

GAO

Fact sheet for the Chairman
Subcommittee on HUD-Independent
Agencies, Committee on Appropriations,
United States Senate

January 1986

HAZARDOUS WASTE

Adequacy of EPA Attorney Resource Levels



129183



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RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION

January 31, 1986

B-221693

The Honorable Jake Garn
Chairman, Subcommittee on HUD-Independent
Agencies
Committee on Appropriations
United States Senate

Dear Mr. Chairman:

As requested in an August 28, 1985, Senate Appropriations Committee Report and our subsequent discussions with your office, this fact sheet summarizes the information we obtained on the adequacy of the Environmental Protection Agency's (EPA's) regional attorney resources to enforce the Comprehensive Environmental Response, Compensation and Liability Act (commonly known as Superfund) and the Resource Conservation and Recovery Act (RCRA), and to defend EPA in lawsuits under these Acts. On December 18, 1985, we briefed your staff on the preliminary results of our work and, as requested, this fact sheet summarizes the information discussed during the briefing. In addition, as requested by your office, we have provided information on EPA's fiscal year 1986 budget development for these activities.

Legal matters under these acts--including enforcement and defense in lawsuits--are the responsibility of either EPA's Office of Enforcement and Compliance Monitoring or the Office of General Counsel. Many of the activities of these offices are carried out in EPA's 10 Offices of Regional Counsel.

EPA received 680 full-time equivalent (FTE) resources¹ to perform legal and compliance activities for all of its environmental statutes including Superfund and RCRA. These offices received the FTE resources as requested in the fiscal year 1986 President's budget--163 for Enforcement and Compliance Monitoring, 138 for General Counsel, and 379 for Regional Counsels. Congress also provided an additional 278 FTEs agency wide. As of January 1986 EPA planned to allocate 47 of these

¹An FTE is a personnel position representing one person for a year and could include both attorneys and/or their support staff.

278 FTEs to the Regional Counsels, thus increasing their resources to 426 FTEs overall.

Nearly all of the legal and program officials we talked to told us that more attorneys are needed. At this point evidence of the impact of the shortage is anecdotal (e.g., comments about attorney overtime and work backlogs or delays).

EPA recognized the need to better determine and document its resource requirements agency wide, including attorneys, and has developed and is refining workload models to quantify attorney needs. It is important for EPA to complete this effort to provide a better estimate of actual needs.

The information was obtained primarily at the Offices of Enforcement and Compliance Monitoring and General Counsel at EPA headquarters, and the Offices of Regional Counsel in Regions I (Boston), IV (Atlanta), and V (Chicago). We also contacted the other seven Offices of Regional Counsel to discuss the issue.

Section I of this fact sheet discusses Superfund and RCRA authorities and program responsibilities. Section II describes our objectives, scope, and methodology. Sections III through VI provide more detailed information on the resources and efforts to quantify attorney resource needs.

We did not obtain official agency comments on this fact sheet; however, we did discuss the contents with EPA officials and have included their comments where appropriate.

As requested by your office, we are providing copies of this fact sheet to all Subcommittee members. Unless you publicly announce its contents earlier, we do not plan further distribution of this report until 30 days from its issue date. At that time, we will send copies to the Administrator, Environmental Protection Agency, and other interested parties upon request. Further information on this fact sheet can be obtained by calling (202) 275-5489.

Sincerely yours,



Hugh J. Wessinger
Senior Associate Director

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ABBREVIATIONS

EPA	Environmental Protection Agency
FTE	Full-time equivalent
GAO	General Accounting Office
OMB	Office of Management and Budget
RCRA	Resource Conservation and Recovery Act

PROGRAM AUTHORITIES AND RESPONSIBILITIESBACKGROUND

The Comprehensive Environmental Response, Compensation and Liability Act (commonly known as Superfund) and the Resource Conservation and Recovery Act (RCRA) provide authority for EPA to ensure proper hazardous waste management and cleanup.

