Environmental Protection Agency - Region 4

Fiscal Year 2001

Enforcement & Compliance Assurance

Accomplishments Report

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FY2001 Accomplishments

The following report details the accomplishments of the Environmental Protection Agency (EPA) - Region 4 enforcement and compliance programs during fiscal year 2001 (FY2001), which lasts from October 1, 2000 through September 30, 2001. EPA Region 4 encompasses eight states in the southeastern United States, including Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. By working with the environmental agencies in these states, the Region has implemented a balanced approach to environmental protection. Using a combination of enforcement, compliance incentives, and compliance assistance, the best approach for addressing environmental degradation can be achieved.

Top Accomplishments

Enforcement Cases and Penalties

EPA Region 4 continued to maintain a strong enforcement presence in FY2001 by referring 45 civil cases to the Department of Justice (DOJ). Of these DOJ referrals, one third of cases were either multi-facility or multimedia cases. The Region set an unprecedented record in both the amount of penalties assessed as well and the cost of imposed injunctive relief. Of the civil and administrative cases that were concluded in FY2001, over $31 million in penalties were assessed, and more than $1.2 billion in injunctive relief was imposed. In terms of pollution reductions, 706,366 pounds and 1,300,000 gallons of pollutants were eliminated. In addition, a major settlement as part of the Coal Fired Power Initiative will result in the annual reduction of 244,800,000 pounds of nitrogen oxide, sulfur dioxide, and particulate matter.

Atlantic Steel Redevelopment Project

EPA Region 4 became involved with the Atlantic Steel Redevelopment Project through EPA's Project XL Program, which is a national pilot program that allows federal, state and local governments and businesses to develop innovative strategies for achieving environmental and public health protection. In exchange, EPA will issue regulatory, program, policy, or procedural flexibilities to conduct the project.

Jacoby Atlantic Redevelopment, L.L.C., a developer in Atlanta, Georgia, has proposed the remediation and redevelopment of approximately 135 acres near Atlanta's central business district. The property to be redeveloped is the site of the former steel mill owned by Atlantic Steel Industries, Inc. This project will combine typical brownfield redevelopment, the cleanup and redevelopment of a potentially contaminated industrial site, with transportation development encouraging modes of transportation beyond single-occupancy vehicles. The proposed redevelopment, named Atlantic Station, will be a mix of residential and business uses and will

include the construction of a multimodal bridge (accommodating cars, pedestrians, bicycles, and mass transit) as well as access to Interstates 75/85 from the site and connect it to a nearby Metropolitan Atlanta Rapid Transit Authority (MARTA) station.

Project XL was required for the Atlantic Steel redevelopment because neither the multimodal bridge nor the associated interstate access ramps would be able to proceed without the regulatory flexibility being allowed by EPA under its XL Program. EPA, in cooperation with several federal, state and local agencies, completed an Environmental Assessment (EA) for the project as part of compliance with the National Environmental Policy Act of 1969 (NEPA). The EA considered the impacts of the entire redevelopment project, including the supporting transportation infrastructure. The Atlantic Steel project will demonstrate that brownfield redevelopment strategies can be combined with transportation projects as part of an overall community revitalization plan, such that air quality and other environmental performance can be improved. Because of its design, use of existing transportation infrastructure, and location, redevelopment of the Atlantic Steel site can improve rather than exacerbate current air quality problems in the Atlanta area.

RCRA Permit Evaders

In FY2001, EPA Region 4's RCRA program continued to support national efforts in ensuring that dangerous hazardous waste treatment and recycling practices are eliminated and that illegal operations do not continue to economically undercut those facilities that operate within the law. In the Ferrous and Non-ferrous Foundry sector, investigations continued to uncover the same trend in noncompliance discovered in FY2000. Investigations at two facilities, owned by the same company, uncovered widespread mismanagement of sand contaminated with copper and lead. In addition to causing contamination on their own property, these facilities shipped foundry sand offsite to as many as sixteen other sites. EPA issued a RCRA § 7003 Imminent and Substantial Endangerment Order to the parent company to address known contamination at four sites which had received sands from the facilities. Jointly with the § 7003 Order, a RCRA § 3013 Order was issued for monitoring, testing and analysis to assess contamination and potential risk of exposure at two sites that are known to have received the foundry sand and ten sites that potentially have had sand disposed onsite. Copper is a constituent of concern because of its aquatic toxicity and lead for human exposure.

During FY2001, the RCRA program also continued inspections in the mineral processing sector to evaluate facilities for hazardous waste mismanagement and to determine if past exemptions to the Bevill Rule were now invalid, thereby making certain wastestreams subject to RCRA. EPA discovered close to a 40 percent rate of significant noncompliance among the facilities inspected. All of these violating facilities will be addressed with formal enforcement actions either by EPA Region 4 or the State agencies.

Mobile Bay Compliance Assurance Initiative

The combination of heavy industry, sensitive environmental populations, and Environmental Justice issues have brought the Mobile Bay area to the forefront of Region 4 issues. This area is heavily industrialized with numerous chemical manufacturers, petroleum refineries and pulp mills. Mobile County ranks as 32nd nationally for total releases and 4th nationally for air releases on the Toxics Release Inventory (TRI). There are several potential environmental justice areas located in Mobile and Baldwin Counties in addition to the diverse and sensitive ecosystems. The primary waterways are the Tennessee-Tombigbee River and the Alabama River which join prior to entering Mobile Bay. Portions of these waterways, as well as others and much of the coast, are under local fish advisories, have contaminated sediments, and have both conditionally approved and prohibited shellfish harvesting areas.

