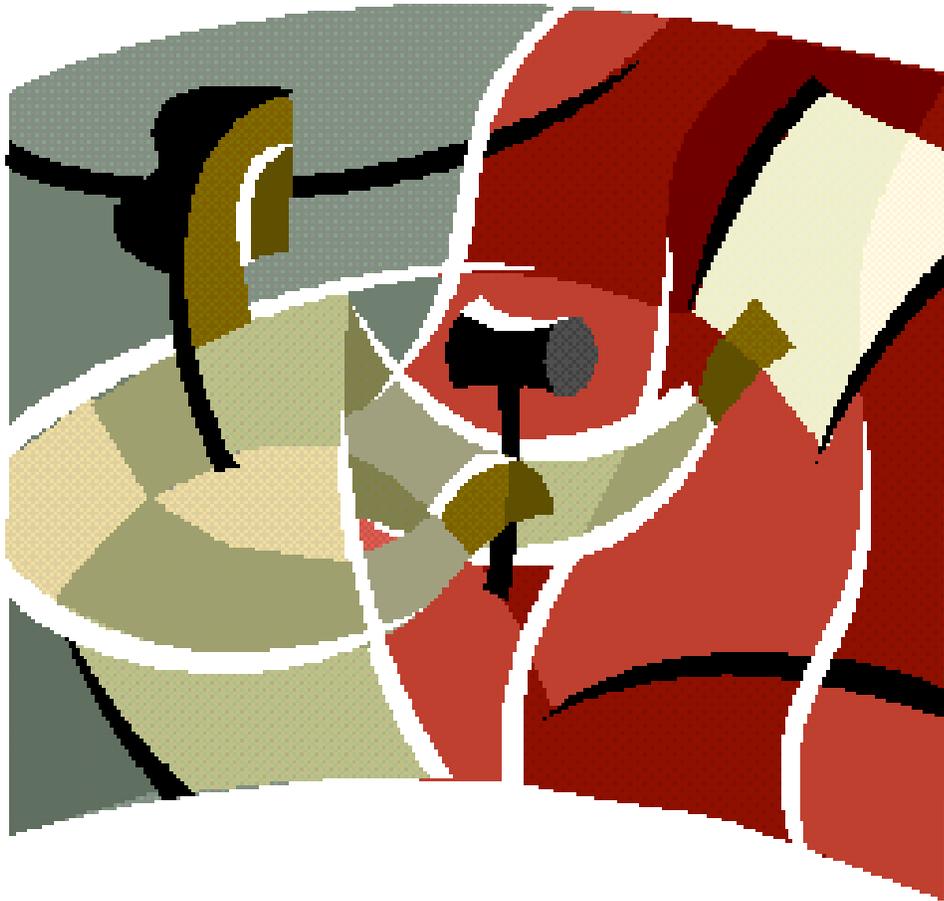


# **Summary of 2001 Enforcement Performance**



**April 2002**



# Introduction

This second annual Ohio EPA enforcement report serves as an internal management document for reviewing the performance of the Agency's enforcement programs. By tracking performance across the Agency, we can identify trends or issues needing to be addressed, as well as note areas of achievement. In addition to tracking performance, this report discusses improvement initiatives and provides information regarding strategic initiatives on enforcement.

U.S. EPA's review of Ohio EPA's enforcement programs in solid waste, hazardous waste, surface water and air was initiated in 2000. In fall 2001, we received U.S. EPA's draft audit report. Although the draft report highlighted some issues of concern, the general conclusion was that Ohio EPA maintains an adequate enforcement presence in the State of Ohio.

The draft report also identified Ohio's criminal enforcement program as one of the best in the country.

Ohio EPA provided extensive comments on the draft report, which included a number of factual errors, particularly in the air portion of the report. U.S. EPA also held a public hearing in November 2001 to solicit additional comments on the draft report. We anticipate that U.S. EPA's report will be finalized sometime in 2002.

Although the draft report concluded that Ohio EPA generally has a sound enforcement program, we can always improve the effectiveness and efficiency of our enforcement program. We began to focus attention on improvement efforts in 2000. Those efforts were maintained in 2001 and will continue in coming years.

