

ABOVE THE LAW

How The Government Lets Major Air Polluters Off The Hook

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Acknowledgments

Thanks to Greg Macias for coordinating the release of *Above the Law*, and to Molly Evans, who designed and produced the report. Thanks to Ken Cook for editing and advice, 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.

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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.

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Foreword

You probably take your car in for an emissions test each year, and you probably don't look forward to it any more than we do. If the car flunks, you don't have much choice but to grit your teeth and pay to get it fixed. It's something all of us do to keep the air clean. Besides, it's against the law to skip or fail an emissions inspection and keep driving the car. If you're caught you risk a fairly stiff fine.

That's not the way things work for some of the nation's biggest industrial air polluters. As this report makes clear, they seem to play by much easier air pollution rules.

Government inspectors have found that hundreds of oil refineries, auto plants, paper mills and other facilities are "significant violators" of the Clean Air Act. They've been caught red-handed, violating various rules designed to protect the air in communities nationwide.

But a shocking percentage of them keep operating in open, government-certified violation of the law—month after month,

year after year—without paying a penny in fines.

Dozens of big corporate air polluters, with brand names like General Motors, Ford, Shell, Exxon and USX continually break America's clean air laws, often racking up over a dozen infractions at a time, and get off scot-free. Other polluting facilities get slapped daintily on the wrist with fines that constitute a ludicrously and lucratively small fraction of their multi-billion dollar profits.

It isn't fair to anyone, of course. Not to those of us who make sure our cars pass the tailpipe test each year. And certainly not to the many companies that *do* abide by environmental rules their competitors violate with impunity.

That's the deplorable state of environmental law and order we found when we delved into the database the U.S. Environmental Protection Agency (EPA) has compiled and quality-checked to determine the clean air compliance record for American industry. EPA's own reviews show a similar pattern. They also show—you'll be shocked to learn—that when clean air in-

spections are more frequent and violators are fined, air pollution drops significantly.

What increases is industry ire. So does lobbying, campaign spending, and anti-environmental rhetoric of the sort that the “regulatory reform” brigade has been shouting in the nation’s capitol in recent years. Led by House Majority Whip Tom DeLay, the former exterminator who, in the glory days of the Republican revolution, actually referred to the EPA as “the Gestapo”, congressional proponents of “regulatory reform” portray environmental regulations as command-and-control job killers that have American industry in an ecological choke-hold. Gestapo? The comical camp guards in *Hogan’s Heroes* are more likely to come to mind after reading this report and EPA’s own reviews.

For big corporate polluters, getting off the hook on environmental laws is a routine part of doing business. Forty-one percent of the nation’s oil refineries and just about a third of the country’s iron and steel plants are significant violators of U.S. air laws. Those laws authorize regulators to penalize air polluters as much to \$25,000 a day, generally not exceeding a total of \$200,000, but fines can climb beyond that if state authorities

see fit. Mostly the fines are not levied at all. We found 53 major polluters out of compliance with the Clean Air Act every quarter for two straight years. Only 20 of them paid fines. A handful of firms accounted for nearly all the penalties.

States have the lead in enforcing the Clean Air Act, with the federal EPA in the role of overseer. The system isn’t working, our report makes clear. And it certainly renders dubious the other line of argument one so often hears from opponents of environmental law when they can’t weaken them outright: “Let’s turn things over to the states. They know best.”

We think citizens know best. They know environmental laws are in place for good reason, and being Americans they probably suspect that the big guys don’t have to play by the rules. They’re right. And when they find out that governors are letting major polluters off the hook, and EPA is watching it happen, they’ll be none too happy.

Maybe they’ll find out while waiting in line to have their car inspected. It was for precisely such moments that God invented the cell phone.

Kenneth A. Cook
President, EWG

Executive Summary

An Environmental Working Group analysis of recently released enforcement records from the U.S. Environmental Protection Agency (U.S. EPA) reveals a persistent pattern of “significant violations” of the Clean Air Act (CAA) in five major industries. Hundreds of large facilities in auto assembly, iron and steel, petroleum refining, pulp manufacturing, and metal smelting and refining are threatening the public health by their repeated failure to comply with federal clean air safeguards. Worse, there has been little effort by state or federal officials to bring even the most flagrant offenders into compliance with current statutory requirements.

The EWG analysis is based upon records of compliance with air pollution standards at nearly 600 facilities in five major industries across the United States during the past two years. These records, which were audited by polluters and state and federal enforcement agencies, have just recently been released to the public. They show that:

- More than 39 percent (227 out of 575) of all major

U.S. facilities in auto assembly, iron and steel, petroleum refining, pulp manufacturing, and the metal smelting and refining industries violated the CAA between January 1997 and December 1998. On average, these facilities violated the Act four out of the eight quarters during the two-year period analyzed. All of these infractions fit the U.S. EPA definition of “significant” violations of the law. Only about one-third (36 percent) of the 227 facilities violating the law have been fined by the U.S. EPA or state environmental regulators. According to EPA, only two percent of the violations reported are paperwork violations (EPA 1997a).

- Fifty-three (53) of these major polluters were out of compliance with the CAA every quarter during the 2-year period analyzed (Table 1). Just 20 of these 53 facilities were subject to fines or penalties during that time.
- When fines were levied, they were almost always too small to have any deterrent effect.

Without question, the Clean Air Act is not being effectively enforced by state environmental agencies.

In turn, EPA oversight of state enforcement is virtually non-existent.

Large industrial companies are taking advantage of the situation and the public is suffering direct health consequences as a result.

The industries with highest violation rates are petroleum refining and iron and steel, where 41 and 31 percent of all facilities respectively are currently classified as “significant violators” of the Clean Air Act.

The average fines for a “significant violator” of the CAA for the past two years nationwide was \$318,290. The average net earnings of the corporations that owned these facilities in 1998 were \$24.2 billion (Table 1).

- In thirteen of the nineteen states with five or more violators, more than 50 percent of all facilities violating the Clean Air Act in the past two years escaped with no fines (Table 2).

The industries with highest violation rates are petroleum refining and iron and steel, where 41 and 31 percent of all facilities respectively are currently classified as “significant violators” of the Clean Air Act. Twenty-five (25) percent of metal smelting and refining facilities, 20 percent of pulp manufacturing facilities and ten percent of auto assembly plants are also currently classified as “significant violators” as of April 1999.