Superfund

Superfund was enacted in 1980 to provide for cleanup of the nation's worst uncontrolled hazardous waste sites. To the extent possible, EPA requires the parties responsible for these hazardous conditions either to perform cleanups themselves or reimburse the government for cleaning up the sites.

EPA uses its enforcement authority to identify, notify, and negotiate with responsible parties in an attempt to reach a settlement whereby responsible parties conduct or pay for cleanups. EPA has authority to take enforcement actions administratively or through civil or criminal litigation. As of January 1986, EPA had sent over 10,900 letters to responsible parties for purposes such as notifying them of their liability for site cleanup. In addition, EPA had concluded 550 negotiations for site cleanup or cost recovery with responsible parties. EPA estimates that it may have to clean up over 2,000 hazardous waste sites.

RCRA

RCRA was enacted in 1976 to protect the public health and the environment from the dangers posed by hazardous wastes. A major objective of the act's hazardous waste management provisions was to establish requirements for the safe treatment, storage, and disposal of hazardous wastes. Treatment, storage, and disposal facilities must comply with requirements, such as groundwater monitoring and financial responsibility, to obtain operating permits.

Under the act, EPA has authority to enforce compliance through administrative orders, civil injunctive and penalty actions, and criminal prosecution. In addition, RCRA allows EPA to authorize states to administer and enforce their own hazardous waste programs when states promulgate regulations that are equivalent to the federal requirements. As of October 1985, 26 states and the District of Columbia had received this authorization.

RCRA was amended by the Hazardous and Solid Waste Amendments of 1984. The amendments contain three major categories of changes; they

- expand coverage of regulated wastes (e.g., lowering the exemption for small quantity generators and thus increasing the universe of regulated facilities by 100,000 to 200,000);
- alter waste management practices, particularly by limiting or banning the use of land disposal for certain wastes; and
- regulate activities not previously controlled, such as underground storage tanks (estimated to be several million).

After states develop implementing regulations, they may seek EPA authorization to administer these provisions. As of January 1986, however, none of the states had been fully authorized to administer and enforce these amendments.

ENFORCEMENT AND LEGAL RESPONSIBILITIES

The Administrator, EPA, is responsible for implementing the authorities under the Superfund and RCRA Acts. Legal matters under these acts have been delegated to the Office of Enforcement and Compliance Monitoring and the Office of General Counsel. Program functions have been delegated to the Office of Solid Waste and Emergency Response. Many of these offices' legal and program activities are carried out in EPA's 10 regional offices. Each region has an Office of Regional Counsel responsible for both the enforcement and counseling activities of these acts. Program activities are also carried out in the regional offices by program divisions (like Region I's Waste Management Division).

The Office of Enforcement and Compliance Monitoring provides direction and review of civil and criminal enforcement activities and makes recommendations on referral of cases to the Department of Justice. It provides direction and guidance to the Agency, including the Office of Solid Waste and Emergency Response, with regard to case development, administrative actions, and compliance.

The Office of General Counsel serves as EPA's primary legal advisor, concerning legal interpretation (in contrast to enforcement) of EPA-administered statutes and other general legal matters including personnel, grants, and contracts. The General Counsel also defends EPA in lawsuits against the Agency and has supervisory responsibilities regarding the Regional Counsels.

The Office of Solid Waste and Emergency Response provides agency-wide policy, guidance, and direction for the Agency's RCRA and Superfund programs. Responsibilities include: (1) program policy development and evaluation; (2) development of appropriate hazardous waste standards and regulations; (3) ensuring compliance with applicable laws and regulations; (4) program policy guidance and overview, technical support, and evaluation of regional RCRA and Superfund activities; (5) development of programs for technical, programmatic, and compliance assistance to states and local governments; and (6) development and implementation of a program to respond to uncontrolled hazardous waste sites and spills.

The regional legal enforcement workload in Superfund and RCRA generally includes legal support activities relating to civil, criminal, and administrative enforcement. For RCRA, the attorneys also review operating permit applications for hazardous waste facilities for legal compliance and provide oversight of state enforcement actions. For Superfund, legal support is necessary in negotiations with responsible parties for emergency or long-term site cleanups or recovery of EPA funds used for such cleanup actions; reviewing EPA records, findings, and determinations for legal sufficiency; and providing general support on an as needed basis (e.g., access to sites, public meetings, etc.).

