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# Failing Grades

for 44 states and the  
District of Columbia

Prepared by



in partnership with



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## Summary

At the heart of the nation's Clean Water Act is a system of permits that determines how much pollution every factory, machine shop, electric utility, sewage treatment plant or other polluter can dump into the nation's waters. These permits, which set the terms for all of the nation's water pollution, are tailored to the size of the polluter, the toxicity or threat of the pollution, the technology available to clean it up, and the quality and size of the waterway receiving the discharges.

In 43 states clean water permits are issued by state regulators; in 7 states and the District of Columbia the program is run by the U.S. EPA. Permits must be renewed at least every five years, at which time pollution reductions or improved treatment technologies are typically required.

The goals of the Clean Water Act will not be met without up-to-date permits. When permits remain expired for years at a time, pollution can continue unchecked, water quality may deteriorate, and progress toward the Clean Water Act's ultimate goal of "zero discharge" of

pollutants is brought to a standstill.

Forty percent of all U.S. waters are not fishable or swimmable, according to the U.S. EPA. Much of this poor water quality begins with regulators who have failed to maintain the legal foundation for improving the quality of the nation's waters: Clean Water Act permits.

A Friends of the Earth and Environmental Working Group review of all 6,700 Clean Water Act National Pollution Discharge Elimination System (NPDES) permits for major facilities shows that in 7 states and the District of Columbia more than half of all water pollution permits for major polluters are expired. More than one third of all permits are expired in 17 states, and in 44 states and the District of Columbia more than 10 percent are expired (Table 1).

Nationwide, about one quarter of all major water polluters, more than 1,690 facilities, are operating without current permits to discharge wastes to the nation's waters. More than 770 major facility permits have been expired for 2 years, and 251 have

**Table 1: Forty-four states and the District of Columbia failed to update their Clean Water Act permits in a timely manner**

Rank	State	Total Major Facilities	Facilities with Expired Permits	Percent of Facilities with Expired Permits
1	District of Columbia*	4	4	100%
2	Nevada	10	7	70%
3	Rhode Island	25	17	68%
4	Oregon	76	51	67%
5	Nebraska	60	40	67%
6	New Mexico*	34	20	59%
7	Colorado	102	51	50%
8	Massachusetts*	148	74	50%
9	Louisiana	247	116	47%
10	Indiana	175	81	46%
11	Washington	89	41	46%
12	New Hampshire*	62	27	44%
13	Minnesota	85	37	44%
14	Connecticut	117	45	38%
15	Hawaii	27	10	37%
16	Idaho*	66	24	36%
17	California**	235	85	36%
18	Ohio	268	93	35%
19	Delaware	24	7	29%
20	New Jersey	168	49	29%
21	Virginia	145	40	28%
22	Iowa	123	31	25%
23	Oklahoma	93	23	25%
24	Michigan	181	44	24%
25	Missouri	146	35	24%
26	Arizona*	46	11	24%
27	Maine*	93	22	24%
28	Alaska*	77	18	23%
29	Texas	582	135	23%
30	North Carolina	216	49	23%
31	Tennessee	152	34	22%
32	Maryland	100	21	21%
33	Montana	44	9	20%
34	South Carolina	191	37	19%
35	Kansas	58	11	19%
36	Wisconsin	132	23	17%
37	Illinois	268	45	17%
38	Florida	253	42	17%
39	South Dakota	31	5	16%
40	Alabama	211	28	13%
41	Arkansas	108	13	12%
42	Vermont	34	4	12%
43	Mississippi	86	10	12%
44	West Virginia	93	10	11%
45	Pennsylvania	387	41	11%
46	Utah	34	2	6%
47	New York	361	14	4%
48	Kentucky	130	2	2%
49	Georgia	172	2	1%
50	North Dakota	26	0	0%
51	Wyoming	26	0	0%
Total		6,621	1,640	25%

\* NPDES permit program run by U.S. Environmental Protection Agency.

\*\* EWG is working with California to obtain more up-to-date information.

Source: Environmental Working Group. Compiled from EPA Permit Compliance System Data as of January 2000.

been expired for 5 years. Many of these facilities dump huge amounts of highly toxic effluent into receiving waters.

In nine states more than 50 major polluters operate today with expired permits, topped by Texas (135), Louisiana (116), Ohio (93), California (85\*\* see table), and Indiana (81) (Table 2).

Under pressure from Congress and its own Inspector General, EPA has recognized the seriousness of the current Clean Water Act permit backlog. Last year the Agency set a goal of reducing the expired permit backlog to no more than 20 percent by the end of 1999 and no more than 10 percent by 2001. We used those goals in our “grading” system, but recognize the downside of that approach. Those goals are relatively unambitious. Expired permits should be the rare exception – not the rule.

While an overall backlog rate — covering major and minor permits — might climb as high as 10 percent from time to time in states with large numbers of smaller facilities, we believe that effective water quality programs should not tolerate *any* continuing backlog for major permits. This standard may be ambitious in comparison to current practice, but improving water quality demands it.

