



State of Ohio Environmental Protection Agency
Office of the Director

Enforcement Report 2006



October 2007

Chris Korleski, Director
Ted Strickland, Governor

Introduction

Ohio EPA produces this annual enforcement report to highlight actions of Ohio EPA and the Ohio Attorney General's Office to enforce Ohio's environmental laws and document the environmental improvements that will be gained through these efforts.

Since 1999, Ohio EPA has been engaged in an ongoing effort to improve its enforcement program. As part of that effort, the Agency made a number of changes, which are documented in this and prior enforcement reports. Improvements include establishment of Agency-wide performance standards; development of standard legal orders and streamlined protocols; and comprehensive reviews of each of the six major enforcement programs.

Because of these efforts, we have significantly improved overall management of the Agency's enforcement program. These improvements have resulted in an increase in the number of actions resolved and a decrease in time necessary to reach resolution.

2006 was another successful year. Once again, the Agency resolved a noteworthy number of cases that will result in significant environmental improvement. We also began implementing the Ohio Diesel School Bus Retrofit Program, which allows school districts to put pollution control equipment on their buses to cut down on particulate emissions through money collected by Ohio EPA's enforcement program.

It is the hard work and dedication of Ohio EPA's inspectors, enforcement coordinators, Ohio EPA attorneys and attorneys from the Ohio Attorney General's Office that make these accomplishments possible.

2006 Case Highlight - Ensuring Proper Disposal of Waste

At its Medina facility, Vexor solidifies non-hazardous liquids, semi-solids and sludges for land disposal in a solid waste facility or for fuel at a waste-to-energy plant. While conducting a routine inspection in September 2004, Ohio EPA learned that a particular generator had caused unmanifested hazardous waste to be transported to Vexor. Further investigations revealed that Vexor had received unmanifested hazardous waste on more than 400 separate occasions since April 24, 2000. Vexor also had illegally stored hazardous waste without a permit on hundreds of occasions from 2001 to 2005.

To address the violations, Ohio EPA issued orders in October 2006 that required Vexor to implement an Agency-approved waste analysis plan and facility compliance plan. The orders also obligate the company to provide training to its employees and customers and pay a civil penalty of \$195,720.



2006 Enforcement Highlights

- Significant improvements to the environment will result from enforcement orders issued in 2006, including: 9,027 tons of air pollution eliminated; 11,503 customers with cleaner drinking water; 854 failing on lot systems to be tied into regional wastewater treatment facilities; 5,444,620 abandoned scrap tires removed; 702 tons of hazardous waste-contaminated soil removed and disposed off-site; and 5.48 tons of non-hazardous waste removed and properly disposed.
- Ohio EPA issued 195 administrative enforcement orders in 2006, surpassing its goal of 153 orders.
- The Agency assessed \$3,523,386 in administrative penalties, an increase of 21 percent from 2005.
- Civil penalties awarded in court judgments or secured in consent decrees by the Attorney General's Office in 2006 totaled \$2,652,940, plus the recovery of \$4,472,811 in other response costs.
- The criminal environmental enforcement program secured 35 convictions or plea agreements with a total of 27 felonies and 21 misdemeanors. These efforts resulted in more than \$288,000 in fines, restitution and other payments, as well as a cumulative four years and three months of jail time, 10 years of suspended jail time, 44 years of probation and 15,050 hours of community service.
- The Division of Surface Water issued 50 orders, the highest of all divisions. These efforts resulted in administrative penalties of \$616,907.
- The Division of Air Pollution Control secured \$1,248,917 in administrative penalties, the highest penalty amount of all divisions, and issued 41 orders.
- The Division of Hazardous Waste Management issued 43 orders, an increase of 72 percent over 2005.
- The Division of Drinking and Ground Waters issued 24 orders and entered into 15 bilateral compliance agreements.
- The Division of Solid and Infectious Waste Management issued 32 orders, exceeding its goal of 20.
- The Division of Emergency and Remedial Response's efforts resulted in five orders. The division also finalized four preferred plans and four decision documents.

2006 Case Highlight - Protecting Public Health and Returning Property to Productive Use

The Diamond Shamrock Painesville Works Site is a former industrial site located along Lake Erie in Lake County. Under orders issued by Ohio EPA, a number of remedial actions will be implemented to address contaminated soils and waste piles on the property. These remedial actions will ensure that the site is protective of human health and the environment. Cleanup also will help facilitate redevelopment of the site into Lakeview Bluffs, a sports-oriented resort community.



Environmental Improvements Achieved Through Enforcement in 2005

One goal of Ohio EPA's enforcement program is to bring facilities back into compliance to ensure that public health, safety and the environment are protected. As in years past, Ohio EPA's enforcement efforts in 2006 resulted in improvements to Ohio's air, water, land and overall protection of public health.