In the counseling and defensive litigation area, Regional Counsels defend EPA in lawsuits and monitor other litigation that may affect EPA. The Regional Counsels handle review of EPA records of decision supporting the selected remedial action at a hazardous waste site; applications for state authorization; Freedom of Information Act and other information requests requiring legal review; and general counseling and advice.

The Offices of Regional Counsel attorneys perform both enforcement and counseling duties. Regional Counsels receive their resource allocations from headquarters' Offices of Enforcement and Compliance Monitoring for enforcement-related activities and General Counsel for counseling and defensive litigation activities. These resources are in the form of FTEs.

For fiscal year 1986, EPA received 680.1 FTEs for legal activities--including 163.4 for Enforcement and Compliance Monitoring,¹ 137.5 for General Counsel, and 379.2 for Regional Counsels--as requested in the President's budget. The Congress also provided an additional 278 FTEs agency wide, of which EPA planned, as of January 1986, to allocate 47 FTEs to the Regional Counsels.

¹This includes 45 criminal investigators and program analysts in that office.

OBJECTIVES, SCOPE, AND METHODOLOGY

In a Senate Appropriations Committee report, dated August 28, 1985, and subsequent discussions with the Chairman's office, we were asked to review whether or not EPA has enough regional attorneys to enforce Superfund and RCRA statutes and to defend EPA against lawsuits. We were also requested to provide information on EPA's fiscal year 1986 budget for legal enforcement and counseling activities.

As agreed with the Committee staff, we performed work at EPA headquarters and Regions I (Boston), IV (Atlanta), and V (Chicago). Region I was selected because preliminary information indicated there were attorney shortages, and additionally, it developed a workload model to determine the number of attorneys needed. Region V was selected because it has the largest Office of Regional Counsel. Region IV was selected because, in contrast to Region I, preliminary information indicated that there were an adequate number of attorneys to enforce Superfund and RCRA. We also telephoned the other seven Offices of Regional Counsel to discuss the adequacy of their attorney resources and problems resulting from any shortages.

To obtain information on the adequacy of attorney resources, we interviewed officials in the Offices of Enforcement and Compliance Monitoring and General Counsel at EPA headquarters. At the three regional offices we visited, we interviewed officials in the Offices of Regional Counsel and the program officials responsible for the compliance and enforcement of the Superfund and RCRA regulations to obtain information on attorneys' duties, responsibilities, needs assessments, and workload models showing the number of attorneys needed to support the Superfund and RCRA programs.

To obtain information on EPA's fiscal year 1986 budget for enforcement and counseling, we reviewed budget requests and interviewed officials in the Offices of the Comptroller, Enforcement and Compliance Monitoring, and General Counsel at EPA headquarters and a budget examiner from the Office of Management and Budget.

In those regional offices where the regional counsel reported a shortage of attorneys, we obtained oral information on backlogs, delays, and the amount of overtime worked, as well as examples of their impact on the Superfund and RCRA programs. Because of the requested reporting date, we did not have time to evaluate the appropriateness of the legal activities included in the EPA workload models, the accuracy of their time estimates to perform such activities, the validity of their workload projections, or the information provided on delays, backlogs, and the amount of overtime worked.

The Chairman's office requested that we not obtain official agency comments. However, the matters presented in this fact sheet were discussed with EPA officials in the Offices of the Comptroller, Enforcement and Compliance Monitoring, and General Counsel, and their views have been included in the report where appropriate.

DEVELOPMENT OF THE FISCALYEAR 1986 BUDGET

The Offices of Enforcement and Compliance Monitoring and General Counsel develop budget requests for attorney enforcement-related and counseling and defensive litigation activities. These requests are compiled by EPA's Office of the Comptroller for the Administrator's approval. They are then submitted to the Office of Management and Budget (OMB) for inclusion in the President's annual budget submission to the Congress. For fiscal year 1986, OMB approved 379.2 FTEs for regional attorney resources, which was less than the 422.8 requested by EPA. The Congress approved the resources requested in the President's budget and provided an additional 278 FTEs agency wide, of which EPA plans to allocate 47 to the Regional Counsels. Even though the Congress added additional resources, the Regional Counsels were still 36.4 FTEs short of the number specified by Enforcement and Compliance Monitoring and General Counsel in their requests to the agency.

