

# Pollution Pays

Failure to Enforce Clean Water  
Laws in Ohio

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# Pollution Pays: Failure to Enforce Clean Water Laws in Ohio

A new computer investigation by the Environmental Working Group shows that large industrial polluters in Ohio are breaking the nation's cornerstone water pollution law and routinely getting away with it. Big water polluters are almost never fined and violations of the clean water laws continue largely unabated, according to U.S. Environmental Protection Agency (EPA) Clean Water Act enforcement records analyzed by EWG.

In 1999, Governor Bob Taft took office, inheriting the environmental legacy of George Voinovich, who was often criticized for hobbling Ohio's environmental agencies and giving far too much access to powerful industry lobbyists in Columbus. The door was wide open for the new governor to improve environmental quality and the enforcement of environmental laws. So far, however, the past has been prologue.

Before Taft's election in November of 1998, he said, "I think we need to enforce existing environmental laws." But he then added the all-important disclaimer: "I think it's important the state enforce laws vigorously but to do so in a way where the state agencies are helpful rather than punitive in their approach to business." (Dan Crawford, "Where they stand." *Business First Columbus*, October 30, 1998).

Taft's new director of Ohio EPA, Chris Jones, is committed to his boss' approach. According to Jones 'the challenge of improving Ohio EPA's public image attracted him

to the job'. (Troy May, "Ohio EPA needs image boost." *Cincinnati Business Courier*, November 5, 1999). Part of improving Ohio EPA's public image involves "telling the good news about the Ohio EPA, focusing attention on environmental successes." (Randall Edwards, "Ohio's new EPA director faces a host of messy issues." *Columbus Dispatch*, January 24, 1999). Also high on Jones' agenda "is making the agency work more efficiently for businesses...." (Troy May, "Ohio EPA needs image boost." *Cincinnati Business Courier*, November 5, 1999).

More bluntly, an Ohio EPA official reportedly told a recent gathering of the Bar Association in Cincinnati "we are not an enforcement agency." (Ohio Citizen Action, Rivers Unlimited, Ohio Chapter of the Sierra Club & Ohio PIRG, "Hidden from the Public: The Distortion of the Ohio EPA's mission." August 5, 1999).

## Findings

EWG analyzed Clean Water Act enforcement records from 22 Ohio facilities for April 1997 through March 1999, the most recent two-year period available. These data, audited by industry and state regulators prior to their release, represent an important but limited number of industries. They include all permitted polluters in auto assembly, iron and steel, petroleum refining, pulp manufacturing, and metal smelting and refining industries in

the state. They reveal a persistent pattern of violations of state and federal clean water laws by big polluters in Ohio. The records further show that the law breaking is made possible by weak state enforcement efforts, and tiny or non-existent fines. Overall:

*Breaking clean water laws is standard business practice for big industry in Ohio*

- Nearly two-thirds (14 of 22) of the “major” facilities inspected violated the

Clean Water Act during the two-year period analyzed. Industrial facilities are designated as “major” based on an EPA classification system that reflects a combination of factors, including toxic pollutant potential, streamflow volume, public health impacts, and proximity to coastal waters.

- Nine of the 14 violators broke the law in at least four of the eight quarters (two years) analyzed for this report.

**Table 1. Fourteen of twenty-two major facilities\* in Ohio have violated the Clean Water Act at least once in the past two years. Only one fine has been levied.**

Company	City	Number of quarters in violation of the Clean Water Act (4/97-3/99)*	Penalties Assessed
LTV Steel Co. Inc.	Cleveland, OH	8 of 8	\$0
Bay West Paper Corp.	Middletown, OH	8 of 8	\$0
Ormet Corp.	Hannibal, OH	7 of 8	\$115,000
Wheeling-Pittsburgh Steel Corp	Mingo Junction, OH	7 of 8	\$0
Wheeling-Pittsburgh Steel Corp	Steubenville, OH	5 of 8	\$0
WCI Steel, Inc.	Warren, OH	5 of 8	\$0
BP Exploration and Oil Inc	Lima, OH	4 of 8	\$0
USS/Kobe Steel Co.	Lorain, OH	4 of 8	\$0
Timken Co., The	Canton, OH	4 of 8	\$0
Jefferson Smurfit Corporation	Circleville, OH	2 of 8	\$0
AK Steel Corp.	Middletown, OH	2 of 8	\$0
Republic Engineered Steel	Canton, OH	2 of 8	\$0
Frasier Papers Inc., W Carroll	West Carrollton, OH	1 of 8	\$0
BP Oil Corp.	Toledo (Oregon), OH	1 of 8	\$0
Mead Corp.	Chillicothe, OH	0 of 8	\$0
Stone Container Corp.	Coshocton, OH	0 of 8	\$0
Appleton Papers Inc.	West Carrollton, OH	0 of 8	\$0
Ashland Oil Inc	Canton, OH	0 of 8	\$0
Sun Company Inc (R & M)	Toledo/Oregon, OH	0 of 8	\$0
Armco Inc.	Mansfield, OH	0 of 8	\$0
CSC Inc	Warren, OH	0 of 8	\$0
North Star BHP Steel	Delta, OH	0 of 8	\$0

