

COLORADO PRIME SUSPECTS

The Law Breaking Polluters
America Fails to Inspect



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Acknowledgments

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Colorado

Federal environmental laws were created through bipartisan efforts in the 1970s to toughen and standardize a patchwork of inconsistent state pollution control laws. The establishment of environmental standards across state lines produced a dramatic improvement in the nation's environment. Yet almost unnoticed during the 1990s, there was a fundamental shift in environmental law enforcement authority away from U.S. EPA and back to the states. Now, three decades after passage of the nation's clean air and water laws, major polluters are slipping through the growing gaps in environmental enforcement.

For a list of facilities in the state that are significant violators of either the Clean Air Act or the Clean Water Act but were not inspected in FY1998 or FY1999 see the **Appendix**.

EWG's analysis of the most recent data available shows:

For the Clean Air Act:

- A total of 560 large factories officially listed as "high priority violators" of the Clean Air Act (CAA) were

not inspected during the two-year period ending October 1999, the most recent period with reliable information. High priority violators are defined as major industrial facilities previously caught with major emissions infractions, significant pollution monitoring errors, or serious procedural violations of the law. Soot from these factories and other sources kill tens of thousands of people annually. Ozone pollution, to which they also contribute, puts nearly one million children and adults in emergency rooms with acute asthma attacks each year (Clear the Air, 1999).

- Half of these uninspected violators were concentrated in five industrial states (Table 1). Officials from three of these states – Ohio, Wisconsin, and Michigan – have been outspoken advocates of a softer, less punitive style of enforcement.
- In these top five states, from 21 percent (Michigan) to 48 percent (Ohio) of all

high priority Clean Air Act violators were not inspected from October 1, 1997 through September 30, 1999.

For the Clean Water Act:

- Two hundred and eighty three (283) significant violators of the Clean Water Act (CWA) were not inspected during the same two-year period (Table 2). Due to weak pollution rules and shoddy enforcement, 40 percent of the nation's waters remain unfishable and/or unswimmable nearly 30 years after the passage of the Clean Water Act.

- Half of these uninspected violators were concentrated in just four states – Texas, Ohio, Michigan, and Missouri, all of which openly advocate assistance, as opposed to punishment of environmental law breakers (Table 2).
- Texas, Michigan and Ohio failed to inspect 25, 20 and 16 percent, respectively, of all high priority violators of the Clean Water Act during the two-year period analyzed.

All Inspections

The above figures do not include all inspections but instead are limited to violators that EPA classifies as “significant” or “high priority” and to inspections that meet minimum federal requirements – so-called level 2 inspections under the Clean Air Act, and compliance evaluations under the Clean Water Act. Many states, however, also reported a substantial number of superficial inspections to the U.S. EPA. These cursory inspections reveal a pervasive cynicism in environmental enforcement that points to a deeper problem in many states than just a failure to inspect the worst polluters.

According to data submitted by the states to the U.S. EPA:

- Forty-two (42) percent of all Clean Water Act inspections were so called “reconnaissance” inspections where

Table 1. Five states account for more than half of the high priority violators of the Clean Air Act not inspected in fiscal year 1998 or 1999.

Rank	State	Number of major polluters listed as high priority violators of the CAA and not inspected FY 1998 - 1999
1	Ohio	86
2	Indiana	81
3	Wisconsin	52
4	Illinois	49
5 (tie)	Michigan	37
5 (tie)	Tennessee	37
7	New Jersey	23
8	Texas	21
9	California	20
10	Missouri	16
11	Massachusetts	15
12	Mississippi	11
13 (tie)	New York	10
13 (tie)	North Carolina	10
13 (tie)	Pennsylvania	10
	All Other States	82
	National Total	560

Source: Compiled by the Environmental Working Group from EPA data.

inspectors are not even required to get out of their cars. U.S. EPA does not consider drive-by or fly-over inspections sufficient to ensure compliance with federal pollution control rules.

- In some heavily industrialized states, almost all Clean Water Act inspections were drive-bys or fly-overs. Delaware topped all states with 95 percent of all CWA inspections falling into this category, followed by Illinois with 89 percent, Pennsylvania with 88 percent, and Indiana with 86 percent (Table 3).

The U.S. EPA has contributed significantly to weak state-level enforcement of the nation's environmental laws, by failing to promulgate strict rules delineating minimum acceptable enforcement practices. There are quite literally no binding minimum standards for the frequency of inspections under either federal clean water or clean air laws. With no one minding the store, many heavily industrialized states are letting environmental enforcement programs deteriorate dramatically. As evidence of the problem our analysis shows that:

- Overall, one third of all the nation's major air polluters (as opposed to just high priority violators) have not been inspected in the last *three* years.

Table 2. Texas, Ohio, Michigan and Missouri account for half of all significant violators of the Clean Water Act not inspected in fiscal years 1998 and 1999.