The following table shows budgeted, actual, and requested distribution between enforcement and counseling FTEs for headquarters and regions for fiscal years 1985 and 1986. Although we were asked to focus on the Superfund and RCRA activities, EPA displays its budget in only two major categories--Superfund and non-Superfund. The latter category includes legal resources required to support RCRA, as well as other environmental statutes, such as the Clean Air Act, Clean Water Act, etc. Superfund has a separate budget because it has its own appropriation and EPA must maintain a separate accounting for cost-recovery purposes.

Table III.1: Enforcement and counseling
FTE allocations^a

Fiscal year of activity	Regional FTEs			Headquarters FTEs			Headquarters and regional FTEs		
	Super- fund	Non- Super- fund	Total	Super- fund	Non- Super- fund	Total	Super- fund	Non- Super- fund	Grand total
Fiscal year 1985:									
Operating Budget ^b									
Enforcement	99.0	136.5	235.5	40.4	118.0	158.4	139.4	254.5	393.9
Counseling	14.3	78.2	92.5	5.0	130.5	135.5	19.3	208.7	228.0
	<u>113.3</u>	<u>214.7</u>	<u>328.0</u>	<u>45.4</u>	<u>248.5</u>	<u>293.9</u>	<u>158.7</u>	<u>463.2</u>	<u>621.9</u>
Actual									
Enforcement	91.2	152.4	243.6	34.1	123.7	157.8	125.3	276.1	401.4
Counseling	11.3	78.9	90.2	5.4	124.3	129.7	16.7	203.2	219.9
	<u>102.5</u>	<u>231.3</u>	<u>333.8</u>	<u>39.5</u>	<u>248.0</u>	<u>287.5</u>	<u>142.0</u>	<u>479.3</u>	<u>621.3</u>
Fiscal Year 1986:									
Office request to Agency									
Enforcement	139.8	197.0	336.8	58.0	185.0	243.0	197.8	382.0	579.8
Counseling	24.7	101.1	125.8	7.0	129.9	136.9	31.7	231.0	262.7
	<u>164.5</u>	<u>298.1</u>	<u>462.6</u>	<u>65.0</u>	<u>314.9</u>	<u>379.9</u>	<u>229.5</u>	<u>613.0</u>	<u>842.5</u>
Request to OMB									
Enforcement	129.0	178.9	307.9	44.4	149.0	193.4	173.4	327.9	501.3
Counseling	24.7	90.2	114.9	7.0	129.9	136.9	31.7	220.1	251.8
	<u>153.7</u>	<u>269.1</u>	<u>422.8</u>	<u>51.4</u>	<u>278.9</u>	<u>330.3</u>	<u>205.1</u>	<u>548.0</u>	<u>753.1</u>
President's budget									
Enforcement	129.0	149.7	278.7	44.4	119.0	163.4	173.4	268.7	442.1
Counseling	20.3	80.2	100.5	6.0	131.5	137.5	26.3	211.7	238.0
	<u>149.3</u>	<u>229.9</u>	<u>379.2</u>	<u>50.4</u>	<u>250.5</u>	<u>300.9</u>	<u>199.7</u>	<u>480.4</u>	<u>680.1</u>

Notes:

^aThis table includes only those budget line items related to legal enforcement and counseling. We excluded the Superfund and non-Superfund technical support and program management line items.

^bBecause the fiscal year 1985 actual amounts were not available until after the fiscal year, the Operating Budget Plan--the amount budgeted for fiscal year 1985--was used as the basis for making the fiscal year 1986 budget request developed in November 1984.