During FY2001, progress was made toward reducing the adverse impact that industries in the Mobile Bay Area are having on human health and the environment. A compliance assistance workshop was held for facilities in and around the Port of Mobile. Speakers from EPA, the Alabama Department of Environmental Management (ADEM), the U.S. Coast Guard, the National Estuary Program and industry representatives detailed common compliance challenges for facilities at the Port and gave advice for remaining or coming into compliance. The Federal Audit Policy was also discussed and facilities were encouraged to take advantage of its offerings. An Environmental Management Systems workshop was held for federal facilities and tribes. This workshop was geared toward educating the regulated community on how to identify their key environmental aspects and improve their activities and management systems that impact the environment and public health.

Activities planned for FY2002 and FY2003 include participation on the Air Toxics Study Committee, which includes citizens' groups, local government, industry, ADEM and EPA. This Committee is tasked with siting monitors and completing an air toxics assessment of the Mobile Bay area. The monitoring data and methodology used for evaluation of the data will be coordinated through EPA risk assessment staff to ensure that the data can be used to make sound science decisions for future EPA/ADEM involvement in the Mobile Bay area. Actual monitoring will begin in February 2002. In addition, EPA will be partnering with local government and industries to present a compliance assistance workshop detailing the requirements for disposal of electronics waste. This workshop will be followed by a collection event for the local community.

Enforcement Case Summaries

Mulitimedia Cases

Morton International (Mississippi) - On October 26, 2000, a Civil Consent Decree, filed by the Department of Justice on behalf of EPA and the Mississippi Department of Environmental Quality (MDEQ), resolved claims that Morton International, Inc. violated provisions of the Clean Air Act (CAA), the Clean Water Act (CWA), the Resource Conservation

and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA) at its Moss Point, Mississippi facility. Morton, a wholly owned subsidiary of Rohm and Haas Company based in Philadelphia, has agreed to pay a $20 million penalty that will be divided equally between the United States and Mississippi. This penalty marks the largest-ever civil fine for environmental violations at a single facility. In addition, the agreement obligates Morton to perform $16 million worth of supplemental environmental projects to benefit public health or the environment. The agreement requires a third-party environmental audit of all 23 chemical facilities owned by Rohm and Haas in the United States. Under the settlement, Morton also will complete a comprehensive assessment of the Moss Point facility, determine whether corrective measures are needed to address pollution, and undertake any necessary measures.

Morton produces plasticizers, synthetic rubber, rocket polymers, and other chemicals and adhesives at its facility in Jackson County, near the Escatawpa River. In 1996, an EPA inspector conducting an evaluation of the facility discovered what appeared to be falsified reports submitted to the MDEQ. Factories with permits issued under the CWA must periodically file these monitoring reports with regulators, indicating the types and amounts of pollutants they are discharging. The discovery of the falsified reports prompted the EPA and the MDEQ to launch a joint investigation of the entire Moss Point facility, examining the company's compliance with several state and federal environmental laws. This investigation revealed numerous civil violations of CWA, CAA, EPCRA, CERCLA and RCRA:

- The agencies found that Morton was disposing of several kinds of hazardous waste at its on-site landfill without a specific permit issued under RCRA. These materials included waste ash, sludge, toluene and other hazardous wastes. In addition, it was determined that Morton was disposing of hazardous wastes in deep injection wells, violating the facility's underground injection facilities permit. Those hazardous wastes include toluene and methyl ethyl ketone, as well as other hazardous wastes.

- Under federal law, a company that releases a specified amount of a hazardous substance into the environment is required to immediately notify the National Response Center. However, although Morton disposed of hazardous wastes into its landfill and injection wells on numerous occasions, the company failed to report these releases to the NRC, in violation of CERCLA.

- The company is also alleged to have violated EPCRA requirements that require companies to report to the EPA each time they produce or release toxic chemicals in excess of an amount specified in the statute. On several occasions between 1993 and 1995, Morton was found to have released methanol, methyl ethyl ketone, and toluene into the air and soil.

- EPA and MDEQ also alleged that the Moss Point facility violated the CAA by building and operating a new boiler - increasing the amount of air pollution emitted - without first

obtaining a permit. Mississippi's state implementation plan under the Act requires that any new or significantly modified facility must have a permit before it begins operating.

- The EPA and the MDEQ also determined that Morton had chronically violated the terms of its Clean Water Act permit, from 1991 to 1996, discharging excessive amounts of pollutants into the Escatawpa River.

In addition, under a separate action Morton pleaded guilty to criminal violations of CWA and RCRA. Under a plea agreement, Morton has agreed to pay a $2 million criminal penalty for these violations.

Macalloy Corporation (South Carolina) **-** Macalloy Corporation, located in Charleston, South Carolina, was targeted for enforcement following a 1997 joint State and EPA multimedia inspection in which numerous Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA) and State environmental law violations were discovered. On July 10, 2001, a settlement agreement was lodged with the Court, and following public notice, entered on September 24, 2001. Under the terms of the agreement, Macalloy will pay a civil penalty of $1.2 million for violations under federal and state requirements, and maintain storm water controls to insure minimal impacts to the adjacent Shipyard Creek. EPA also is in the process of completing the assessment and action plan for a Superfund clean-up action at the site. This case represented not only the first case in South Carolina in which the South Carolina Department of Health and Environmental Control (SCDHEC) and EPA filed and jointly negotiated a civil judicial enforcement against a CWA or RCRA defendant, but also one of the very few instances that a water enforcement case has ever led to a site being placed on the Superfund National Priorities List (NPL).

