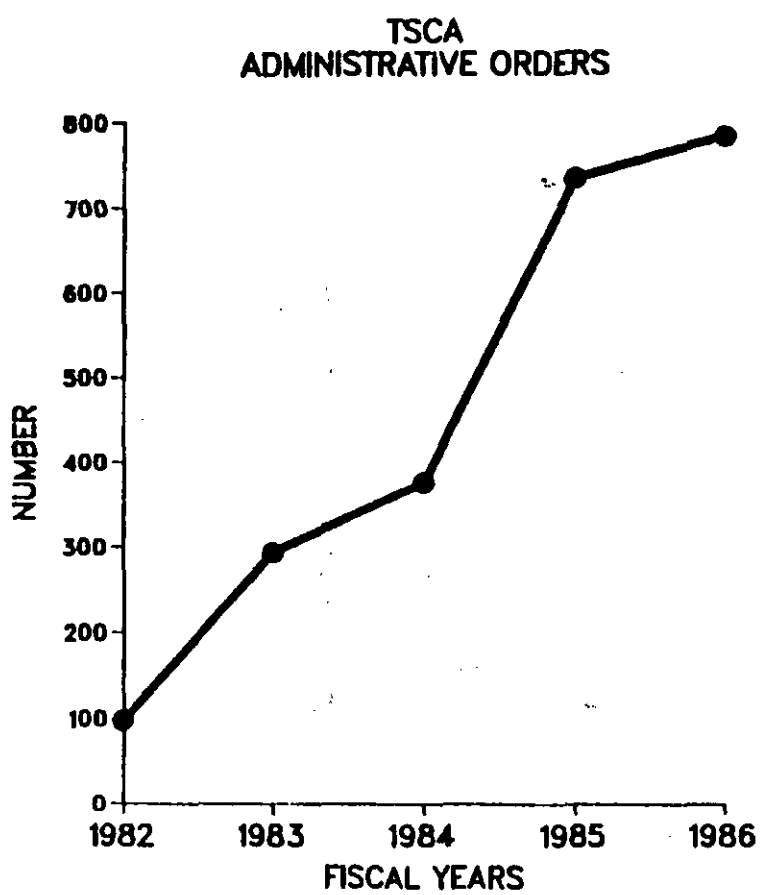


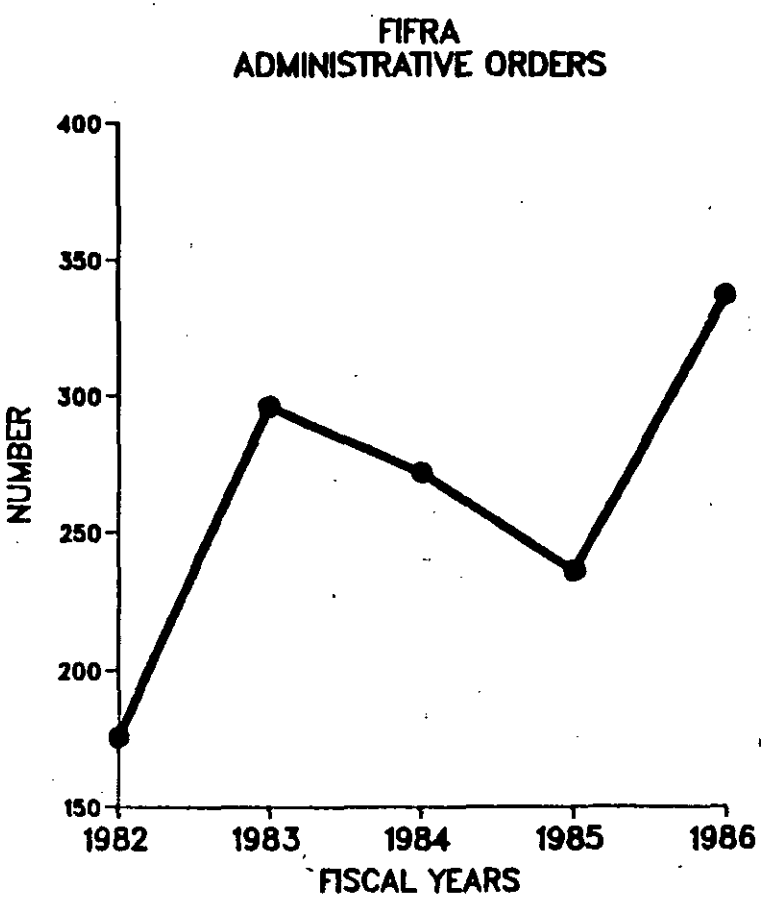
LEGEND

- RETURNED TO COMPLIANCE
- ON COMPLIANCE SCHEDULES
- INITIAL ENFORCEMENT ACTION TAKEN