ENFORCEMENT AND GENERAL
COUNSEL BUDGET REQUESTS

EPA's Office of the Comptroller provided guidance to Enforcement and Compliance Monitoring indicating that it wanted its 1986 budget request expressed at levels of 5, 10, and 15 percent above the 1985 budget levels. In arriving at its budget request, Enforcement and Compliance Monitoring requested that the regions send their estimates with the 5-, 10-, and 15-percent increases, along with an estimate of their actual needs. According to the Chief of the Management Operations Branch, Enforcement and Compliance Monitoring, the regional input indicated that a 15-percent increase would not satisfy the regions' needs. Consequently, Enforcement and Compliance Monitoring's request to the Office of the Comptroller included a 43-percent increase beyond the 1985 budget levels. According to a senior budget analyst in the Office of Enforcement and Compliance Monitoring, these estimates are probably understated because, when made in July 1984, (1) the estimates were based on 1984 activity levels, which did not reflect the increased enforcement workload for 1985, and (2) the regional counsels had little experience in estimating resource needs.

General Counsel's budget request was developed at levels of 5, 10, and 15 percent above the 1985 budget levels. Although General Counsel's overall budget request to the Office of the Comptroller was 15 percent above the 228-FTE budget level for fiscal year 1985, the regional request showed a 36-percent increase.

AGENCY ADJUSTMENTS TO ENFORCEMENT
AND GENERAL COUNSEL REQUESTS

In July 1984 Enforcement and Compliance Monitoring and General Counsel submitted their fiscal year 1986 proposals to the Budget Division, Office of the Comptroller. Internal hearings were conducted, at which time budget requests were justified and defended. The Administrator approved budget requests based on the merits of the managers' arguments for their needs, and on the size of the agency-wide increase he was willing to request. After this process EPA forwarded its budget to OMB.

The Administrator reduced the regional enforcement request by a total of 28.9 FTEs, from 336.8 to 307.9; 10.8 FTEs were cut from the Superfund area, with the remaining 18.1 FTEs taken from the non-Superfund area. The counseling request was reduced by a total of 10.9 FTEs, from 125.8 to 114.9, with the full 10.9-FTE reduction coming from the non-Superfund area.

OMB ADJUSTMENTS

A budget examiner in OMB's Natural Resources Division said that OMB provided little instruction to EPA on the budget format.

OMB told EPA that the budget request should not exceed the 1985 budget level.

Although OMB reduced the agency's requests in the enforcement and counseling areas, it did approve an amount exceeding the fiscal year 1985 actual level. Overall, it approved an increase of 59 FTEs, of which 45 FTEs are to be allocated to the Regional Counsels.

CONGRESSIONAL APPROPRIATION

In January 1985 the President's budget was submitted to the Congress. In November 1985 the Congress approved EPA's fiscal year 1986 budget request. In addition, the Congress increased EPA's appropriation by 278 FTEs agency wide. According to a senior budget analyst in the Office of Enforcement and Compliance Monitoring the agency intends to allocate an additional 47 FTEs among the Regional Counsels for legal enforcement work, thus increasing their resources to 426 FTEs.

FISCAL YEAR 1985REGIONAL ENFORCEMENT AND COUNSELING RESOURCES

Table IV.1 shows the fiscal year 1985 resources devoted to the enforcement and counseling functions in the 10 EPA regions and the actual number of attorneys at each location as of September 30, 1985. There is a difference between the number of attorneys and FTEs because (1) FTEs are personnel positions and cover both attorneys and support staff, and (2) actual numbers of attorneys can be greater than total FTEs because individual attorneys may not have been employed for the full year.

Table IV.1: Fiscal year 1985 regional enforcement and counseling resources

<u>Region</u>	<u>Superfund and non-Superfund Resource distribution (in FTEs)</u>			<u>Number of attorneys as of 9/30/85¹</u>
	<u>Enforcement</u>	<u>Counseling</u>	<u>Total</u>	
I	19.2	8.2	27.4	29
II	31.7	10.9	42.6	37
III	31.4	10.5	41.9	30
IV	30.6	10.1	40.7	29
V	51.8	13.4	65.2	46
VI	23.4	11.2	34.6	26
VII	18.8	4.5	23.3	19
VIII	9.5	7.1	16.6	21
IX	14.2	8.2	22.4	21
X	<u>13.0</u>	<u>6.1</u>	<u>19.1</u>	<u>15</u>
Total	<u>243.6</u>	<u>90.2</u>	<u>333.8</u>	<u>273</u>

Notes:

¹Twelve of these attorneys are other than permanent, full-time employees.