Source: Environmental Working Group. Compiled from EPA SFIP Data.

\* SFIP data used for this report includes all major facilities in five industries: Auto assembly, iron and steel, petroleum refining, pulp manufacturing, and metal smelting and refining industries. Violations are reported on a quarterly basis and no distinction is made between single or multiple violations.

## Pollution pays in Ohio: Major violators get a slap on the wrist

On September 30, 1998 the United States Environmental Protection Agency issued an Administrative Penalty Complaint against the Ormet Corporation, that ordered Ormet to pay just \$115,000 for repeated and serious violations of the Clean Water Act. The complaint alleged that the Ormet Primary Mill failed to comply with its Clean Water Act Permit for wastewater discharges to the Ohio River as follows: 1) failure to comply with its effluent limitations for fluoride, phenolics, nickel, cyanide, chlorine, Acute Toxicity, aluminum, nickel, silver, zinc, and pH; 2) Failure to Monitor and Report pollutants at the frequencies and using the methods specified; 3) Unauthorized Discharges from the Anode Bake Furnace area; 4) failure to maintain records as required.

- Two of these companies were in violation of the Clean Water Act in each of the past eight quarters analyzed.

### *Weak law enforcement makes environmental crime pay in Ohio*

- Only one (Ormet Corporation) of the 14 major facilities violating the Clean Water Act during the past two years was fined by the state of Ohio or the U.S. EPA during that time (Table 1). Two facilities violated the Clean Water Act every quarter for the past two years yet incurred no penalties. Some of these facilities were fined during this period, however, these penalties were paid for violations that occurred several years prior to the two year period of our analysis (See sidebar).
- Two so-called “minor” facilities, Chrysler Corporation in Toledo and Marion Steel Corporation in Marion, also violated the Clean Water Act eight straight quarters and were not fined at

all. These facilities are not small, but are classified as minor due to a loophole in Clean Water Act reporting requirements (see sidebar page 4).

- Most major facilities were inspected only once a year for Clean Water Act violations. Violation rates would almost certainly be higher if these facilities were inspected more often.
- Six of the 22 facilities analyzed were listed as current “significant violators” of the Clean Water Act, of these only Ormet Corporation was fined for CWA violations during the two-year period analyzed.

### **Gutting Environmental Enforcement**

Former Governor Voinovich pushed through several key legislative and administrative changes that contributed to a state of weak regulatory enforcement in Ohio. These polluter-friendly initiatives are supported by Governor Taft.

## CLASSIFICATION AS "MINOR" FACILITY CREATES MAJOR LOOPHOLE FOR BIG POLLUTERS

Industrial facilities discharging wastewater to public sewage treatment plants -- instead of directly into rivers or streams -- are classified as "minor" under the Clean Water Act, regardless of the volume or toxicity of the pollution that they, quite literally, dump down the drain. This reporting loophole virtually ensures weak enforcement of clean water laws against some major industrial polluters.

States are not required to report the violations or compliance status of "minor" facilities to U.S. EPA. This means, for example, that large auto assembly plants dumping their wastewater down the public sewer are considered minor polluters and their compliance with the CWA is not required to be tracked by the EPA. Instead, the publicly financed sewage treatment facilities that receive this pollution are categorized as "major" polluters if they serve a population of 10,000 or more, discharge one million gallons or more of wastewater daily, or have a significant impact on water quality. Further, public water treatment facilities, as opposed to state enforcement authorities, are required to adopt mechanisms to enforce pretreatment standards against industrial discharges.

- In June 1994, Voinovich signed the Audit Privileges and Immunity Law which allows companies to investigate their environmental problems and fix them without civil penalty or public notification. The self-audits cannot be used as evidence in any civil or administrative proceeding.

Implementation was delayed until March 1997 after the U.S. EPA concluded that the statute provided too many protections for businesses that break the law.

