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### States Fail to Ensure Water Quality

by Clifford Rechtschaffen  
November 17, 2004

Passed amid public furor over burning rivers and dying lakes, the 1972 Clean Water Act (CWA) marked a crucial turning point for environmental protection. Unfortunately, passing a law is often only the beginning of the struggle. The federal government relies in great measure on state agencies to enforce many of the key provisions of the CWA, including the National Pollutant Discharge Elimination System (NPDES), a system by which polluters are issued permits to emit specific quantities of pollution into waterways.

The sorry truth is that the system doesn't work very well, and enforcement of NPDES provisions is inadequate. That's the conclusion I'm forced to draw from a survey of state environmental protection agencies I conducted earlier this year. I asked the state agencies whether they had the resources needed to enforce the law, and of the 17 that replied, 11 reported that their funding was inadequate for the task. In fact, seven of the states reported that the funding available for enforcement is 60 percent or less than what is needed to do the job, with Wyoming's funding calculated at 29 percent of what is required, and Georgia's at just 20 percent.

The path from funding shortfall to inadequate enforcement is short and straight. At least in part because of funding concerns, state regulators are slow to renew NPDES permits, meaning that many facilities are operating with outdated and inadequate permit limits. Even after permits are issued, enforcement in many states is deficient. Many states fail to carry out inspections, take timely and appropriate enforcement actions, and impose meaningful penalties for noncompliance, including penalties that recover the economic benefit of noncompliance.

As a result, many permit-holders are significantly out of compliance with their permit restrictions. In 2003, the Environmental Protection Agency (EPA) completed a detailed nationwide analysis of compliance by major facilities, finding that approximately 25 percent were in significant noncompliance with their CWA permits at any given time. And they're not just a little out of compliance: half of the permit exceedances for toxic discharges were more than twice the permitted levels, and 13 percent were more than 10 times the permitted levels.

States are also failing to monitor water quality in lakes, rivers, and streams within their borders, as required by the Clean Water Act. According to the EPA, as of 1998, states have assessed water quality for only 23 percent of the nation's rivers and streams, 42 percent of its lakes, ponds, and reservoirs, and 32 percent of its estuaries. Even where water bodies have been assessed, the data are often unreliable and inconsistent across states (or even over time within the same state). The Government Accountability Office found in 2000 that only six states reported that they had a majority of the data needed to assess whether their waters meet water quality standards.

Finally, the EPA's data-management systems for NPDES permits are out of date and inadequate, greatly complicating the federal oversight of state enforcement required by law. According to one study, data was missing from EPA databases for 96 percent of stormwater dischargers.

Not surprisingly, the quality of America's waterways has suffered from such lax enforcement. Of the 23 percent of rivers and streams that states had assessed, more than a third were found to be "impaired" as a result of pollution. An even

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should shift the costs of implementing their NPDES programs to polluters, via permit fee programs, an approach many states already take. No company has a right to freely pollute the nation's waterways. States should set fees at the level necessary to fully fund program costs, and the revenue generated should be dedicated to NPDES programs. The Clean Air Act does something very similar, requiring states to impose permit fees sufficient to fund the costs of administering and enforcing their programs.

Second, it's time to supplement current pollution-control efforts with an approach known as "spotlighting," which would require enhanced disclosure of enforcement- and compliance-related data, thus creating public accountability for compliance and enforcement by regulators. Such disclosure – and the potential for public embarrassment that it brings – can generate powerful incentives for improved performance. Thus, for example, the EPA should publicly evaluate and rank the compliance records of regulated firms, singling out the best and worst performers. The United Kingdom has done this for the past five years with positive results. A comparable success story is EPA's Toxic Release Inventory program, which requires industry to publicly disclose its routine releases of toxic chemicals. Under this program there has been a 49 percent decline in releases between 1988 and 2002.

Likewise, a number of studies have demonstrated that investors react negatively to poor environmental performance, driving down stock prices. That's exactly why the Securities and Exchange Commission also should spotlight polluting companies by expanding the mandatory environmental disclosure requirements for publicly traded corporations.

By making public and private institutions accountable to the public for their efforts to reduce pollution, we can effectively and inexpensively supplement existing enforcement of the Clean Water Act, thus reducing pollution in the nation's waterways.

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