Without question, the Clean Air Act is not being effectively enforced by state environmental agencies. In turn, EPA oversight of state enforcement is virtually non-existent. Large industrial companies are taking advantage of the situation and the public is suffering direct health consequences as a result. It is no wonder that year after year, the air in many major metropolitan areas fails to meet federal health standards. In the five industries

analyzed, which represent just a fraction of all American industry:

- Forty-three (43) facilities, located in metropolitan regions that are out of compliance with the CAA, emitted illegal levels of the very pollutant for which the community failed to meet federal health standards (Table 3). Only half of these facilities had been fined in the past two years by either state or federal authorities.

Industry is Pressing for Further Rollbacks of Health Safeguards

Major progress toward existing clean air goals could be achieved with strict enforcement of current laws and regulations. Instead, lax enforcement encourages unsafe amounts of pollution even as major polluting industries work for rollbacks of federal clean air standards under the guise of “regulatory reform.”

In the halls of Congress, industry portrays itself as living in fear of onerous federal environmental regulations. Regulatory reform legislation is offered in this context as a means to relieve the so-called burden of big government. In truth, most of these proposals would further relax already slack enforcement of environmental safeguards by erecting a series of bureaucratic roadblocks in the path of nearly all federal rules to protect the public health.

Table 1. Many multi-billion dollar corporations violated the Clean Air Act in every quarter of 1997 and 1998 and escaped with small or nonexistent fines.

Rank	Facility Name	Location	Penalty	Total Revenue of Parent Corporation/1998
1	General Motors	Bowling Green, KY	\$0	\$161,300,000,000
2	Ford Motor Co.	Wayne, MI	\$0	\$144,400,000,000
3	Shell Oil Company	Roxana/ Wood R, IL	\$2,178,000	\$128,100,000,000
4	Exxon Corporation	Baytown, TX	\$250,000	\$100,700,000,000
5	Exxon Corporation	Billings, MT	\$0	\$100,700,000,000
6	BP Exploration and Oil Inc.	Lima, OH	\$0	\$71,200,000,000
7	BP Oil Corp.	Toledo (Oregon), OH	\$0	\$71,200,000,000
8	Koch Refining Company Inc.	Rosemount, MN	\$6,929,692	\$36,200,000,000
9	Amoco Oil Company	Whiting, IN	\$0	\$32,800,000,000
10	Star Enterprise	Delaware City, DE	\$0	\$31,700,000,000
11	Chevron U.S.A. Inc.	El Segundo, CA	\$2,500	\$26,800,000,000
12	Marathon Oil Company	Robinson, IL	\$75,000	\$24,800,000,000
13	USX Corp	Braddock, PA	\$0	\$24,800,000,000
14	USX Corp	Gary, IN	\$0	\$24,800,000,000
15	Tosco Corporation	Wilmington, CA	\$9,250	\$12,000,000,000
16	Tosco Corporation	Trainer, PA	\$0	\$12,000,000,000
17	Total Petroleum Inc	Alma, MI	\$0	\$8,300,000,000
18	Packaging Corp. of America	Tomahawk, WI	\$0	\$7,597,000,000
19	James River Corp.	Old Town, ME	\$73,000	\$7,300,000,000
20	Sun Company Inc	Marcus Hook, PA	\$0	\$7,000,000,000
21	Sun Company Inc (R & M)	Toledo (Oregon), OH	\$0	\$7,000,000,000
22	Ashland Oil Inc	Canton, OH	\$2,792,990	\$6,900,000,000
23	Ashland Oil Inc	Saint Paul Park, MN	\$1,351,056	\$6,900,000,000
24	Valero Refining Company	Texas City, TX	\$91,000	\$5,500,000,000
25	Bethlehem Steel Corp.	Burns Harbor, IN	\$0	\$4,500,000,000
26	LTV Steel Co. Inc.	Cleveland, OH	\$0	\$4,300,000,000
27	Nucor Steel	Darlington, SC	\$0	\$4,200,000,000
28	Stone Container Corp.	Missoula, MT	\$357,200	\$3,800,000,000
29	Stone Container Corp.	Hopewell, VA	\$0	\$3,800,000,000
30	Clark Oil & Refining Corp.	Hartford, IL	\$0	\$3,700,000,000
31	Willamette Industries Inc.	Bennettsville, SC	\$0	\$3,700,000,000
32	National Steel Corp.	Granite City, IL	\$546,700	\$2,848,000,000
33	National Steel Corp.	Ecorse, MI	\$0	\$2,848,000,000
34	AK Steel Corp.	Middletown, OH	\$0	\$2,400,000,000
35	United Refining Inc.	Warren, PA	\$197,000	\$2,200,000,000
36	Consolidated Papers, Inc.	Wisconsin Rapids, WI	\$0	\$2,000,000,000
37	Quaker State Corporation	Newell, WV	\$200,000	\$1,900,000,000
38	GS Technologies Corp.	Kansas City, MO	\$0	\$1,700,000,000
39	Potlatch Corp.	Lewiston, ID	\$0	\$1,600,000,000
40	Weirton Steel Corp.	Weirton, WV	\$0	\$1,255,000,000
41	WCI Steel, Inc.	Warren, OH	\$0	\$665,000,000
42	Northwestern Steel and Wire Co.	Sterling, IL	\$0	\$596,000,000
43	Montana Refining Co.	Great Falls, MT	\$60,000	\$589,000,000
44	NS Group Inc.	Koppel, PA	\$0	\$410,000,000
45	South Hampton Refining Co.	Silsbee, TX	\$50,000	\$25,000,000
46	Finch, Pruyn & Co., Inc.	Glens Falls, NY	\$10,000	N/A
47	Globe Building Materials Inc.	Cornell, WI	\$0	N/A
48	Lyons Falls Pulp & Paper Inc.	Lyons Falls, NY	\$180,000	N/A
49	Ormet Corp.	Hannibal, OH	\$0	N/A
50	Petro Star Inc.	Valdez, AK	\$0	N/A
51	Placid Refining Co.	Port Allen, LA	\$0	N/A
52	Sunland Refining Corp.	Bakersfield, CA	\$1,500,000	N/A
53	Zinc Corporation of America	Monaca, PA	\$16,000	N/A
	Average		\$318,290	\$24,645,177,778

Source: Environmental Working Group, compiled from SFIP/AFS data, Fortune 500 Revenue, or Annual Reports.

Table 2. Many states fined fewer than 50 percent of the companies with Clean Air Act violations.

State	Percent Fined	Facilities with Violations*
Wisconsin	0%	11
Georgia	0%	5
Ohio	15%	13
Oregon	20%	5
Virginia	20%	5
Michigan	25%	12
Indiana	25%	8
Pennsylvania	33%	15
Arkansas	33%	6
Illinois	38%	13
South Carolina	40%	5
Alabama	45%	11

* Violations are limited to infractions of the Clean Air Act reported in the five industries contained in the SFIP database.