IMPACT AND EXTENT OF ATTORNEY SHORTAGES

Officials in the Offices of Enforcement and Compliance Monitoring and General Counsel told us that more attorneys are needed. In addition, 8 of the 10 Regional Councils told us that they are understaffed in Superfund and/or RCRA. While five of these Regional Councils had not documented the extent of their shortages or their impact, the other three had done some type of analysis to determine their staffing needs.

CONCERNS ABOUT ATTORNEY SHORTAGES

According to the Associate Enforcement Counsel for Hazardous Waste Enforcement, Superfund legal support is relatively better off than RCRA, but Regional Councils are understaffed in both areas due, at least in part, to an imbalance between the level of RCRA and Superfund program and legal staffing. He believes that the shortage is greatest in RCRA where the Regional Councils are experiencing backlogs. In addition, as the 1984 RCRA amendments are implemented, further backlogs will occur. According to the Chief of the Program Planning and Budget Branch in the Office of General Counsel, it is generally acknowledged at EPA that the Offices of Regional Counsel are understaffed. The Chief stated that increases in attorney resources have not kept pace with the increases in workload resulting from new statutory requirements. He had not performed any workload analysis to document the extent of the shortage.

When asked about the impact of the attorney resource shortage, the Regional Councils could only provide anecdotal evidence of their current and potential problems. EPA regions generally do not maintain statistics on attorney overtime, work backlogs, or delays. However, the Office of Enforcement and Compliance Monitoring does maintain statistics on case-load projections and time frames for closing cases.

Reduced legal involvement: Four Regional Councils (Regions I, IV, V, and VI) told us that they have eliminated or reduced their involvement in certain legal support activities associated with Superfund and RCRA enforcement. For example, due to inadequate staffing in the Superfund area, the Region I Counsel has had to prioritize its workload and, as a result, has eliminated a number of activities, including some aspects of legal support for (1) responsible party searches, and (2) removal actions--short-term responses to address immediate and specific dangers at a hazardous waste site. Region I also eliminated Counsel oversight of the Superfund site investigation and study phase, which involves a detailed examination of Superfund site cleanup alternatives.

The Region V Counsel told us that some aspects of RCRA permit review have been transferred to the program unit. Although Region

IV characterized RCRA legal support as "marginally adequate," the Chief of the Hazardous Waste Law Branch told us that his office's involvement in the granting of permits under RCRA has been very limited due to insufficient staff. This official told us that the Counsel should be reviewing permit submittals to ensure that EPA's decision to issue a permit and the terms of the permit are supported. The Region VI Counsel told us that he has eliminated attorney oversight of state enforcement actions under RCRA.

Cases without attorneys: As of September 1985, Region I had 37 responsible party negotiations ongoing. The Senior Assistant Regional Counsel for Superfund estimated that about four of these cases had reached the point in negotiations where an agreement to do the remedial Superfund site investigation and feasibility study could be signed; however, no attorneys were available to prepare the settlement documents so that work could begin.

Defensibility of EPA decision documents: According to a regional Assistant Counsel for Superfund, some of the region's Superfund site cleanup decision documents signed in fiscal year 1985 possibly could not withstand legal scrutiny. He told us that the problem is that attorneys lacked time to review work plans for the Superfund site investigation and feasibility study and this phase was completed without flood plain or wetlands assessments needed to ensure consistency with the National Contingency Plan.¹ As a result, the cleanup decisions could be challenged and the cleanups halted.

Impact of RCRA amendments: The RCRA amendments are expected to have a major impact on Regional Counsel workload. For example, the amendments required all land disposal facilities to certify compliance with requirements, such as groundwater monitoring and financial responsibility, as of November 8, 1985. Otherwise, these facilities would lose their interim status² and would be forced to close.