# 2001 Enforcement Highlights

- Of the 81 backlogged cases (two years or older) targeted for resolution, 76 cases – or 94 percent – were resolved by the end of the year. More importantly, in just two years, Ohio EPA was successful in nearly eliminating the backlog of administrative enforcement cases.
- In two years, the average age of cases on the Agency’s administrative docket dropped from 475 days to 325 days. Now, the average age of an administrative enforcement case is less than one year old.
- At the end of 2001, there were only nine verified complaints pending and only two of those complaints were older than two years. Compare this to 1999, when 59 verified complaints were pending in the Agency. During the last two years, Ohio EPA has successfully completed investigations of 64 verified complaints.
- By issuing 146 orders, the Agency surpassed its goal of issuing 100 orders by nearly 50 percent.
- Since 2000, when the Agency enforcement goals were first established, there has been nearly an 80 percent increase in the Agency’s productivity in getting enforcement cases resolved.
- For the second year in a row, Ohio EPA exceeded the \$2 million mark in total administrative civil penalties.
- For the first time, each division was asked to measure the environmental improvement achieved through its enforcement efforts.
- The Attorney General’s Office filed 54 consent orders, assessed \$5,958,717 in penalties and recovered \$909,222 in costs. This is the third highest amount of civil penalties and costs recovery in the last eight years.
- The Division of Surface Water assessed total penalties (civil and administrative) of \$3,114,081, the second highest amount in the last 12 years.
- The Division of Hazardous Waste Management issued 16 orders, exceeding its goal of 12 orders. The average age of administrative cases on the docket was reduced by 132 days to an overall average age of 176 days.
- The Division of Air Pollution Control issued 56 orders, exceeding its goal of 40. This is the highest annual number of orders issued by the division in the past eight years. The division assessed \$3,177,712 in total penalties, the second highest annual total in the last 10 years in the air program. Finally, the division also resolved all but one of its 44 backlog cases.
- The Division of Solid and Infectious Waste Management issued 24 orders, exceeding its goal of 15. Of the 20 cases that would be two years old by the end of 2001, the division resolved all but three.
- The Division of Drinking and Ground Waters issued 10 orders in 2001, exceeding its goal of five. The division assessed \$340,150 in total penalties, the highest annual total by this division since the Agency started tracking Agency-wide performance more than 12 years ago.
- The Division of Emergency and Remedial Response issued four administrative orders and filed a federal consent decree to ensure investigation and cleanup at a high-priority site.

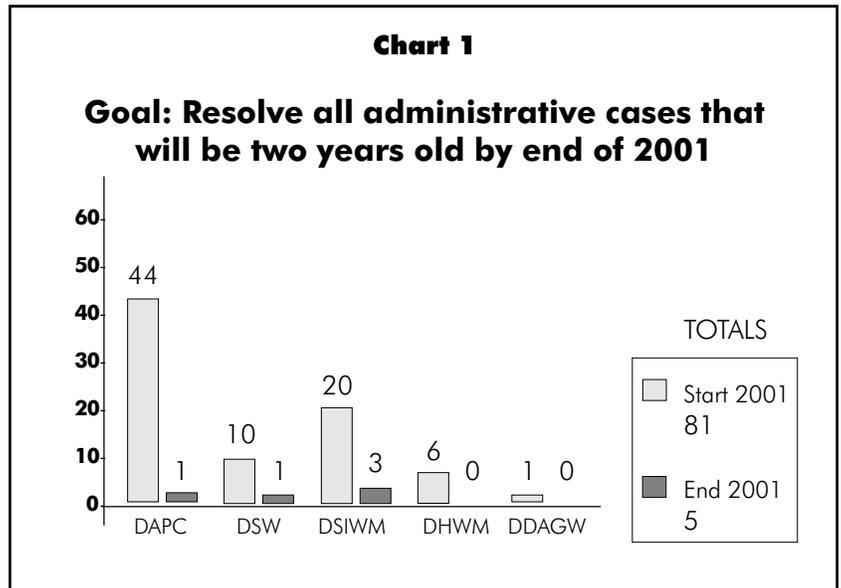
# Agency-wide Enforcement Goals for 2001

Ohio EPA instituted Agency-wide enforcement goals in 2000 intended to increase the overall efficiency of the enforcement program. We maintained the same goals in 2001. By creating consistent goals for each of the major programs, we can apply the same standards and strive for a common level of productivity and effectiveness.

In creating the goals, two characteristics were fundamental: They had to be easily measurable and easily communicated. By meeting these two characteristics, we hope to ensure that the entire Agency is striving to attain the same level of performance. If the goals are easily measured, they can be tracked with little effort and performance can be measured on an annual basis. If the goals are easily communicated, managers, attorneys, enforcement coordinators and inspectors can all have a common priority.

The effort to keep the goals simple and measurable was successful. In just two years, the Agency's enforcement program staff and attorneys have become familiar with the goals and have invested significant effort to achieve them. Below is a summary of the Agency's four enforcement goals in 2001.