Source: Environmental Working Group. Compiled from SFIP/AFS data.

Major progress toward existing clean air goals could be achieved with strict enforcement of current laws and regulations.

Companies will never comply with the Clean Air Act, or any environmental law, without a real threat of punishment. 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 air pollution that continue to plague most metropolitan areas in the United States.

Conclusions and Recommendations

EWG’s first ever analysis of enforcement records audited by federal and state officials and the polluters themselves, reveals a disturbing disregard for public

health safeguards and pollution standards that have been adopted to protect the public health from serious environmental threats. Enforcement of the Clean Air Act is feckless and the health protections already promised to the public by the Congress are nowhere near being met. It is inconceivable that this level of illegal activity would be tolerated under statutes applied to other areas of society or commerce. The primary reason that this situation has been allowed to continue, we believe, is that the public has not had any way to know that the nation’s clean air laws were so poorly enforced and routinely violated. This report is a first step in what we hope is a long-term effort to educate and involve the public in enforcement of the nation’s environmental laws.

In the five industries examined, the record of compliance with the Clean Air Act is abysmal. To remedy the problem, state and federal environmental enforcement agencies need to vastly improve their enforcement activities. Industry, in turn, should not operate with such an opportunistic disregard for what it clearly knows to be rules and regulations that were designed, with its input, to protect the public health.

Specifically, to improve compliance with the CAA:

- The Congress must not pass legislation that in any

Table 3. Corporations emitting illegal amounts of a pollutant for which their community fails to meet clean air goals.

Company Name	Location	Pollutant For Which the Community Fails to Meet Clean Air Goals	Penalty
USX Corp	Fairfield, AL	PB, VOC	\$0
Birmingham Steel Corp.	Birmingham, AL	VOC	\$0
Chevron U.S.A. Inc.	El Segundo, CA	VOC	\$2,500
Tosco Corporation	Wilmington, CA	VOC	\$9,250
General Motors	Wilmington, DE	VOC	\$0
Young Refining Corporation	Douglasville, GA	SO2, VOC	\$0
Clark Oil & Refining Corp.	Hartford, IL	PT	\$0
National Steel Corp.	Granite City, IL	PT	\$546,700
Chicago Tissue Co.	Chicago, IL	VOC	\$0
Northwestern Steel and Wire Co.	Sterling, IL	PT	\$0
Amoco Oil Company	Whiting, IN	VOC, SO2	\$0
Bethlehem Steel Corp.	Burns Harbor, IN	PM10	\$0
Green River Steel Corp.	Owensboro, KY	PT	\$64,000
Placid Refining Co.	Port Allen, LA	VOC	\$0
Ford Motor Co.	Wayne, MI	PT	\$0
Rouge Steel Co.	Dearborn, MI	PT	\$210,000
National Steel Corp.	Ecorse, MI	PT, VOC	\$0
General Motors	Wentzville, MO	VOC	\$0
Aluminum Co. of America	Massena, NY	CO, SO2	\$57,500
Lyons Falls Pulp & Paper Inc.	Lyons Falls, NY	CO, NO2, SO2, VOC	\$180,000
International Paper Co.	Ticonderoga, NY	NO2	\$0
BP Oil Corp.	Toledo (Oregon), OH	PT, VOC, SO2	\$0
Sun Company Inc (R & M)	Toledo (Oregon), OH	SO2	\$0
LTV Steel Co. Inc.	Cleveland, OH	PT	\$0
USS/Kobe Steel Co.	Lorain, OH	PT	\$0
AK Steel Corp.	Middletown, OH	PT	\$0
WCI Steel, Inc.	Warren, OH	PT	\$0
CSC Inc	Warren, OH	PT	\$0
United Refining, Inc.	Warren, PA	VOC	\$197,000
USX Corp	Braddock, PA	PM10	\$0
Zinc Corporation of America	Monaca, PA	PT	\$16,000
Asarco Incorporated	El Paso, TX	CO, PM10, VOC	\$0
Simpson Pasadena Paper Co.	Pasadena, TX	VOC	\$13,500
Exxon Corporation	Baytown, TX	VOC	\$250,000
Mobil Oil Corporation	Beaumont, TX	VOC	\$167,600
Howell Hydrocarbons & Chem. Inc.	Channelview, TX	VOC	\$66,000
Shell Deer park Refinery	Deer Park, TX	VOC	\$5,000
Clark Refining and Mark.	Port Arthur, TX	VOC	\$19,500
Fina Oil and Chemical Company	Port Arthur, TX	VOC	\$599,250
Star Enterprise	Port Arthur/Neches, TX	VOC	\$0
South Hampton Refining Co.	Silsbee, TX	VOC	\$50,000
Valero Refining Company	Texas City, TX	VOC	\$91,000
Phillips Petroleum Company	Woods Cross, UT	VOC	\$0

Source: Environmental Working Group. Compiled from SFIP/AFS data.

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 air pollution that continues to plague most metropolitan areas in the United States.

way slows the implementation and enforcement of public health standards or pollution controls mandated under the Clean Air Act or any other environmental law.

- State legislatures must limit the enforcement discretion of regulatory agencies so that repeat violators cannot escape unpunished. Penalties for repeat violators must be mandatory and large enough to curtail future violations. A good example is the state of New Jersey where a “three strikes” style environmental law has been passed to solve this problem.
- Regional EPA offices should exercise their authority and intervene in cases where state regulators don’t follow EPA’s new guidance on “Timely and Appropriate Enforcement Response to High Priority Violators” and

bring persistent violators back into compliance with the CAA.

- U.S. EPA should help concerned citizens participate in the development and enforcement of air pollution permits issued under Title V of the CAA. Regional EPA offices should monitor state implementation of Title V programs to ensure that the compliance-related information is readily understandable by and available to the public.
- To assure that so-called audit privilege laws do not allow polluters to avoid or delay environmental compliance and hide their records from the public, the audit privilege laws that exist in 24 states should be repealed and replaced with U.S. EPA’s audit policy.

Above the Law

A substantial body of evidence shows that thousands of large companies routinely violate their pollution permits and/or regulatory standards. 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, contribute 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.

Citizens attempting to push industrial facilities to clean up their processes have frequently been met with the simple refrain that the facility is “in compliance with the law.” Attempts to counter this claim required considerable efforts. Individuals willing to take the time to request compliance data from the state or U.S. EPA faced difficulties interpreting the information, and the data that citizens were given was likely to be outdated,

incomplete, incorrect or misleading. In response to this lack of information the U.S. EPA initiated the pilot Sector Facility Index Project (SFIP).