Cleaner Air

Many enforcement actions taken by the Division of Air Pollution Control result in decreased levels of air pollutants. The statistics below represent overall reductions in the annual amount of pollutants released into Ohio's air. Because each action resulted in the installation or proper operation of permanent controls, the reductions achieved this year and in prior years will benefit the environment for years to come. Here are the reductions associated with the 2006 enforcement actions:



Tons of Air Pollution Reduced due to Enforcement

- Volatile organic compounds - 160 tons per year
- Particulates - 113 tons per year
- Nox - 419 tons per year
- SO₂ - 8,332 tons per year
- CO - 2.7 tons per year
- **Total - 9,026.7 tons per year**

Cleaner Drinking Water

The Division of Drinking and Ground Waters regulates public water systems. Enforcement actions are taken against a variety of drinking water providers, from major municipalities to small mobile home parks to ensure that they are providing adequate treatment of drinking water to Ohioans. The chart below shows the number of citizens who have cleaner drinking water as a result of Ohio EPA's enforcement actions.



Citizens with Cleaner Drinking Water

- 4,338 customers - 2001
- 9,208 customers - 2002
- 8,947 customers - 2003
- 4,789 customers - 2004
- 9,053 customers - 2005
- 11,503 customers - 2006



Protecting Ohio's Streams, Lakes, Rivers and Wetlands

The Division of Surface Water is responsible for protecting Ohio's streams, rivers, lakes and wetlands. Enforcement actions range from eliminating sewage overflows from large municipal wastewater collection systems to addressing storm water requirements at construction sites. The statistics below demonstrate improvements to Ohio's waterways resulting from 2006 enforcement actions:

Improvements in Ohio's Waterways



- Sewer overflows addressed - 16
- Illicit discharges addressed - 1
- Spill/releases addressed - 1,501,200 gallons
- Wastewater flow abandoned/tied into regional treatment plant - 19,204 gallons per day
- Wastewater/receiving enhanced treatment - 231,587 gallons per day
- Improved storm water controls - 253.14 acres
- Failing on-lot systems addressed - 854 lots
- Stream mitigation - 5,064 feet

Cleaner Land

The Division of Solid and Infectious Waste Management cleans up open dumps and abandoned tires across the state and regulates composting, solid waste, construction and demolition debris (C&DD) and infectious waste facilities. Below are statistics regarding the amount of waste and tires removed from open dumps in Ohio in 2006:

- Abandoned scrap tires cleaned up: 5,444,620
- Construction and demolition debris (C&DD) removed from open dumps: 1,889 cubic yards

The Division of Hazardous Waste Management takes a number of enforcement actions each year to ensure the proper management, transportation and disposal of hazardous waste. Each year, the division certifies that closures of hazardous waste units have been properly completed. The statistics below show how much hazardous waste was addressed through closure certifications.

- Contaminated soil removed and disposed through hazardous waste cleanups: 702 tons
- Non-hazardous waste removed and properly disposed - 5.48 tons

The Division of Emergency and Remedial Response takes enforcement actions to clean up sites in Ohio where hazardous substances were disposed of prior to many of the environmental regulations taking effect. Many times these sites are the most complex or costly to clean up. The goal of the cleanup achieved through enforcement is to return previously polluted land to productive use. In 2006, enforcement actions will result in 2.5 acres of Ohio land being returned to productive use.



Ohio EPA Enforcement Goals for 2006

In 2006, we set out to accomplish a number of goals to continue to enhance the overall enforcement efforts of the Agency. A summary of these activities follows.

Goal 1:

Increase the measurements of enforcement efforts.

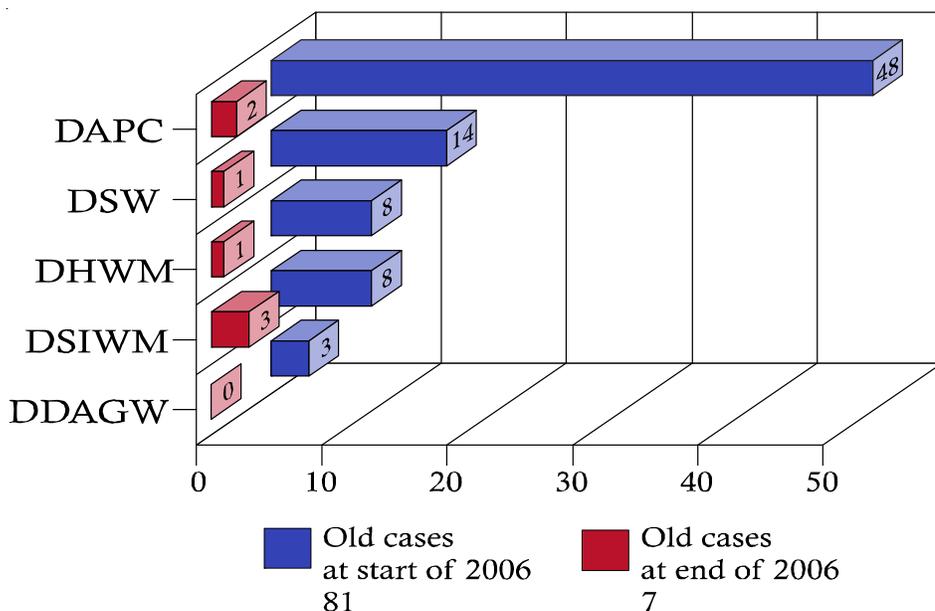
Since 1999, we have focused on a number of measures to gauge the overall health of Ohio EPA's enforcement program. These have included things such as the number of Findings and Orders issued and the number of consent decrees/judgments obtained by the Ohio Attorney General's Office. While these are certainly important measures of an enforcement program, a number of other activities also reflect the health of our enforcement program. For example, in 2006, Ohio EPA's enforcement efforts involved:

- 10,966 compliance inspections
- 4,895 complaint inspections
- 5,633 notice of violation letters

Goal 2:

Resolve all administrative enforcement cases older than 21 months by the end of 2006.

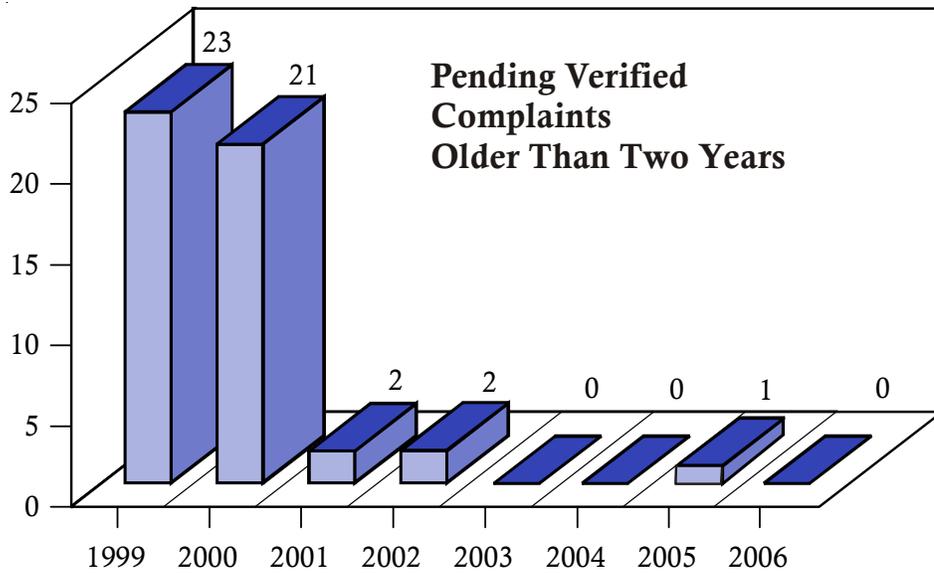
2006 was our third year of implementing this performance standard. In 2004, we met this standard for 82 percent of our cases. In 2005, we met this standard in 97 percent of our cases. In 2006, we met this goal for 91 percent of our cases.



Goal 3:

Resolve all verified complaints within two years of receipt.

We met this performance standard with all of our cases in 2006.



2006 Case Highlight - Protecting Ohio's Air

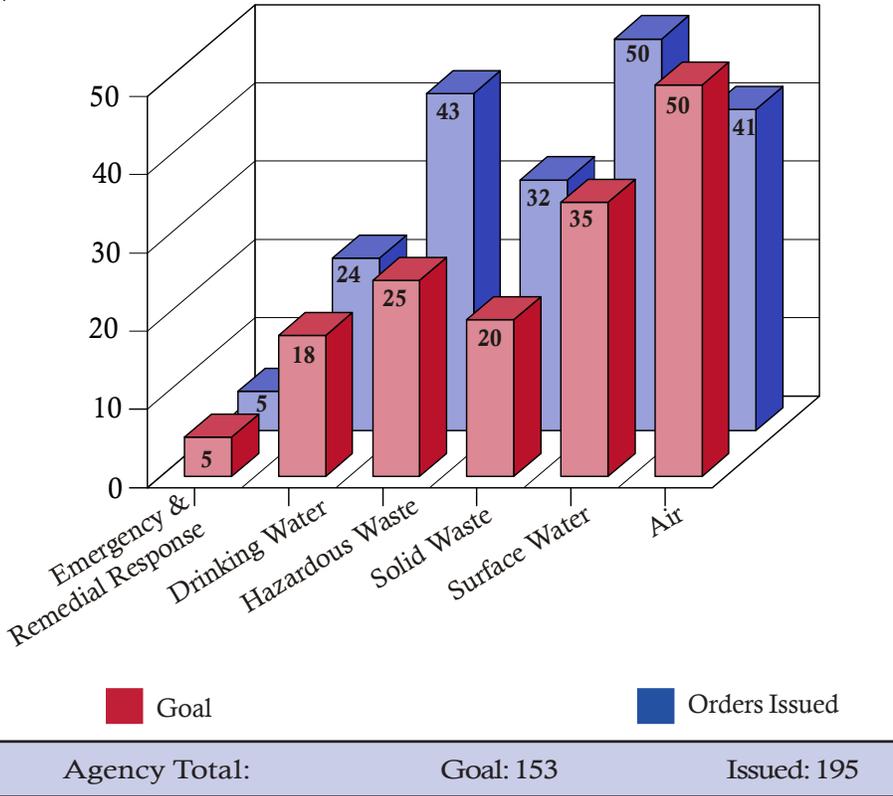
Endres Processing, Inc. owns a facility in Upper Sandusky that dries bakery by-products (such as pizza dough, cookies, cereals, snack foods, and jellies) for use as an animal feed supplement.

