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Report to the Congress; by Elmer B. Staats, Comptroller General.

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In a comprehensive effort to clean up the Nation's waterways, either the Environmental Protection Agency (EPA) or States with EPA-approved programs issue permits to both industrial and other source dischargers. These permits limit the amount of pollutants that may be discharged into waterways. After an industrial discharge permit is issued, EPA or the State is responsible for insuring that dischargers comply with permit conditions. Findings/Conclusions: A review of discharge reports filed by 165 agencies indicated: widespread and frequent noncompliance with permit conditions, frequent failure to submit industrial self-monitoring reports which could conceal additional violations, and widespread failure to meet required discharge standards. Such noncompliance with permit conditions, including violations of toxic-substances limits, underlines the need for improved compliance monitoring. Although a strong enforcement program is necessary to promote compliance, EPA enforcement actions usually lack clout. Except for referring violators to the Justice Department and/or barring them from receiving Federal contracts, grants, or loans, EPA cannot penalize the violator economically. Justice Department referrals, however, are time-consuming, complex, and expensive, and the results are unpredictable. Since 1975, EPA has been able to bar violators from Federal contracts, but this is not done often. Recommendations: The Administrator of EPA should: define what constitutes a major industrial discharger and determine the cumulative effects of minor permittees' pollution; increase its sampling inspection coverage; provide priorities and guidance for identifying and resolving the most significant adjudicatory hearings; make more effective use of existing enforcement mechanisms; amend the agency's regulation to lower the amount of exempt contracts, loans, and grants; and periodically evaluate the adequacy and timeliness of existing enforcement mechanisms

and, if necessary, request that the Congress provide EPA with the authority to administratively assess penalties against industrial permit violators. (RRS)

8047

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

More Effective Action By The Environmental Protection Agency Needed To Enforce Industrial Compliance With Water Pollution Control Discharge Permits

Cleaning up the Nation's waterways depends to a large extent on compliance by industry with water discharge permits which specify the amount of pollutants which may be discharged. GAO found significant noncompliance with permit conditions, including failure by some industrial facilities to construct required abatement facilities.

The Agency's efforts to insure timely compliance have been hampered by limited review mechanisms and enforcement actions.

The Agency should improve its use of compliance and enforcement mechanisms and should evaluate periodically the adequacy and timeliness of existing enforcement mechanisms. If necessary, the Agency should again request the Congress to provide it with authority to administratively assess penalties against industrial permit violators.

CED-78-132

OCTOBER 17, 1978

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-166506

To the President of the Senate and the
Speaker of the House of Representatives

This report discusses problems experienced by the Environmental Protection Agency in controlling industrial water pollution.

Significant industrial noncompliance with water pollutant discharge permits underlines the need for stronger compliance and enforcement action. However, the Agency's efforts to insure timely compliance have been hampered by inadequate monitoring and enforcement mechanisms and actions.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

We are sending copies of this report to the Director, Office of Management and Budget; the Chairman, Council on Environmental Quality; and the Administrator, Environmental Protection Agency.

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

MORE EFFECTIVE ACTION BY THE ENVIRONMENTAL PROTECTION AGENCY NEEDED TO ENFORCE INDUSTRIAL COMPLIANCE WITH WATER POLLUTION CONTROL DISCHARGE PERMITS

D I G E S T

Success in cleaning up the Nation's waterways depends to a large extent upon the Environmental Protection Agency's enforcement of permits issued to industrial facilities to discharge wastewater into rivers and streams.

A strong enforcement program is necessary to promote compliance with its regulations under the law but the Agency's enforcement actions usually lack clout. The Agency's enforcement of industrial permits needs strengthening.

GAO's review of discharge reports prepared by 165 facilities--called "permittees" by the Agency--disclosed a high degree of noncompliance with discharge limitations. About 55 percent of the 165 permittees failed to comply with one or more discharge limits during a 15-month period. Moreover, 51 percent of these violators failed to comply in 5 or more months of a 15-month period ending December 31, 1977. (See p. 4.)

Sampling inspections by the Environmental Protection Agency also disclosed frequent noncompliance. More than 45 percent of the inspections in one region and more than 20 percent of the inspections in another region revealed one or more discharge violations. (See p. 6.)

Some instances of noncompliance involved significant violations of permit limitations for toxic substances. For example, one permittee discharged once a month for 5 consecutive months 98 or more pounds of

cyanide, more than eight times the 11-pound limitation. (See p. 6.)

Permittees also frequently did not submit required monitoring reports. Although this is an administrative violation of the permit conditions, it could conceal more serious discharge violations. (See p. 6.)

Some permittees classified as major dischargers and many permittees classified as minor dischargers also did not meet required levels of treatment of discharges. The Agency estimates that 700 of 3,700 major dischargers did not meet the treatment date of July 1, 1977. GAO found that in one region, the reported number of permittee noncompliers was understated by more than 140. The Agency also did not know how many of the estimated 27,000 minor dischargers did not meet the treatment deadline. GAO found that significant minor permittee noncompliance with the July 1, 1977, treatment requirements is likely. (See p. 7.)

NEED FOR IMPROVED COMPLIANCE MONITORING

Compliance monitoring, the mechanism intended to alert the Agency and States to violations of permits, is the key to the control of industrial water pollution. The Agency's current compliance monitoring activities may not, however, identify significant permit violations because:

--The Agency has not emphasized monitoring of minor permittees, although it has no uniform criteria as to whether a permittee should be classified as a major or minor discharger and it has insufficient evidence as to the cumulative effects of large numbers of minor dischargers on overall water quality. (See pp. 8 to 10.)

--Sampling inspection coverage is inadequate (See pp. 10 to 13.)

- Lengthy adjudicatory hearings restrict the Agency's monitoring coverage. (See pp. 13 and 14.)

LACK OF STRONG ENFORCEMENT ACTION

Compliance with permit requirements is the ultimate goal of the enforcement system. Once a permit is violated, timely, strong enforcement action is necessary to insure future compliance. The Agency's enforcement response is neither timely nor strong in most cases. (See p. 16.)

The Agency can take various enforcement actions when a permittee does not comply with permit conditions, such as

--warning letters,

--phone calls,

--administrative orders, and

--notices of violations.

Potentially more stringent actions include Department of Justice referrals and barring violators from Federal contracts, grants, or loans. (See p. 16.)

Although administrative resolution is preferred, untimely use of administrative orders often allows permittees to violate permit limits for extended periods of time. In some cases, administrative orders are not issued for more than a year after the first permit violation occurred. (See p. 18.)