Since its construction in 1941 to its closure, the Macalloy facility manufactured ferrochromium -- an alloy of iron and chromium which is used to make stainless steel and alloy steels. Although Macalloy had a permit to discharge industrial wastewater from their site to Shipyard Creek under the National Pollutant Discharge Elimination System (NPDES), Macalloy had exceeded its permit effluent limits thousands of times, including several significant parameters such as hexavalent chromium, suspended solids, pH, and fecal coliform. In addition, there had been unpermitted contaminated storm water discharges into Shipyard Creek. Samples of sediment in Shipyard Creek showed high levels of contamination by chromium, along with other metals. The initial focus of the case was to address past CWA violations, control contaminated surface water discharges, and address contaminated sediments and marshes in Shipyard Creek. As EPA's investigation continued, it became apparent that a multimedia approach involving the State (which had also issued a state RCRA order) was necessary to address the entirety of the site contamination. Macalloy (and the preceding owners) had generated slag, baghouse and electrostatic precipitator dusts (ESP), and gas conditioning tower sludges, and had stored and/or buried these wastes over much of the 125-acre property. When EPA began the case, the massive ESP dust pile on the property and the site-wide contamination was causing contaminated runoff and surface water problems. In February 2000, the site was ranked on the Superfund National Priorities List (NPL) due to concerns of releases of hazardous

constituents through a surface water pathway. Macalloy has ceased operations and the proposed cleanup plan for the site is expected to be released in December 2001.

Clean Air Act

Air Liquide America Corporation - On June 21, 2001, the EPA, through the Department of Justice, filed a complaint and consent decree resolving multiple violations of the Clean Air Act by Air Liquide. The government had charged Air Liquide with illegally releasing ozone-depleting gases from industrial process refrigeration systems at 22 facilities in 18 states (seven facilities in Region 4). The agreement requires Air Liquide to convert all of its industrial refrigeration systems now using regulated ozone-depleting chlorofluorocarbons (CFCs) to systems using alternative, environmentally friendly refrigerants. The company will also fund an environmental justice supplemental environmental project valued at $422,000 that will benefit a lower income, predominantly minority community in Louisiana, and pay a $4.5 million civil penalty, setting a new record for the largest CFC penalty collected by EPA. The total value of the retrofitting is estimated to exceed $14 million.

Nucor Steel, Inc. - On June 19, 2001, a Consent Decree was entered for violations of PSD/NSPS under the Clean Air Act and violations under EPCRA and RCRA. This was a multi-regional case involving eight mini-mills and six steel fabrication facilities in the States of Alabama, Arkansas, Nebraska, South Carolina, Texas and Utah. The company agreed to a cash penalty of $9 million, the installation of continuous emission monitors valued at $2 million, and $2 million in supplemental environmental projects. Nucor also agreed to pilot Selective Catalytic Reduction (SCR) and Selective Non-Catalytic Reduction at select mills, and install SCR permanently on reheat furnaces at two mills; and pilot a program for low VOC- based paint for painting operations. Additionally, Nucor agreed to join EPA in filing a joint motion that vacates the Vulcraft, Payne, Alabama decision and requires fugitives to be included in the PSD determination. This settlement will reduce NOx by 6,400 tons and VOCs by 3,000 tons over eight years.

Marathon Ashland Petroleum LLC - A consent decree was filed on May 11, 2001, in U.S. District Court in Detroit for Marathon Ashland that is expected to reduce emissions from seven petroleum refineries by more than 23,000 tons per year. Under the settlement, Marathon Ashland will spend an estimated $265 million to cut emissions by using innovative technologies, incorporating improved leak detection and repair practices, and making other pollution-control upgrades. Marathon Ashland will also pay a $3.8 million civil penalty under the Clean Air Act and spend $6.5 million on two environmental projects in communities affected by the refineries' pollution. Marathon Ashland operates a petroleum refinery in Catlettsburg, Kentucky.

Clean Water Act

Murphy Farms, Inc. (North Carolina) - Region 4 entered into a settlement with Murphy Farms, Inc. and D. M. Farms of Rose Hill (collectively, the defendants) for Clean Water Act violations at five hog farms in Magnolia, North Carolina. The settlement resolves a civil judicial

action filed by the United States and by three citizens organizations: the American Canoe Association, the Professional Paddlesports Association and the Conservation Council of North Carolina. The terms of the settlement are embodied in a consent decree lodged on July 10, 2001, and entered on October 2, 2001, with the United States District Court in Wilmington, North Carolina. The consent decree requires the defendants to take specified measures to prevent future discharges of swine waste at the hog farms and to pay $72,000 to the United States Treasury. Measures called for in the consent decree include the installation of stream buffers; the marking of spray areas; inspections; training of personnel; removing certain spray field areas from service; and record keeping.

The EPA and citizens' lawsuit alleged a number of illegal discharges to the Cape Fear River Basin from swine operation in violation of the National Pollutant Discharge Elimination System (NPDES) provisions of the Clean Water Act. An earlier decision by the District Court resulted in the State of North Carolina issuing to D. M. Farms the first NPDES permit to a concentrated animal feeding operation (CAFO) in the State. The NPDES permit contains substantial additional measures to prevent discharges. Because of the environmental and human health concerns created by the concentration of large swine CAFOs in eastern North Carolina, EPA has been working with North Carolina to ensure development of an effective NPDES CAFO permitting program.

