REPORT TO THE CONGRESS

Water Pollution Abatement Program: Assessment Of Federal And State Enforcement Efforts

B-166506

Environmental Protection Agency

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

MARCH 23, 1972

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 is our report on our assessment of Federal and State enforcement efforts to abate water pollution The Federal aspects of the program are administered primarily by the Environmental Protection Agency

Our review was made 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)

Copies of this report are being sent to the Director, Office of Management and Budget, and to the Administrator, Environmental Protection Agency

Comptroller General
of the United States

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ABBREVIATIONS

EPA Environmental Protection Agency

GAO General Accounting Office

HEW Department of Health, Education, and Welfare

OWP Office of Water Programs

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WATER POLLUTION ABATEMENT PROGRAM
ASSESSMENT OF FEDERAL AND STATE
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D I G E S T

WHY THE REVIEW WAS MADE

Enforcement of water quality requirements traditionally has been the primary responsibility of the States The Federal role generally has been to take action when the States fail to act or request assistance In prior reviews dealing with water pollution, the General Accounting Office (GAO) noted a lack of enforcement by both Federal and State Governments In this report GAO assessed Federal and State enforcement efforts in Florida, Georgia, Indiana, Massachusetts, New Jersey, and North Carolina

Legislation

Federal enforcement actions can be taken under the Federal Water Pollution Control Act of 1956, as amended, and under the Refuse Act of 1899 Under the 1956 act the Environmental Protection Agency (EPA) can (1) call a conference between Federal and State water pollution control officials to identify polluters and to recommend corrective action, (2) call a public hearing to receive testimony concerning a specific polluter not following the conference recommendations, and (3) request the Attorney General to sue as a final resort

If a polluter is violating a State's water quality standards, EPA can request the Attorney General to initiate court action 180 days after notifying the polluter of the violation

Under the 1899 act EPA can promptly refer to the Attorney General cases involving industrial plants discharging waste into navigable waters without a permit from the Corps of Engineers

FINDINGS AND CONCLUSIONS

In the past, both the States and the Federal Government relied heavily on voluntary compliance with water quality requirements and few enforcement actions were taken against polluters As a result only limited success was achieved in abating water pollution Since 1970, Federal and State programs have been improved substantially and enforcement actions have been pursued vigorously Even so, more could be done

State enforcement

Policies and practices of some States led to more effective enforcement, and GAO believes that other States should do the same

Some States, for example, in their plans requiring municipalities and industrial plants to construct waste treatment facilities, established not only dates by which construction must be completed but also interim dates for such phases as submission of preliminary and final plans and start of construction States that used interim dates had a more effective basis for measuring the progress in constructing waste treatment facilities and for taking timely enforcement action when progress lagged (See p 14.)

Other good practices were

--A close working relationship between the State pollution control agency and the State attorney general's office States that took prompt enforcement actions were generally those in which the water pollution control agencies received substantial assistance from the offices of the attorneys general (See p 25)

--An effective system for monitoring the progress of polluters in abating pollution To do a good job of enforcement, the States must know which municipalities and industrial plants are not meeting requirements (See p 24)

Need for coordinated enforcement

Some Federal enforcement actions were taken without coordination among the Federal agencies concerned and/or without consultation with the State water pollution control agencies This tended to downgrade the role of the States, particularly when the States were taking, or planned to take, action

The lack of coordination among the Office of Water Programs, EPA, U S attorneys, and State water pollution control agencies, in some cases, has resulted in duplication of State and Federal efforts and has caused confusion among polluters as to which agency had responsibility for enforcement During 1971 both the Department of Justice and EPA issued guidelines designed to promote coordination among Federal and State enforcement agencies (See p 36)

Legislative constraints

Under the Federal Water Pollution Control Act, EPA can take enforcement action only when water pollution has occurred, that is, when a discharge has endangered health and welfare or has lowered the quality of the water Even with testing it may be difficult to relate a change in water quality to a specific municipal or industrial discharge