Litigation through the Department of Justice can be an effective enforcement tool. However, litigation occurs infrequently. The Agency is reluctant to refer cases due to the time and complexity involved. (See pp. 18 to 20.)

Prohibiting water-polluting facilities from receiving Federal contracts, grants, or loans is a stringent enforcement action available. However, despite continued recommendation of its use, only four facilities have been listed for water violations since the program's inception in 1975. (See pp. 20 to 22.)

Unlike other Agency regulatory programs and some State-managed permit programs, the Agency can not administratively assess monetary penalties for permit violations. All cases which warrant a penalty must go through a time-consuming procedure of referral to the Department of Justice and the courts. (See pp. 23 to 25.)

RECOMMENDATIONS

The Administrator, Environmental Protection Agency, should:

--Define what constitutes a major industrial discharger and determine the cumulative effects of minor permittees' pollution. (See p. 14.)

--Increase its sampling inspection coverage including requiring followup inspections. (See p. 15.)

--Provide priorities and guidance for identifying and resolving the most significant adjudicatory hearings. (See p. 15.)

--Make more effective use of existing enforcement mechanisms. (See p. 28.)

--Amend the Agency's regulation to lower the amount of exempt contracts, loans, and grants from $100,000 to $10,000 to increase the impact of listing. (See p. 28.)

--Periodically evaluate the adequacy and timeliness of existing enforcement mechanisms and, if necessary, request again that the Congress provide the Agency with the authority to administratively assess penalities against industrial permit violators. (See p. 29.)

AGENCY COMMENTS

To expedite issuance of the report, formal written comments were not obtained; however, the report was discussed with cognizant Agency officials and their comments are included. The Agency generally agreed with the report recommendations.

Agency officials stated that:

--A new method for classifying major and minor permittees would be set forth in draft regulations in December 1978.

--Although desirable, increased sampling inspection coverage would be difficult to realize because of staffing limitations.

--The authority to administratively assess penalities would strengthen the Agency's enforcement responses.

Department of Justice officials reviewed the report and said they are in fundamental agreement with the report.

Contents

ABBREVIATIONS

EPA	Environmental Protection Agency
GAO	General Accounting Office
NEIC	National Enforcement Investigations Center
NPDES	National Pollutant Discharge Elimination System
OFA	Office of Federal Activities
QNCR	quarterly noncompliance report

CHAPTER 1

INTRODUCTION

Industrial water pollution can contribute significantly to degradation of the Nation's waterways. Industries, in the daily routine of doing business, discharge a variety of pollutants, including, in some cases, toxic substances. In a comprehensive attempt to clean up the Nation's waterways, either the Environmental Protection Agency (EPA) or States with EPA-approved programs issue permits to both industrial and other point source dischargers. 1/ These permits limit the amount of pollutants that may be discharged into waterways.

If industry does not comply with these permits, recreational waters and potential drinking waters could be polluted. Industries that do not comply could have an unfair competitive advantage over industries that do comply since they would be able to postpone the expenditures for constructing and operating required treatment facilities.

This review was performed as a followup to our report entitled "Implementing the National Water Pollution Control Permit Program: Progress and Problems." 2/ In that report, we stated that permit noncompliance appeared to be widespread; however, the program had just been implemented and it was too soon to assess its effectiveness.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

The 1972 amendments to the Clean Water Act (Public Law 92-500, 33 U.S.C. 1251 et seq.) established the National Pollutant Discharge Elimination System (NPDES). It required industrial dischargers to achieve by July 1, 1977, discharge limitations by applying the best practicable control technology currently available as defined by the Administrator, EPA, or any more stringent limitations necessary to meet water quality standards or any other requirements.

1/ According to the Clean Water Act, as amended, (33 U.S.C. 1362 (14)) any discernible, confined, and discrete conveyance from which pollutants are or may be discharged.

2/ RED-76-60, February 9, 1975.

As amended in 1977, the Clean Water Act gives EPA the authority to extend the July 1, 1977, deadline until April 1, 1979, for noncomplying dischargers that acted in good faith and that made a commitment to secure the resources necessary to meet the treatment requirements.

The NPDES permit program sets discharge limitations and insures compliance with these limitations. It is illegal for point source dischargers to discharge pollutants into the Nation's navigable waters without an NPDES permit. Dischargers are subject to civil penalties up to $10,000 a day for violations of permit conditions. Willful or negligent violations could result in fines up to $25,000 a day and 1 year in prison for the first offense, and up to $50,000 a day and 2 years in prison for subsequent offenses.

Generally, an NPDES permit, which is issued for fixed periods not exceeding 5 years, specifies (1) discharge liminations for specific pollutants or substances, (2) schedules setting forth the type of actions required and time frames necessary to comply with the discharge limitations, (3) requirements for self-monitoring of wastewater flows and of specified pollutants, and (4) periodic reporting of plant compliance.

SIZE OF PROGRAM

EPA estimated that as of June 1978, more than 45,000 major and minor industrial facilities required permits. EPA does not have a clear definition of a major industrial discharger. Classification of a facility as a major discharger may be the result of (1) objective criteria such as volume of wastewater discharged or type of industry or (2) subjective evaluations such as a personal assessment that the facility is a major discharger.

As of June 1978, EPA or States with EPA-approved programs have issued approximately 30,000 industrial permits, as shown below.

	Major permittees	Minor permittees	Total
EPA-issued permits	2,365	15,234	17,599
State-issued permits	1,263	11,459	12,722
Total	3,628	26,693	30,321

According to EPA, most of the 15,000 industrial dischargers yet to receive permits were classified as minor dischargers

SCOPE OF REVIEW

Our review was to determine the adequacy of Federal activities to identify and take prompt action against industrial permit violators. We made our review at EPA headquarters in Washington, D.C., and in EPA's region II in New York and its region IV in Atlanta.

We interviewed officials at EPA's headquarters and its regional offices as well as officials in State water pollution control agencies or departments in Albany, New York; Hartford, Connecticut; Raleigh, North Carolina; Tallahassee, Florida; and Trenton, New Jersey. We also contacted officials at four U.S. attorneys' offices and three State attorneys' offices.

In addition to examining pertinent Federal and State agencies' documents, records, and other literature, we analyzed 58 enforcement actions in EPA regions II and IV. We also reviewed the degree of industrial permit compliance of 165 permittees in Florida, New Jersey, New York, and North Carolina. This information was obtained from permittee-prepared discharge reports maintained by EPA and the cognizant States. The identities of the permittees reviewed are not reported. We believe such disclosure would be unfair given the large universe of permittees. The use of permittee examples is intended only to indicate the adequacy of Federal compliance and enforcement actions. Also, we did not contact the permittees reviewed.