- PENDING

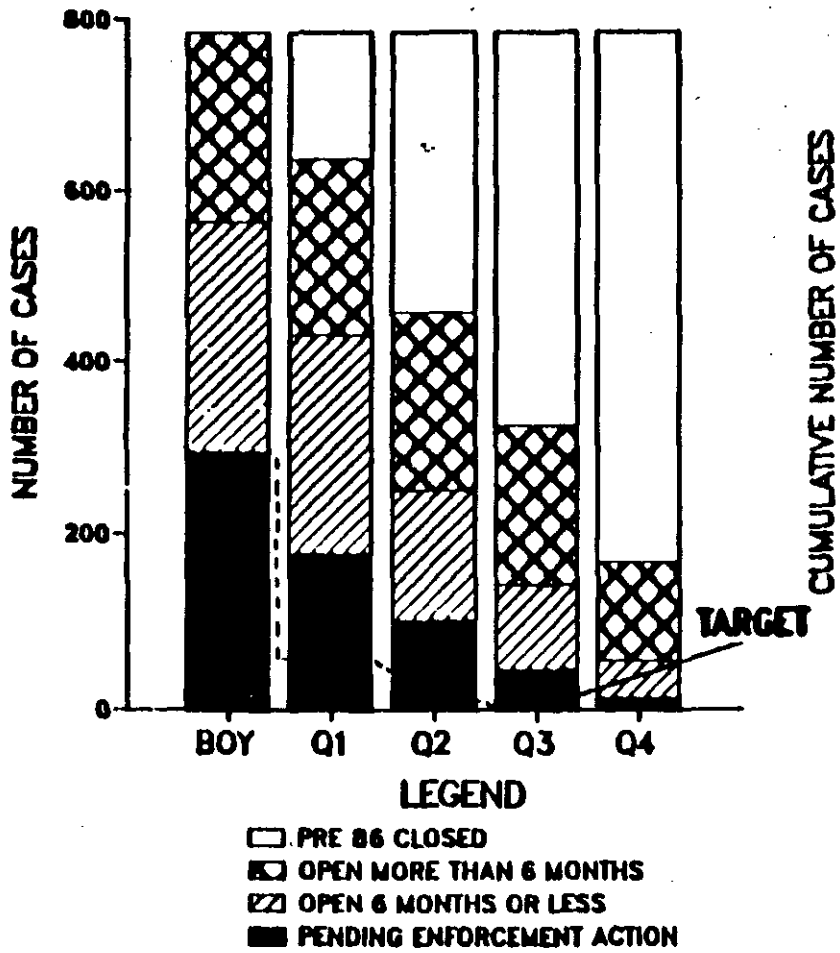
OCAPO 10/86

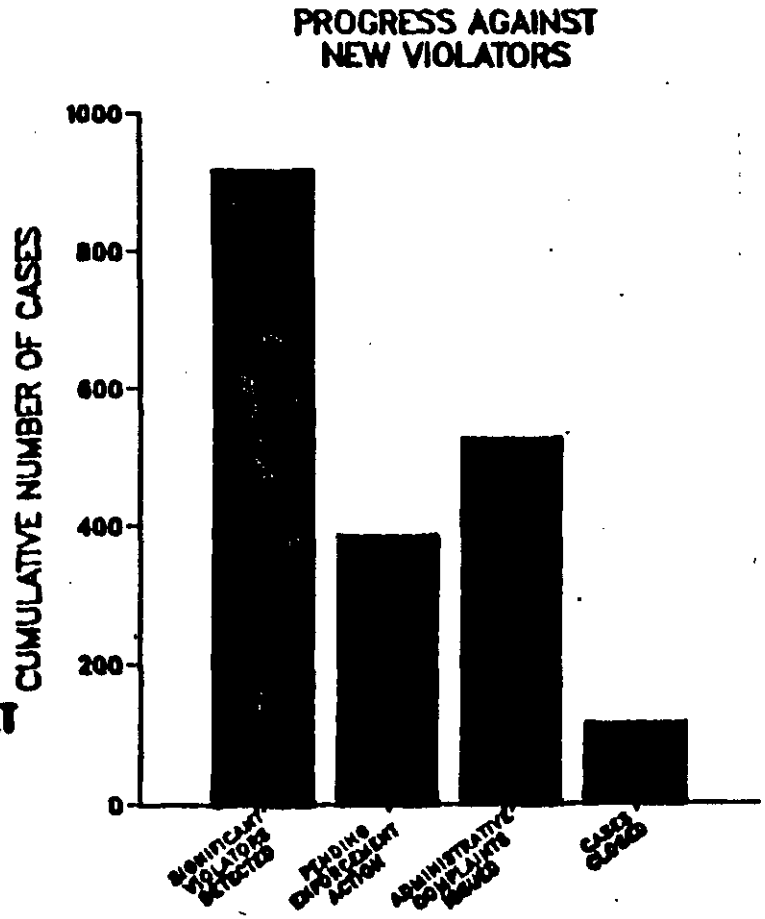
TSCA AND FIFRA ENFORCEMENT ACTIVITY
FY 1982 – FY 1986