In June 2005, Ohio EPA received a verified complaint that alleged violations of Ohio's air pollution control laws against the owner of the facility at the time, Advanced Organics, Inc. (AOI). AOI had a prior history of noncompliance with Ohio's air pollution laws which resulted in a consent order in December 27, 2002.

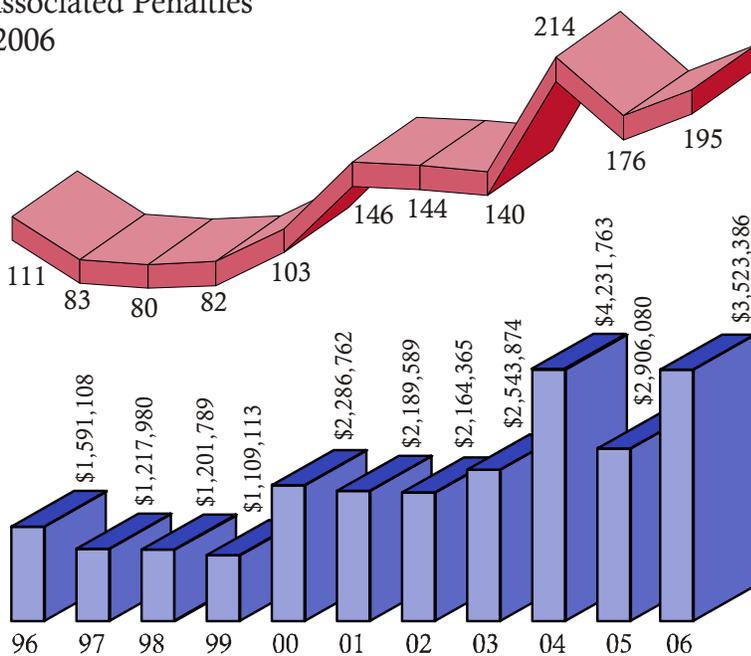
There were a couple ownership changes, and in March 2006, Kalmbach Feed Ingredients, Inc. and Endres Processing, Inc. agreed to a consent order with Ohio EPA and the Attorney General's Office for causing a public nuisance and violating the terms of the 2002 consent order. Endres committed to bring the facility into compliance with the order and the facility's permit. Kalmbach agreed to pay a \$100,000 civil penalty for the violations.