To expedite issuance of the report, formal, written EPA comments were not obtained; however, the report was discussed with cognizant EPA officials and their comments are included where appropriate. In addition, the Department of Justice's Land and Natural Resources Division also provided informal comments.

CHAPTER 2

BETTER MONITORING NEEDED TO DETECT WIDESPREAD NONCOMPLIANCE WITH PERMIT CONDITIONS

After an industrial discharge permit is issued, EPA or States with EPA-approved permit programs are responsible for insuring that dischargers comply with permit conditions. The effectiveness of the program depends on how successful EPA and the States are in identifying instances of noncompliance and taking appropriate and prompt action.

We found

--widespread and frequent noncompliance with permit conditions and frequent failure to submit industrial self-monitoring reports which could conceal additional violations, and

--widespread failure to meet the required July 1, 1977, discharge standards.

Such noncompliance with permit conditions, including violations of toxic substances limits, underlines the need for improved compliance monitoring coverage.

SIGNIFICANT INDUSTRIAL PERMIT VIOLATIONS

Industrial permit noncompliance includes failing to observe discharge limits and failing to construct required waste treatment facilities for achieving discharge standards. These failures could result in significant water pollution. Industrial permit noncompliance also includes failing to submit required discharge monitoring reports. This is an administrative violation which could conceal other permit violations.

Frequent discharge violations

Discharge monitoring reports that were prepared by 165 EPA region II and region IV industrial permittees showed widespread and frequent permit violations. About 55 percent of these 165 permittees failed to comply with one or more permit discharge limitations. In addition, 51 percent of these violators failed to comply in 5 or more months of a 15-month period ending December 31, 1977.

The violation rate reflects only those effluent violations which exceeded EPA's technical review criteria. The technical review criteria is a screening device to insure that limited professional resources concentrate on the most significant violations. The criteria consists of numerical factors, which, when multiplied by the actual permit limit, establish a higher violation limit. Discharges exceeding the higher limit are deemed to be significant violations. The numerical factors vary depending on the particular parameter. In some cases--temperature limits, for example--all deviations from the permit limit are deemed significant.

It should be noted, however, that screening based on the criteria does not establish which deviations from discharge limits are violations. According to EPA, all deviations are violations, unless they are specifically authorized in the permit. The criteria does not excuse relatively minor violations. Frequency of violations is also important. The criteria defines frequent violations as those which occur more than once in any four consecutive quarters.

The 165 permittees mentioned earlier included State-managed and EPA-managed major and minor permittees. The results of our analysis follow.

Permit type	Total number reviewed	No violations	Length of violations		
			1 to 4 months	5 to 8 months	9 to 15 months
EPA-managed major dischargers	60	19 (32%)	20 (33%)	5 (8%)	16 (27%)
EPA-managed minor dischargers	60	38 (63%)	9 (15%)	5 (9%)	8 (13%)
State-managed major dischargers	30	8 (27%)	11 (37%)	6 (20%)	5 (16%)
State-managed minor dischargers	15	10 (67%)	4 (26%)	1 (7%)	- (-)
Total	165	75 (45%)	44 (27%)	17 (10%)	29 (18%)

Some instances of noncompliance involved significant violations of permit limitations for toxic substances. For example, one permittee discharged once a month for 5 consecutive months, 98 or more pounds of cyanide--more than eight times the 11-pound limitation. In 1 day the permittee actually discharged over 340 pounds. In another case, a permittee discharged 59, 22, 340, 68, and 229 pounds of copper over a 5-month period; the daily maximum permit limitation was 7.8 pounds.

EPA's review of discharge monitoring reports also disclosed frequent noncompliance. For example, for the 3-month period ended December 1977, EPA region II found that 260 of 542 major industrial permittee discharge monitoring reports reviewed contained one or more effluent violations.

EPA sampling inspections disclosed significant noncompliance with permit conditons. A sampling inspection, which involves collecting, testing, and analyzing a permittee's discharge, is intended to (1) determine the permittee's compliance with permit conditions and (2) verify the self-monitoring data reported to EPA.

During the 15-month period ended December 31, 1977, EPA region II conducted 114 sampling inspections; 54 (47 percent) disclosed one or more discharge violations. For the same period, EPA region IV conducted 128 sampling inspections; 28 (22 percent) disclosed one or more discharge violations.

Of the 82 violations noted by the sampling inspections, 24 involved toxic substances to be regulated under the Clean Water Act of 1977. In one sample, a permittee discharged 715 pounds of phenols--more than seven times the permit limit. In another case, a permittee discharged 234 pounds of cyanide--more than eleven times the 20-pound permit limit.

Reporting violations may result in understatement of discharge violations

The permit program relies, to a great extent, on permittee reporting compliance data. Of particular importance is permittee reporting of discharges.

Discharge monitoring reports show, for a given period of time, the permittee's actual discharge as well as the permit conditions. Without these reports, EPA officials do not know whether the permittee has complied with permit limitations. We found that permittees frequently failed to submit the required discharge monitoring reports.

Of the 165 permittees we studied, 38 (23 percent) failed to submit one or more required discharge monitoring reports during the 15-month period. Of these 38 permittees (4 were major permittees), 25 failed to submit the report for 5 or more months.

EPA region II has also found frequent nonsubmission and/or late submission of discharge monitoring reports. Region II reported that during a 15-month period, approximately 700 EPA-managed permittees either submitted discharge monitoring reports late or not at all.

Discharge reports are important to the overall pollution control effort; failing to submit them is not just a minor administrative violation. If EPA does not have the reports, it does not know if the permittees complied with permit conditions. Consequently, the extent of overall compliance with discharge limitations could be overstated and the degree of water pollution caused by industrial sources understated.

Noncompliance with abatement schedules

Prior to the 1977 amendment, the Clean Water Act required that all industrial dischargers meet certain discharge standards by July 1, 1977. In many cases waste treatment facilities had to be constructed before these standards could be met.

In April 1978, EPA reported that 720 permittees, or about 20 percent of the estimated 3,628 major industrial permittees, had not met the July 1, 1977, requirements. However, we found that the extent of noncompliance was understated because of an error by one EPA region in determining the number of major permittees meeting the discharge requirements. In addition, EPA does not know how many minor permittees failed to meet the discharge date; therefore, the actual extent of water pollution caused by industrial sources could be much greater than estimated.

Region II records indicated that EPA underestimated the number of permittees failing to meet the deadline. In region II our analysis revealed that 206 major industrial permittees did not meet the July 1, 1977, deadline. This figure is significantly greater than the 64 noncompliers reported by region II. EPA officials stated that region II was the only region to miscalculate the number of noncompliers.