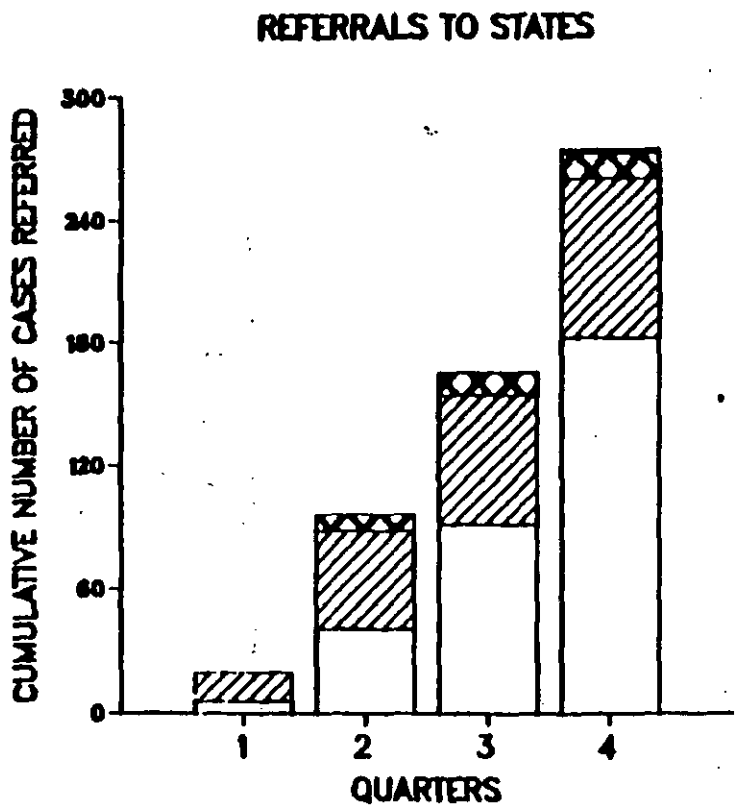
RESPONSE TO TSCA SIGNIFICANT NONCOMPLIANCE
As of September 30, 1986

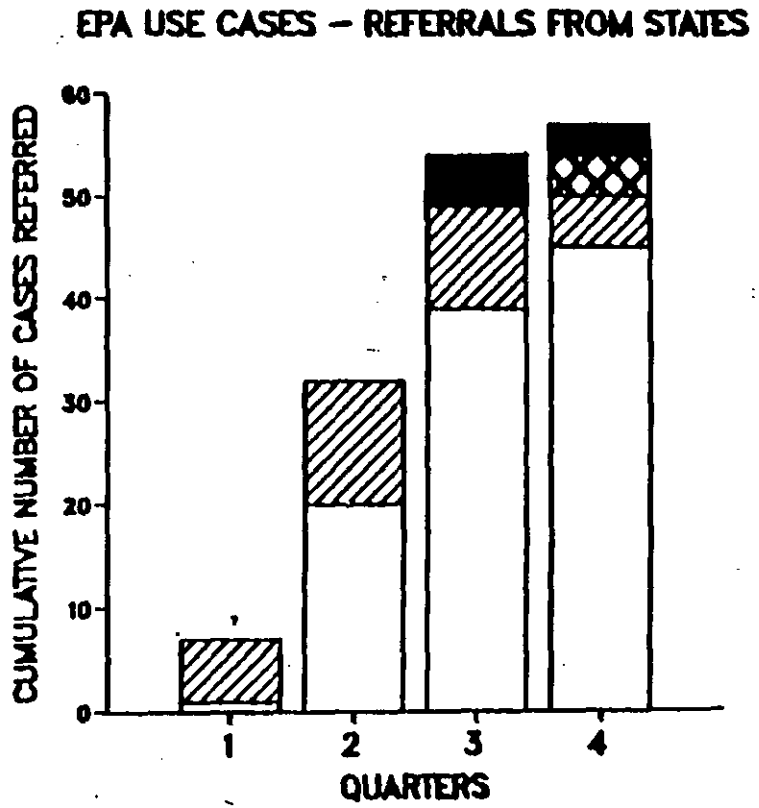




OCAPO 10/86

ADDRESSING FIFRA SIGNIFICANT NONCOMPLIANCE
As Of September 30, 1986





LEGEND

- NOT ADDRESSED BEYOND TIMEFRAME
- ADDRESSED BEYOND TIMEFRAME
- PENDING WITHIN TIMEFRAME
- ADDRESSED WITHIN TIMEFRAME

OCAPO 10/86