## GOAL 1: All administrative enforcement cases older than two years must be resolved by the end of 2001.



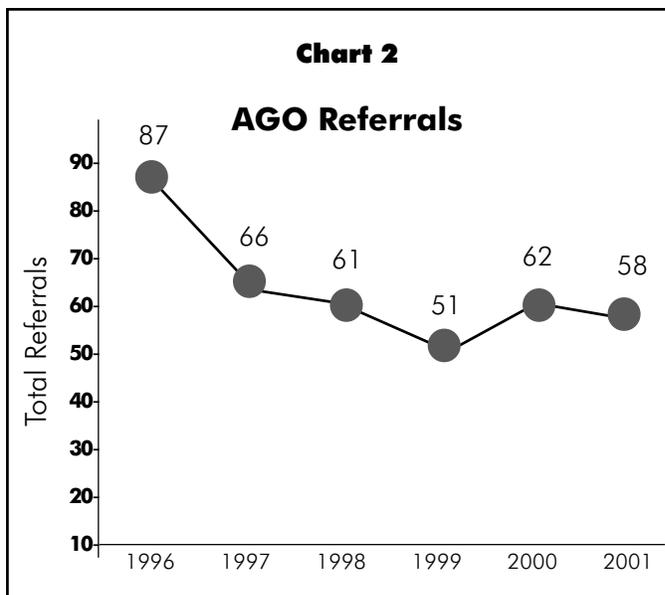
The intent of this goal was to address our overall efficiency in taking administrative enforcement actions. By establishing this goal and achieving it, the Agency would have no administrative case "backlog." After eliminating the backlog, the goal would continue to exist as a performance standard to maintain the efficiency of the enforcement process.

For purposes of this goal, a backlog case is defined as a case that will be two years old by the end of the year. We measure case age from the date the enforcement action request (EAR) is received from a district office or local air agency by Central Office.

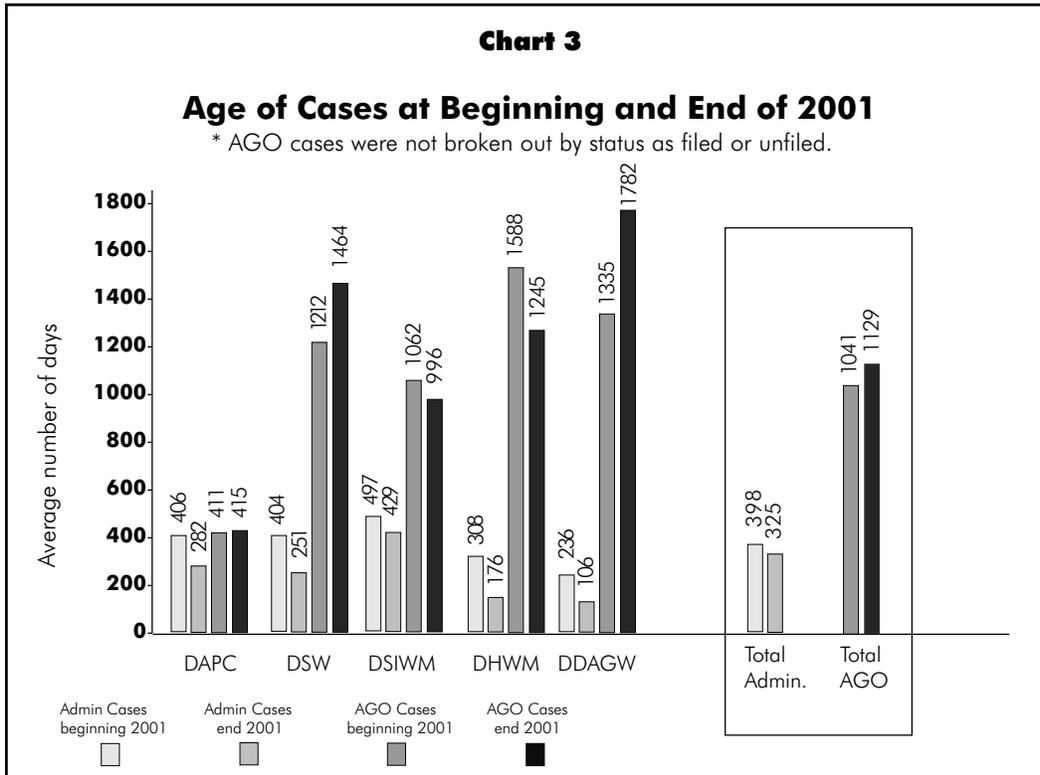
At the start of 2000, there were 110 cases on our administrative enforcement docket that would become two years old by Dec. 31, 2000. A large number of those cases were three to five or more years old. By the end of 2000, we had reduced the backlog to 29 cases — a 74 percent drop in just one year.

At the start of 2001, we added 52 new cases to the 29 cases carried over from 2000. Of the 81 cases targeted for resolution, 76 cases — or 94 percent — were resolved by the end of the year (Chart 1). In just two years, Ohio EPA was successful in nearly eliminating the backlog of administrative enforcement cases.

Chart 2 demonstrates that the Agency, once again, did not eliminate the backlog by simply referring cases to the Attorney General's Office (AGO) that were difficult to resolve administratively. There were 58 case referrals to the AGO in 2001, which is about average for the last five years and a drop from 2000.



By eliminating the backlog, there was an overall positive effect on the age of the Agency's enforcement docket. In two years, the average age of cases on the Agency's administrative docket dropped from 475 days to 325 days (Chart 3). This demonstrates that this enforcement goal was successful in increasing the overall efficiency of Ohio EPA's enforcement program. Now, the average age of an administrative enforcement case is less than one year old.