In addition, EPA officials did not know how many of the estimated 27,000 minor permittees failed to construct the facilities necessary to meet the July 1, 1977, discharge standards. Although the degree of pollution caused by this noncompliance depends on the amount and location of pollutants discharged, it could be substantial. As discussed on page 9, little is known about the effects of minor permittee discharges on the Nation's waterways and, therefore, the large number of minor permittees could have a significant cumulative effect on pollution of the waterways.

NEED FOR IMPROVED COMPLIANCE MONITORING COVERAGE

Compliance monitoring, the mechanism intended to alert EPA and States with EPA-approved programs to permit noncompliance, is the key to EPA control of industrial water pollution. However, EPA's monitoring program may not effectively identify significant permit violations because of

- --the lack of uniform EPA criteria on how permittees should be classified,
- --insufficient evidence on the cumulative effect of minor industrial permittees,
- --inadequate sampling inspection coverage, and
- --effective permits taking too long to become enforceable due to lengthy adjudicatory hearings.

If the compliance monitoring program is to be effective, these shortcomings must be overcome.

The definition and effect of minor permittees need clarification

As noted on page 2, EPA has two permit classifications--major and minor permittees. Because of staff limitations, EPA compliance activities emphasize identifying major permit violators. In its fiscal year 1978 budget justification, EPA stated there would be no compliance monitoring of or enforcement action against minor permittees. New York and North Carolina officials said their EPA-approved programs also de-emphasize compliance monitoring of minor industrial dischargers, but to a lesser extent than EPA.

Although the permit classification influences the degree of compliance activity, EPA has not defined a major discharger. Therefore, some regional offices have developed their own definitions. Two regional offices have developed detailed criteria for classifying permittees as either major or minor dischargers; however, the two criteria differ a great deal. For example, in region II a major discharger is defined as one who discharges a minimum of 10 pounds of heavy metals; in region III the minimum is 20 pounds. Most heavy metals are toxic substances.

In November 1977, EPA's National Enforcement Investigations Center (NEIC) reported on a pilot study which evaluated methods for classifying NPDES permittees. In its report, NEIC stated that:

> "NPSES permits are now classified as "major" or "minor" based on various sets of arbitrary and/or subjective criteria that have been changed frequently in the past. Substantial differences exist between States and between EPA Regions as to what is considered to be a "major" industry. As the number of major permits in a state or Region is used as one of the criteria for distributing resources (positions and funds) for several programs, a uniform method of classifying permits is needed to assist in providing a resource distribution consistent with national and regional priorities."

NEIC recommended further development of a classification method.

Unknown effects of minor permittee pollution

EPA has not determined the effect of minor permittees' discharges on its attempt to clean up the Nation's waterways. A previous EPA attempt to compare the discharges of minor facilities to major facilities had inconclusive results.

EPA's comparison considered six effluent parameters: (1) biological oxygen demand, (2) iron, (3) total suspended solids, (4) oil and grease, (5) chromium, and (6) phenols. Both chromium and phenols are classified as toxic substances. EPA's analysis showed that major dischargers contributed the bulk of the biological oxygen demand, but only slightly more total suspended solids than

minor dischargers. No clear difference between major and minor contributions could be determined for the four remaining parameters.

EPA should determine the cumulative effect of minor permittees' discharges on its water clean-up efforts. Without this knowledge, EPA's de-emphasis of compliance activities relating to the substantially high number of minor permittees could result in significant water pollution.

Sampling inspection coverage could be improved

Periodic sampling inspections are needed to verify permittees' reports of compliance. Without these inspections a permittee could conceivably report itself in compliance when in reality it is not. For example, recently false discharge monitoring reports were submitted for a major industrial facility for more than 2 years. In this particular case, the falsification concealed significant discharges of a toxic substance into recreational waters.

To insure accurate permittee discharge reporting, EPA conducts sampling inspections. These inspections are an important monitoring tool but their effectiveness is diminished because of inadequate sampling inspection coverage, lack of followup inspections, and long and expensive sampling procedures.

Not all major industrial permittees are sampled annually. For example, during a 15-month period ending December 31, 1977, EPA region II conducted sampling inspections of approximately 20 percent of its EPA managed major dischargers. EPA regional officials said that because the emphasis is on monitoring major dischargers, minor industrial permittees are usually not sampled.

A study conducted by NEIC showed that the self-monitoring practices of the majority of NPDES sources are significantly deficient. In a January 1978 report NEIC stated that 99 percent of 106 sources that were evaluated had at least one major self-monitoring deficiency. NEIC defined a major deficiency as one which could result in questionable or unreliable discharge monitoring report results. Based on its study, NEIC reported that:

"Most of the sources had major deficiencies in one or more of the general areas of flow monitoring sampling techniques and analytical techniques. Agency use of these data for tracking permit compliance varies from questionable to unreliable."

In addition to not conducting sampling inspections annually, we found that EPA has no policy for requiring followup sampling inspections. If noncompliance is disclosed during a sampling inspection, EPA does not require additional sampling to determine if the noncompliance has been corrected. For example, three EPA sampling inspections disclosed significant violations of toxic substances limitations; however, no followup sampling inspections were conducted for more than 1 year. In one case, the daily discharge of phenols, a toxic substance, exceeded the permit limitation by 600 pounds.

EPA headquarters officials agreed that followup inspections are a desirable and useful monitoriring tool. They said that such inspections are not made because of a lack of resources and because of other priorities.

Sampling duration

According to EPA regional officials, staffing limitations prevent annual sampling inspections of major industrial permittees. Sampling inspections require significant staff resources, but EPA could augment its inspection resources and increase its sampling coverage by reducing the duration of its sampling inspections.

For enforcement purposes, EPA procedures require that a 24-hour inspection should be conducted if the discharger's permit requires a 24-hour self-monitoring sampling inspection. EPA region II officials stated that they usually conduct 24-hour sampling inspections. In region IV, however, EPA conducts two 24-hour inspections. Region IV sampling inspection officials believe the second 24-hour inspection is needed because of possible errors made in the first inspection. However, other region IV compliance and enforcement officials believe that one 24-hour inspection should suffice.

Although EPA region II conducts one 24-hour inspection, the director of the region's sampling inspection program believes inspections of less than 24-hours could be used. The director believes 8-hour inspections could increase region II's sampling inspection coverage by 50 percent.