Enforcement in the CAFO arena has been highlighted as a national priority by EPA, as set forth in EPA's Clean Water Action Plan released in February 1998, and the Department of Agriculture-EPA Unified National Strategy for Animal Feeding Operations released in March 1999. Like other forms of polluted runoff, discharges from CAFOs have been determined to be a significant source of water pollutants such as nutrients (e.g., nitrogen and phosphorus), organic matter, sediments, pathogens, heavy metals, hormones, antibiotics, and ammonia. As a result of market forces and technological changes, the past several decades have seen substantial changes in the animal production industry including the expansion of confined production units, the concentration of large farms in the same geographic area, and vertical integration. These changes have brought an increased risk to water quality and public health because of the amount of manure and wastewater CAFOs generate.

Dalton Utilities and the Water, Light, and Sinking Fund Commission of the City of Dalton, Georgia (Dalton Utilities) - On July 17, 1998, the Department of Justice filed a complaint on behalf of the United States Environmental Protection Agency, Region 4, in the United States District Court for the Northern District of Georgia against Dalton Utilities and the Water, Light and Sinking Fund Commission for numerous violations of the Clean Water Act. On March 28, 2001, the Court entered the Consent Decree which settled the claims raised by the United States and the State of Georgia against Dalton Utilities. The Consent Decree required Dalton Utilities to pay a six million dollar ($6,000,000) civil penalty and specified injunctive relief. The six million dollar civil penalty is the largest cash penalty ever against a municipality for violations of environmental statutes.

The City of Dalton is located in the northwestern part of the State of Georgia within the County of Whitfield. The City of Dalton, through the Board of Water, Light and Sinking Fund Commissioners operates Dalton Utilities. Dalton Utility operates, maintains, and manages the electric, natural gas, drinking water and sewage services for the City of Dalton and the surrounding areas within Whitfield County.

The Utility owns and operates three biological wastewater treatment facilities which have a combined design treatment capacity of 40 million gallons per day. The Utility operates a collection system consisting of approximately 200 miles of sewer pipe, 3,000 manholes, and 13 pump stations. About 87 percent of the wastewater which enters the collection system originates from industrial sources, primarily carpet manufacturers. The treatment facilities at the Utility produce both wastewater effluent and sewage sludge. Effluent from the treatment facilities is sprayed onto a dedicated land application system (LAS) which comprises approximately 8,875 acres. The effluent from these wastewater treatment facilities is applied to field areas on the LAS site twenty-four hours a day on a rotating basis. A significant amount of the wastewater sprayed on the LAS leaves the site via surface waters and enters the Conasauga River. The Clean Water Act prohibits the discharge of pollutants by any person into navigable waters of the United States, except in compliance with certain enumerated sections. The Utility did not possess a NPDES permit issued under the Clean Water Act to discharge pollutants from its collection or land application systems.

Pursuant to the terms and conditions of the Consent Decree, the Utility is required to implement the pretreatment program approved by the State of Georgia and any successor LAS permits and NPDES permits. The Utility must create a detailed map of the collection system which identifies manhole and pump station locations, flow direction, and the sizes of all pipes. This map must be updated annually to reflect all additions to and deletions from the Utility's collection system. The Utility is also required to implement the operation and maintenance standards and procedures in the Sewer Collection System Management Program, Standard Operating Procedures (Collection System SOP). Capital improvements must be initiated to prevent discharges of pollutants from the collection system to waters of the State and maintain adequate financial and personnel resources to implement the Collection System SOP.

The Utility must also implement the LAS Water Quality Characterization Plan by February 23, 2002. The State of Georgia is required to issue a draft NPDES permit to the Utility for the LAS and also required to make a final decision about whether to issue a final NPDES permit within a reasonable time, taking into account the public comments received and any other factors the State may lawfully consider.

The Utility is banned from land applying sewage sludge. The Utility is required to permanently disable the sludge distribution lines by physically separating and capping all lateral distribution lines from the main trunk line. For compliance purposes with the sludge regulations, the Utility is required to demonstrate that the pollutants in the soil are below the ceiling concentration for metals set forth in the sludge regulations at Part 503. If the Utility cannot demonstrate that the pollutant levels in the soils are below the ceiling concentrations in Part 503,

the Utility must submit a plan for reducing the metal concentration within the respective area. Groundwater monitoring wells must be installed along the boundary of the former sludge application site. Pollutants in the groundwater must be below the concentration listed in the Consent Decree. If the Utility cannot demonstrate that the pollutant levels in the groundwater are below the concentrations outlined in the Consent Decree, the Utility must submit a plan for reducing the pollutant concentration in the groundwater as soon as technically possible.

Comprehensive Environmental Response, Compensation, and Liability Act

Copper Basin Mining Site (Tennessee) - On January 11, 2001, EPA, the Tennessee Department of Environment and Conservation (TDEC) and OXY USA executed a Memorandum of Understanding (MOU) to address the environmental cleanup and restoration of the Copper Basin Mining Site in Polk County, Tennessee. The MOU outlines a cooperative approach that EPA, TDEC and OXY USA will follow in the remediation and restoration of the Copper Basin, a vast multi-watershed area severely degraded and polluted by over a century of copper and iron mining, mineral processing and acid production. EPA has agreed to refrain from listing the Site on the National Priorities List as long as work is proceeding under the MOU. Pursuant to the MOU, and concurrent with its signing, four administrative orders were executed with OXY USA (three EPA orders and one TDEC order) covering the first phase of work to be performed in the Copper Basin. The estimated value of work agreed to by OXY USA is $250,000,000. The parties recognize that the final remediation and redevelopment of the Copper Basin will be a long-term, complicated undertaking that will best succeed in a timely fashion if the parties continue to work together cooperatively, sharing resources and technical expertise.