One of the factors that limits the effectiveness of EPA enforcement is the lack of authority to enforce specific effluent restrictions The use of such restrictions would permit the setting of treatment requirements for municipalities and industrial plants before pollution became a problem Under such a system, enforcement actions would be easier Showing a failure to meet the established restrictions, rather than showing that a polluter's discharge caused a violation of water quality standards, would be sufficient grounds to start enforcement proceedings

The act does not permit swift action to halt the discharge of pollutants into interstate waters--even when such discharge endangers the health and welfare of persons A minimum of 32 weeks is required between the time that EPA notifies interested parties, including alleged polluters, of its decision to hold an enforcement conference and the time that EPA can hold a formal hearing After the hearing EPA can issue a notice specifying a period of not less than 26 weeks within which the pollution must be abated The case can be referred to the Attorney General for court action only if a polluter is not taking reasonable action to comply with the notice

When water quality standards are violated, EPA can move somewhat faster because court action can begin 180 days after polluters are notified of the violations This 180-day waiting period appears to be unreasonable in some cases, however, because it gives recalcitrant polluters 6 additional months to take, or to agree to take, long overdue abatement action (See p 43)

The Refuse Act has provided EPA with more effective enforcement authority with regard to industrial plants discharging wastes into navigable waters Under the act EPA and the Corps of Engineers are implementing a permit program to regulate the discharge of industrial pollutants into navigable waters Violators can be referred without delay to the Department of Justice for court action

The act, however, does not provide EPA with the comprehensive authority needed to adequately carry out Federal enforcement because municipalities discharging sewage in a liquid state and industrial plants discharging wastes into municipal sewers generally have not been subjected to enforcement proceedings under the act Enforcement authority is split between EPA and the Corps Proceedings under the act have tended to subjugate the primary role of the States in abating and controlling water pollution

Legislative changes being considered

Legislation being considered by the Congress expresses the intent of the Congress to preserve the primary role of the States in abating pollution and also substantially strengthens the Federal enforcement role by

--expanding Federal authority to municipal discharges into all navigable waters,

--authorizing the establishment and enforcement of specific effluent limitations,

--establishing a comprehensive permit program,

--facilitating swift enforcement action, and

--requiring a water quality inventory

RECOMMENDATIONS OR SUGGESTIONS

The proposed legislation, if enacted and effectively implemented, should resolve the major problems noted in GAO's review Therefore GAO is making no recommendations

AGENCY ACTIONS AND UNRESOLVED ISSUES

EPA agreed, in general, with GAO and said that it was acting to resolve the problems brought out in the report EPA also noted the enforcement actions it had taken after it was organized The Corps of Engineers, the Department of Justice, and the six State water pollution control agencies also agreed, in general, with GAO (See p 50)

MATTERS FOR CONSIDERATION BY THE CONGRESS

This report contains information which will be useful to the Congress in its consideration of pending legislation

CHAPTER 1

INTRODUCTION AND SCOPE

The Federal Water Pollution Control Act of 1956, as amended (33 U.S.C. 1151), expresses the intent of the Congress that the States have primary responsibility for the abatement, control, and prevention of water pollution. The Federal role under the act is essentially to back up the States, that is, to initiate enforcement action when a State fails to act or when a State requests such action. Additional Federal enforcement authority resides in section 13 of the Rivers and Harbors Act of 1899. (See p. 6.)

Prior to May 1966 the Department of Health, Education, and Welfare (HEW) had responsibility for the Federal water pollution control program. In May 1966 the Federal Water Pollution Control Administration was transferred from HEW to the Department of the Interior and in April 1970 was renamed the Federal Water Quality Administration. In December 1970 the functions of the Federal Water Quality Administration were transferred to the Environmental Protection Agency which was established in accordance with Reorganization Plan 3 for the purpose of organizing rationally and systematically the Federal Government's environmentally related activities.

Within EPA the Federal water pollution control program was assigned to the Water Quality Office, now the Office of Water Programs (OWP). In April 1971 the enforcement functions of OWP were transferred to EPA's Office of the Assistant Administrator for Enforcement and General Counsel.

