

Pollution Pays

Failure to Enforce Clean Water
Laws in Michigan

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Pollution Pays: Failure to Enforce Clean Water Laws in Michigan

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

In 1991, Governor John Engler entered office with a promise to cut bureaucratic waste, make government more efficient, and work with business to clean up the environment.

According to the governor's office, these efforts have been successful: Michigan has "balanced the state's environmental needs with the needs of business and industries to grow and create new jobs" (*The Associated Press*, September 7, 1998). Moreover, the public should rest assured that this "balanced" approach does not mean that Michigan has gone soft on polluters. According to the chief of Michigan's Department of Environmental Quality, Russell J. Harding: "Operating a facility in violation of state environmental laws places it in a very precarious position with serious financial and legal liability." (Russell J. Harding "Audit Law Encourages Improvement", *Ethnic News Watch* December 22, 1998). Nothing could be further from the truth.

Findings

EWG analyzed enforcement records from 26 Michigan 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 Michigan. The records further show that the law breaking is made possible by weak state enforcement efforts, and tiny or non-existent fines. Overall:

Nine years after Governor Engler entered office, breaking clean water laws is standard practice for big industry in Michigan

- All of the ten *major* facilities inspected were in violation of the Clean Water Act at some time in the two-year period analyzed (Table 1). 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.
- These ten violators broke the law more than half the time they were operating, accruing violations an average of five

of the eight quarters in the two-year period analyzed.

- Four of these companies were in violation of the Clean Water Act for two years straight (each of the eight quarters analyzed).

So-called “minor” polluters foul Michigan waters with impunity

- Eleven of the 12 so-called minor polluters analyzed violated clean water laws during the past two years. These facilities are not small, but are classified as minor due to a loophole in Clean Water Act reporting requirements (see sidebar page 4). Some of these “minor” polluters have caused big problems (Table 2). For example the S.D. Warren Company in

Muskegon spilled 625,000 pounds of sodium chlorate in 1998.

- Four of the “minor” facilities were out of compliance in every quarter for two years straight (all eight quarters analyzed).
- On average, these twelve facilities broke the law four of the eight quarters analyzed.

Weak law enforcement makes environmental crime pay in Michigan

- None of the ten major facilities violating the Clean Water Act between April 1997 and March 1998 were fined by the state of Michigan or the U.S. EPA during that time (Table 1). Even the four facilities that violated the Clean

Table 1. Every major facility* in Michigan violated the Clean Water Act at least once in the past two years. No fines have been levied.

Company	City	Number of quarters in violation of the Clean Water Act (4/97-3/99)*	Penalties Assessed
Packaging Corp. Of America	Manistee, MI	8 of 8	\$0
Mead Corp.**	Escanaba, MI	8 of 8	\$0
Champion International Corp.	Norway, MI	8 of 8	\$0
National Steel Corp.	Ecorse, MI	8 of 8	\$0
Manistique Papers Inc.	Manistique, MI	7 of 8	\$0
Copper Range Co.	White Pine, MI	6 of 8	\$0
Total Petroleum Inc	Alma, MI	3 of 8	\$0
Stone Container Corp.	Ontonagon, MI	2 of 8	\$0
Menasha Corp.	Otsego, MI	2 of 8	\$0
Rouge Steel Co.	Dearborn, MI	1 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.

** Mead Corporation disputes the fact that they were in violation for every quarter analyzed.

Table 2. Eleven of the twelve minor^s facilities in Michigan have violated the Clean Water Act at least once in the past two years. No penalties were assessed.

Company	City	Number of quarters in violation of the Clean Water Act (4/97-3/99)*	Penalties Assessed
General Motors	Flint, MI	8 of 8	\$0
Ford Motor Co.	Wayne, MI	8 of 8	\$0
Ford Motor Co.	Wixom, MI	8 of 8	\$0
Macsteel	Jackson, MI	8 of 8	\$0
Ford Motor Co. (Michigan Truck)	Wayne, MI	4 of 8	\$0
Ford Motor Co.	Dearborn, MI	3 of 8	\$0
Autoalliance Intl.	Flat Rock, MI	2 of 8	\$0
S.D. Warren Co.	Muskegon, MI	2 of 8	\$0
North Star Steel Co.	Monroe, MI	2 of 8	\$0
General Motors	Buick City (Flint), MI	1 of 8	\$0
Georgia Pacific Corp.	Kalamazoo, MI	1 of 8	\$0
Chrysler Corp. (Jefferson N)	Detroit, MI	0 of 8	\$0

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

^s See Sidebar page 4.

* Violations are reported on a quarterly basis and no distinction is made between single or multiple violations.

Water Act every quarter for the past two years were not fined during this time.

- Most major facilities are only inspected once a year. Violation rates would almost certainly be higher if these facilities were inspected more often.
- Three of the ten facilities analyzed were listed as current “significant violators” of the Clean Water Act, yet none of these facilities have been fined for CWA violations.
- Minor facilities also got off the hook. None of the 11 “minor” violators were fined for breaking clean water laws, even facilities that broke the law for two years in a row.

Gutting Environmental Enforcement

Governor Engler has won several key administrative and legislative changes that have sharply limited the effectiveness of the state’s

efforts to enforce environmental laws.

- Engler created the Department of Environmental Quality (DEQ) in 1995 through an executive order. The DEQ was split from the Department of Natural Resources (DNR) to theoretically protect Michigan’s environment more efficiently.

Seventeen citizen oversight committees were eliminated by the split and have not been restored. Field staff have been reduced in both departments while administrative positions have grown. (Michigan Land Use Institute Report, 1998).

- In 1995, Engler gutted Michigan’s Polluter Pay law, shifting the burden of clean up costs to taxpayers instead of holding corporations responsible for their own pollution. (John Fliesher, “State retreats on environmental protection, report says.” *The Associated Press*, October 3, 1998).

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 1996, Engler pushed an audit privilege law through the legislature which was later modified when the federal EPA threatened to take over state enforcement if the law was not changed.

According to DEQ head Russell Harding, "The prospect of triggering federal enforcement action had a chilling effect on many businesses. They can now enjoy a high degree of confidence that participating in the audit program will not subject them to federal enforcement attention." (Russell J. Harding, "Audit Law Encourages Improvement", *Ethnic News Watch*. December 22, 1998)

This appears to be quite an understatement. Since passage of the audit privilege law in 1996, neither state or federal enforcement of clean water laws has done anything to increase compliance, reduce pollution, or clean up Michigan's waters.

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 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-96 at 120 miles an hour. The state highway

patrol wouldn't offer to "balance this drunk's needs" with the needs of the people of Michigan. He or she would be thrown in jail and fined for endangering the health of dozens of other Michiganders.

However, if a large industrial facility is endangering thousands of Michiganders by fouling waterways, its operators are almost never even fined. They are instead considered customers of the Engler 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 Michigan's lakes and rivers.

Recommendations

Major improvements in water quality in Michigan 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.

To improve enforcement of the Clean Water Act:

- Michigan should set strict limits on the discretion of its regulatory agencies. Facilities should not be allowed to be out of compliance with environmental laws for more than two quarters in any one-year period without facing mandatory penalties. A good example of a more effective state enforcement policy is the New Jersey law that is based on the popular "three strikes and you're out" model.
- The regional U.S. EPA office should exercise its authority and take over cases when Michigan assesses insufficient fines or delays during the enforcement process.
- Michigan's audit privilege law should be repealed and replaced with U.S. EPA's audit policy.
- Citizens should be informed every quarter about the compliance status of Michigan's major companies.

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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