Martin County Coal Corporation (Kentucky) - On Wednesday, October 11, 2000, a coal slurry impoundment owned and operated by the Martin County Coal Corporation (MCCC), in Inez, Martin County, Kentucky, had a sudden breach and released an estimated 250 million gallons of waste materials, including coal mine fine refuse slurry, sediments and other materials. The release occurred due to the collapse of an abandoned mine shaft under and adjacent to the refuse impoundment. The spilled waste material entered both the Wolf Creek and Rockcastle Creek watersheds. The spill has been described as one of the south's worst environmental disasters. The slurry left fish, turtles, snakes and other aquatic species smothered as the slurry covered the bottoms of the streams and rivers.

EPA Region 4 was contacted by the National Response Center and responded immediately to the release along with the Commonwealth of Kentucky. The EPA On Scene Coordinator (OSC) was dispatched and set up the Unified Command/Incident Command to coordinate the response as required by the National Contingency Plan. Several potable and industrial water supply intakes were affected as a result of the spill. MCCC, under the direction of the OSC and with the help of the Corp of Engineers, began immediately providing alternative water supplies to the impacted communities.

The released waste material entered the surface water and impacted more than 100 miles of surface water downstream from the Site, including the Tug Fork and Levisa Fork of the Big

Sandy River, a tributary of the Ohio River. The spill buried yards and farms, covered roads, disrupted water service, and closed schools, business and other public facilities. The Tug Fork and Big Sandy border both West Virginia and Kentucky.

The complicating factor, for EPA, was that the release was basically a naturally occurring substance. It was clear that EPA had authority to respond to the initial release of a pollutant or contaminate under CERCLA §104, but it was not clear that EPA would be able to recover all its costs and get full restoration of the impacted streams and rivers. EPA spent more than a million dollars of Superfund money on the first response and wanted to recover those costs. The coal industry was concerned with the perception that EPA, by using CERCLA authority, would require that coal be deemed a hazardous substance.

Region 4 worked closely with the coal company, the State of West Virginia, the Commonwealth of Kentucky, EPA Headquarters, and EPA Region 3 to develop a unique order that requires the company to remove all the slurry material from the water bodies and to restore those water bodies. The order further requires the coal company to pay all of EPA's past and future costs under CERCLA. The order also provides for a unique mechanism for all interested parties to have a say in the restoration of the streams and rivers. A team which consists of representatives from Kentucky, West Virginia, EPA Regions 3 and 4, and MCCC will be in the field to approve or disapprove work as it progresses. The idea was that having the experts in the field as work progressed would result in a faster and better clean-up that was agreeable to all interested parties.

Divex Inc. (South Carolina) - On October 29, 2001, Judge Dennis M. Shedd of the United States District Court for the District of South Carolina entered a Consent Decree with six corporate and three federal agency generator and/or arranger Potentially Responsible Parties (PRPs) for the Divex Inc. Superfund Site (Site). This settlement, pursuant to § 107(a) of CERCLA, provides for the reimbursement by these PRPs of $1,998,473 in response costs incurred by EPA and $13,565 in response costs incurred by the South Carolina Department of Health and Environmental Control (SCDHEC) in responding to the release of hazardous substances at the Site. In addition to the Consent Decree, on September 24, 2001, an Administrative Order on Consent for Recovery of Past Response Costs (AOC) became effective that resolved liability with ten additional parties. The AOC, pursuant to § 107(a) of CERCLA, provides for the reimbursement by these additional PRPs of $159,846 in response costs incurred by EPA in responding to the release of hazardous substances at the Site.

The initial Complaint in this case was filed on July 31, 2001, against Lockheed Martin Corporation, Mine Safety Appliances Company, Safety-Kleen (Lone and Grassy Mountain), Inc., Olin Corporation, General Dynamics OTS (Aerospace) Inc., and General Dynamics OTS (California), Inc. Additionally, the Complaint addressed the liability against the Department of the Army, Department of the Navy, and the Department of Energy. The AOC settled the liability relating to five companies, three public school districts, and SCDHEC.

The Divex, Inc. Superfund Site consists of three different parcels of property in various locations in and around Columbia, Richland County, South Carolina. The owner and primary operator of Divex, Inc., was Mr. Jack Sutherland. The company was run by Mr. Sutherland from the early 1980s until 1993 and was engaged in numerous environmentally-related services: hazardous waste transportation, underground storage tank removal, explosive and demolition work, and cylinder cleaning and disposal. In addition, Divex, Inc., entered into numerous contracts for testing, developing, and disposing of various experimental chemicals and compounds. On September 6, 1993, Mr. Sutherland was killed in a chemical explosion while mixing highly reactive materials at the manufacturing facility on Montgomery Road. The explosion caused a release of explosives, acids, and other chemical intermediaries into the environment.