Rank	State	Number of major polluters listed in significant non-compliance of the CWA and not inspected FY 1998 - 1999
1	Texas	73
2	Ohio	31
3	Michigan	20
4	Missouri	18
5 (tie)	Massachusetts*	11
5 (tie)	Minnesota	11
7	Colorado	10
8 (tie)	Georgia	9
8 (tie)	Illinois	9
8 (tie)	Washington	9
11 (tie)	Maine*	8
11 (tie)	New York	8
11 (tie)	Puerto Rico	8
14 (tie)	Vermont	7
14 (tie)	West Virginia	7
	All Other States	44
	National Total	283

* CWA/NPDES permit program run by U.S. EPA.

Source: Compiled by the Environmental Working Group from EPA data.

Recommendations

State control of environmental law enforcement has taken environmental protection back a quarter century to a time when state level politics determined the degree of environmental protection provided to communities across the country. Recent budget cuts, passed in June, 2000 by the House of Representatives would practically eliminate all EPA oversight of state enforcement activities.

EPA will never regain the primary enforcement role it had ten years ago, nor should it

Table 3. In ten states over 40 percent of Clean Water Act inspections conducted in 1998 and 1999 did not require inspectors to get out of their cars.

Rank	State	Reconnaissance or "drive-by" inspections	Total inspections	Percent "drive-by" inspections
1	Delaware	1,154	1,220	94.6%
2	Illinois	8,279	9,294	89.1%
3	Pennsylvania	6,810	7,783	87.5%
4	Indiana	3,210	3,730	86.1%
5	Maine	371	542	68.5%
6	South Dakota	243	385	63.1%
7	South Carolina	1,892	3,046	62.1%
8	New York	2,563	5,074	50.5%
9	Michigan	370	784	47.2%
10	Mississippi	594	1,359	43.7%

Source: Compiled by the Environmental Working Group from EPA data.

necessarily seek to do so. But to make the current state-lead system accountable to the public and to the goals of the law, several major changes in current policy are needed:

EPA's enforcement budget must be restored to 1996 levels.

Budget cuts passed by the House of Representatives in June, 2000 would slash EPA's civil enforcement contract budget by 70 percent from \$51 in fiscal year 1996 to \$15 million. These cuts would eliminate 3,000 inspections each year and derail any hope that much needed oversight of state enforcement programs could take place. Instead of these cuts, funding

should be restored to FY 1996 levels.

EPA must immediately issue regulations defining minimum performance standards for state agencies enforcing the nation's environmental laws.

Currently there are no binding minimum requirements that state agencies must follow when enforcing the nation's environmental laws. EPA has developed guidance for many aspects of state enforcement, but that guidance has no teeth when states choose to ignore it. Until enforcement regulations are in place, there is no hope that the law will be consistently and effectively enforced nationwide.

As a part of these standards, high priority violators must be inspected every year.

At a minimum, state enforcement agencies must perform a full compliance evaluation every year at all facilities classified as high priority violators of the Clean Air Act or the Clean Water Act.

The U.S. EPA Inspector General must audit state enforcement programs to determine what full compliance with environmental laws means in each state.

Clearly, states need to step up enforcement activity, particularly for the known violators of the law. But beyond that, EPA needs to investigate state enforcement programs for consistency, and to determine that a state's claim of full compliance with the law is legitimate.

EPA and the states must make information about violations readily available to the public.

To ensure the public's right to know, the U.S. EPA and the states must post all violations of federal and state environmental laws on the web. The information must include the type and severity of the violation at specific facilities, any enforcement action taken, and the magnitude of any fines if and when they are levied.

Ensure that inspectors get adequate recognition for their work.

Too often the good work of inspectors is thrown away when cases are dropped as the cases move up the enforcement ladder. There needs to be more consistent follow-up on violations to ensure that inspections are seen as an important first step in the law and order process and not a complete waste of time.

Empower inspectors to issue field citations.

Inspectors should be given the power to issue field citations. By empowering inspectors to issue tickets for clear-cut cases, EPA would streamline the enforcement process and focus the system on larger problems that cannot be addressed immediately.

Colorado Appendix

Major Colorado polluters that are in significant violation of the Clean Air Act but were not inspected in FY1998 or FY1999.

<u>Major Polluter</u>	<u>City, State</u>
Coors Ceramics Company Structural Div	Golden, CO
Amoco Production - So. Ute Tribal F#1	La Plata County, CO
Cobe Cardiovascular Inc	Arvada, CO

Colorado Appendix

Major Colorado polluters that are in significant violation of the Clean Water Act but were not inspected in FY1998 or FY1999.

Major Polluter	City, State
Boulder, City Of-75Th St Wwtp	Boulder County, CO
Colorado Springs, City Of	El Paso County, CO
Cripple Creek & Victor Gold	Victor, CO
Cyprus Yampa Valley Coal Corp.	Oak Creek, CO
Eagle River Water & San. Dist.	Eagle County, CO
Eagle River Water & San. Dist.	Eagle County, CO
Fountain Sanitation District	Fountain, CO
Lafayette, City Of	Lafayette, CO
Usbor-Leadville Drain Tunn (E)	Leadville, CO
Viacom International, Inc.	Minturn, CO