

ABOVE THE LAW

How The Government Lets Major Air Polluters Off The Hook

Montana

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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 Montana. The records, audited by industry and state regulators prior to their release, show that state officials in Montana 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 7 facilities (7 major facilities) in Montana, from January 1997 through December 1998, shows that:

- Five (5) of the seven major facilities analyzed were out of compliance with the Clean Air Act at least one quarter, and an average of six of the eight quarters in the two-year period analyzed. Four of these facilities were fined by the state of Montana 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 \$107 billion in 1998, compared with total fines of \$673,180 levied against four of the five companies that violated clean air safeguards in Montana (Table 1).
- Three companies, Exxon Corporation in Billings, Montana Refining Co. in Great Falls and Stone Container Corp. in Missoula have been out of compliance with the Clean Air Act every quarter for the past eight quarters. All three of these facilities were fined (Table 1).
- Three of the seven facilities analyzed were listed as current “significant violators” of the Clean Air Act (Table 2). Two of these facilities were fined.

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

This finding also brings into question the effectiveness of the Montana audit privilege law. Based on the current state of air pollution enforcement in Montana, it is safe to say that after two-years on the books, the Montana audit privilege law has done nothing to reduce pollution or improve compliance with clean air standards. 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 air pollution that continue to plague most metropolitan areas in the United States.

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 Montana 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:

- Montana 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 Montana assesses insufficient fines or

delays during the enforcement process.

- Montana's audit privilege law should be repealed and replaced with U.S. EPA's audit policy.
- U.S. EPA and Montana 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 Montana 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 Montana 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
Exxon Corporation	Billings, MT	8		\$100,700,000,000
Montana Refining Co.	Great Falls, MT	8	\$60,000	\$589,000,000
Stone Container Corp.	Missoula, MT	8	\$357,200	\$3,800,000,000
Asarco Incorporated	East Helena, MT	3		\$2,233,000,000
Columbia Falls Aluminum Co.	Columbia Falls, MT	1	\$255,980	

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 from 1997, 1998 and where available, 1999.

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

Facility	City	Penalty**	Revenue
Asarco Incorporated	East Helena, MT	\$0	\$2,233,000,000
Exxon Corporation	Billings, MT	\$0	\$100,700,000,000
Montana Refining Co.	Great Falls, MT	\$60,000	\$589,000,000

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 from 1997, 1998 and where available, 1999.