Other individuals are in favor of inspections of less than 24 hours. Currently, the Interstate Sanitation Commission of New York, New Jersey, and Connecticut uses 6-hour inspections for NPDES monitoring purposes. In addition, New Jersey State environmental officials believe that less than 24-hour sampling inspections should be used because of the cost. EPA region II officials estimate that each sampling inspection costs approximately $2,300.

EPA headquarters water enforcement officials do not agree, however, that compliance sampling inspections of less than 24-hour duration would result in resource savings. They advised us that although they do not have data on the relative cost of 8-hour versus 24-hour sampling inspections, they believe there would be little or no savings because

--analytical laboratory support for a sample is the same regardless of whether an 8-hour or 24-hour sample is taken;

--samples are conducted using automatic equipment which does not normally require additional inspector attention;

--other segments of a compliance inspection, including checks of self-monitoring records, laboratory procedures, operation and maintenance procedures, and compliance schedule requirements, are conducted while the sample is being taken; and

--an 8-hour sample takes a total of 11 hours to obtain (2 extra hours to set up the sampling equipment and 1 hour to remove it) and therefore personnel overtime compensation may be required.

They also stated that preliminary data available indicates that only 16 percent of the labor cost of a 24-hour sampling inspection is directly associated with collecting the sample.

Headquarters enforcement officials also stated that use of a less than 24-hour compliance inspection sample could raise a question of enforceability. They noted that NPDES permit limitations are written in terms of daily maximum and monthly average discharges. In their opinion, violation of a daily maximum limitation may not be legally documented by less than a 24-hour sample unless the shorter sample is clearly demonstrated as being representative of the daily discharge. EPA officials further stated that the uniformity and consistency of the discharge must also be considered.

We agree that less than 24-hour samples may pose enforceability questions, but we believe they could be used for compliance monitoring purposes. If they indicate significant noncompliance, a 24-hour followup sample could then be used to strengthen EPA's enforcement case.

With respect to potential resource savings from the use of less than 24-hour samples, we believe there is a need to resolve the disagreement between headquarters officials and EPA regional, State, and interstate officials. Little hard information exists on the benefits of less than 24-hour samples, although personal opinions abound. EPA currently has an ongoing study of compliance sampling inspection which may be a useful vehicle for resolving the disagreement.

Adjudicatory hearings are lengthy

After a permit is initially issued, the permittee may request an adjudicatory hearing if he objects to any of the permit conditions. If the request is approved, the permittee does not have to comply with the contested conditions until the hearing is completed.

The hearings are very lengthy. For example, in region IV as of December 1977, hearings for 7 of the 22 major permittees had been in process more than 2 years; 4 of them has been pending for 3 or more years.

Pollution resulting from contested permit conditions could be substantial, particularly if caused by toxic substances. For example, toxic permit conditions were contested for the duration of the hearings for six of the nine region II permittees. In one instance the limits for arsenic, cadmium, chromium, copper, cyanide, lead, and mercury were contested for more than 10 months; in another instance the limits for two toxics--nickel and lead--were delayed for more than 3 years.

EPA regional officials agreed that hearings have adversely affected the monitoring program. According to these officials, delays in resolving hearings may cause significant problems in the future. These officials believe that when permits are revised to reflect best available technology requirements there may be a substantial increase in the number of hearings. One EPA region IV enforcement official believes the number of hearings will increase tenfold.

Adjudicatory hearings are also a drain on EPA staff resources. EPA region II officials said that for 8 months six EPA attorneys spent 50 to 100 percent of their time on two hearings.

EPA headquarters officials stated that EPA plans to revise the hearing process. They had not yet evaluated, however, the effect such a revision would have on hearings, time frames, and staff resources.

CONCLUSIONS

Frequent and widespread industrial permit noncompliance, including significant toxic permit violations, in some cases, underlines the need for improved EPA compliance monitoring.

EPA de-emphasizes monitoring of minor industrial permittees. However, the cumulative pollution of these permittees is unknown. In addition, lack of detailed EPA criteria on what constitutes a minor permittee has resulted in inconsistent regional definitions and, therefore, different compliance monitoring emphases.

The effectiveness of EPA's sampling program for identifying permit violators is reduced by EPA's inability to inspect major industrial permittees annually and to conduct followup inspections when significant noncompliance is noted. The use of less than 24-hour sampling inspections may be a means of increasing sampling coverage.

Lengthy adjudicatory hearings also have an impact on EPA's compliance activities. Pollution resulting from contested permit conditions could be substantial particularly if caused by toxic substances. In addition, adjudicatory hearings can be a drain on resources.

RECOMMENDATIONS TO THE ADMINISTRATOR, EPA

We recommend the Administrator develop a more comprehensive monitoring program to insure greater compliance with the objective of the Clean Water Act, as amended, by

--Clearly defining what constitutes a major industrial discharger.

--Increasing EPA's efforts to determine the cumulative pollution attributed to minor industrial dischargers

and ascertain the effect such minor industrial dischargers have on EPA's attempt to clean up the Nation's waterways.

--Increasing the coverage provided by sampling inspections to test and verify permittees reports of compliance.

--Requiring followup sampling inspections when significant noncompliance is detected.

--Providing priorities and guidance for identifying and resolving adjudicatory hearings for those permittees whose discharges are causing the greatest adverse environmental effects.

AGENCY COMMENTS

EPA generally agreed with our report recommendations. EPA officials pointed out that a new method for classifying major and minor permittees should appear in draft regulations in December 1978. EPA also indicated that although desirable, increased sampling inspection coverage would be difficult to realize because of staffing limitations.

CHAPTER 3

MORE EFFECTIVE ENFORCEMENT ACTION NEEDED AGAINST VIOLATORS OF PERMIT CONDITIONS

Compliance with permit requirements is the ultimate goal of NPDES. When a permit condition is violated, timely and strong enforcement action is necessary to promote future compliance.

In most cases EPA's enforcement responses are neither timely nor strong. Except for referring violators to the Justice Department and/or barring them from receiving Federal contracts, grants, or loans, EPA cannot penalize the violator economically. Justice Department referrals, however, are time-consuming, complex, and expensive, and the results are unpredictable. Since 1975, EPA has been able to bar violators from Federal contracts, but this is not done very often.

LACK OF STRONG ENFORCEMENT ACTION

EPA can take various enforcement actions when a permittee permittee fails to comply with permit conditions. These actions include administrative remedies such as warning letters, telephone calls, administrative orders, and notices of violations. Other potential and more stringent actions EPA can take include referring violators to the Department of Justice and barring them from Federal contracts. The range of available enforcement actions are discussed below.