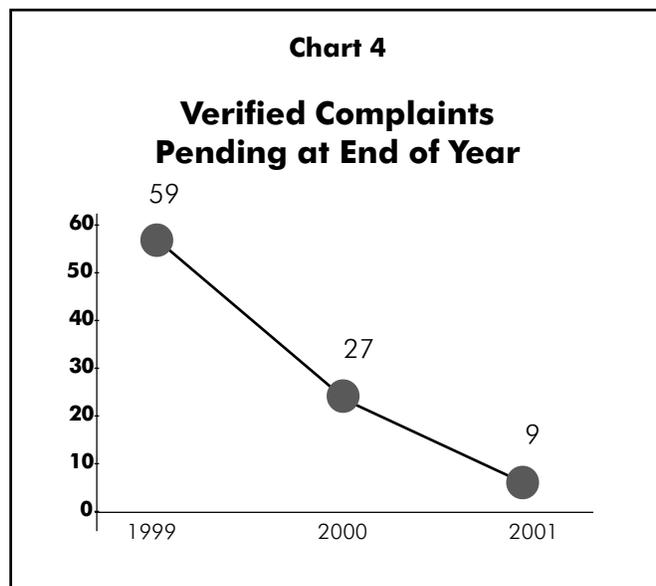
**GOAL 2: All verified complaints older than two years must be resolved by the end of 2001.**

Responding to verified complaints is a very visible function of this Agency. Typically, it can be the only direct contact a citizen has with Ohio EPA. It is how that citizen will form his or her opinion of Ohio EPA. If a citizen takes the time to file a verified complaint, it typically signifies that an individual or group of individuals is very concerned about a particular facility or situation in the environment. As a result, we established a performance standard that no verified complaint could go unresolved for more than two years.

Since initiating this goal two years ago, the Agency has a renewed emphasis on timely response to verified complaints. For example, in 1999, 59 verified complaints were pending in the Agency. At the end of 2001, there were only nine complaints pending and only two of those complaints were older than two years. During the last two years, Ohio EPA has successfully completed investigations of 64 verified complaints. Chart 4 shows the decrease in the number of pending verified complaints at Ohio EPA.

**GOAL 3: Issue 100 Findings and Orders in 2001.**

Our third enforcement goal was directed at the Agency's productivity in our enforcement programs. Each division's historical performance, as it related to issuance of final orders, was reviewed. We targeted a number for issuance in 2000 that was in line with that historical performance, but on the higher end of that performance. Each program also reviewed the number of administrative cases currently on its docket to ensure sufficient cases were already in Central Office to meet the targets. When the six divisional targets were compiled, a total of 100 findings and



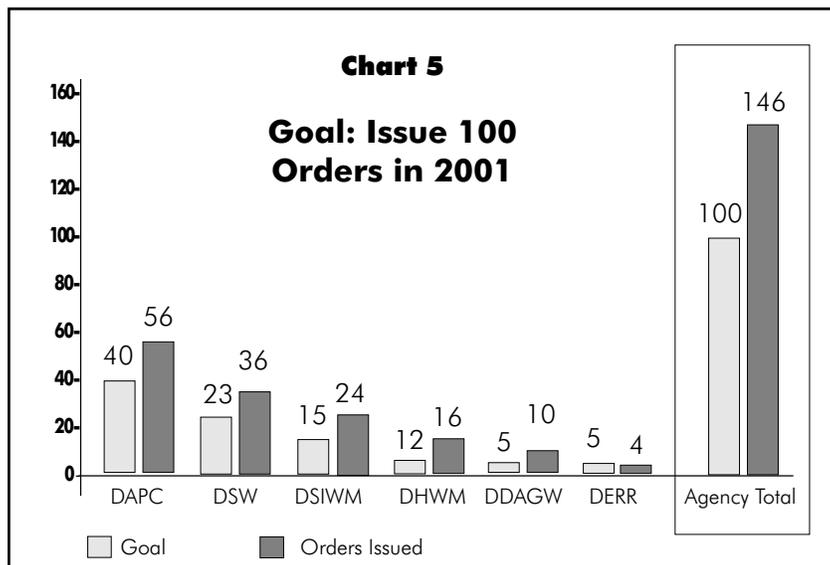
orders for 2000 was set as the goal. We maintained the same goal in 2001. The divisions' targets for 2001 were as follows: DAPC (40); DSW (23); DSIWM (15); DHWM (12); DDAGW (5) and DERR (5).

Overall, the enforcement programs were extremely productive in 2001. By issuing 146 orders, the Agency surpassed the goal by nearly 50 percent. Every division, except DERR, substantially exceeded its targets (Chart 5).