Our review was concerned primarily with the effectiveness of Federal and State enforcement activities in ensuring that polluters constructed waste treatment facilities needed to attain the water quality standards established by the States and approved by the Federal Government. In general our review covered activities during the period 1957 through February 1971.

Our review was conducted at EPA headquarters in Washington, D.C., and at regional offices in Boston, Massachusetts;

Chicago, Illinois, Charlottesville, Virginia; and Atlanta, Georgia. Our review was conducted also at the State agencies responsible for the water pollution control enforcement programs in Florida, Georgia, Indiana, Massachusetts, New Jersey, and North Carolina. We held discussions with EPA and State officials and with U.S. attorneys, and we examined pertinent records and files. In addition, we interviewed a number of industrial and municipal polluters in five of the States.

LEGISLATION

The Federal Water Pollution Control Act of 1956 (70 Stat. 498) provided for a three-step enforcement process which included (1) a conference between Federal and State water pollution control officials to identify polluters and to decide on required corrective actions, (2) a public hearing called by the Secretary of HEW (now called by the Administrator of EPA) to receive testimony concerning a specific polluter not following the recommended corrective plan, and (3) Federal court action, as a final resort, against a polluter not making reasonable efforts to abate pollution.

The Water Quality Act of 1965 (79 Stat. 903), which amended the Federal Water Pollution Control Act, required the States to establish water quality standards for all interstate and coastal waters and to include in these standards plans for implementing and enforcing the standards. The standards are subject to Federal review and approval.

The act also gave the Federal Government an additional enforcement tool in that the Secretary of HEW was authorized (now the Administrator, EPA, is authorized), in cases of pollution of interstate waters which reduced the quality of the water below the established State standards, to initiate court actions 180 days after notifying the polluters of the violations. The purpose of the 180-day period is to allow the polluter time to take, or to agree to take, action voluntarily to abate the pollution.

Section 13 of the Rivers and Harbors Act of 1899 (33 U.S.C. 407), commonly referred to as the Refuse Act, recently has been used for initiating Federal court actions against industrial plants discharging wastes into navigable waters

and their tributaries. The act prohibits the discharge of any refuse matter, other than liquid wastes flowing from the streets and sewers, into navigable waters without a permit from the Corps of Engineers.

Federal agencies had interpreted this act as applicable to only those discharges which interfered with navigation. Since March 1970, however, the interpretation of the act has been expanded to apply to pollutants discharged into navigable waters by industrial plants. In addition, in December 1970 the President issued Executive Order 11574 which required EPA and the Corps of Engineers to implement a permit program under the act to regulate the discharge of pollutants and other refuse matter into navigable waters. Violations of the act can be referred without delay to the Department of Justice for civil or criminal actions.

CHAPTER 2

PROBLEMS AND OBSERVATIONS CONCERNING STATE AND FEDERAL ENFORCEMENT OF REQUIREMENTS FOR ABATING WATER POLLUTION

The Federal Water Pollution Control Act declares that the States are to have the primary responsibility for abating and controlling water pollution. To fulfill this responsibility a timely and effective enforcement program is needed. We found that prior to 1966 the six States included in our review relied heavily on polluters' voluntary compliance with State water quality requirements. Few cases were referred to the State attorneys general for court actions The State enforcement programs generally were not implemented forcefully. As a result the States had limited success in abating and controlling discharges into State waters.

Since about 1966, and especially since 1970, the six State enforcement programs have improved substantially We found, however, that some States continued to rely heavily on voluntary compliance and were reluctant to initiate enforcement actions We found also that certain policies and practices adopted by some States contributed to the effectiveness of their enforcement programs, and we believe that the adoption of such policies and practices by other States could be of benefit to their enforcement programs

Some States, for example, in their plans requiring municipalities and industrial plants to construct waste treatment facilities, established not only dates by which construction must be completed but also interim dates for such phases as submission of preliminary and final plans and start of construction. States that utilized interim dates had a more effective basis for (1) measuring the progress in constructing waste treatment facilities and (2) taking timely enforcement actions when progress lagged.