## Recommendations

Some states may allow more pollution than others, but none can operate an effective water

pollution program with more than 10 percent of their permits expired at any one time. Everyone involved — the Congress, the U.S. EPA, Governors, State legislatures and State agencies — must recognize that up-to-date permits are essential to the functioning of the Clean Water Act.

A number of excuses are commonly given for the backlog of permits; from lack of money, to changing regulations, to a feeling that permits are not a priority. EPA should assess the validity of all of these issues, determine the staffing levels for permit issuance, and ensure that a shortage of resources is not the cause of delay. Permits must be a priority for all states, but where a lack of resources is found to contribute to permit backlog:

- EPA should work with the states to increase fees for permitting programs where appropriate.
- Where EPA runs the program, the agency must seek special authorities from Congress to fund the federally run permit programs through new permit fees. If the Congress is serious about eliminating the backlog, they must respond quickly to EPA's request.

The problem is often compounded by industries who take advantage of resource-strapped

**Table 2: Eight states have more than 50 expired Clean Water Act permits**

Rank	State	Total Major Facilities	Facilities with Expired Permits
1	Texas	582	135
2	Louisiana	247	116
3	Ohio	268	93
4	California**	235	85
5	Indiana	175	81
6	Massachusetts*	148	74
7	Oregon	76	51
8	Colorado	102	51
9	New Jersey	168	49
10	North Carolina	216	49
11	Connecticut	117	45
12	Illinois	268	45
13	Michigan	181	44
14	Florida	253	42
15	Washington	89	41
16	Pennsylvania	387	41
17	Nebraska	60	40
18	Virginia	145	40
19	Minnesota	85	37
20	South Carolina	191	37
21	Missouri	146	35
22	Tennessee	152	34
23	Iowa	123	31
24	Alabama	211	28
25	New Hampshire*	62	27
26	Idaho*	66	24
27	Oklahoma	93	23
28	Wisconsin	132	23
29	Maine*	93	22
30	Maryland	100	21
31	New Mexico*	34	20
32	Alaska*	77	18
33	Rhode Island	25	17
34	New York	361	14
35	Arkansas	108	13
36	Arizona*	46	11
37	Kansas	58	11
38	Hawaii	27	10
39	Mississippi	86	10
40	West Virginia	93	10
41	Montana	44	9
42	Nevada	10	7
43	Delaware	24	7
44	South Dakota	31	5
45	District of Columbia*	4	4
46	Vermont	34	4
47	Utah	34	2
48	Kentucky	130	2
49	Georgia	172	2
50	North Dakota	26	0
51	Wyoming	26	0
Total		6,621	1,640

\* NPDES permit program run by U.S. Environmental Protection Agency.

\*\* EWG is working with California to obtain more up-to-date information.

Source: Environmental Working Group. Compiled from EPA Permit Compliance System Data as of January 2000.

bureaucrats, or who intentionally delay the process of permit renewal by submitting late or inordinately complex permit renewal applications. To ensure that polluters cooperate and do their fair share:

- EPA and the states must fine facilities that submit incomplete applications and assess higher fees on applications that require time-consuming re-review of materials.
- EPA and the states must require facilities to submit renewal applications no less than nine months prior to an expiration deadline. Higher fees should be imposed for late applications. This is

tougher than current rules, which allow for submissions up to the expiration date.

- Polluters with a history of late, incomplete or particularly complex permits should be required to submit their applications earlier than the nine-month time frame.
- EPA and the states must stop the practice of continuing permits just because application has been filed. This back-door “administrative” permitting process does not allow for adequate public input, and it should not be used to mask serious problems with permitting delays.

## Background on the Permit Program

The objective of the Clean Water Act is to “restore and maintain the chemical, physical, and biological integrity of the nation’s waters.”

To achieve this goal, the Congress established a series of national criteria and policies including what is referred to as “fishable/swimmable” water quality – the bottom line goal for all waters in the country. As of 1996, the states reported that 40 percent of the nation’s rivers, lakes, and estuaries failed to meet the fishable/swimmable standard.

To ensure that progress towards Clean Water Act goals can be monitored and enforced, the Act established the National Pollutant Discharge Elimination System (NPDES). The NPDES program is based on a system of permits for both major and minor polluters. These permits limit the types and amounts of pollutants that can be discharged from industries and local sewage treatment plants. They also specify the water quality testing and reporting that each facility must carry out. Forty-three (43) states administer and enforce

their own NPDES program. The U.S. Environmental Protection Agency (EPA) administers the remainder.

Under the program, specific pollutant limitations are set through two basic approaches— one based on the technology that is available to limit pollution and the other on local water quality needs.