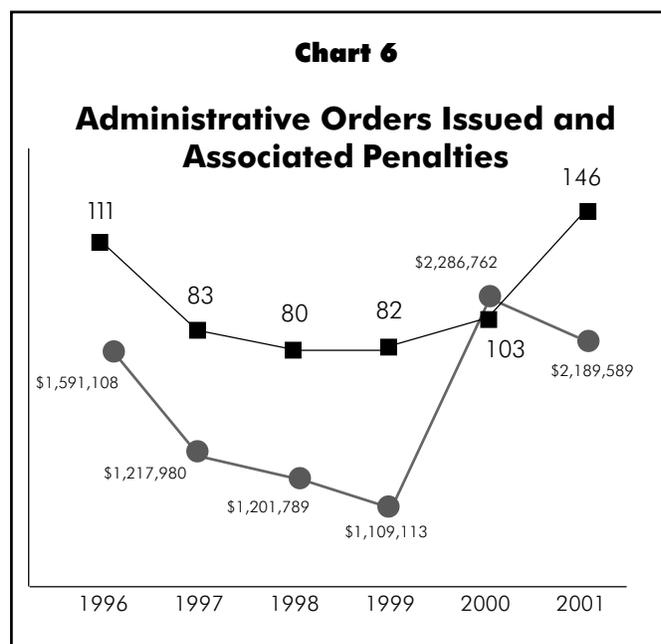
Since 2000, when the Agency enforcement goals were first established, we have seen nearly an 80 percent increase in the Agency's productivity in getting enforcement cases resolved (Chart 6).

Once again, this achievement also carried over to other areas. The Agency collected \$2,189,589 in administrative penalties, exceeding the \$2 million mark for the second year in a row. Again, this is a very significant achievement for the Agency since signing the Memorandum of Understanding with the AGO.

However, some programs saw an increase in



local air agencies. The challenge in 2002 will be to maintain efficiency and productivity with an increase in the size of the administrative docket. Chart 7 shows the enforcement docket size at both Ohio EPA and the Attorney General's Office. Chart 8 shows the number of EARs by district in 2001, and an overall comparison between 2000 and 2001.



their docket sizes despite elimination of almost all backlogged cases and issuance of 146 orders. The increase in docket size was a result in an increase in the number of enforcement action requests (EARs) that were sent to Central Office from the districts and

**GOAL 4: Measure environmental improvement achieved through enforcement.**

For the first time, each division was asked to measure the environmental improvement achieved through its enforcement efforts. By gathering and distributing this information, we can demonstrate the gains made in the environment through our enforcement efforts. The effort to quantify environmental gains from enforcement actions is evolving, and while the measures used in 2001 do not completely capture all the environmental benefits realized, they provide a foundation to build on.

**Solid waste and tires cleaned up**

In 2001, 5,681 tons of solid waste were cleaned up in Ohio as a result of enforcement actions.

**Hazardous waste addressed**

Due to closures of hazardous waste units achieved through enforcement, 37,405 tons of contaminated material were treated, properly disposed or removed from various sites in Ohio in 2001.

**Improved drinking water for Ohioans**

In 2001, 4,338 customers received higher quality drinking water due to an Ohio EPA enforcement action.