EPA Enforcement Responses

Telephone call or warning letter	Used generally in minor cases of failure to submit reports or other required documents. Usually includes a demand to submit the documents within a specified time frame and threatens further action in the form of at least an Administrative Order.
Enforcement letter	May be used against any violation. Cites nature of violation and any previous attempts to gain

	compliance. Letter demands full explanation of violation and can require compliance within a specified time frame.
Administrative Order	May be used against any violation. Cites nature of violation and demands compliance within 30 days or for certain violations, within a reasonable period of time.
Administrative Order to Show Cause	May be used against any violation. Rather than demanding compliance within a specified time frame, requires violator to appear before EPA at a specified time and place to show cause why penalties should not be imposed or legal action instituted.
Notice of Violation	Used when EPA discovers violations of a State-managed permit. Notifies the State agency and the discharger of violation and requires the State agency to take action within a specified time frame.
Referral to the Department of Justice	May be used against more serious violations. Requests the Department of Justice to institute civil or criminal actions against violator.
Federal Contractor Listing Program	Can be used concurrently with referral to the Department of Justice. Prohibits polluter from entering into any non-exempt Federal contracts, grants, or loans.

EPA prepared a guide establishing enforcement responses appropriate for NPDES permit violations. Although EPA emphasizes that the guide should not be rigidly applied, it anticipates that in most cases responses to violations will be within the framework of responses outlined in the guide. The type of response suggested varies depending on the type of noncompliance. For example, the guide suggests using administrative orders or judicial action in cases where a permit violation results in environmental damage.

More timely use of administrative orders is needed

Administrative orders demand that violators comply with permit conditions. They can also be used to order violators to report to EPA why their cases should not be referred to the Department of Justice. In fiscal year 1977, EPA issued 436 administrative orders to major nonmunicipal dischargers. EPA officials said that an administrative order is usually EPA's first formal enforcement response although less stringent enforcement action, such as telephone calls, may have been made prior to the order's issuance.

To determine the effectiveness of administrative orders, we reviewed 10 orders issued by region II and 10 orders issued by region IV. In most of these cases, the orders resulted in permittee compliance, but the effectiveness of the orders was reduced because an average of more than 400 days elapsed from the time the violation occurred to the time the order was issued.

Of these 20 orders, 7 required less than 250 days and 13 required more than 250 days. More than half of these 20 cases had continuous violations before the administrative orders were issued. One permittee consistently violated final permit limits for two toxic substances during a 30-month period. In this case, EPA did not issue an administrative order until more than 3 years after the violation. In another case, a permittee violated cyanide limits for more than 18 months before EPA issued an administrative order.

Time delays in issuing administrative orders inhibit the effectiveness of EPA's administrative enforcement program. Administrative orders must be issued faster to curtail prolonged permit violations.

Time-consuming referral process

EPA may request the Department of Justice to initiate criminal or civil action against a violator. This action is called referral. Although referral is a powerful tool, it does have major shortcomings. Referral is time-consuming, and complex, and its results can be unpredictable. According to EPA regional officials, referrals are usually a last resort.

Infrequent referrals

U.S. attorneys are the Attorney General's chief law enforcement representatives. The four assistant U.S. attorneys we contacted told us that EPA is not referring

enough cases. During fiscal year 1977, 94 major nonmunicipal permittees were referred to the Justice Department. EPA region IV officials said more cases should be referred but that staff limitations preclude referring all cases.

A former EPA region II lawyer said that the small number of referrals is due to the difficulty and time involved in (1) referring a case to the Department of Justice and (2) obtaining a decision in the Federal courts. He also said that as a result, EPA tries to settle cases without referring them to the Department of Justice. The National Commission on Water Quality stated that EPA's dependence on outside counsel has probably resulted in fewer cases being referred and in greater emphasis on developing an administrative record.

Because referral to Justice is usually not the first enforcement action taken, a lot of time may elapse between the initial violation and the referral action. Our review of all 8 region II referrals and 10 of the 18 region IV referrals during fiscal year 1977 showed an average of about 500 days between the initial violation and the referral action.

Once a case is referred, its progress toward final resolution remains slow. At the time of our review, 13 of the above 18 cases had been resolved. The average time between the date of referral and the court judgment for these 13 cases exceeded 190 days.

EPA reliance on outside counsel could be a problem

The Justice Department represents EPA in civil matters. Officials of both agencies agreed that this representation requires a close and cooperative relationship. They believe that to achieve this objective, the respective attorneys' roles must be clarified. A June 1977 memorandum of understanding between EPA and the Justice Department provides this clarification.

Our discussions with four assistant U.S. attorneys and EPA enforcement officials revealed that actual or perceived problems of cooperation continue to exist. For example, all four attorneys believe the quality of EPA referral products could be improved. One U.S. attorney believes EPA refers insignificant violations.

EPA enforcement officials said that cooperation with U.S. attorneys ranged from excellent to poor. In one enforcement case involving an EPA-managed permittee, EPA regional officials were concerned that a potential referral would be significantly delayed because of a poor working relationship with the U.S. attorney. The violation was not referred to Justice; instead, the State environmental agency planned to take administrative enforcement action.

The Department of Justice is aware of the need for improved day-to-day working relationships with the Federal agencies it represents in court. On March 14, 1978, the Attorney General said that the Department has tried to develop a new sensitivity for treating client agencies that is similar to the way private lawyers treat clients. He also said that to help nurture their sensitivity the Department is instituting a new system for evaluating the performance of its lawyers. This system will include obtaining comments on attorney performance from the client agencies. We were unable to assess this system's effect on EPA and Justice working relationships at the time of our review.

Infrequent use of the Federal Contractor Listing Program

The Federal Contractor Listing Program prohibits award of Federal contracts, grants, or loans to noncomplying industrial facilities. Although the program can be effective, EPA uses it infrequently. The prohibition applies to any contract, grant, or loan over $100,000 and to any contract under $100,000 in cases where the violation results in a Federal criminal conviction.

Facilities can be listed when EPA's Office of Federal Activities (OFA) determines that they have continuing or recurring violations of water standards. EPA may consider listing facilities because of State and local criminal conviction, civil adjudications, and administrative findings of noncompliance. However, in State-managed programs the Governor must request EPA to list the facility.

The listing program, however, has been used infrequently since its inception in July 1975. As of April 15, 1978, EPA regional offices had submitted to OFA the names of 12 facilities that were not complying with water quality requirements. No State has requested the program's use. By comparison, during fiscal years 1976 and 1977, EPA issued 669 administrative orders and made 139 referrals to U.S. attorneys.

Of these 12 facilities, 4 were listed, 1 was held in abeyance because of good progress made toward settlement of the case, 4 were not listed because the dischargers agreed to take corrective action, and 3 were rejected by OFA. Of the three that were rejected, one involved a minor discharger, one was based on a criminal charge which had been dismissed, and the other was rejected after the discharger's court trial began.

