

ABOVE THE LAW

How The Government Lets Major Air Polluters Off The Hook

Arizona

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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.

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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 Arizona. The records, audited by industry and state regulators prior to their release, show that state officials in Arizona 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 8 facilities (5 major facilities) in Arizona, from January 1997 through December 1998, shows that:

- Three (3) of the five major facilities analyzed were out of compliance with the Clean Air Act at least one quarter, and an average of five of the eight quarters in the two-year period analyzed. None of these facilities were fined by the state of Arizona 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 \$27 billion in 1998, none of the three companies that violated clean air safeguards in Arizona were fined (Table 1).
- Four of the five facilities analyzed were listed as current “significant violators” of the Clean Air Act (Table 2). None of these facilities were fined.

It is clear from this analysis that there is no undue regulatory burden on air polluters in Arizona, 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 Arizona 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:

- Arizona 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 Arizona assesses insufficient fines or delays during the enforcement process.
- U.S. EPA and Arizona 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 Arizona 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 Arizona 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
North Star Steel Co.	Kingman, AZ	7		
BHP Copper Inc.	San Manuel, AZ	6		\$24,664,000,000
Cyprus Miami Mining Corporation	Globe (Miami), AZ	1		\$2,566,000,000

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

* 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 Arizona EPA as "significant violators" of the Clean Air Act.*

Facility	City	Penalty**	Revenue
BHP Copper Inc.	San Manuel, AZ	\$0	\$24,664,000,000
Cyprus Bagdad Copper Corporation	Bagdad, AZ	\$0	\$2,566,000,000
Cyprus Miami Mining Corporation	Globe (Miami), AZ	\$0	\$2,566,000,000
Stone Container Corp.	Snowflake, AZ	\$0	\$3,800,000,000

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.