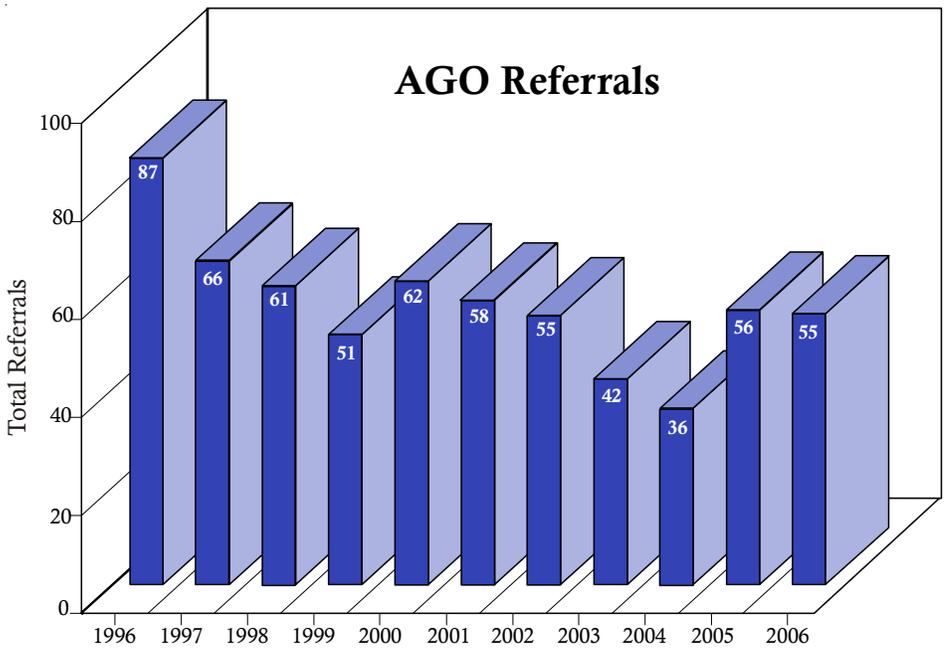
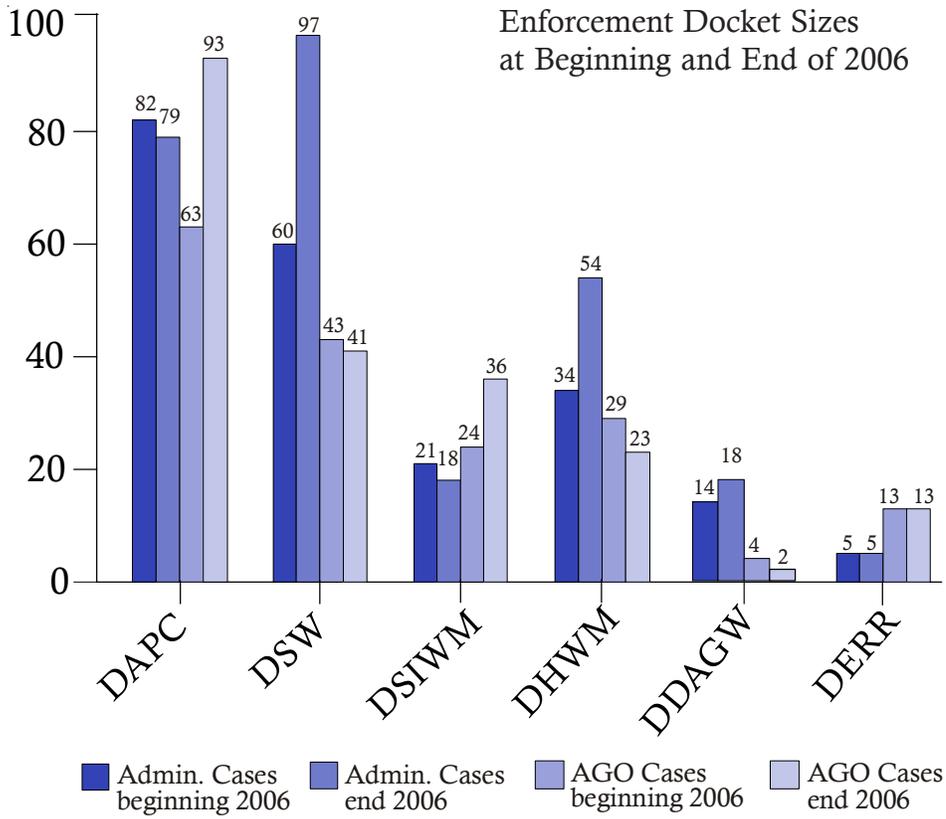
Goal 4:
Issue 153 Findings and Orders in 2006.

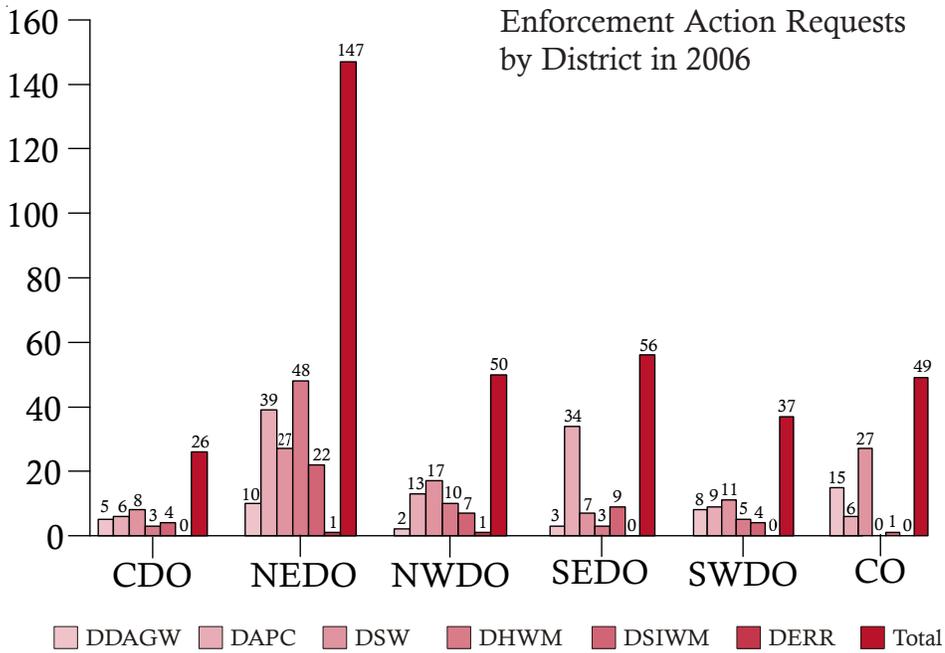
In 2006, the Agency issued 195 orders, far exceeding the goal. Much of this success is due to efforts to streamline the enforcement process and adhere to timelines allotted to resolve cases.