Our analysis is based upon the Clean Air Act portion this recently released database. The SFIP data are the most extensive quality assured data on compliance and enforcement available from U.S. EPA. They provide the first comprehensive review of industry compliance with environmental laws, and cover roughly 600 facilities in five major industries from January 1997 to December 1998. Our findings provide clear evidence that a substantial portion of all industrial facilities in the United States are routinely violating the CAA.

Report Findings

U.S. EPA guidance instructs the states to bring all significant violators into compliance with environmental laws within 270 days of the identification of a violation (EPA 1998b) or proceed with civil penalties. In spite of these clear administrative instructions, many facilities remain out of compliance with the CAA for years at a time, and the majority

Constrained by limited resources or a lack of political will, regulatory agencies take effective enforcement action against only a relatively small percentage of violators.

CLEAN AIR ACT PROGRAMS

The CAA has several regulatory and permitting protections. A facility emitting air pollutants may be subject to one or more requirements depending on the nature of the facility, its emissions, and air quality in the area where the facility is located.

State Implementation Plan (SIP) - The CAA gives states the responsibility for developing a plan for achieving national clean air standards. The plan details air pollution control strategies for all sources of air pollution; cars, as well as factories and power plants. The SIP is the collection of pollution control rules, monitoring requirements, enforcement authorities, and funding mechanisms that a state intends to use to meet clean air standards. In areas not meeting air quality standards, SIPs must require permits for new and modified major sources of air pollution.

National Emission Standards for Hazardous Air Pollutants (NESHAPs) - Major sources of hazardous air pollutants - those with the potential to emit more than 10 tons/year of individual pollutants or 25 tons/year of any

combination of air pollutants - must comply with national standards for reducing these pollutants.

Prevention of Significant Deterioration (PSD) - The PSD program applies in areas where air quality is better than National Ambient Air Quality Standards. Major sources - those with the potential to emit more than 100 tons annually of any pollutant - must demonstrate that they will not contribute to air quality violations in order to obtain a permit, and they must install best available control technology.

New Source Review (NSR) - This program requires a review for facility modifications to determine whether the change warrants treating the facility as a new source, subject to new source performance standards.

New Source Performance Standards (NSPSs) - New facilities and modifications of existing facilities must meet New Source Performance Standards, which is the best available pollution control technology determined on an industry-by-industry basis.

The U.S. EPA considers all the violations reported in the SFIP serious.

of these are not fined, regardless of the seriousness or persistence of the violations.

The U.S. EPA considers all the violations reported in the SFIP serious. In fact, for major facilities — those that emit or have the potential to emit a specified amount of pollution (575 of the 597 facilities analyzed) — only significant violations of the CAA are tracked¹. This is true for both

historical and current non-compliance.

The facilities in this analysis are all large industrial factories. Their average total annual release of hazardous air pollution reported to the U.S. EPA Toxics Release Inventory (TRI) is nearly one million pounds a year. This does not include hundreds of million of pounds of 'conventional' pollutants emitted by these facilities but

Table 4. Most facilities with ten or more violations of Clean Air Act in the past two years were not fined.

Rank	Company Name	Location	Violations*	Penalty	Total Revenue of Parent Corporation 1998
1	National Steel Corp.	Ecorse, MI	22	\$0	\$2,848,000,000
2	Crown Paper Co.	Berlin, NH	21	\$0	\$850,900,000
3	BP Oil Corp.	Toledo (Oregon), OH	21	\$0	\$71,200,000,000
4	Sun Company Inc	Marcus Hook, PA	21	\$0	\$7,000,000,000
5	United Refining Inc.	Warren, PA	20	\$197,000	\$2,200,000,000
6	Valero Refining Company	Texas City, TX	20	\$91,000	\$5,500,000,000
7	General Motors	Wentzville, MO	19	\$0	\$161,300,000,000
8	Shell Oil Company	Roxana/ Wood R, IL	18	\$2,178,000	\$128,100,000,000
9	Clark Oil & Refining Corp.	Hartford, IL	17	\$0	\$3,700,000,000
10	Amoco Oil Company	Whiting, IN	17	\$0	\$32,800,000,000
11	Marathon Oil Company	Robinson, IL	16	\$75,000	\$24,800,000,000
12	South Hampton Refining Co.	Silsbee, TX	16	\$50,000	\$25,000,000
13	National Steel Corp.	Granite City, IL	16	\$546,700	\$2,848,000,000
14	Northwestern Steel and Wire Co.	Sterling, IL	16	\$0	\$596,000,000
15	LTV Steel Co. Inc.	Cleveland, OH	16	\$0	\$4,300,000,000
16	Ashland Oil Inc	Saint Paul Park, MN	15	\$1,351,056	\$6,900,000,000
17	Bethlehem Steel Corp.	Sparrows Point, MD	15	\$0	\$4,500,000,000
18	Ford Motor Co.	Wayne, MI	14	\$0	\$144,400,000,000
19	Stone Container Corp.	Hopewell, VA	14	\$0	\$3,800,000,000
20	Ashland Oil Inc	Canton, OH	14	\$2,792,990	\$6,900,000,000
21	Star Enterprise	Delaware City, DE	13	\$0	\$31,700,000,000
22	Bloomfield Refining Company	Bloomfield, NM	13	\$0	\$657,000,000
23	USX Corp	Fairfield, AL	13	\$0	\$24,800,000,000
24	North Star Steel Co.	Kingman, AZ	13	\$0	N/A
25	USX Corp	Gary, IN	13	\$0	\$24,800,000,000
26	AK Steel Corp.	Middletown, OH	13	\$0	\$2,400,000,000
27	Westvaco Corp.	Luke, MD	12	\$0	\$2,900,000,000
28	P.H. Glatfelter Co.	Spring Grove, PA	12	\$0	N/A
29	Exxon Corporation	Baytown, TX	12	\$250,000	\$100,700,000,000
30	Birmingham Steel Corp.	Birmingham, AL	12	\$0	\$1,136,000,000
31	Bethlehem Steel Corp.	Bethlehem, PA	12	\$405,571	\$4,500,000,000
32	Stone Container Corp.	Missoula, MT	11	\$357,200	\$3,800,000,000
33	Koch Refining Company Inc.	Rosemount, MN	11	\$6,929,692	\$36,200,000,000
34	Sun Company Inc (R & M)	Toledo/Oregon, OH	11	\$0	\$7,000,000,000
35	Aluminum Co. of America	Newburgh, IN	10	\$10,000	\$15,500,000,000
36	Lyons Falls Pulp & Paper Inc.	Lyons Falls, NY	10	\$180,000	N/A
37	Citgo Refining and Chemicals	Corpus Christi, TX	10	\$0	\$10,912,000,000
	Average			\$416,600	\$25,928,614,706

*May indicate more than one CAA program violation in a given quarter.