In a January 19, 1977, memorandum to regional administrators, the Administrator, EPA, stated, "I am sufficiently impressed with the potential of the Federal Contractor Listing Program in our enforcement efforts that I am instituting a policy of a presumption of listing in all serious cases of noncompliance." As examples of the program's potential effectiveness, the Administrator cited the agreement by two noncomplying dischargers to build a joint wastewater treatment system after they had been listed and the agreement by two other facilities to comply after the regional office had inquired into the status of their Federal contracts and/or Federal grant funds.

Regarding "presumption of listing," the Administrator further stated that:

> "I want to make clear that there will be a presumption of listing for all serious cases of noncompliance which include continuing or recurring violations of effluent limitations, or compliance schedules by a major industrial discharger or a Class A source. In these situations, either a recommendation of listing shall be made to OFA or the Region shall provide reasons why the recommendations was not initiated."

EPA's Agency Operating Guidance for fiscal year 1978 further emphasized the need for using the listing program more frequently. The guidance stated, in part, that:

> "Efficient execution of the program responsibilities require that the Regional Enforcement Divisions recommend to OFA candidates for listing so that a listing proceeding can take place. Regional operating priorities are:
>
> 1. Each Regional Office should as soon as possible refer to OFA for listing its "top 10" polluters.

2. Make greater use of the listing program as an alternative or supplement to filing court actions".

The regional offices, however, have not used the listing program more frequently. Responding to a May 24, 1977, OFA request for a report on implementing the Administrator's "presumption of listing" policy, only 6 of the 10 EPA offices submitted the requested reports; none of them submitted recommendations for listing facilities.

Listing program exemptions should be reduced

Although listed as a violating facility, a discharger is eligible to participate in many Federal programs because EPA's regulations exempt contracts, loans, and grants not exceeding $100,000, unless there has been a Federal criminal conviction. EPA's fiscal year 1978 operating guidance provides for OFA to seek a lower contract exemption amount in order to increase the impact of listing.

An OFA official told us that OFA hoped amended regulations in the future would reduce the exemption from $100,000 to $10,000, which is the ceiling for small purchases. He said OFA believes that many dischargers are not affected by the listing because they have Federal contracts ranging from $10,000 to $100,000.

To determine the potential impact of lowering the contract exemptions from $100,000 to $10,000, we studied the monetary ranges of Federal contracts. This information is not available on a Government-wide basis; however, an official of the Federal Supply Service in the General Services Administration provided data showing that 79 percent of the Federal Supply Service contracts for fiscal year 1977 exceeded $10,000 but did not exceed $100,000, as shown below.

Monetary range	Number of contracts	Percent of total
Over $100,000	3,297	21
$10,000 to $100,000	12,431	79
Total	15,728	100

These figures clearly demonstrate that lowering the exemption amount will substantially increase the listing program's impact, at least with regard to Federal Supply Service contracts.

ADMINISTRATIVELY ASSESSED FINES COULD PROVIDE MORE EFFECTIVE ENFORCEMENT ACTION

EPA's present enforcement mechanisms are time-consuming and costly. EPA needs a more effective, more timely, and less costly mechanism to insure that dischargers comply with NPDES permit requirements. The authority to administratively assess fines against industrial permit violators would provide such a mechanism.

Present mechanisms are time-consuming and costly

If EPA determines that a permittee should be fined for violating permit conditions, it must refer the case and its recommended penalty amount to the Justice Department and subsequently to the cognizant Federal court. An EPA official said every penalty case must undergo this lengthy process.

Administratively assessed penalties could eliminate time-consuming litigation for both the permittee and the U.S. attorney. In addition, the time and manpower EPA needs to prepare the referrals could be eliminated. Investigative packages--consisting of the complaint, the report, and exhibits--must be prepared for such cases. This information may be voluminous, but it is required for all referrals.

EPA has requested administrative penalty authority

In July 1977, EPA requested that the Congress give it the authority to administratively assess penalties against permit violators. EPA proposed that the amount of the penalty equal the monetary benefits the permittee realized by not complying with permit conditions. Connecticut uses a similar system.

EPA believes it should be permitted to administratively assess a noncompliance penalty because the present method is often time-consuming. EPA's Administrator said the proposed method would have three important effects: it would (1) improve the efficiency of existing enforcement methods, (2)

promote compliance by rendering investments for installing and operating and maintaining control facilities as financially attractive to business managers as noncompliance, and (3) end the unfair competitive advantage noncomplying industrial sources have over complying sources.

The Clean Water Act of 1977 failed to give EPA the authority to administratively assess noncompliance fees although an earlier Senate-approved version included such a provision. One Senate manager of the Clean Water Act said the authority to assess noncompliance penalties was unnecessary at the time for two reasons:

--Industry's compliance record was relatively good.

--EPA's current water enforcement policy is to seek court-imposed penalties in amounts commensurate with the economic benefit of delayed compliance.

However, the Senate manager also said:

"Subsequent review of compliance under the Clean Water Act, the success of the Agency in implementing its penalty policy through the courts, and the time delay and resource demands of seeking judicially imposed penalties may indicate that the administrative assessment mechanism will become necessary in the future."

Other EPA and State programs provide administrative assessment authority

Although EPA does not have the authority to penalize water permit violators, it does have the authority to administratively assess penalties in other programs. For example, under the Spill Prevention Control and Countermeasures programs, EPA can fine noncomplying companies by using violation notices and subsequent conferences and hearings. In fiscal year 1977, EPA region II collected penalties in 44 such cases.

The Clean Air Act of 1977 (Public Law 95-95) gives EPA the authority to assess noncompliance penalties. Under this system EPA's Administrator can assess and collect a noncompliance penalty against any person violating certain provisions of the act.

Some States, including New York and North Carolina, with EPA-approved permit programs have the authority to administratively assess fines against industrial water violators.

The ability to administratively assess monetary penalties could add clout to EPA's current enforcement program. Relying on the courts to impose penalties can be a lengthy and resource-intensive process. In addition, EPA's current water enforcement policy for seeking court-imposed penalties in amounts commensurate with the economic benefit of delayed compliance is not applicable to the high numbers of effluent permit violations.

NEED FOR IMPROVED EPA OVERVIEW OF STATE-MANAGED PROGRAMS

States with EPA-approved permit programs are primarily responsible for permit compliance and enforcement activities. EPA, however, is responsible for assuring that State permit program activities are consistent and equitable.