**Homes no longer facing unsanitary conditions**

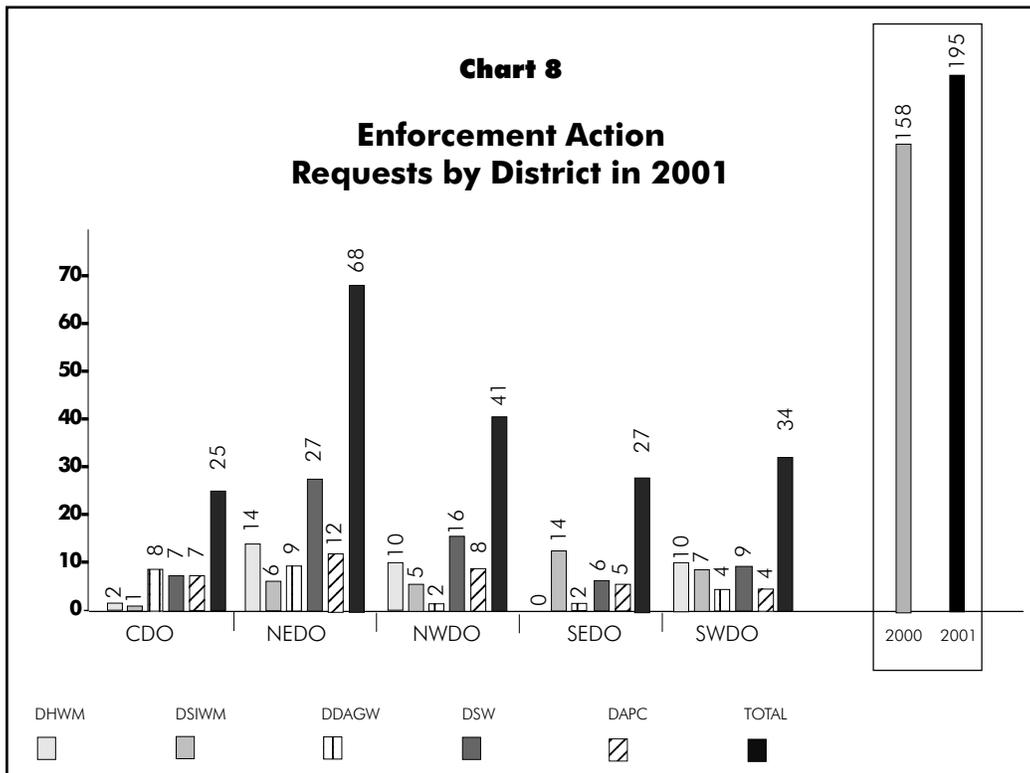
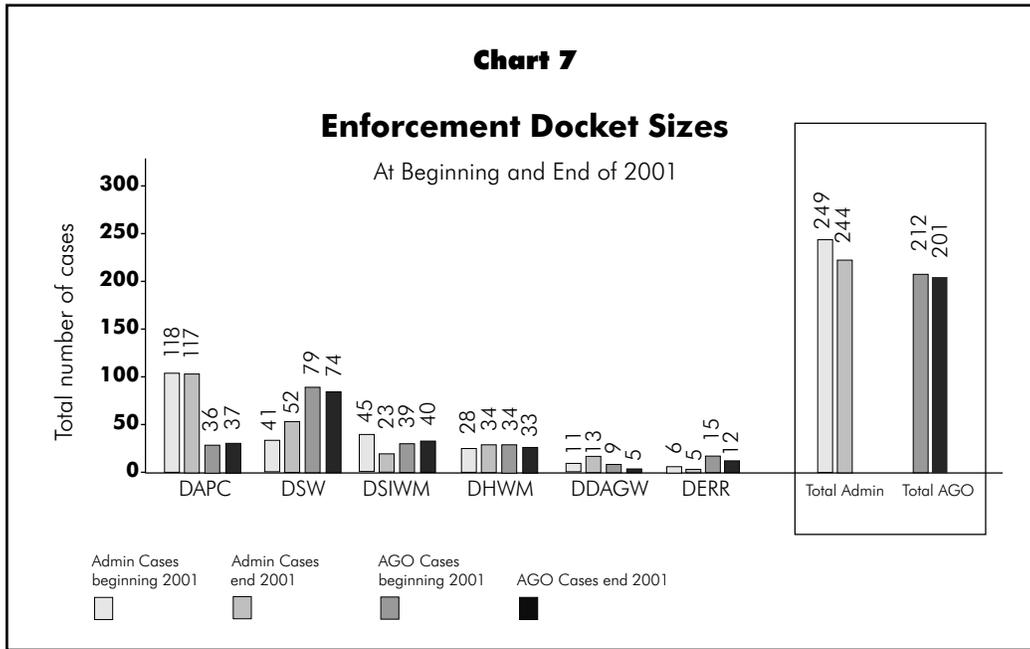
In 2001, Surface Water secured orders correcting 158 homes that had unsanitary wastewater treatment.

**Cleaner air**

Enforcement actions in the air pollution control program resulted in a reduction of 607.7 tons of air pollution annually. This includes 464 tons of volatile organic compounds and organic compounds; 82.6 tons of particulates; 43.8 tons of hydrochloric acid; 11 tons of nitrogen oxides and 6.3 tons of carbon monoxide.

**Goal 5: Resolve Priority Cases at AGO**

Working with the Attorney General's Office (AGO), we identified in March a select list of cases referred to the AGO that the divisions felt should receive high priority. The number of cases each division contributed was based on the overall size of their respective pending case dockets at the AGO. For each case, the AGO was requested to either settle the case or file a formal complaint in court by the end of the year. Through the hard work of both Ohio EPA and the attorneys of the AGO, substantial progress was made, enabling this goal to be met by Jan. 31, 2002.



# Other Enforcement Improvements in 2001

In contrast to 2000, when we concentrated on changes to the overall Agency enforcement structure, the focus in 2001 was top-to-bottom reviews of each of the division's enforcement programs. These reviews are directed at maximizing the efficiency and effectiveness of the division's limited resources.

## Division of Surface Water

In 2001, the Division of Surface Water concluded a year-long intensive review of its enforcement procedures. In April 2001, the division developed a final policy that memorialized the substantial changes developed during the review. Once these changes are fully implemented in 2002, the surface water program will be able to more effectively manage the enforcement process. The division will provide clear direction and will optimize the use of its existing resources. Below is a very brief description of some of the significant changes.

**Establish a Division Enforcement Policy Committee**—The goal of this committee is to move the division from a reactive, bottom up approach to initiating enforcement to a more proactive approach that provides for input from both district staff and division management. The committee will identify enforcement initiatives at the beginning of each year and ensure necessary training is provided to develop appropriate and well documented cases. This change should greatly increase the effectiveness and efficiency of the surface water enforcement program.