**Administrative Orders Issued
 and Associated Penalties
 1996-2006**







Goal 5:

Track Agency performance standards established to meet the five-year statute of limitations on enforcement cases.

In 2002, the Ohio General Assembly enacted a five-year statute of limitations on environmental violations for which Ohio EPA will seek a civil penalty. In order to ensure that we bring enforcement actions within the five-year timeframe, we developed time-specific performance standards for cases in which we are seeking a civil penalty. We began officially implementing these performance standards in 2005.

A key date under the statute is July 2007. This is the earliest date that the statute of limitations applies to violations that existed prior to the enactment of the legislation.

At the end of 2006, there were 79 cases affected by the July 2007 statute of limitations that had not been settled or where a complaint had not been filed; many of those were referred as late as 2006. The AGO spent considerable time and resources either settling or filing complaints in these cases to address statute of limitation issues.



Goal 6:

Improve tracking compliance with existing Findings and Orders and judicial consent decrees.

Since 2000, Ohio EPA has issued 919 administrative orders. During that same period, the Attorney General's Office has obtained 282 judgments/consent decrees. In most cases, defendants/respondents comply with the obligations that they have agreed to or have been ordered to perform. However, in some cases they do not.

In an effort to ensure compliance with existing enforceable documents, we developed a draft protocol between Ohio EPA and the Attorney General's Office that sets forth expectations and processes regarding tracking and addressing noncompliance with existing orders/consent decrees. We made significant progress in developing a uniform approach but with the change of administration, did not finalize the document. After review by the new administration, we expect that this document will be finalized in 2007.

Goal 7:

Develop uniform agency policy on supplemental environmental projects.

In 2005, we circulated and obtained comments from Agency staff on a uniform policy for Supplemental Environmental Projects (SEPs). The goal was to provide more consistency among programs in how we incorporate SEPs into enforcement settlements. We finalized the policy in December 2006 and it is currently being used by staff and the regulated community.

2006 Case Highlight - Criminal Enforcement of Environmental Laws

Cognis Corporation, Cincinnati, manufactures specialty chemicals. Cognis had numerous illegal releases of different pollutants that entered nearby Mill Creek.

A criminal investigation was pursued by the Southern Ohio Environmental Crimes Task Force, which included Ohio EPA's Office of Special Investigations, Ohio Attorney General's Office Bureau of Criminal Identification and Investigation, U.S. EPA's Criminal Investigation Division, the Cincinnati Fire Department, Metropolitan Sewer District, Ohio Department of Natural Resources and U.S. Fish & Wildlife. During the complaint investigation, it was determined that at least one of the releases into Mill Creek was an intentional act.

On September 28, 2006, Cognis pled to four misdemeanor counts for violating the Clean Water Act and one count of violating the Migratory Bird Act (Canada geese and ducks were killed from the toxic release) and was sentenced to a \$215,000 fine, three years federal probation, and ordered to pay \$219,994 in restitution.



2006 Case Highlight - Protecting Public Health

In January 2006, the maximum contaminant level under the Safe Drinking Water Act for arsenic decreased from 50 ug/L to 10 ug/L. In anticipation of this change, Ohio EPA's Division of Drinking and Ground Waters began working with systems that were expected to have difficulty meeting the new standard. The division launched an enforcement initiative to obtain enforceable plans and schedules to meet the new standard. Penalties were included for systems that failed to provide a plan.

In 2006, the division addressed 11 public water systems that were in violation or expected to be in violation of the arsenic standard. Five of these systems were schools. As a result of Ohio EPA's efforts, these systems are pursuing treatment alternatives or are tying their systems into a community system. Most of the systems agreed to provide bottled drinking water until they come back into compliance.

Goal 8:

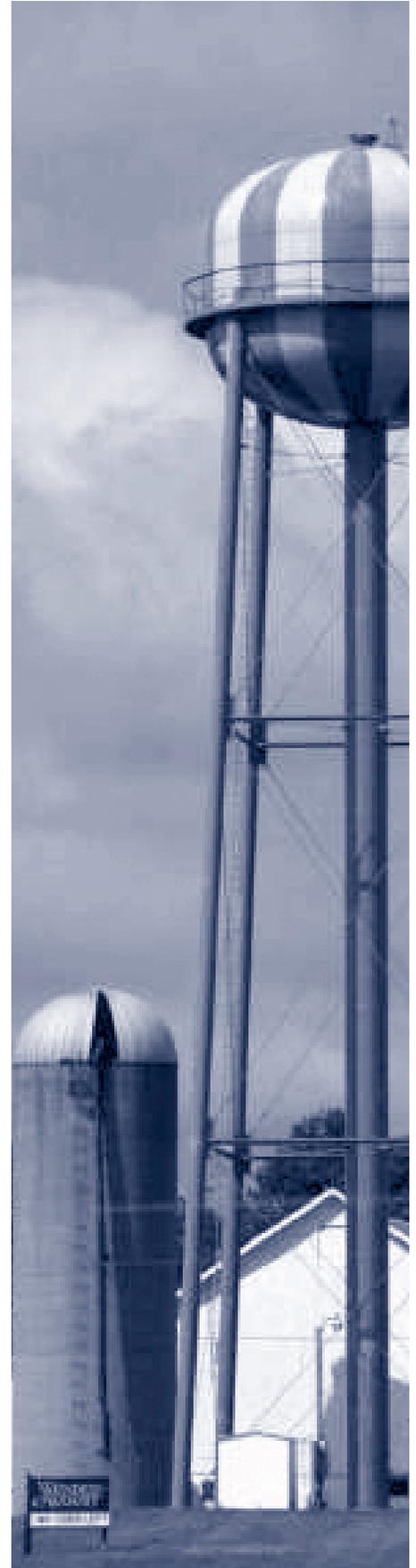
Prepare for U.S. EPA review of enforcement programs.