According to the Waste Compliance Monitoring and Enforcement Section Chief in Region IV, only 84 facilities of an estimated 200 to 235 submitted the required certification and accompanying documents by the November deadline. This could have a significant impact on the Regional Counsel workload because EPA is taking enforcement action against facilities that either failed to

¹The National Contingency Plan delineates (1) federal and state response authorities for abandoned or uncontrolled hazardous waste sites and (2) methods and criteria for when and to what extent a removal or remedial response should be undertaken.

²Facilities in operation on or before November 19, 1980, were allowed to continue operating under "interim status" until a final hazardous waste permit is issued.

certify or submitted false certifications and are operating illegally.

Delays, backlogs, and attorney overtime: Five Regional Counsels (Regions I, II, IV, V, and VI) indicated that they had backlogs of cases or that delays had occurred in processing administrative orders or reviewing Freedom of Information Act requests and state authorization submittals. For example, at the beginning of fiscal year 1985, Region II had a backlog of 62 unresolved administrative orders. At least five Regional Counsels (Regions I, III, V, IX, and X) indicated that their attorneys are working substantial amounts of overtime.

EPA headquarter's work projections indicate that the number of enforcement cases are expected to increase 27 percent in fiscal year 1986 from 437 to 556 cases. Another 8-percent increase is expected in fiscal year 1987. In addition, headquarters information systems show that the average time required to close a case increased from 501 days in 1984 to 659 days in 1985. The Chief, Management Operations Branch, Office of Enforcement and Compliance Monitoring, believes the shortage of attorneys contributed to the delays in closing these cases.

Borrowed positions from program units: Some EPA regional offices try to compensate for attorney shortages by allocating positions from the program units to the Regional Counsels. For example, the Region I Counsel borrowed six FTEs from the program units, and the Region V Counsel borrowed three FTE program positions. Region IV and VI officials believe, however, that it is up to the Offices of Enforcement and Compliance Monitoring and General Counsel to provide adequate staffing to the Regional Counsels and, thus, do not reallocate any positions from their program units.

REGIONAL EFFORTS TO QUANTIFY NEEDS

Three of the eight Regional Counsels indicating an attorney shortage have made an effort to quantify the extent of their attorney resource needs.

The Region I Office of Regional Counsel has developed its own Superfund and RCRA workload models. For fiscal year 1986, its Superfund model projected the need for an additional 5.24 FTEs (66-percent increase) over the fiscal year 1985 level to adequately support the Superfund enforcement and counseling activities. The model shows a need for 13.19 FTEs for fiscal year 1986; the fiscal year 1985 FTE level was 7.95. This model is based on the fiscal year 1986 workload projections and pricing factors--estimates of the amount of time required to perform each activity.

The Region I RCRA model projects the need for an additional 1.55 FTEs in fiscal year 1986 to support the Region's highest priority work. Other priority regional work, such as judicial referrals, enforcement of information requests, and additional state authorization work, is not included in this model analysis. The RCRA model, like the Superfund model, is based on the fiscal year 1986 workload projections and pricing factors based on historical experience.

The Region II Office of Regional Counsel also attempted to quantify its shortages using a workload model for fiscal year 1986 Superfund and RCRA enforcement activities. For Superfund, the Region II analysis showed a total need for 25.9 FTEs. The Office of Regional Counsel has 18.0 FTEs available for Superfund enforcement activities, 1.0 FTE of which is borrowed from the regional office program staff. Excluding the borrowed position, the Region II analysis showed the need for an additional 8.9 FTEs (52-percent increase). For the RCRA enforcement program, the Region II analysis showed a total need for 8.96 FTEs. The Office of Regional Counsel currently has 5.0 FTEs available to support RCRA enforcement activities, 2.0 of which are borrowed from the regional office program staff. Excluding the borrowed positions, the Region II analysis showed the need for an additional 5.96 FTEs (199-percent increase).