**Implement District Office Enforcement Meetings**—By visiting the districts to discuss enforcement issues, the surface water division will be able to better manage existing resources.

**Redefine Central/District Office Staff Responsibilities**—This effort will eliminate duplication and maximize the skills of each staff member who works in the enforcement unit.

**Redefine Relationship between AGO and Division**—Changes will be implemented that will allow both the AGO and the Division of Surface Water to maximize the resources at their disposal.

**Establish Better-Designed Performance Standards**—Through the use of these standards, expectations for the enforcement unit staff will be well defined and easily communicated.

**Increase Public Awareness of Enforcement Successes**—The division will better utilize its Web page to communicate the successes of its enforcement program.

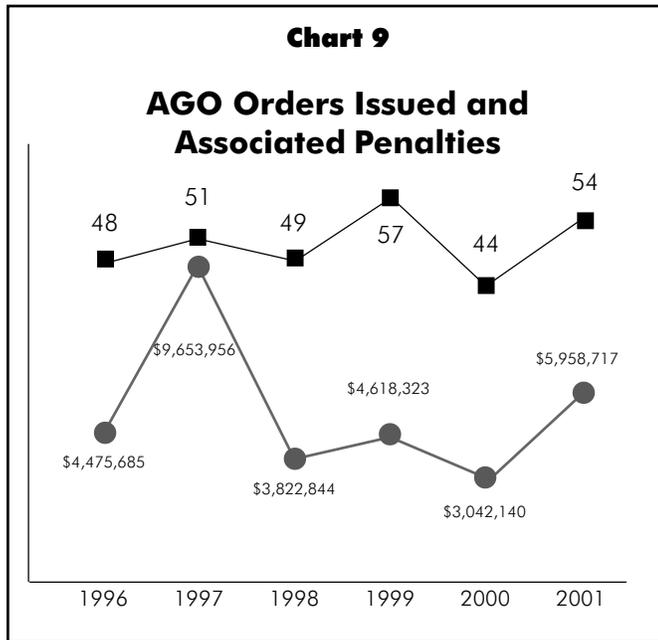
## Division of Solid and Infectious Waste Management

The Division of Solid and Infectious Waste Management began to review its enforcement procedures in 2001. They solicited input from Ohio EPA's districts and local health departments. A number of issues are now targeted for resolution. In 2002, the division will develop a strategy to analyze these issues and develop solutions. By the end of 2002, the division will begin to implement the changes.

# Overall Status of Ohio EPA's Enforcement Programs

## Attorney General's Office

Chart 9 shows that the AGO filed 54 consent orders and assessed \$5,958,717 in penalties. The AGO also recovered \$909,222 in costs. For 2001, the total amount of civil penalties assessed and costs



recovered represents the third highest total in the last eight years. These significant achievements came in a year when the AGO obtained several significant resolutions on resource-intensive cases. For example, they resolved the Akron-Hardy Road Landfill case, the largest pending solid waste enforcement case. A federal decree was filed in the Fayette Tubular Products case, which was a significant resolution involving a contaminant plume that may pose a threat to human health. Also, the AGO filed a global settlement on Buckeye Egg Farm after lengthy litigation. After the settlement was filed, the AGO diligently pursued non-compliance by filing multiple contempt charges against the company.

In addition to these efforts, the AGO has been pushing to get all backlogged cases filed in court. Once a case has been filed in court, the judge typically controls how quickly the case will move. By the end of 2001, more than 75 percent of AGO cases older than 2,000 days had been filed.

## Administrative Enforcement

As discussed in more detail above, we had a very successful year for administrative enforcement actions. Ohio EPA issued 146 findings and orders, and collected \$2,189,589 in total penalties (cash plus supplemental environmental projects). We eliminated the backlog of old enforcement cases and established performance standards for future actions. The average age of pending administrative enforcement cases is now less than one year old.

### Division of Surface Water

The Division of Surface Water had significant achievements in 2001. Foremost, it completed its review of enforcement procedures and began to implement significant changes. These changes should result in an increase in the effectiveness and efficiency of its enforcement program.

The division also maintained its high productivity in 2001. It reduced its backlog of administrative cases from 10 to 1. It issued 36 orders, exceeding its goal of 23 orders. The average age of administrative cases was reduced by 153 days, to an overall average of 251 days. The division assessed total penalties of \$3,114,081 (\$2,808,250 from the AGO and \$305,831 in administrative penalties), the second highest amount in the last 12 years.

### Division of Hazardous Waste Management

The Division of Hazardous Waste Management had significant achievements as well, including eliminating its backlog of administrative cases. In 2001, the division also reduced the number of unfiled (AGO) cases older than 2,000 days by 80 percent. The division issued 16 orders, exceeding its goal of 12 orders. It assessed \$386,117 in civil penalties. The average age of administrative cases on the docket was reduced by 132 days to an overall average age of 176 days. The fact that the division's current administrative docket is comprised of cases averaging less than six months old is a tremendous achievement.