In October 1993, EPA initiated work and/or oversight at all three parcels of land. The initial emergency removal effort involved the categorization, stabilization, treatment and disposal of substantial volumes of explosive, flammable, reactive and toxic substances as well as listed hazardous substances. The removal was conducted with the cooperation of numerous state and federal agencies. The final phase of the removal involved complex Site assessment and sampling based on information that explosive material was buried throughout the Montgomery Road property. The sampling revealed that there were no buried explosives or hazardous materials on the Site. To date, EPA and DOJ have incurred approximately $4,630,000 in response costs for removal and related enforcement activities at the Site.

Federal Insecticide, Fungicide, & Rodenticide Act

Charles Handley (Georgia) - EPA Region 4 filed a Consent Agreement and Final Order against Charles R. Handley for violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), for misusing aldicarb, a restricted use pesticide active ingredient, for predator control. In June 1999, the Georgia Department of Natural Resources (GDNR) determined a bear death related to ingestion of a lethal dose of aldicarb. The property on which the carcass was found was leased by Charles Handley of Fargo, Georgia, for the purpose of honey production and inspectors found a cut-off plastic container holding a substance resembling crumbled doughnuts, honey and a dark granular substance found to be aldicarb. The Georgia Department of Natural Resources brought criminal charges against Mr. Handley. EPA regarded Mr. Handley, a certified private applicator in Georgia, to be a "Commercial Applicator" by definition because aldicarb is not labeled for any uses in honey production and proceeded with a civil administrative action. Mr. Handley was charged with one count of use of a pesticide in a manner inconsistent with its labeling and agreed to pay a fine of $2,530.

PetMed Express, Inc. (Florida) - On September 30, 2001, EPA Region 4 filed a Consent Agreement and Final Order against PetMed Express, Inc., for violations of FIFRA, for selling and distributing misbranded pesticides. The Respondent was selling the flea-and-tick control products "Advantage" and "Frontline" that had been illegally imported into the United States and failed to

meet the labeling requirements of FIFRA. The company destroyed existing stocks of the misbranded pesticides and agreed to pay a penalty of $100,000.

Resource Conservation & Recovery Act

Toyota Motor Manufacturing (Kentucky) - Toyota Motor Manufacturing, Kentucky, Inc. (Toyota) operates a vehicle assembly plant in Georgetown, Kentucky. The plant generates hazardous waste purge solvent from painting and cleaning operations. Waste purge solvent is piped to a hazardous waste storage tank for shipment offsite. During a November 1, 2000, EPA Compliance Evaluation Inspection, EPA observed that the facility was operating out of compliance with the requirements for hazardous waste tank systems and the air emission standards for equipment leaks. On September 27, 2001, EPA and Toyota entered into a Compliance Agreement and Final Order, which requires compliance with the applicable regulations and the payment of a $42,206 penalty.

Industrial Galvanizers Southeastern (Florida) - On February 7, 2001, a Consent Agreement and Final Order pursuant to Section 3008(a) of RCRA was entered into with Industrial Galvanizers Southeastern, located in Tampa, Florida. The Settlement included a $69,500 civil penalty for managing hazardous waste in an area which did not meet the appropriate RCRA tank standards. The facility was observed to be storing metal preparation waste sludges in a secondary containment area, which should have been containerized and shipped off-site in a timely manner. Therefore, the facility was not operating in a manner to minimize the possibility of a release to the environment.

As a result of this settlement, Industrial Galvanizers Southeastern also provided multimedia training to inspectors in Region 4 on the galvanizing process. In addition, the facility will also assist the EPA Region 4 RCRA program in a compliance assistance effort with the galvanizing sector in FY 2002 and 2003.

R & R Distributing Company (Tennessee) - On August 31, 2000, EPA and the State of Tennessee filed a joint civil complaint against R & R Distributing Company, Inc., (R & R), a petroleum distributor, for various violations of federal and state Underground Storage Tank (UST) requirements. True to the State's prior experience with the Defendant, it was necessary to employ the U.S. Marshals to serve the summons and complaint on the Defendant. Following protracted negotiations, on August 13, 2001, the consent agreement memorializing the settlement between R & R and plaintiffs was lodged with the court. Due to cost of completion of the necessary injunctive relief (which resulted in the closure of 16 of the 19 facilities cited in the complaint) and an inability-to-pay justification on the part of R&R, EPA and the State accepted a mitigated penalty of $120,000.

The Defendant is a petroleum distributor who delivers petroleum products to UST systems and was the owner and/or operator of approximately 74 USTs at 33 facilities in the Columbia, Tennessee area. Most of these facilities consist of small to medium-sized convenience stores and gasoline stations. In June 1998, Region 4 inspected 27 of the R & R

facilities (19 of these were included in the referral) and found numerous violations of the UST regulations including failure to perform release detection, failure to comply with closure requirements, and failure to have demonstration of financial responsibility. Due to R & R's history of violating environmental laws, this action had a significant impact by forcing compliance (upgrades and proper financial responsibility) or closure of all of R & R's facilities within the state.

U.S. Department of Veterans Affairs - VA Medical Center (North Carolina) - On August 10, 2001, EPA filed an administrative consent order against the U.S. Department of Veterans Affairs (VA) W.G. Hefner VA Medical Center, located in Salisbury, North Carolina, for various violations of Subtitle I of the Resource Conservation and Recovery Act (RCRA). Significant in this action was the resulting Supplemental Environmental Project (SEP) - an environmental compliance promotion SEP involving two 2-day UST Compliance and Inspector Training Programs consisting of one day of classroom training and one day of on-site training per session. The Training will be given to all personnel in the 3 Southeastern VA Regions and offered free of charge to all state and federal agency personnel located in the State of North Carolina.

