

Enforcing the Law: EPA's Toxics Problem

"How meaningful can a law be when four-fifths of those it is supposed to cover are violating it?" asks a new report that focuses on the implementation of federal laws designed to protect people from toxic substances. Many firms now routinely violate toxic safeguard laws, the study contends, because the Environmental Protection Agency (EPA) lacks the staff and the funding to monitor compliance and to enforce the laws effectively.

The study, based on data gleaned largely from recent government reports and documents, reveals an "extraordinary failure of implementation," says William Drayton, the report's author and an EPA official during the Carter administration. Released last week, the report, "America's Toxic Protection Gap," was compiled for Environmental Safety, a nonpartisan association of environmental and public health professionals based in Washington, D.C.

"It is absolutely startling that a study like this could reveal such a danger," comments Luther Terry, surgeon general in the Kennedy and Johnson administrations. "The degree of noncompliance represents the deficit in what we should be doing to protect the health of the people." Terry is one of several former government officials who, along with about 30 organizations like the National PTA, American Public Health Association and various environmental and church groups, endorse the report.

Among the study's findings are that:

- only six of the 546 officially recognized highest priority abandoned hazardous waste dumps have actually been cleaned up and closed so far under the "Superfund" program that began in 1981.
- between 1981 and 1984, the federal government completed safety reviews of only four pesticide ingredients, which resulted in ensuring the safety of 70 pesticides out of 40,000 products requiring such screening by law.
- the EPA has been able to issue final permits to only about 115 of the 8,000 or so active hazardous waste facilities in the country, while the remainder operate under "interim status" permits. Last fall, a General Accounting Office (GAO) report found that 78 percent of these "interim" facilities violated minimum EPA safety requirements.
- about half of the schools in the country have not yet been inspected for traces of asbestos in the air, and almost two-thirds of schools have failed to warn school employees or parents about the potential problem.
- an experimental EPA monitoring program using new laser detection equipment found that almost 80 percent of tested industrial plants exceeded emission stand-

ards for air pollutants. Action was taken against only a handful of the companies.

An EPA spokesman, however, says the report contains "factual errors, misleading statements and out-of-date material." EPA argues, for example, that although only six hazardous waste dumps have been cleaned up, much work has been done on many of the remaining priority sites. EPA also says that by the end of 1984, about 90 of 600 active ingredients in pesticides will have been reviewed. In addition, the latest EPA figures reveal that "significant non-compliance" with drinking water standards, air pollution standards and water discharge permits was generally well below 20 percent.

But the difficulty, says one environmentalist, is that without adequate monitoring and inspection, it is hard to determine the actual level of compliance. Beth Millemann of Environmental Safety says, "We tried to compile as up-to-the-minute information as possible on these subjects." In general, she adds, the group's report has been well received, even among people who work at EPA.

J. Clarence Davies, executive vice president of the Conservation Foundation in Washington, D.C., also praises the report and says, "The basic point the report makes with regard to compliance and implementation is a very valid one."

In contrast, the Reagan administration paints a somewhat rosier picture. While recognizing the complexity of current environmental problems, the recently released annual report of the Council on Environmental Quality (CEQ) says the overall state of the environment seems to be improving. CEQ, charged with formulating and recommending environmental policy to the White House, lauds the increasing role of private organizations and state and local governments in handling environmental problems. "The last three years have seen a change in the federal government's role in environmental management and protection," says CEQ. The report calls for environmental laws and regulations that allow greater flexibility to make programs more cost effective and more responsive to local needs.

However, many state and local programs have ground to a halt because of cutbacks in federal funds, says Jacqueline Warren, who sits on two New York state environmental advisory committees. Davies agrees with CEQ that industry has a key role to play in most of these programs. But, he says "unless you can structure a carrots-and-sticks system to get industry to comply and help within limitations, it isn't going to get done."

Moreover, the idea of "private enforcement" doesn't appeal to him. "Citizen suits

are now the predominant federal judicial enforcement mechanism under the Clean Water Act," says the Conservation Foundation's annual report on the environment (SN: 7/7/84, p. 8). "It's certainly useful in the absence of more stringent government enforcement," says Davies, but "it's the government's job to enforce the law."

Further evidence of failures to enforce or implement environmental laws appears in two GAO reports, also issued last week, that highlight EPA's difficulties with the Toxic Substances Control Act (TSCA). EPA has the responsibility for identifying, assessing and controlling unreasonable risks to health from the manufacture, use and disposal of the 60,000 chemicals already on the market and the 1,000 new chemicals proposed each year for manufacture. To date, EPA has acted to control four chemicals and is conducting "priority" reviews of two more. The agency has also decided that 22 others must be tested for health and environmental effects, but it has not yet come up with rules for testing the chemicals, says GAO. In addition, budget constraints limit the number of these substances that can be considered for regulatory action in any given year.

One of the GAO reports also discusses weaknesses in EPA's program to assess risks posed by new chemicals. The EPA assessment focuses mainly on a chemical's proposed initial use. Changes in the way a chemical substance is used can alter the risk it poses, says GAO. It suggests that EPA needs to monitor the manufacture and use of chemicals more closely. "Without an effective inspection program, there is little assurance that EPA's program for reviewing new chemicals is satisfying TSCA's objective of protecting people and the environment against unreasonable risks," the GAO report says.

In a written reply to GAO, Milton Russell of EPA says the agency is committed to solving the problems pointed out in the report. But, he says, the new chemicals program has major accomplishments to its credit that are understated or not recognized in the report.

Warren, a lawyer with the Natural Resources Defense Council in New York, which is investigating the possibility of a lawsuit against some school boards over the asbestos issue, says that TSCA is a "very discretionary statute." It doesn't obligate EPA "to do very much of anything," she says. "Congress should take back some of that discretion that it delegated and give [EPA] specific dates and duties."

Millemann says that Congress doesn't need to introduce thousands of new environmental laws. "What we're saying is that we've got fine laws, and they ought to be enforced."
—I. Peterson