NPDES permits that detail the water quality performance and reporting requirements for major polluting facilities must be renewed every five years, with the goal of bringing all waters up to national and state water quality standards. NPDES permits are the foundation of the Clean Water Act. The goals of the Clean Water Act cannot be achieved when permits remain expired for years freezing obsolete treatment technologies in place and ignoring the need for improving water quality.

### The Permit Backlog

The backlog of expired NPDES permits was highlighted in a 1998 report by the EPA Office of Inspector General (OIG). At the

time, EPA “accepted” the Inspector General’s conclusion that the permit backlog is a “material weakness” under the Federal Managers Financial Integrity Act (FMFIA). Under FMFIA this meant that the program as currently managed could not meet its statutory goal. Clearly, reducing the number of expired permits is directly linked to the Clean Water Act’s long-term viability and protection of human health and the environment.

The report also triggered a congressional inquiry by Congressman Bud Shuster, Chairman of the House Committee on Transportation and Infrastructure, and Senator John Chafee, then Chairman of the Senate Environment and Public Works Committee.

Shuster and Chafee requested immediate steps to reduce the backlog and a quarterly report on the agency’s progress. The EPA agreed to evaluate the reasons for the backlog and to use the “appropriate tools and resources to reduce” the backlog.

EPA has since issued “backlog reduction goals” and a report called the “Interim Framework to Ensure Issuance of Timely and High Quality NPDES Permits” in an effort to show that they are working to reduce the backlog. EPA went so far as to create a web page — [www.epa.gov/owmitnet/permits/backlog/](http://www.epa.gov/owmitnet/permits/backlog/)

[backlog.htm](#) — that tracks the backlog and charts monthly progress towards the ultimate national goal of no more than 10 percent of all major permits being expired at any given time.

The goals established by EPA assume that some backlog levels will continue, but strive to keep permit issuance at what the agency considers an acceptable rate. EPA has established the following quantitative targets for reducing the backlog:

- The backlog of NPDES permits for major facilities will be reduced to 20 percent in all States by the end of calendar year 1999.
- The backlog of NPDES permits for major facilities will be reduced to 10 percent in all States by the end of calendar year 2001.
- The backlog of NPDES permits for major and minor facilities will be reduced to 10 percent by the end of calendar year 2004.

EPA’s website shows clearly that overall there has been virtually no progress towards any of these goals. According to data available at the site, nationwide there has been no reduction in expired permits for major water polluters in the two years since the OIG’s report.

# Grading the States and EPA Regions

To bring more attention to the problem of expired clean water permits, Friends of the Earth and the Environmental Working Group analyzed state generated NPDES permit data compiled by the U.S. EPA. We found that nearly every state has failed to renew NPDES permits on a timely basis.

While a measure of expired NPDES permits is not, of itself, a complete indicator of the quality of a state's waters or the state's water protection efforts, a large proportion of permits that have expired can indicate trouble for water quality. In fact, the national association of the state environmental commissioners, known as ECOS, itself once recommended looking to the number and percentage of expired permits as a "core measure" of environmental performance in water quality protection.

## Report Card Methodology

The analysis is based on data from the U.S. EPA **Envirofacts** database. The Permit Compliance System or PCS database of Envirofacts contains information submitted by the states (or EPA

regional offices). We only analyzed permits that are categorized by the states and regions as "major": a designation that is based upon a combination of factors including toxic pollution potential, pollution volume, public health impacts, and proximity to coastal water.

States with more than 10 percent of the NPDES permits expired received a failing grade under our grading system. This grade is based upon EPA's stated goal of reducing the expired permits to 10 percent.

In some cases, our methodology will actually understate the true extent of the problem. To accommodate the lag time between action on a permit and entry of the updated information into the system, we provided for a three-month grace period for late permits. Thus, permits that expired between October 18, 1999 and January 18, 1999 (the date Envirofacts was updated prior to our analysis) are not classified as "expired" in our analysis.

Despite our effort to accommodate a reasonable lag time for data entry, it is quite possible that

other permits listed as “expired” in our analysis have, in fact, been renewed, since some states may be very slow in providing updated information to EPA headquarters. In addition, a few facilities may have ceased operations but remain listed as “active” facilities in the database.

These sorts of data errors are a serious problem. Envirofacts is the central repository for state collected environmental information, and the Pollution Control System database represents the only assemblage of each state’s data into one collection. It is readily accessible to anyone who has access to the Internet on a computer in his or her home, school, business or local library. It is a very useful source of information to local

activists concerned with water quality — if it is kept up-to-date.

In addition, without accurate data EPA cannot effectively oversee the state and regional enforcement of environmental laws. For these reasons states that fail to provide EPA with accurate and timely information deserve a poor grade for lack of accountability, regardless of the true status of their water pollution permits.

Consistent with the analytical approach explained above, Friends of the Earth and the Environmental Working Group have graded the EPA regions and the states. The website related to this report — [www.foe.org/cleanwater/grades](http://www.foe.org/cleanwater/grades) — provides both the “class” standings and detailed information on expired permits for individual states.