Source: Environmental Working Group. Compiled from SFIP/AFS data, Fortune 500 data, or Annual Reports.

not tracked by the TRI, such as particulate matter, sulfur dioxide, nitrogen oxides, and most volatile organic compounds.

Historical Non-Compliance. Thirty-nine (39) percent (227 out of 575) of the major facilities in the SFIP have been out of com-

pliance with at least one or more sections of the CAA in at least one quarterly report in the past two years². Most of these facilities are routinely out of compliance with the CAA. The average facility that violated the CAA was out of compliance in four of the last eight quarters, and 53 facili-

Less than one-half of the current “significant violators” have been fined by U.S. EPA or the states for CAA violations.

ties violated the CAA in every quarter for the last two years. Little has been done to bring chronically non-complying facilities back into compliance. Of the 53 facilities that have been violating the CAA for the past two years, U.S. EPA or the state has fined only 20 (Table 1, p. 3). And less than one-half of the current “significant violators” have been fined by U.S. EPA or the states for CAA violations.

Some facilities have violated multiple CAA programs over that period. Counting every quarterly reported violation of a CAA program, 37 facilities had ten or more violations of the CAA in the past eight quarters (Table 4). Six facilities—National Steel in Michigan, Crown Paper in New Hampshire, BP Oil in Ohio, Sun Company in Pennsylvania, United Refining in Pennsylvania, and Valero Refining in Texas—had 20 or more quarterly reported violations of CAA programs over the past two years. In that same time period, only two of these six polluters were fined.

Current Non-Compliance.

As of April 15, 1999, 29 percent of the facilities in these five industries were listed in violation of the CAA. Of the 575 major facilities analyzed, 171 are currently considered “significant violators,” 41 more have reported violations that fit the EPA definition of “significant violators” but are not listed as such, and one minor facility is listed as a “significant violator”. All major facilities that are in violation for a

pollutant should also be listed as a “significant violator.” Because of problems with the U.S. EPA database that tracks the pollutant of concern and the “significant violators” list, discrepancies between the two exist.

Perhaps the most egregious violations are those that occur in areas that are not currently meeting federal air quality standards. Our analysis found 43 facilities that violated their permits to emit a pollutant for which they are in a non-attainment area. Of those 43 facilities over half have not been fined in the past two years by either the state or federal government (Table 3, p. 5).

The Data Underestimate the Problem

Federal government enforcement data underestimate the actual violations of environmental laws. The main reason for this is that the states have not aggressively inspected facilities. According to a recent U.S. EPA Office of Inspector General audit “[a]ir enforcement disclosed fundamental weaknesses with state identification and reporting of ‘significant violators’ of the CAA” (EPA 1998a, page I). This weakness extended to every element of the process, from inspection to data entry into the federal database used to track non-compliance.

Another source of undercounting in this report is that we tracked only violations that the

If our analysis had included state or monthly infractions, the number of violations would have been higher.

U.S. EPA designated as quarterly violations. If our analysis had included state or monthly infractions, the number of violations would have been higher. Monthly violation data, however, were not as thoroughly audited as the quarterly violation information we used.

The SFIP data consolidates all violations of a CAA statute into one quarterly compliance designation. Because of this, it is impossible to tell if facilities violated the CAA hundreds of times during the month or just once.

The last source of underestimation involves the way U.S. EPA lists facilities that agree to a compliance schedule. Facilities that are technically not meeting their obligations under the CAA, but are meeting a schedule for returning to compliance are not listed as being in violation. Even if these facilities later fail to meet the extended schedule and move back into violation their status is not retroactively changed to non-compliance. Although this may seem like a technical point, there are several facilities whose compliance records would seem very different if this change were made.

In many respects, this phenomenon of companies not meeting their compliance schedule represents the worst failure of environmental enforcement. These facilities have been identified by U.S. EPA as being out of compliance and are working

with either U.S. EPA or the state to meet their obligations under the CAA. When they fail to meet the schedules that have been worked out for them they should be fined immediately. If these facilities are allowed to revise compliance schedules over and over, a bad precedent has been set.

Nature of the Violations

The vast majority of the violations in the SFIP database are considered significant, meaning they directly impact public health and air quality. EPA's guidance on "significant violators" and the new definition for high priority violations defines a violation for major sources as any violation of emissions or monitoring standards, any substantial procedural violation, or any violation of a federal or state administrative order. Minor sources must be listed as "significant violators" when they are in violation of emissions standards.

One indicator of the nature of the violations listed in the SFIP database is the action the facility must take to correct the problem. Violations that require the installation of pollution control equipment or changes to operating procedures are most often more serious than violations that require only administrative action. Other procedural violations, like the failure to apply for a permit or monitor for excess emissions, can also be serious, even if they don't ultimately require changes to operating procedures, because

It is impossible to tell if facilities violated the CAA hundreds of times during the month or just once.

Table 5. Enforcement of the Clean Air Act can result in substantial pollution reductions.

Pollutant	Reduction (pounds)
Volatile Organic Chemicals	62,562,000
Particulate Matter	24,555,000
Carbon Monoxide	21,502,000
Propane	20,014,000
Polynuclear Aromatic Hydrocarbons	14,400,000
Lead	10,297,000
Benzene	7,666,000
Cement Kiln Dust	6,000,000
Toluene	998,000
Chlorofluorocarbons	427,000

* The above figured represent reductions at just 11 percent of facilities where enforcement actions were taken.

Source: EPA 1997 Enforcement Report.

Almost none of the actions brought against companies in this analysis are for recordkeeping violations.

they make it impossible to enforce the law.

In its 1997 and 1996 Enforcement and Compliance Assurance Accomplishments Report, U.S. EPA released an analysis of the results of enforcement actions. In fiscal year 1997, 40 percent of the actions required the installation of pollution control equipment, a change in operating procedures, or some other removal or remediation. The 1996 report disclosed similar findings. The majority of the remaining cases required some form of testing, monitoring, or other major procedural change within

the plant (EPA 1996, EPA 1997a).

Industry frequently argues that these are only minor paperwork violations. By “paperwork violations” we mean violations that are truly minor. Such infractions would not include procedural violations like the failure to report monitoring results, which could reveal emissions violations. Almost none of the actions brought against companies in this analysis are for recordkeeping violations. In both 1997 and 1996 less than two percent of actions were concluded with only recordkeeping changes (EPA 1996, EPA 1997a).