EPA needs to strengthen its overview of State-managed programs. Required State noncompliance reports do not provide EPA with the data it needs to assess State activities. In addition, sometimes States are not aggressive in their enforcement actions against permit violators. Also, EPA is not aggressive in its follow-up responses to lax State enforcement action. As more States assume responsibility for the permit enforcement program, EPA's overview activities will gain increased importance.

State noncompliance reports are inadequate

The State quarterly noncompliance report (QNCR) is an important tool for EPA monitoring of State enforcement programs. The QNCR lists all State-managed major permittees that do not comply with permit conditions during the quarter. It also describes the nature of the noncompliance as well as actions the State proposes to take to attain compliance with permit conditions.

Despite its importance in the EPA overview function, the QNCR has shortcomings and does not provide EPA with sufficient information to adequately accomplish this

function. For example, the report contains information on only major dischargers; therefore, EPA is not informed of the total extent of State enforcement action or activity.

QNCRs often do not contain complete information on major permittees. In particular, the reports often do not contain information on the extent of the violation and on the type and effectiveness of State enforcement action. For example, a recent State QNCR showed that several proposed enforcement actions were referred to the State regional office for followup action. No further information was given as to what action, if any, would be taken by the regional office.

In region IV State-prepared QNCRs are often incomplete with respect to the extent of violations. The reports indicate that discharge violations occurred, but they do not indicate to what extent the violations exceeded permit conditions.

In August 1976, and again in August 1977, the Natural Resources Defense Council, Inc., emphasized the need for improved QNRs. The Council cited problems in numerous areas, particularly regarding the consistency of reporting requirements. In the August 1977 letter, the Council pointed out QNCR report deficiencies and, as reflected on the QNCR, lack of action and consistency in enforcement.

State enforcement actions and EPA overview followup are not aggressive

In some cases, States with EPA-approved permit programs are not taking aggressive enforcement action against permit violators. EPA needs to (1) strengthen its overview follow-up action by notifying States and industrial violators to correct permit noncompliance and (2) insure that permit violations are enforced uniformly and consistently.

State legal officials and EPA regional enforcement officials believe that State enforcement actions are not aggressive because of the close relationship between State environmental enforcement officials and local industrial permittees.

In an October 1975 report the National Commission on Water Quality stated that pollution control agencies, particularly those at the State level, emphasize informal cooperation in their dealings with dischargers rather than strong enforcement action. The Commission also stated that

engineers--not lawyers--usually used this informal approach. This difference sometimes creates internal conflict over enforcement policy.

Our review of 10 State enforcement orders issued to industrial violators showed that 5 did not result in compliance. The State considered further enforcement action in only one of these cases. One State often modifies orders to extend compliance deadlines because of the permittees' continued inability to achieve permit compliance.

EPA's overview of State-managed programs is intended to insure that a uniform national compliance and enforcement policy is implemented. As part of its overview responsibility, EPA can take enforcement action if violations of State-managed permits are detected and the State has failed to take action. EPA may issue a notice of violation which (1) notifies the State and the violator of EPA's findings and (2) threatens enforcement action if the State does not commence enforcement action within 30 days.

However, notices of violation have not been used frequently. In EPA region II and region IV only 14 and 21 notices of violation respectively, were issued in fiscal year 1977. Region IV officials said they were reluctant to issue notices of violation because of the political nature involved. Of 15 major dischargers in one State in region IV which did not take action on violations, EPA failed to issue notices of violation in a timely manner to 3 of the dischargers. In two of these cases permittees had been violating discharge limits for about 12 months before notices of violation were issued.

Other organizations are dissatisfied with EPA's overview of State permit programs. For example, during our review an environmental group filed a suit in Federal Court requesting that EPA withdraw approval of one State's permit program. The environmental group alleged that permit violations in the State were widespread because the State failed to enforce the program. In a ruling on EPA's motion to dismiss the complaint, the court ruled that EPA has a mandatory, not discretionary, duty to take action when it receives information that a State is not administering its permit program adequately.

Significant participation in the permit program by 29 States and the Virgin Islands as of March 1, 1978, highlights the importance of EPA's overview. This overview will increase in importance since EPA expects more States to seek its approval to manage their own permit programs.

CONCLUSIONS

EPA's enforcement of industrial permits needs strengthening. Although a strong enforcement program is necessary to promote compliance, EPA enforcement actions usually lack clout.

EPA's formal administrative response, the administrative order, which cannot be used to fine violators, should be issued in a more timely manner. Use of Federal courts, a powerful enforcement action, is hampered by its lengthy and resource-intensive process. Effectiveness of the contractor listing program is reduced because of infrequent use and limited applicability to contracts, grants, or loans which exceed $100,000, in the absence of a Federal criminal conviction.

Unlike some State-managed industrial permit programs and other EPA regulatory programs, EPA lacks authority to administratively assess penalties against permit violators. This authority would allow EPA to avoid lengthy and resource-intensive legal processes.

As more States assume management of the permit program, EPA's efforts to insure uniform enforcement become more important. However, EPA's current overview is restricted by inadequate State reports and its own reluctance to officially notify the States of program deficiencies.

RECOMMENDATIONS TO THE ADMINISTRATOR, EPA

We recommend the Administrator develop a more aggressive enforcement program against violators of industrial permit conditions by

--Requiring more timely and effective use of administrative orders.

--Directing EPA regional offices to make greater use of the listing program by recommending facilities, as warranted, for placement on the list of violating facilities.

--Amending EPA's regulation to lower the amount of exempted contracts, loans, and grants from $100,000 to $10,000 to increase the impact of listing.

--Encouraging States which have assumed the permit program to participate in the listing program;

--Improving EPA's overview of State-managed permit programs by (1) improving the quality of State reports and (2) aggressively following up on any instances in which the State failed to take appropriate enforcement action.

--Periodically evaluating the adequacy and timeliness of existing enforcement mechanisms and, if necessary, requesting again that the Congress provide EPA with the authority to administratively assess penalties against industrial permit violators.

AGENCY COMMENTS

EPA generally concurred with our report recommendations. EPA officials stated that they are encouraging the regional offices to expedite the issuance of administrative orders and to increase the use of referrals to the Department of Justice. They pointed out, for example, that during the 10-month period ending July 30, 1978, EPA had made 105 referrals to the Department of Justice compared to 94 made in the prior fiscal year. They believe that the authority to administratively assess penalties could strengthen their enforcement activities. They further stated that planned changes in the State overview activities should assist in correcting the deficiencies noted in our report.

In commenting on this report, the Department of Justice Land and Natural Resources Division indicated that they were fundamentally in agreement with its contents.

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