

Firms, cleanup quietly forced

■ A group's suits are helping carry out the government's environmental goals — and angering targeted businesses.

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Environmentalists call it eliminating dangerous chemicals by enforcing the law. Targeted businesses label it legal extortion.

By any name, a San Francisco-based environmental group has quietly been winning hundreds of thousands of dollars for the U.S. Treasury and private groups — as well as agreements to phase out ozone-destroying chemicals — by suing Bay Area companies for not reporting their annual releases of 325 hazardous chemicals.

A novel tactic on the West Coast, the lawsuits by Citizens for a Better Environment earn praise from federal environmental officials, and demonstrate the awesome reach of the 1986 law that requires the reports. The law does not restrict emissions, but community activists around the country have used the information gleaned from company reports to force changes in chemicals and manufacturing processes at nearby factories.

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Watchdog group forces curbing of chemical releases

■ CHEMICALS

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However, as many as one-third of the firms subject to the law don't file the reports, according to congressional auditors. Federal agencies rarely prosecute non-filers. So Citizens for a Better Environment is pursuing them, using the law's huge potential fines — a maximum of \$25,000 a day — to exact concessions.

That's a possible \$9 million penalty per year for each listed chemical that a company uses but fails to report. The threat has brought companies to the table — where they're agreeing to pay much smaller fines, file the delinquent reports, and usually, phase out the offending chemical.

"What we're finding is that more often than not there are feasible substitutes, and it just takes some pushing to get companies to implement them," said Nora Chorover, an attorney for Citizens for a Better Environment.

Most of the targeted companies have been using chemicals believed to damage the Earth's protective ozone layer, like Freon and trichloroethane — both heavily used as cleaners in the electronics industry. Citizens for a Better Environment identifies companies that did not submit re-

ports by checking files at other government environmental agencies.

In another innovation, the citizens' group is encouraging firms to divert part of their fines to other environmental and social groups, like the Silicon Valley Toxics Coalition and Asian Immigrant Women's Advocates, usually for programs involving chemical training or pollution prevention.

So far, Citizens for a Better Environment claims its 14 settlements have yielded \$152,000 for the government, \$131,000 for these outside groups, and agreements by the companies to spend \$750,000 on new chemicals and processes.

Most of that money has come grudgingly, however. Targeted companies complain they are small outfits — many with about 100 employees — who either didn't know about the reporting

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law or miscalculated whether they had to report. All stress that they weren't accused of excessive pollution, just failing to file forms.

"It was terribly unfair: The punishment didn't fit the crime," said Art Armstrong, owner of Armstrong Technology of Sunnyvale, which makes parts for electronic and medical equipment. "Whether or not I filled out the form really had no effect on the environment."

Armstrong agreed to stop using trichloroethane to clean machinery and to pay \$1,500 to the government and \$13,500 to the Santa Clara Center for Occupational Safety and Health, a private group. He's also spent \$75,000 on new equipment, and nearly \$20,000 in legal fees.

Since eliminating trichloroethane, Armstrong says labor costs for cleaning equipment have increased and he has stopped bidding for some defense

contracts.

Armstrong was one of the few company officials willing to talk publicly about the settlements. Others complained bitterly about Citizens for a Better Environment — but only privately, claiming they feared additional lawsuits.

Company officials particularly resent having to pay the citizens' group's legal fees — \$10,000 in a typical case, as high as \$15,000 in some. Many grumble that Citizens for a Better Environment is using the lawsuits as fund-raisers.

Chorover admits that the group uses the fees to pay for continuing research into enforcement of the reporting law and other environmental rules, but notes they are authorized by the law. "They're more than justified by the amount of time we spend on the case," she said.

In filing the lawsuits, Citizens for a Better Environment adopted a tactic used by environmental groups in New York, Virginia, Pennsylvania and other Eastern states.

"We use penalty assessments (the possible fines) as a way of getting their attention," said David Monsma, a lawyer for the Environmental Action Foundation of Takoma Park, Md., which filed one of the first such suits.

CLEANING UP

Nine South Bay companies have settled lawsuits with an environmental group for failing to report chemical emissions under a 1986 federal law. Here's a summary of those settlements.

	Chemicals	Settlement
Acme Fiberglass Hayward	Styrene, acetone	\$2,500 to U.S. government; will study alternatives
Armstrong Technology Sunnyvale	Trichloroethane	\$1,500 to U.S. government; \$13,500 to worker-safety group; must spend \$75,000 to develop, install alternatives
Edwards Enterprises Newark	Trichloroethane	\$10,500 to U.S. government; seek alternatives
High Vacuum Apparatus Hayward	Trichloroethane	\$10,500 to U.S. government; \$7,500 to private foundation
Hoya Electronics San Jose	Freon	\$3,000 to U.S. government; \$7,000 to Asian women's group; \$10,000 to study alternatives
Lam Research Fremont	Freon	\$15,000 to U.S. government; expect to spend \$250,000 on substitutes
MDC Vacuum Products Hayward	Trichloroethane	\$1,000 to U.S. government; \$28,500 to Silicon Valley Toxics Coalition
Megatest Corp. San Jose	Freon	\$31,000 to U.S. government; eliminate use
Next Computer Redwood City	Freon	\$4,000 to U.S. government; \$36,000 to Silicon Valley Toxics Coalition

Source: Citizens for a Better Environment, company officials

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The tactic wins plaudits from the U.S. Environmental Protection Agency, which is charged with enforcing the law. EPA officials view the suits as a way to stretch their own limited budget; in six years, the agency has filed fewer than 50 lawsuits against

companies in California, Nevada, Arizona and Hawaii for not reporting emissions.

"We feel like they're doing the legwork in finding them and good work in settling them," said Allan Zabel, a lawyer in EPA's San Francisco office.