## **Division of Air Pollution Control**

The Division of Air Pollution Control historically has had one of the busiest enforcement programs in the Agency. The division currently has 154 pending enforcement actions — one-third of the Agency's total pending enforcement actions. Despite this large number of enforcement actions, the division has maintained the youngest docket. The average age of cases at both the AGO and the Agency is now less than one year.

In 2001, the division successfully eliminated its backlog of administrative cases. There were 44 administrative cases that would be two years old by the end of 2001, and the division ended the year with only one such case. Also of note: there is only one AGO case older than three years that has not been filed in court. The division issued 56 findings and orders, exceeding its goal of 40 orders. This is the highest annual number of orders issued by the division in the past eight years. The division assessed \$3,177,712 in penalties (\$2,014,761 from the AGO and \$1,162,951 in administrative penalties). This is the second highest total of penalties assessed in the last 10 years by the air program.

## **Division of Solid and Infectious Waste Management**

The solid waste program issued 24 findings and orders in 2001, exceeding its goal of 15 orders. It assessed \$221,340 in civil penalties. In 2001, the division emphasized reducing the backlog of administrative cases, which it had struggled with in 2000. Of the 20 cases that would have been two years old by the end of 2001, the division resolved all but three. There was a corresponding drop in the average age of pending cases by 68 days. There also was a significant decrease in the overall number of administrative cases on its docket, from 45 to 23. The program plans to build on this momentum in 2002.

## **Division of Drinking and Ground Waters**

The Division of Drinking and Ground Waters issued 10 findings and orders in 2001, exceeding its goal of five. The drinking water program had no backlog of administrative cases to start 2001. It has maintained the lowest average age for administrative cases. In 2001, the average age was further reduced from 236 days to 104 days. The division assessed \$340,150 in penalties (\$226,800 from the AGO and \$113,350 in administrative penalties). This represents the division's highest total penalties assessed since the Agency started tracking Agency-wide performance more than 12 years ago.

## **Division of Emergency and Remedial Response**

Over the last two years, the Division of Emergency and Remedial Response has taken a critical look at its enforcement program. A strategic decision was made to focus on a select number of priority sites in order to see those sites move through the lengthy process toward cleanup and final resolution. This has been a successful effort for the division. In 2001, it issued four administrative orders, one short of its goal. The division also submitted a federal consent decree for the Fayette Tubular Products case. The settlement resulted in a court order requiring a comprehensive investigation and cleanup of this site. In 2001, ground water sampling showed that the level of concern presented by contamination from the site greatly increased. The division and AGO reacted quickly to these new results, securing a global settlement in a couple of months after the results were discovered.

# Enforcement Initiatives for 2002

Due to the continuing success of our improvement efforts, we will maintain the same Agency-wide enforcement goals in 2002. By maintaining consistent goals, we can firmly establish a benchmark for our annual performance.

## **GOAL 1: All administrative enforcement cases older than two years must be resolved by the end of 2002.**

All administrative enforcement cases that will become two years old by December 31, 2002, must be resolved by the end of the year. Because we have eliminated the backlog, this goal has become a performance standard for all administrative enforcement cases. By maintaining this goal we can ensure no backlog is created in the future.

## **GOAL 2: All verified complaints must be resolved within two years of receipt.**

We must stay focused on investigating and resolving all verified complaints received in a timely manner. In 2001, we achieved the goal of eliminating the backlog of verified complaints. We have now turned the goal into a performance standard to ensure the Agency maintains a level of performance that citizens deserve.

## **GOAL 3: Issue 110 Findings and Orders in 2002.**

In 2001, the Agency demonstrated a very high level of productivity in resolving existing enforcement cases. However, as discussed above, our enforcement docket has increased in size. To maintain a high level

of productivity, we are increasing our goal to 110 findings and orders in 2002. We have adjusted the program targets based on workloads and the increase in size of the dockets. The targets for 2002 are as follows: DAPC (40); DSW (25); DHWM (20); DSIWM (15); SDDAGW (5); and DERR (5).

## **GOAL 4: Measure environmental improvement achieved through enforcement.**

Each division will continue to measure the environmental improvement achieved through our enforcement efforts. At the end of the year, we will include the results in the enforcement report for the Agency. Information also will be included in news releases about enforcement actions throughout the year. By gathering and distributing this information, we have more ways in which to discuss the improvements made in the environment through our enforcement efforts. The surface water program is still in the process of developing methods to track the environmental improvements gained through its enforcement efforts.

## **GOAL 5: AGO Priority Cases and the New Statute of Limitations.**

Recently, Senate Bill 105 passed. It will institute a five-year statute of limitations on all environmental actions for civil penalties. In 2002, we will establish a statute of limitations tracking mechanism that the divisions and districts will institute. We will also establish a schedule to eliminate any remaining backlog enforcement cases pending at the Attorney General's Office.

Backlog cases targeted for resolution in 2002 will be designated AGO priority cases.