Enforcement has important air quality benefits in both the short and long-term. In the 1997 Enforcement and Compliance Assurance Accomplishments Report U.S. EPA listed the pollutant reductions that resulted from these actions. Although U.S. EPA only had specific pollutant data for 11 percent of the reported cases, the pollutant reductions were substantial (Table 5). In 1997, these reductions included 87 million pounds of carcinogens, soot and smog forming pollutants. (EPA 1997a).

Notes

¹ Currently USEPA tracks “significant violators”. Starting in June of 1999 USEPA will begin to track High Priority Violators. The difference between the two is mostly semantic. In both cases qualification as a violator requires violations of emissions standards or substantial procedural violations of the CAA.

² Quarterly non-compliance indicates non-compliance with one or more CAA program during the quarter. Facilities are listed as being in non-compliance for the quarter if they have been listed as being in non-compliance for any period during the quarter.

The Nature of The Problem

Many factors account for the widespread violations of environmental laws and the lack of enforcement. Environmental compliance is a relatively low priority at many facilities. Businesses realistically figure that the economic advantages they gain by not complying with the law outweigh the slight chance of government enforcement action against them. Indeed, this calculation has been borne out in many cases (EPA 1997b). Budget cuts and lack of political will often account for the lackluster performance of environmental enforcement agencies. And insufficient public information about the performance of facilities makes it easy for the situation to continue.

One of the main constraints to strong enforcement is that the public has no easy way of knowing about the scope of environmental violations, the specific identity of local violators, the consequences of the violations, and the non-performance of state enforcement agencies. Even with the SFIP database published on the Internet, there are still many unanswered questions relating to

the facilities covered by the database. And with the public in the dark, chronic violations of environmental laws and lack of enforcement rarely emerge as public issues. As a result, there is no pressure on industry or government to improve their performance.

The audit privilege/immunity laws that have been enacted in twenty-four states only serve to keep the public uninformed. Although these laws were enacted to encourage industry self-audits, there is no evidence that they have produced this result. To the contrary, they appear to have resulted in further secrecy (see Sidebar, p. 14).

The problem with non-compliance in these industries does not appear to be the result of poorly designed federal policy. The U.S. EPA provides clear guidance on the appropriate penalty for non-compliance with the CAA. U.S. EPA uses a formula that includes the economic benefit incurred through non-compliance and then fines the facility an additional amount depending upon the “gravity” of the offense and the good faith effort of the facility

The problem with non-compliance in these industries does not appear to be the result of poorly designed federal policy.

The problem is that federal guidelines are rarely followed.

AUDIT PRIVILEGE/IMMUNITY LAWS PROTECT POLLUTERS, NOT THE ENVIRONMENT

Twenty-five states have instituted audit privilege/immunity laws since 1993, and an additional 11 states have instituted environmental audit policies since 1994 according to a recent study by the National Conference of State Legislatures (NCSL 1998). Audit privilege laws usually grant privileged status to information generated by an environmental audit in a criminal, civil or administrative proceeding regardless of whether problems found in audits are addressed by the company. Immunity legislation rewards companies that self-disclose by reducing or eliminating the penalty for the violation.

Environmental audits are voluntary internal evaluations of company operating procedures. They are used to measure compliance with environmental regulations, identify problems early and correct them quickly. When used appropriately an environmental audit can help a company

comply with environmental laws and shift a state's limited enforcement resources into areas of greater concern. Audit privilege/immunity laws seek to promote self-audits by insulating companies from the liability they would otherwise incur when they document violations of environmental law. Unfortunately, the audit privilege laws that have been written in several states don't require the disclosure or correction of problems. And instead of promoting responsible corporate behavior, too often they create a mechanism for corporations to shield themselves from the release of damaging information. The Supreme Court of the United States characterized audit privilege laws as a serious threat to the integrity of the legal system:

"The greater portion of evidence of wrongdoing by an organization or its representatives is usually found in the official records and documents of

to comply after being notified of the offense. Historical non-compliance is also considered in setting the appropriate fine (EPA 1991).

The problem is that federal guidelines are rarely followed. The fines that are paid by companies rarely adhere to the recommended formulas. A 1997 U.S. EPA Office of Inspector General audit of Region 9 found that contrary to EPA's guidance, the penalties assessed by local air

districts in California did not escalate for repeat violators and that the penalties were not large enough to deter the violators from committing the offenses again (EPA 1997b). And California is generally perceived as a leader in environmental quality.

The audit gave an example of a facility that was cited for a public nuisance violation in which thirty complaints of illness were received. The facility, which is located in a non-attain-

that organization. Were the cloak of privilege to be thrown around these records and documents, effective enforcement of many federal and state laws would be impossible (Braswell v. U.S. 1988).”

Industry has effectively advocated audit privilege laws by arguing that without them, companies will not perform voluntary compliance audits because they will be subject to penalties for any violation revealed by the audit. In theory, once the fear of self-inflicted government penalties is removed, self-audits and compliance with the law will increase. The theory is a bust. The National Conference of the State Legislatures study found that facilities in states with audit privilege laws or policies did not audit their environmental practices more frequently than other states. The study also found that the majority of the voluntary disclosures made were minor. In short,

there is no evidence that audit privilege laws are producing more self-audits, eliminating polluting practices, or increasing compliance with the law (NCSL 1998).

This is because they are based on a faulty premise. The major cause of non-compliance with environmental laws is not the lack of audit privilege laws. The root cause of non-compliance with environmental laws is lack of enforcement by state and federal officials, as evidenced by small or nonexistent penalties levied against even the most egregious violators. Instead of rewarding companies for their non-compliance by passing audit privilege laws, states should simply follow EPA guidelines and levy appropriate penalties against violators. If the threat of strong enforcement is convincing enough, companies will perform self-audits even without an audit privilege law, to avoid larger penalties down the road.

ment area, was fined \$500, even though the correct fine according to OIG was \$15,000. The audit stated further that three of the four air districts reviewed “gave no consideration to the economic benefit of noncompliance in its penalty calculation” (EPA 1997b).

It is common for facilities to receive multiple notice of violations with small or no fines. The California study found that large companies averaged 11 “notice

of violations” during the two-year period of the study. OIG used as an example an oil refinery that was cited for 10 violations over a 12-month period. When the company was eventually fined for the public nuisance, its history of non-compliance was not considered in setting the penalty amount (EPA 1997b).

Even companies that pay large penalties can gain significant economic advantages by not complying with environmental

Even companies that pay large penalties can gain significant economic advantages by not complying with environmental laws.

