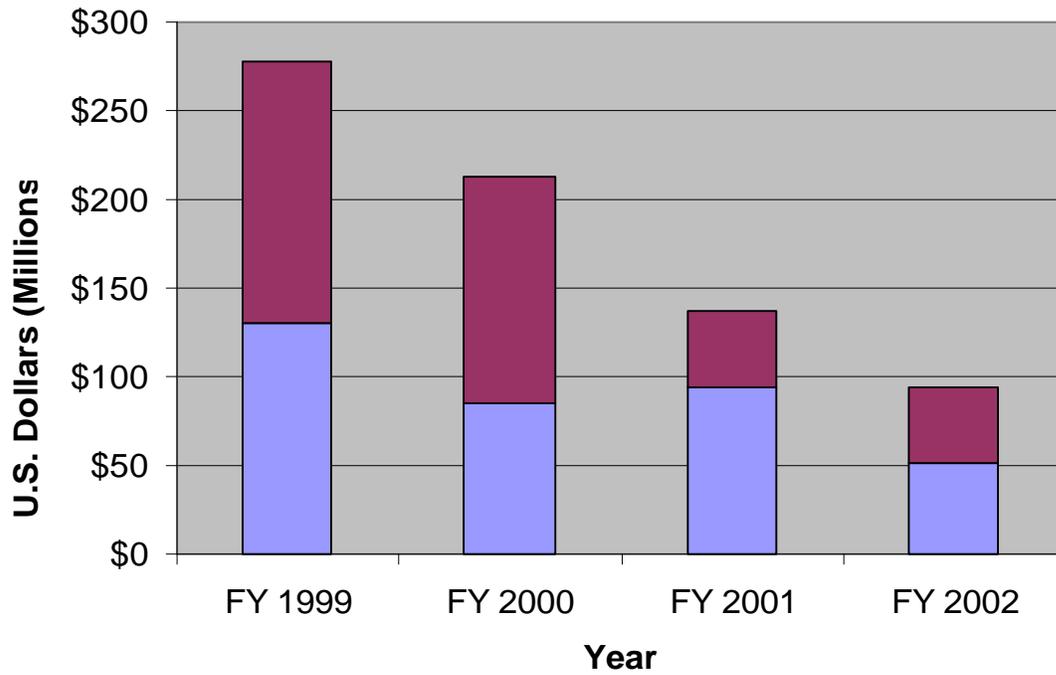

Paying Less to Pollute

THE DECLINE OF ENVIRONMENTAL ENFORCEMENT AT EPA UNDER THE BUSH ADMINISTRATION



January 2003

Executive Summary

Shortly after taking the reins at the Environmental Protection Agency, the Bush Administration announced that it would cut the Agency's enforcement staff by 270 positions. The Administration has also made clear that it does not support the laws that EPA has been trying to enforce that prevent aging power plants, refineries, and other factories from increasing pollution when they expand. Predictably, these decisions have begun to take their toll on EPA's ability to persuade violators to agree to settle enforcement actions brought against them.

In the 2002 fiscal year – the first full year in which EPA was under the thumb of the Bush Administration and its allies in the energy lobby – the number of penalties recovered from polluters in civil cases that were settled in federal court declined by half compared to the previous three year average. Defendants paid over \$130 million, \$84 million, and \$94 million, respectively, in fiscal years 1999, 2000, and 2001 to settle judicial actions. In 2002, the U.S. government was able to recover only \$51 million in civil penalties. In addition, nearly two-thirds of penalties in the 2001 fiscal year (October 1, 2000 to September 30, 2001) came from settlements lodged before the Bush Administration took office on January 20, 2001. Declining penalties can be explained in part by the absence of large settlements with the kind of Fortune 1000 companies that were the subject of large enforcement actions in prior years.

In addition to paying penalties, companies are expected to return to compliance. EPA, however, will reduce penalties somewhat for those willing to undertake "supplemental environmental projects" or "SEPs" that bind companies to do work that is well beyond what is required to comply with the law. These SEPs offer substantial benefits to local communities by, for example, financing the purchase and preservation of wetlands and greenspace, underwriting the cost of fence-line monitoring and mobile asthma clinics, or supporting conversion of bus fleets to natural gas. The value of these SEPs declined from a three-year average of \$106 million between fiscal years 1999 and 2001, to only \$43 million in 2002. Significantly, more than half of the SEPs obtained in the 2001 fiscal year originated from settlements lodged during the Clinton Administration.

Attachment A documents the current Administration's persistent campaign to cut back on enforcement staffing at EPA. By undercutting the enforcement program, the Administration has hamstrung EPA's power to effectively negotiate for environmental projects. The U.S. Senate has acted to restore full funding to EPA's enforcement program, which could help to reverse this trend, but has been stymied by the U.S. House of Representatives' push to restore only partial funding that would leave EPA with more than 100 fewer enforcement positions than it had when the current Administration took office. Meanwhile, the Bush Administration has made existing clean air laws even harder to enforce by weakening rules that require plants to obtain permits and install pollution controls. See Environmental Integrity Project (EIP), *Turning the Clock Back on the Clean Air Act* (Oct. 2002); EIP, *Bright Lines or Loopholes?* (Dec. 2002).

The attached analysis is based on a review of EPA cases lodged in federal court over the past four fiscal years. Because all judicial settlements that resolve ongoing violations have to be published in the Federal Register for comment, the Environmental Integrity Project was able to obtain penalty and SEP data for almost all cases by searching through the LEXIS inventory of Federal Register notices. EIP compared the notices to EPA's announcements and press advisories on judicial cases and Department of Justice docket data obtained through a Freedom of Information Act request. The attached charts indicate "no value given" where the notice of lodging notes that there was a penalty or SEP obtained but does not state a specific amount. Entries are left completely blank in a handful of cases where the notices of lodging make no reference to penalties or SEPs whatsoever.

This analysis focuses on settlements lodged under the Clean Air Act, Clean Water Act, the Resource Conservation and Recovery Act, and several other statutes. According to Department of Justice data, a small number of cases brought in fiscal years 2001 and 2002 were not lodged. These settlements required only payment of a penalty, generally because the facility had closed or already returned to compliance. Because this data was not available from prior years, it was not included in this analysis. Similarly, enforcement actions establishing the government's environmental claims in bankruptcy cases were omitted, as recovery is uncertain under such circumstances.

The attached does not include Superfund cases, or a tally of natural resource damages under the Oil Pollution Act. It also does not include administrative actions, as that data is not yet available. Nevertheless, judicial cases typically account for more than two-thirds of penalties and supplemental environmental benefits recovered in civil enforcement cases. The analysis is limited to civil enforcement cases, and does not include statistics from the criminal enforcement program, as these are not yet readily available.

No single statistic can capture the full range of benefits realized when environmental laws are enforced. Moreover, enforcement trends tend to be cyclical in nature, making it possible that the results for fiscal year 2002 are an aberration. Unfortunately, it is more likely that these numbers reflect an intentional effort to weaken enforcement efforts, indicating that the Bush Administration will do little to enforce environmental laws unless the public demands it.

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EPA Civil Enforcement Judicial Settlements Fiscal Years 1999-2002

Does not include Superfund