The Region IX Office of Regional Counsel used a different approach to demonstrate its resource shortage. The Regional Counsel explained that he developed a ratio of Region IX Office of Regional Counsel FTE resources to the total regional resources and compared it with the national ratio. He told us that this comparison showed that Region IX had fewer attorneys to support the Agency's program staff than the national average. For example, for fiscal year 1985, the Region IX ratio of attorneys to total resources was 1 to 19.3; the national ratio was 1 to 16.45. For fiscal year 1984, the Region IX ratio was 1 to 22.2, while the national ratio was 1 to 17.44.

EPA HEADQUARTERS' EFFORTS TO QUANTIFY RESOURCE NEEDS

EPA efforts to quantify its attorney resource needs through workload models began during fiscal year 1985. To determine the number of attorneys needed, Enforcement and Compliance Monitoring and General Counsel are developing and refining their own workload models. EPA plans to complete these models in time to be used to formulate the fiscal year 1988 budget request.

ENFORCEMENT EFFORTS
TO QUANTIFY NEEDS

Prior to developing a workload model, Enforcement and Compliance Monitoring asked the Regional Counsels to estimate for budget purposes the work that could be accomplished within specified resource levels established by the Office of the Comptroller.

During fiscal year 1985, Enforcement and Compliance Monitoring began developing a workload model to determine the number of regional attorneys needed for Superfund and non-Superfund enforcement programs and to distribute the available attorney resources to the Regional Counsels. In developing the model, Enforcement and Compliance Monitoring identified typical legal enforcement activities and, with input from the Regional Counsels, estimated the pricing factors. The number of cases within each activity, called outputs, were projected using a combination of historical data and fiscal year 1986 targets.

This model was not completed in time to be used for the fiscal year 1986 budget request. However, EPA used the model for internal purposes to compare its results with fiscal year 1985 budget levels and to estimate the regional shortages. The model showed that the Regional Counsels would need a 76-percent increase over their fiscal year 1985 actual enforcement resources to accomplish the projected fiscal year 1986 Superfund and non-Superfund workload. The model was also used to distribute the fiscal year 1986 appropriation to the Regional Counsels.

The Chief of Enforcement and Compliance Monitoring's Management Operations Branch told us that the model needs to be refined and that improvements are underway. She believes that the model's pricing factors need further refinement and the enforcement activities need better definition. She also told us that to accomplish the pricing factor validation, two Regional Counsels are participating in a time-accounting effort for RCRA legal enforcement activities. This effort will provide better data to support the pricing factors in the model. In addition, a Regional Counsel workgroup is developing a more detailed breakdown of the legal enforcement activities associated with the environmental statutes, including Superfund and RCRA. She hopes that these refinements will be completed in time for the fiscal

year 1988 budget process so that the model can be used to determine actual needs.

The model is a significant step forward in quantifying resource needs. Although the model needs refinement, a senior budget analyst in Enforcement and Compliance Monitoring told us that the model was valid as a gross measure of attorney shortages. In fact, she stated that it may actually understate resource needs. For example, the model does not reflect the increased attorney workload stemming from the 1984 RCRA amendments.

GENERAL COUNSEL EFFORTS
TO QUANTIFY NEEDS

The Chief of the Program Planning and Budget Branch explained that in the past the General Counsel allocated the final authorized FTEs to the regional offices for Superfund based on the number of priority sites contained in each region. For non-Superfund programs, regional attorney resources were allocated in accordance with each region's percentage share of total program staff.

In November 1985 the Office of General Counsel was developing a model to determine the Regional Counsels' resource needs for counseling activities and to distribute the resources to each of the Regional Counsels. This model will identify the typical counseling activities, estimate the amount of time required to perform each activity, and be linked to the number of cases within each activity. The Chief of the Program Planning and Budget Branch told us that he hoped to have this model ready for use in developing the fiscal year 1988 budget request.

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We were told that the models, although still being refined in January 1986, were used to some extent in developing the fiscal year 1987 budget request. Because the fiscal year 1987 budget had not been released during our review, we were unable to determine to what extent the models were used in the budget's development.

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