

ABOVE THE LAW

How The Government Lets Major Air Polluters Off The Hook

New Jersey

John Coequyt
Richard Wiles
Christopher Campbell



Acknowledgments

Above the Law. Thanks to Ken Cook for editing and advice with the report and to Marshall Hendricks for his assistance with the data analysis of *Above the Law*. We wish to thank Neil Carman, Ed Hopkins, Keri Powell, and Velma Smith for their help in developing and refining the report and the many organizations releasing the report which are too numerous to name here. We would also like to thank the conscientious staff at the Environmental Protection Agency and the AFS and SFIP hotlines for their help with the data requirements of this report.

Above the Law was made possible by grants from the SBF Fund of the Tides Foundation and the Joyce Foundation. The opinions expressed in this report are those of the authors and do not necessarily reflect the views of the supporters listed above. Environmental Working Group is responsible for any errors of fact or interpretation contained in this report.

Copyright (c) May 1999 by the Environmental Working Group/The Tides Center. All rights reserved. Manufactured in the United States of America. Printed on recycled paper.

Environmental Working Group

The Environmental Working Group is a nonprofit environmental research organization based in Washington, D.C. The Environmental Working Group is a project of the Tides Center, a California Public Benefit Corporation based in San Francisco that provides administrative and program support services to nonprofit programs and projects.

Kenneth A. Cook, President
Richard Wiles, Vice President for Research
Mike Casey, Vice President for Public Affairs

To order a copy

Copies of this report may be ordered for \$5.00 each (plus 6% sales tax or \$.30 for Washington, D.C. residents) and \$.75 for postage and handling. Payment must accompany all orders. Please make checks payable to:

Environmental Working Group
1718 Connecticut Avenue, N.W. Suite 600
Washington, D.C. 20009
(202) 667-6982 (phone)
(202) 232-2592 (fax)
info@ewg.org (e-mail)

www.ewg.org

This report and many other EWG publications are available on the World Wide Web at www.ewg.org

Executive Summary

An Environmental Working Group analysis of U.S. Environmental Protection Agency (EPA) Clean Air Act enforcement records reveals a persistent pattern of violations of state and federal clean air rules by big polluters in five major industries in New Jersey. The records, audited by industry and state regulators prior to their release, show that state officials in New Jersey are doing little to enforce the Clean Air Act, and federal officials with the U.S. EPA are allowing this poor performance to continue. Large industrial corporations are taking advantage of lax enforcement to avoid compliance with clean air rules that they had an active hand in developing through the public comment process.

This new analysis of 13 facilities (13 major facilities) in New Jersey, from January 1997 through December 1998, shows that:

- Seven (7) of the thirteen major facilities analyzed were out of compliance with the Clean Air Act at least one quarter, and an average of three of the eight quarters in the two-year period analyzed. Six of these facilities were fined by the state of New Jersey or the U.S. EPA during that time (Table 1). These facilities include all permitted polluters in the state in auto assembly, iron

and steel, petroleum refining, pulp manufacturing, and metal smelting and refining industries.

- The parent corporations that owned these facilities reported total combined revenues of \$51 billion in 1998, compared with total fines of \$645,200 levied against six of the seven companies that violated clean air safeguards in New Jersey (Table 1).
- Three of the thirteen facilities analyzed were listed as current "significant violators" of the Clean Air Act (Table 2). All three of these facilities were fined.

It is clear from this analysis that there is no undue regulatory burden on air polluters in New Jersey, a finding that severely undermines the rationale for so-called regulatory reform legislation at the federal level. Industry argues that most regulatory actions brought against facilities 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 that almost none of the actions are for recordkeeping violations. In both 1997 and 1996, less than two percent

of all enforcement actions 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 air health protections and virtually no pressure for air polluters to comply with current pollution control laws.

Recommendations

Substantial evidence shows that thousands of large companies routinely violate their pollution permits. They discharge too much waste into waterways, emit excess pollutants into the air, and mismanage the hazardous waste they create or accept for treatment or disposal. These chronic violations of environmental laws add to pollution of air and water, contributing to health risks, and put law-abiding companies at an unfair economic disadvantage. Constrained by limited resources or a lack of political will, regulatory agencies take effective enforcement action against only a relatively small percentage of violators.

Major improvements in air quality in New Jersey could be achieved just by strict enforcement of current laws and regulations. To achieve this goal however, both state and federal environmental enforcement agencies need to vastly improve their enforcement activities. Industry, in turn, needs to operate without such opportunistic disregard for environmental rules it typically helped to write.

To improve compliance with the Clean Air Act:

- The regional U.S. EPA office should exercise its authority and take over cases when New Jersey assesses insufficient fines or delays during the enforcement process.
- U.S. EPA and New Jersey should help concerned citizens participate in the development and enforcement of air pollution permits issued under Title V of the CAA. U.S. EPA and New Jersey should monitor state implementation of Title V programs to ensure that the compliance-related information is readily understandable by – and available to – the public.



Table 1: Many multi-billion corporations in New Jersey violated the Clean Air Act in the past two years and escaped with little or no fines.

Facility	City	Number of Violations 1997 - 1998*	Penalty**	Revenue
Valero Refining Company	Paulsboro, NJ	6	\$176,100	\$5,500,000,000
Chevron U.S.A. Inc.	Perth Amboy, NJ	3	\$303,400	\$26,800,000,000
Citgo Asphalt Refining Company	Paulsboro, NJ	3	\$2,100	\$10,912,000,000
Co-Steel Raritan	Perth Amboy, NJ	3		\$1,511,000,000
Co-Steel Sayreville	Sayreville, NJ	3	\$1,800	\$1,511,000,000
Coastal Eagle Point Oil Co.	Westville, NJ	3	\$100,100	\$7,100,000,000
Garden State Paper Co.	Garfield, NJ	2	\$61,700	

Source: Environmental Working Group. Compiled from U.S. EPA SFIP/AFS data, Company Annual Reports and Fortune 500 listings as of April 15, 1999.

* Violations are reported quarterly.

** The most recent data reports penalty amounts form 1997, 1998 and where available, 1999.

Table 2: Industrial facilities currently listed by the New Jersey EPA as "significant violators" of the Clean Air Act.*

Facility	City	Penalty**	Revenue
Chevron U.S.A. Inc.	Perth Amboy, NJ	\$303,400	\$26,800,000,000
Citgo Asphalt Refining Company	Paulsboro, NJ	\$2,100	\$10,912,000,000
Valero Refining Company	Paulsboro, NJ	\$176,100	\$5,500,000,000

Source: Environmental Working Group. Compiled from U.S. EPA SFIP/AFS data, Company Annual Reports and Fortune 500 listings as of April 15, 1999.

* Listed by the state as a significant violator as of April 15 1999.

** The most recent data reports penalty amounts form 1997, 1998 and where available, 1999.