Even after the changes required by the feds, *Crain's Cleveland Business* declared the law a victory for Ohio industry: "The good news for businesses is that the premise of the statute remains intact. Companies that investigate and discover environmental problems can correct the problems without fear of civil penalties and negative publicity." (Heather Aley Austin, "Audit law

amended to suit U.S. EPA", *Crain's Cleveland Business*, August 17, 1998).

- Voinovich also instituted the Voluntary Action Program as a provision in Ohio's Brownfields law in September 1996. The law encourages companies to reclaim industrial sites with a promise not to be sued for environmental violations uncovered during the clean-up. Like audit privilege, citizens groups are not allowed to use the information in lawsuits against the companies, no matter how flagrant or serious the violations.

A coalition of Ohio environmental groups issued a report on the state of the Ohio EPA in August of 1999.

The report described environmental enforcement in Ohio as "the weakest since 1972" and concluded the agency has "incre-

mentally altered the mission and trained its personnel that they exist to satisfy a 'customer', the industrial permit seeker the Ohio EPA is supposed to be regulating." (Ohio Citizen Action, Rivers Unlimited, Ohio Chapter of the Sierra Club & Ohio PIRG, "Hidden from the Public: The Distortion of the Ohio EPA's mission." August 5, 1999).

## Conclusions

Big business routinely claims that most regulatory actions are initiated by "overzealous big-government regulators" for minor paperwork violations that consume massive amounts of resources for little environmental gain.

The facts are that few enforcement actions are brought in the first place and almost none are for recordkeeping violations.

In both 1997 and 1996, less than two percent of all environmental enforcement actions nationwide were concluded with only recordkeeping changes. In contrast to the image of a crushing regulatory burden, this analysis clearly shows that there is

barely any enforcement at all of existing clean water protections and virtually no pressure for water polluters to comply with current pollution control laws.

Imagine a drunk motorist racing down I-71 at 120 miles an hour. The state highway patrol wouldn't help this "customer" comply with the law. He or she would be thrown in jail and fined for endangering the health of dozens of other Ohioans.

However, if a large industrial facility is endangering thousands of Ohioans by fouling waterways, its operators are almost never even fined. They are instead considered "customers" of the Taft Administration, who must be helped to be in compliance with the state's public health and environmental laws.

In spite of all the rhetoric to the contrary, there is little factual evidence that anything other than stepped-up enforcement, larger fines, and tougher federal government oversight will increase compliance with environmental laws and reduce the serious levels of water pollution that continue to foul Ohio's lakes and rivers.

### **FINES OFTEN LAG BEHIND CRIME BY YEARS**

In many cases fines for violations of the Clean Water Act in Ohio are imposed years after the violations occur. For example, two facilities that were fined, WCI Steel and LTV Steel paid penalties in 1999 and 1998 for violations that occurred in 1995 and 1993 respectively. Given the fact that both of these facilities continue to violate the Clean Water Act even while they are being fined for past violations, it is clear that more significant and timely action is required by Ohio.

# Methodology

This analysis is based on data from EPA's new Sector Facility Index Project (SFIP). The SFIP contains quality checked compliance and enforcement data. The SFIP database is available on-line at:

<http://es.epa.gov/oeca/sfi/>

The five industries covered in the SFIP are: automobile assembly, iron and steel, petroleum refining, pulp manufacturing, and smelting and refining (aluminum, copper, lead, and zinc). The SFIP database has detailed information on 640 facilities in these industries operating as of 1996. U.S. EPA continues to monitor the five industries that are represented in the SFIP database and intends to add or remove facilities as appropriate.

## Summary of Data Quality Assurance Review

U.S. EPA worked for three years to identify the facilities in SFIP and to assure the accuracy and usefulness of the data. As part of this effort, all facilities had an opportunity to review the data. Sixty-two percent of the

facilities responded. U.S. EPA and the states then reviewed the responses and made changes to the data as appropriate.

Two-thirds of the SFIP facilities submitted comments as part of the quality assurance review that was open from August through October 1997. A small number of comments have been received and processed since the October deadline. The review categorized data elements into two categories: major elements, which include linked permits, enforcement actions and facility compliance status; and minor elements, which include facility name, address and date of inspection.

Approximately 37,000 major data elements were presented to the facilities that submitted comments. Comments were received on 3,400 data elements. Of those, U.S. EPA and the state governments agreed that changes were appropriate in 1,700 cases. Comments were received on approximately 1,000 of the 19,000 minor data elements presented. Of those, U.S. EPA and the state governments agreed that changes were appropriate in 500 cases.





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