The Defendant is a medical hospital operated by the federal Veterans Administration providing, primarily, outpatient medical and psychiatric care services for U.S. service veterans and their dependents. It is the owner and/or operator of nine Underground Storage Tanks (USTs) at different locations on the VA Medical Center campus. The majority of the USTs are used for storing fuel for emergency generators. Two USTs are used to dispense fuel for the facility's fleet vehicles. On February 16, 2000, Region 4 inspected all of the USTs to determine compliance with leak detection and upgrade requirements under RCRA Subtitle I and 40 C.F.R. § 280. EPA found several violations of the UST regulations including failure to install corrosion protection, failure to install spill and overfill protection, and failure to provide release detection. EPA Region 4 filed an administrative action with a proposed penalty of $49,900. In response to due diligence on the part of the VA in completing the necessary injunctive relief and the acceptance of the SEP (that will cost the VA more than $40,000), EPA accepted a mitigated penalty of $5,000.

Safe Drinking Water Act

U.S. Army XVIII Airborne Corps and Fort Bragg (North Carolina) - Fort Bragg, a federal facility located in Ft. Bragg, North Carolina, owns and operates a public water system with approximately 6,700 service connections, and regularly serves approximately 65,000 individuals, making it subject to certain provisions of the Safe Drinking Water Act. A review of available records indicated that Fort Bragg exceeded the maximum contaminant level (MCL) for total trihalomethanes (TTHM) on 16 different 12-month periods and failed to provide timely public notice for 14 of the TTHM violations. Fort Bragg also failed to meet the public education requirements as a result of exceeding the 90th percentile action levels for lead, and failed to report its noncompliance with the MCLs for organic chemicals.

EPA Region 4 filed an Administrative Complaint against Ft. Bragg on March 14, 2000, and entered into a Consent Agreement and Final Order (CAFO) on June 5, 2001. The CAFO includes the payment of a cash penalty of $312,500 and the performance of two Supplemental Environmental Projects (SEPs) with a total SEP cost of at least $821,994. One SEP is a Water System Performance Evaluation of five U.S. Army installations to identify deficiencies in the water systems, including source water, treatment, water quality, operational monitoring and control, and operation and maintenance of the distribution system, and recommended improvements. The second SEP is a Runoff Characterization and Land Classification project of the cantonment of Fort Bragg to determine surface water drainage, and to recommend best management practices for storm water runoff.

Tommy Naylor Farm (North Carolina) **-** On September 28, 2001, Region 4 issued a Safe Drinking Water Act §1431 Imminent and Substantial Endangerment Order (Emergency Order) to Tommy Naylor Farm, a concentrated animal feeding operation (CAFO) in North Carolina. Tommy Naylor Farm was targeted for enforcement action after several private drinking water wells near the farm were found to be contaminated with nitrate.

During the course of the investigation, EPA used nitrogen isotope analysis to determine the source of the nitrate contamination in the private wells near Tommy Naylor Farm. The isotope analysis, in connection with hydrological information and ground water sampling data, enabled EPA to distinguish among various potential sources of nitrate contamination. As a result, EPA was able to determine that Tommy Naylor Farm was causing or contributing to nitrate contamination in the underground source of drinking water underlying the facility, which resulted in the contamination of three down-gradient private water supply wells. Drinking water with high levels of nitrate can cause serious illness and even death in infants and small children. It may also cause miscarriages, elevated blood pressure, spleen hemorrhages, and other illnesses.

Tommy Naylor Farm consists of two swine facilities, Farm #1 and Farm #2. The Emergency Order pertains only to Farm #2, which houses approximately 1,225 hogs. The Emergency Order requires Tommy Naylor Farm to provide an emergency supply of bottled water to the three homes with wells that were contaminated by the Farms' operations. The Farm is also required to perform quarterly sampling of the three private wells and to submit a plan for providing a permanent alternative source of safe drinking water to the affected homes. Tommy Naylor Farm has indicated that it will comply with the terms of the Emergency Order.

U.S. v. Levine, et al. (Kentucky) - A complaint was filed with the Western District of Kentucky against Syd Levine and his five corporations on August 22, 1997, seeking the following relief: (1) an award of stipulated penalties for failure to comply with an administrative order;
(2) civil penalties for violations of the Safe Drinking Water Act (SDWA) and underground injection control (UIC) regulations; and (3) proper plugging and abandonment of 41 underground injection wells or the performance of mechanical integrity testing (MIT) upon those wells. Defendants had violated the SDWA and UIC regulations by failing to perform MITs on 41 underground injection wells.

On November 3, 2000, the District Court issued its decision on the United States Motion for Summary Judgment. All Defendants were found liable for failure to perform MITs on 41 underground injection wells. Stipulated penalties of $52,920 were awarded against one corporate defendant for failure to comply with an administrative consent order. The remaining four companies and Syd Levine individually were found liable for $75,000 in civil penalties. The Court directed defendants to demonstrate the mechanical integrity of the injection wells within two years of entry of the Court's Order. Of particular importance to the integrity of the UIC program was the finding that whether or not an underground source of drinking water exists in the area of injection wells is irrelevant to a determination of liability for failure to conduct MITs. Presently, the decision is on appeal.