In 2007, U.S. EPA began reviewing Ohio EPA's hazardous waste, air and wastewater programs. This type of review has been conducted in other states and is meant to ensure a consistent level of performance across the country. We worked with staff from U.S. EPA during the review and look forward to receiving feedback and working with U.S. EPA to address areas of improvement.

Goal 9:

Benchmark environmental penalties in DSW.

In 2006, the Division of Surface Water began an evaluation of its penalty policies by reviewing and examining penalty approaches by other water programs in Region V. These and other efforts will assist DSW in determining whether refinements to their current approach are warranted.



Overall Status of Ohio EPA's Enforcement Programs

Ohio EPA and the Attorney General's Office continue to be recognized for having one of the best criminal environmental enforcement programs in the country. In 2006, Ohio EPA and the Attorney General's Office secured or assisted in securing convictions in the following areas:

	Convictions/Pleas	Felonies	Misdemeanors
DAPC	1		1
DSIWM	7	7	
DHWM	17	9	9
DSW	7	5	10
Other	3	6	1
Total	35	27	21

These efforts resulted in more than \$288,000 in fines, restitution and other payments. These efforts also resulted in a cumulative four years and three months of jail time; 10 years of suspended jail time; 44 years of probation; and 15,050 hours of community service.

Attorney General's Office

The Attorney General's Office obtained judgments or consent decrees in 39 cases, assessed \$2,652,940 in civil penalties and recovered \$4,472,811 in response costs in 2006.

Administrative Enforcement

Ohio EPA issued 193 orders and assessed \$3,523,386 in administrative penalties (cash plus supplemental environmental projects) in 2006.

2006 Case Highlight - Protecting Ohio's Waterways by Ensuring Proper Waste Disposal

Milacron, Inc., operates a plastics manufacturing facility that discharges its pretreated wastewater to the Village of Mt. Orab and ultimately to Snapping Turtle Run.

In March 2006, Milacron discharged approximately 700 gallons of chromium-laden wastewater to the Mt. Orab wastewater treatment plant. Milacron left a pretreatment system pump on continuously, causing a spill to overflow a containment dike that overflowed into the sewer sump in the facility's basement. The Mt. Orab plant was unable to adequately treat the industrial waste and it passed through the plant into Snapping Turtle Run. A similar spill 10 months earlier also caused problems at the Mt. Orab treatment plant.

In an enforcement action to address these violations, Milacron agreed to submit a spill plan, install any necessary equipment or alarms to prevent future spills, and pay a \$25,000 civil penalty.



2006 Case Highlight - Environmental Improvement through Criminal Enforcement of Environmental Laws

Richard Sherman owns Sherman Recycling Services (SRS), a metal and iron recycling facility in Newark. Sherman also has a transportation business that hauls roll-off boxes of construction and demolition debris (C&DD) and/or solid waste from specific locations to local sanitary landfills. However, instead of hauling this waste to the landfills and paying for proper disposal, Sherman transported both solid waste and C&DD to the SRS facility, where it was illegally buried.

In June 2004, Ohio EPA's Office of Special Investigations received a complaint that various materials including dry wall, wood and cardboard were being buried at the back of the SRS site. After an investigation that included covert surveillance, interviews and a criminal search warrant, a criminal prosecution was initiated.

In February 2006, Richard Sherman and his company pled guilty to illegally burying solid waste at Sherman Recycling. In June 2006, a Licking County judge sentenced him to four years prison and three years of post control release. He was also ordered to clean up the property, pay a \$5,000 fine and restitution in the amount of \$71,099.27 to the State of Ohio. The company was also ordered to pay a \$25,000 fine.

Division of Air Pollution Control

The Division of Air Pollution Control continues to have one of the busiest enforcement programs within the Agency. DAPC issued 41 orders. While short of its goal of 50 orders, the division spent considerable time on two very difficult and time consuming cases: Lanxess and Countywide. DAPC assessed total penalties of \$2,046,455 (\$797,538 by the AGO and \$1,248,917 in administrative penalties). This is the highest penalty amount of all divisions. DAPC continued to carry a very large enforcement docket with 79 administrative cases and 93 cases at the Attorney General's Office at the end of 2006.