TITLE V PERMITS

Title V Permits - The CAA amendments of 1990 added Title V, a new air emissions permitting program for major sources. Title V permits will integrate all federal CAA requirements into a single document. By consolidating the facilities' permit requirements, the public, regulators and industry can better determine the facilities' compliance status. Because limits not included in the Title V permit will not be enforced, it is essential that the permits are correctly written and include all of the appropriate limits.

States are now developing operating permit programs to review, issue, administer, and enforce operating permits. States are beginning to collect the fees necessary to carry out these responsibilities. Once the Title V programs are established the fees that

are collected from the permit-holders will fund the enforcement of Title V permits and the federal government will no longer fund state enforcement efforts. Under this new arrangement U.S. EPA will retain its oversight responsibility, but it will no longer be able to negotiate the terms of state enforcement of the CAA as a condition of federal funding for state enforcement programs.

Under Title V, all permits applications, permits, monitoring and recordkeeping reports and annual compliance certifications must be made available to the public. The CAA also gives concerned citizens the right to bring enforcement actions to compel compliance with Title V permit requirements.

laws. A perfect example of this is the Crown Central Petroleum Corporation. An analysis of the economic benefit of non-compliance with Texas and federal law prepared for a citizen's suit against Crown calculated the economic benefit to Crown of non-compliance at \$13.9 million. Thus even though Crown has been fined \$1 million for emitting hundreds of excess tons of sulfur dioxide, they have benefited tremendously from the delay in enforcement (Kavanaugh 1998).

Ineffective communication between the states and U.S. EPA has also severely eroded EPA's ability to enforce the CAA according to multiple EPA audits (EPA 1998a). These audits docu-

ment widespread underreporting of "significant violators" by the states to U.S. EPA. The problems that have existed in the past with identifying "significant violators" of the CAA also contributed to the inability to bring facilities into compliance. U.S. EPA has the ability to take over a case if it feels the state or local government is not acting effectively to bring a facility back into compliance, but U.S. EPA can only play the role of the "bad cop" for the states if they are well informed.

What is being done to improve compliance

The most ambitious attempt to improve compliance with the CAA is the Title V program.

When completed, the Title V permit program will consolidate all CAA permits into a single document that, if correctly implemented, promises to be a big step forward for enforcement of the CAA (See Sidebar, p. 16).

In December, the Office of Environmental Compliance Assurance revised its guidance on Timely and Appropriate Enforcement Response to Significant Air Pollution Violators. This document outlines the response the U.S. EPA expects from the states to violations of the CAA. In the new guidance “Significant Violators” are called “High Priority Violators.” States and U.S. EPA now have a little more time to bring facilities into compliance. And U.S. EPA clarified the system for prioritizing the list of companies for which enforcement actions must be taken (EPA 1998b).

In the new guidance, U.S. EPA also reiterates its expectation that states will resolve all violations of the CAA in a reasonable time frame. And U.S. EPA states that its “national goal is to have all federal, state and local enforcement actions for CAA violations assess a penalty sufficient to achieve effective deterrence for the source subject to enforcement and for the regulated community as a whole” (EPA 1998b page 14). In other words, the sting of enforcement must be sufficient to compel compliance with the law.

As this process moves forward it is important to focus on the

effectiveness with which these “significant violators” are brought back into compliance, not just the process by which they are identified. EPA’s revision of its guidance for the appropriate response to CAA violations is a hopeful indication that this might happen. However, U.S. EPA still needs to address the fundamental differences between its view, and most states’ views of the role of enforcement penalties as a mechanism for ensuring compliance with environmental laws.

U.S. EPA has initiated a few other programs to increase compliance with environmental laws (see Appendix 1). Of these programs the Targeted Enforcement initiative is the most promising. Targeted enforcement is designed to bring industries with specific problems back into compliance. By learning from trends in non-compliance across states and regions, U.S. EPA can solve major environmental problems in specific industries in a manner that is fair to that industry and helpful to the states. This initiative should be made a high priority within U.S. EPA.

Of the other new initiatives, the Compliance Assistance and National Performance Measures programs are both common sense efforts that should have been instituted long ago. The Compliance Incentive Programs, on the other hand, have the potential to undercut the goals of the CAA and should be viewed with caution, because it erodes EPA’s ability to punish violators.

U.S. EPA still needs to address the fundamental differences between its view, and most states’ views of the role of enforcement penalties as a mechanism for ensuring compliance with environmental laws.

Conclusions and Policy Recommendations

Violations often continue for months and sometimes-even years without any enforcement action.

There is an abundance of evidence that numerous large companies routinely and chronically discharge more pollutants to air than the CAA allows. The result is more pollution, more health risks for communities, and unfair economic advantages for environmental violators over their law-abiding competitors. State and federal governments are frequently slow to act against environmental violators, and violations often continue for months and sometimes even years without any enforcement action.

The root of the problem is that the public has no easy way of knowing about the scope of environmental violations.

State and federal environmental enforcement agencies need to vastly improve their enforcement activities. EPA's goal, resolving all violations in a timely manner, will never be achieved without major changes in the construct and management of state and federal enforcement programs and a solid commitment by regulators to ensure that environmental law-breaking is not tolerated.

But the root of the problem is that the public has no easy way of knowing about the scope of environmental violations, the specific identity of local viola-

tors, the consequences of the violations, and the non-performance of state enforcement agencies. With the public in the dark, chronic violations of environmental laws and lack of enforcement rarely emerge as public issues, and as a result, there is no pressure on industry or government to improve their performance.

To improve compliance with the Clean Air Act:

- The Congress must not pass legislation that in any way slows the implementation and enforcement of public health standards or pollution controls mandated under the Clean Air Act or any other environmental law.
- State legislatures must limit the enforcement discretion of regulatory agencies so that repeat violators cannot escape unpunished. Penalties for repeat violators must be mandatory and large enough to curtail future violations. A good example is the state of New Jersey where a "three strikes" style environmental

law has been passed to solve this problem.

- Regional EPA offices should exercise their authority and intervene in cases where state regulators don't follow EPA's new guidance on "Timely and Appropriate Enforcement Response to High Priority Violators" and bring persistent violators back into compliance with the CAA.
- U.S. EPA should help concerned citizens participate in the development and enforcement of air pollution permits issued

under Title V of the CAA. Regional EPA offices should monitor state implementation of Title V programs to ensure that the compliance-related information is readily understandable by and available to the public.

- To assure that so-called audit laws do not allow polluters to avoid or delay environmental compliance and hide their records from the public, the audit privilege laws that exist in 25 states should be repealed and replaced with U.S. EPA's audit policy.