Toxic Substances Control Act

Aegis Environmental, Inc. (Tennessee) - On September 20, 2001, EPA Region 4 filed a Consent Agreement and Final Order against Aegis Environmental, Inc., located in Franklin, Tennessee for violation of Section 402 of the Toxic Substances Control Act (TSCA). Aegis Environmental, Inc. conducted lead-based paint abatement at two sites for the Chattanooga Tennessee Housing Authority without obtaining EPA firm and individual certification as required. Aegis Environmental, Inc. agreed to pay a final adjusted penalty of $13,500. Aegis Environmental, Inc. has since obtained the appropriate lead-based paint abatement certifications for the State of Tennessee. This case was the first TSCA Section 402 civil penalty to be issued in the Nation.

Criminal Enforcement

Central Industries, Inc. (Mississippi) - For many years, ending in 1995, Central Industries, Inc., rendered millions of pounds per year of chicken parts from processing plants into usable products in its plant in Scott County, Mississippi. In doing so, the company virtually ignored persistent problems with its wastewater treatment plant. As a result, Central continually exceeded its NPDES permit limits for many contaminants and frequently discharged untreated blood, feathers and other offal into Shockaloe Creek, a tributary of the Pearl River.

Central was owned and operated by a consortium of large chicken producers, including Tyson Foods, Inc., Marshall Durbin Food Corporation, Forrest Packing Company, Choctaw Maid Farms, Inc., and B.C. Rogers Poultry, Inc. Executives of each of the companies served on Central's Board of Directors at various times, making decisions concerning the operation of the plant, including the operation of the wastewater treatment system.

In November 2000, Central pled guilty to 26 felony Clean Water Act (CWA) charges and was ordered to pay a criminal fine of $13 million and to pay one million dollars in restitution. Over the next several months, various executives with knowledge of the plant's operational difficulties pled guilty to criminal charges. In March 2001, Tammy H. Etheridge, former CEO of Central, pled guilty to three CWA misdemeanors and was ordered to serve four months monitored home confinement. Etheridge was also ordered to serve three years supervised

probation, immediately pay a $300,000 criminal penalty, and serve 200 hours of environmental-related community service. Earlier, three other executives of Central had pled guilty to CWA charges. Terrence Miller pled guilty to one CWA felony and was sentenced to three years supervised release, 100 hours of community service, and a $25,000 fine. John R. McCarty pled guilty to two CWA misdemeanors and was sentenced to one month home confinement, two years supervised release, 100 hours of community service and a $50,000 fine. John M. Rogers, Jr. pled guilty to one CWA misdemeanor and was sentenced to two years supervised probation, and a $100,000 fine.

LCP Chemicals-Georgia (Georgia) - LCP Chemicals-Georgia (LCP), a division of Hanlin Group, Inc., operated a chlor-alkali plant located in Brunswick, Georgia, which produced chlorine, sodium hydroxide and muriatic acid. LCP shut down operations in February of 1994, and EPA-Criminal Investigation Division began an investigation of the facility shortly thereafter. Investigators determined that serious violations of the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and other environmental statutes had occurred on a daily basis at the plant, a 550 acre facility located adjacent to a tidal marsh. As a result of the violations, large quantities of mercury, caustic wastewater, acidic wastewater, chlorine and bleach were released into the environment. As a result of these violations and contamination from previous operations, the facility is now a Superfund site.

On May 28, 1998, Christian A. Hansen, former chief executive officer of Hanlin, Randall W. Hansen, former chief operating officer of Hanlin, Alfred R. Taylor, former plant manager, and D. Brent Hanson, former environmental manager, were indicted in United States District Court for the Southern District of Georgia. The indictment included 42 counts of violations of environmental laws, including RCRA, CERCLA, CWA, and RCRA knowing endangerment. On January 15, 1999, a jury in federal court in Brunswick, Georgia, found Christian A. Hansen, Randall W. Hansen, and Alfred R. Taylor, guilty of the knowing endangerment of plant workers, one of very few knowing endangerment verdicts in the country. In addition, Christian A. Hansen was found guilty of a total of 41 counts which included conspiracy, violations of RCRA, CERCLA and the CWA. Randall W. Hansen was found guilty on 34 counts and Al Taylor was found guilty on 20 counts. Before the trial began, three mid-level managers, including Brent Hanson, pled guilty to violating environmental laws and cooperated in the government's investigation. On July 28, 1998, the corporation pled guilty to seven counts of violating environmental laws including RCRA, CERCLA, CWA, the Endangered Species Act and conspiracy.

Christian A. Hansen was sentenced to nine years incarceration, Randall Hansen was sentenced to 46 months incarceration, and Al Taylor was sentenced to six and one-half years incarceration. The three managers who cooperated, Brent Hanson, Chris Dunn, and Duane Outhwaite, were sentenced to 18 months incarceration, nine months incarceration, and probation, respectively.

The Hansens and Taylor appealed their convictions and sentences to the Eleventh Circuit

Court of Appeals. On August 24, 2001, the Court of Appeals issued a published decision affirming the convictions and sentences of all three. The Court found no merit in any of the defendants' claims of trial and sentencing errors. The Court found that the evidence was sufficient to show that the defendants knew that the plant's violations of the CWA and RCRA violations were inevitable, that the plant was incapable of complying with environmental standards, and that the employees were endangered while working within this environment without consenting to the risk. The Court rejected the defendants argument that they should not be held responsible for the environmental violations because they did not personally treat, store or dispose of hazardous waste or direct anyone else to do so. The Court found that the evidence was sufficient for the jury to find that the defendants' actions were in furtherance of the violations.