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EPA: Few Fined for Polluting Water

Agency Says It Must Do Better Job of Monitoring

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About a quarter of the nation's largest industrial plants and water treatment facilities are in serious violation of pollution standards at any one time, yet only a fraction of them face formal enforcement actions, according to an Environmental Protection Agency internal study.

The study is the broadest effort to date to document the failure of the EPA and the states to fully enforce the Clean Water Act, enacted 30 years ago to clean up the nation's rivers and streams. The study, completed in February by the EPA's Office of Enforcement and Compliance, found that half the serious offenders exceeded pollution limits for toxic substances by more than 100 percent.

When formal disciplinary actions were taken, fewer than half resulted in fines, which averaged about \$6,000.

The study showed that some companies and municipalities have illegally discharged toxic chemicals or biological waste into waterways for years without government sanctions. Such discharges can cripple fisheries, taint fishing holes and increase the risks of illnesses ranging from skin rash to lead and mercury poisoning.

J.P. Suarez, EPA's assistant administrator for enforcement and compliance assurance, acknowledged problems with enforcement. The EPA must do a better job of monitoring the work of state agencies that handle the vast majority of enforcement cases, he said, and the internal report will help that effort.

"I wouldn't declare failure yet," Suarez said in an interview. He said the EPA is trying to be more aggressive in monitoring state enforcement of the Clean Water Act by creating 10 regional "watch lists" of the most flagrant violations. "Obviously, what we want to do is make sure where there is a significant noncompliance that we understand what the cause is and, if enforcement is appropriate, that someone takes action," he said.

Suarez said Bush administration officials "are the first people that are doing something about" a problem that has existed for years. But Sen. James M. Jeffords (I-Vt.), ranking member of the Senate Environment and Public Works Committee, said yesterday the report illustrated the administration's "pervasive actions to undermine our clean water laws."

Environmental watchdog groups have highlighted EPA shortcomings before, but the February report was the first time the agency used its own information to build a comprehensive critique of enforcement procedures. The study was not officially released, but a source provided a copy to The Washington Post.

The U.S. Public Interest Research Group (PIRG) charged last August that a combination of lax enforcement of clean water laws by the EPA and by state inspectors and lenient courts has led to persistently high levels of illegal dumping of waste and toxic chemicals. One EPA source said "it's easier" to settle court cases for a few thousand dollars than to seek millions of dollars in penalties that could require substantial time and money to pursue in the courts.

Fourteen states -- Virginia, Connecticut, Rhode Island, Vermont, Oklahoma, Kansas, Nebraska, Utah, Texas, Ohio, Indiana, Tennessee, Louisiana and Michigan -- had rates of "significant noncompliance" with discharge requirements above the national average.

"We know that EPA enforcement of the Clean Water Act is weak and inadequate by the fact that polluters continue to brazenly violate the law," said Richard Caplan, environmental advocate for PIRG. "Polluters can get 20 strikes and still hit a home run because they continue to pollute and receive very little in fines."

Mid-level career officials in EPA's compliance office undertook the study last year as a first effort to use the agency's data to construct a comprehensive "performance-based" assessment of compliance under the Clean Water Act. The study focused on compliance by what the law describes as "major facilities." They comprise about 6,600 industrial installations and wastewater treatment plants whose large discharge requires them to monitor and report monthly on waste water "toxics," such as lead, selenium and mercury, and "conventionals," which include fecal matter, silt and other biosolids.

The EPA inspector general recently criticized the computer system used for gathering water quality data. But knowledgeable agency sources said the Clean Water Act compliance statistics, gathered by individual states from plants' and utilities' mandatory monthly reports, were reliable.

The major exception is California, which has largely ignored EPA filing requirements for 20 years, Suarez said. California submits only 40 percent to 50 percent of the required information, and "it's got to stop," he said. Noncompliance by the nation's most populous state leaves a gaping hole in the EPA's monitoring abilities.

Stan Martinson, water quality chief for the California Water Resources Control Board, agreed that "we're lagging" in providing compliance information to the EPA, but he blamed California's outdated paper reporting system. California has asked the EPA for \$1 million to complete an electronic transition.

The 50-page February report emphasized the years 1999 to 2001. It said, however, that its core finding -- that about 25 percent of major facilities were in "significant noncompliance" with pollution limits at any one time -- continued a nearly decade-long trend.

The Clean Water Act defines significant noncompliance as toxic discharges of 20 percent or more above permitted levels for at least two months out of the previous six months, or conventional discharges of 40 percent or more above permitted levels for the same time period.

The study found that 50 percent of all noncompliers in 2001 were at least 100 percent over the limit for toxics, and 13 percent were at least 1,000 percent over. Facilities can also be in significant noncompliance by not filing required reports.

Despite the high number of offenses, the report said the EPA took formal action against no more than 15 percent of the violators during 1999-2001. Fewer than half ended up paying fines -- averaging between \$4,996 and \$6,455. The report mentioned no installations by name, but The Post contacted several noncompliers by using the agency's public databases.

At Kenyon Industries Inc., a Rhode Island textile company with significant violations for at least two years, company officials said a change in their chemical treatment of nylon fabric -- which was necessary to stay competitive -- led to the problems. The EPA report showed Kenyon exceeded the allowable discharge limits of metallic sulfides, a hazardous pollutant, by 535 percent to 1,285 percent

during 2002. Kenyon has not been penalized.

"At first we weren't certain where the sulfides were coming from," said Barbara Bentley, an environmental consultant to Kenyon. But even after pinpointing the problem, she said, "those things take a little bit of time" to correct.

Assessing fines, however, does not necessarily resolve problems or get rid of pollutants. In February 2002, a federal court ordered Allegheny Ludlum Steel Corp. to pay \$8.2 million for repeated violations of toxic metal pollution at steel mills outside Pittsburgh. The company has appealed the fine and the EPA continues to list the company as a serious offender.

"We believe we are in compliance with the Clean Water Act," company spokesman Dan Greenfield said. "Obviously, because we are appealing the decision, there's not much more I can say."

And in Augusta, Ga., state authorities have fined the Butler Creek Water Pollution Control Plant at least 28 times for ammonia discharges since 2001, collecting \$229,000 while the utility finishes a \$12 million upgrade.

"We certainly don't see it as more cost-effective [for the company] to pay the penalties than fix the problem," said James B. Messerly of the Augusta Utilities Department.

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