2006 Case Highlight - Protecting Public Health

Salineville is a small village in Columbiana County. The Village's public water system had a long history of noncompliance with drinking water laws and Ohio EPA orders. Through additional enforcement actions, the Village was required to make various repairs to its system and develop a long-term solution to remain in compliance. The Village was also required to remain under a boil advisory until Ohio EPA verified that all items in the orders were completed and the facility returned to compliance. This enforcement action was one of many in a string of actions that eventually prompted the Village to agree to connect to a regional public water system.



2006 Case Highlight - Protecting Ohio's Waterways

During development of the 44-acre Vineyard Estates subdivision in Lorain County, Avon Land Group violated water quality regulations when it filled wetlands without authorization and installed a storm water retention basin within Schwartz Ditch.

In an enforcement settlement with Ohio EPA, the developer agreed to remove the in-stream basin, restore the affected section of Schwartz Ditch and create wet extended detention basins to perpetually improve the quality of storm water runoff from the development. The settlement also required the developer to create an additional 1,502 feet of stream channels on the property; preserve 500 feet of stream at an off-site location; create, restore or acquire 6.1 acres of wetlands at off-site locations; and pay a penalty of \$87,000.

Division of Surface Water

The Division of Surface Water maintained its high productivity in 2006. It issued 50 orders, more than any other division and exceeding its goal of 35. DSW also accepted 97 new enforcement referrals from district offices in 2006. DSW assessed total penalties of \$1,664,309 (\$1,047,402 by the AGO and \$616,907 in administrative penalties).

Division of Hazardous Waste Management

The Division of Hazardous Waste Management issued 43 orders, exceeding its goal of 25. DHWM assessed \$1,398,040 in civil penalties (\$425,000 by the AGO and \$973,040 in administrative penalties).

Division of Solid and Infectious Waste Management

The Division of Solid and Infectious Waste Management issued 32 orders, exceeding its goal of 20. DSIWM assessed \$262,722 in civil penalties (\$83,000 by the AGO and \$179,722 in administrative penalties). A significant focus of the DSIWM program in 2006 was to address scrap tire cleanup sites.

Division of Drinking and Ground Waters

The Division of Drinking and Ground Waters issued 24 orders in 2006, exceeding its goal of 18. DDAGW also issued 15 bilateral compliance agreements, which are designed to address noncompliance at facilities whose violations are serious but able to be corrected short of issuing orders. DDAGW assessed \$800,400 in penalties (\$300,000 by the AGO and \$500,400 in administrative penalties).

Division of Emergency and Remedial Response

Several years ago, the Division of Emergency and Remedial Response made a strategic decision to focus on a select number of priority sites in order to move those sites through the lengthy process toward cleanup and final resolution. This has been a successful effort for the division. DERR met its goal by issuing five orders in 2006.



Ohio EPA Enforcement Goals for 2007

With the change in administration in early 2007, there were questions about what the Agency's enforcement goals should be. As a testament to the fact that the enforcement improvements and performance standards have become so ingrained in the way the Agency does business, the divisions collectively decided to continue to adhere to the established performance standards designed to ensure timeliness in enforcement cases.

With an eye toward 2008, the Director's Office will evaluate progress to determine whether these goals should be refined and whether new goals should be added.

2006 Case Highlight - Protecting Public Health

Meadowlake Golf & Swim is a popular sports and eating establishment in Stark County. Drinking water is provided by a well on site. Because of the number of customers it serves, it is a public water system.

Meadowlake failed to comply with numerous drinking water requirements. After numerous, unsuccessful attempts to settle the case, Ohio EPA filed a 13-count complaint against Meadowlake Corporation in the Stark County Court of Common Pleas. In May 2006, the court found that Meadowlake committed more than 1,000 longstanding intentional violations of Ohio's drinking water requirements. The court ordered Meadowlake to pay a \$300,000 civil penalty and meet Ohio EPA's requirements for regulated public water systems. Meadowlake appealed the verdict.

Enforcement Money Helps Clean Up School Bus Emissions

Many counties in Ohio are not meeting the federal air quality standard for very small particulates. These small particulates penetrate deep into the lungs and pose serious health risks such as aggravated asthma and lung damage. The exhaust gases from diesel school bus engines contain significant amounts of these fine particulates.

In 2005, Ohio EPA developed and began implementing an initiative to provide school systems the opportunity to obtain funding to install diesel particulate controls for school buses. Funding comes from a portion of the civil penalties Ohio EPA assesses in civil enforcement cases. This effort required the Agency to adopt administrative rules.

In 2006, the Agency awarded the first grants. In total, Ohio EPA has awarded \$1.1 million in grants for the installation of pollution control equipment on 386 school buses statewide. This removed more than five tons of pollutants from the air.