STATE BASED SOLUTIONS

Encourage policymakers in states with poor facility compliance and lax enforcement records to take action to improve compliance rates and enforcement. In the mid-1980s, for example, following a series of reports on poor compliance and enforcement, New Jersey enacted the environmental counterpart of the now popular "three-strikes-you're-out" model for dealing with violators of other laws.

Current U.S. EPA Enforcement Initiatives

For many years the General Accounting Office (GAO) and U.S. EPA's Office of the Inspector General (OIG) have documented a chronic lack of compliance with, and enforcement of, environmental laws. Without identifying individual violators, these agencies have shown that a *substantial minority* of facilities regulated under clean air, clean water, and hazardous waste statutes do not comply with environmental protection standards.

Recently, six audits by EPA's Office of the Inspector General have brought to light specific problems with the process whereby states identify "significant violators" and the diligence with which these violators were reported to EPA regional offices. The most recent report from the OIG reported, "fundamental weakness with state identification and reporting of "significant violators" of the CAA" (EPA 1998a page I).

In response to these problems EPA's Office of Enforcement and Compliance Assurance (OECA) has initiated several pilot programs to increase com-

pliance with environmental laws. The programs fit into three categories: compliance assistance, compliance incentives, and targeted enforcement.

By themselves, these programs will not seriously reduce the levels of non-compliance found among the SFIP facilities. Some of these initiatives could provide useful models for larger efforts by U.S. EPA. The Compliance Assistance Program, which is designed for small business, and the Targeted Enforcement efforts both hold great promise. The Compliance Incentive Programs, on the other hand, should be viewed with great caution.

Compliance Assistance Programs: U.S. EPA has set up nine National Sector-Based Compliance Assistance Centers. Eight of the nine sectors were selected to serve an environmentally important small business sector. U.S. EPA has also initiated several narrowly targeted compliance programs. Examples of these include an effort to increase compliance among dry cleaners in Washington DC.

Compliance Incentive Programs: These programs use a combination of compliance assistance, environmental audits, self-disclosure of violations, and reduced or eliminated penalties for those participating in the program. U.S. EPA has several compliance incentive programs. One example is the voluntary agreement between U.S. EPA and the National Pork Producers Council. Under this controversial program, pork producers that promptly disclose and correct any violations will receive a reduced civil penalty.

Targeted Enforcement: U.S. EPA is beginning to search out sector-based environmental non-compliance using demographic and industry information as well as historical compliance data. Once U.S. EPA identifies a problem with an industry, or even a statute affecting a few industries, the agency will work with the industry to rapidly move into compliance with the threat of enforcement as a stick and assistance in complying with the particular statute as the carrot. Facilities that immediately comply are sometimes granted a lesser fine if they work with U.S. EPA

or are allowed to pursue a Supplemental Environmental Project that reduces emissions beyond the legal requirement.

Targeted enforcement activities have uncovered massive noncompliance. In its Wood Products Initiative, U.S. EPA found New Source Review violations at approximately 70-80 percent of the facilities investigated (EPA 1999). Because of the success of this and other efforts, as well as the large environmental gains from New Source Review, EPA has focused on New Source Review as a key element of its targeted enforcement efforts.

The National Performance Measure Program: OECA also initiated the National Performance Measures Strategy in 1997. The goal of this program is to develop valid measures of compliance with environmental laws. This initiative is still in its early stages. It will likely be some time before U.S. EPA develops, collects and releases new national performance measures, but this program will prove essential to characterizing the effectiveness of the CAA.

Methodology

This analysis is based on data from EPA's new Sector Facility Index Project (SFIP). We used SFIP data because U.S. EPA has quality checked the data for the facilities in these project. 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. Of the 640 facilities in the database 597 are regulated under the CAA and 575 are considered major facilities.

The SFIP database includes all the facilities operating in the above industries 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. Data for SFIP facilities from the Airs Facility Subsystem (AFS) database was used when SFIP data did not provide sufficient detail for our analysis.

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. Specific changes included:

Permit Linkages: Permits of several co-located operations (e.g., TRI submissions for on-site energy production, sawmills) were sent to the facilities for their comment rather than have SFIP make the call about appropriate linking. Facilities commented on 211 of the 1,790 total permit linkages presented for review. Of these comments, 158 were accepted.

Enforcement Actions: Facilities commented on 64 of the 376 enforcement actions presented. Of these comments, 41 were accepted. Facilities identified

another 20 actions not listed, ten of which have been accepted.

Significant Noncompliance (SNC) Status: Facilities commented on 103 of the 1,292 eligible data elements. Of these comments, 90 were accepted.

Quarterly Compliance Status: Facilities commented on approximately 3,000 of the 30,000 quarters of historical compliance status presented for review. Of those, comments were accepted on approximately 2,400 quarters.

Inspections: Facilities commented on 75 of the 3,761 inspections presented. Of these comments, 31 were accepted. Another 241 inspections were identified, of which 88 have been accepted.

Problems With Data On California Facilities

In the course of our research into data from the EPA's Sector Facility Indexing Project, EWG developed significant concerns about the integrity of the data for industrial facilities in California. Although SFIP data have been extensively audited by the EPA and the companies themselves, data compatibility issues within the agency have left major data gaps that prevent a useful and accurate analysis of violation history in California.

In March 1999, when EPA updated SFIP data for the rest of the country, the agency replaced detailed information on California enforcement actions in SFIP with the notation that "this information was not available for SFIP's March data refresh." As a result, details on enforcement, citations and penalties were not available for approximately half of the bad actor companies in California ("current violators" and those with historical violations).

Among the California companies lacking enforcement data in SFIP are the Tosco Facility in Martinez, where a recent explosion killed four workers and the Chevron facility in Richmond,

where an explosion in March 1999 sent thousands to the hospital complaining of smoke-related symptoms. Other facilities with data gaps include the Exxon and Huntway facilities in Benicia, and the Kern and Texaco facilities in Bakersfield.

EWG has no reason to believe that California has a better record than other states when it comes to enforcing Clean Air Act violations. Quite to the contrary, a 1997 audit of California air compliance programs by the EPA Inspector General found that local air districts, who in California are responsible for 98 percent of enforcement actions against major facilities, failed to adequately enforce and deter violations. The audit found that local air districts failed to assess adequate fines, failed to consider a facility's past compliance history and failed to resolve enforcement actions in a timely manner.

EWG is currently working with EPA, state and local officials in California to obtain more up-to-date and reliable data for the state. That data will be analyzed in a future EWG report.

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