Enforcement actions could be taken whenever municipalities or industrial plants did not comply with the States' requirements at any of the interim dates States that did

not use interim dates generally took enforcement actions only after polluters failed to complete construction by the dates specified in the States' plans

We found that a close working relationship between a State's water pollution control agency and attorney general's office was important to the success of a State's enforcement program. States that took timely enforcement actions were generally those in which the water pollution control agencies received substantial assistance from the offices of the attorneys general. Some States are assigning career attorneys to work exclusively with the State water pollution control agencies. We believe that the enforcement programs in other States can be improved greatly by better coordination between these offices.

Although the States have primary responsibility for enforcing water pollution abatement requirements, the Federal Government has a responsibility to initiate enforcement actions, in cases of interstate pollution, when the States fail to act or, in cases or intrastate pollution, when the States request Federal assistance. Because of increasing concern over the problem of water pollution and because of the reluctance of some States to initiate enforcement actions, Federal enforcement has become more forceful since 1970.

Prior to 1970 the Federal Government did not make maximum use of its enforcement authority Since EPA was established in December 1970, however, Federal enforcement actions have become more frequent and have been initiated and pursued on a more timely and forceful basis

Although the increased Federal enforcement activity has served as an important stimulus toward abating water pollution, certain factors continue to limit the effectiveness of the Federal enforcement program.

Federal enforcement actions have been initated by OWP of EPA under authority of both the Federal Water Pollution Control Act and the Refuse Act of 1899 and by the U.S. attorneys under authority of the Refuse Act Some of these actions were taken without coordination among the Federal agencies and/or without consultation with the State water

pollution control agencies. We believe that such actions tended to downgrade the primary enforcement role of the States, particularly in situations in which the States were taking, or planned to take, enforcement actions against polluters.

The lack of coordination among OWP, U S. attorneys, and State water pollution control agencies has resulted in duplication of State and Federal enforcement efforts and has caused confusion among polluters as to which agency has responsibility for enforcing water pollution abatement requirements.

In April 1971 the Department of Justice issued guidelines to the U.S attorneys for litigation under the Refuse Act. The guidelines stipulated that U S. attorneys initiate actions under the act only on cases referred to them by the Corps and EPA pursuant to a memorandum of understanding between the Corps and EPA. This memorandum stated that EPA would evaluate the existence and adequacy of State enforcement efforts before a case was referred to the U.S. attorneys for enforcement action.

In June 1971 EPA issued to its regional offices guidelines which stated that all proposed enforcement actions should be discussed with State agencies well in advance of recommending that EPA headquarters initiate Federal enforcement actions and that the State water pollution control agencies should be notified of any proposed recommendations

The guidelines and the memorandum of understanding, if properly implemented, should improve not only the coordination among the Federal agencies but also the coordination with State water pollution control agencies.

Enforcement activities are influenced by the legal tools available. Under the Federal Water Pollution Control Act, EPA can take enforcement action only when water pollution has occurred, that is, when a discharge has lowered the quality of the water or has endangered health or welfare. Even in attempting to enforce water quality implementation dates, EPA must show endangerment of health and welfare and a reduction in water quality, which can be a lengthy and costly process. Even with testing it still may be difficult to

relate a change in water quality to a specific municipal or industrial discharge

One of the factors that limits the effectiveness of the EPA enforcement program is the lack of authority to enforce specific effluent restrictions. The use of such restrictions would permit the setting of waste treatment requirements for municipalities and industrial plants before pollution became a problem. Under such a system enforcement actions would be easier. Showing a failure to meet the established effluent restrictions, rather than showing that a polluter's discharge caused a violation of water quality standards, would be sufficient grounds to act

The Federal Water Pollution Control Act does not permit swift action to halt the discharge of pollutants into interstate waters--even when such a discharge endangers the health and welfare of persons. Under the act a minimum of 32 weeks is required between the time that EPA notifies interested parties, including alleged polluters, of its decision to hold an enforcement conference and the time that EPA can hold a formal hearing. After the hearing EPA can issue a notice specifying a period of not less than 26 weeks within which the pollution must be abated EPA can refer the case to the Attorney General for court action only if a polluter is not taking reasonable action to abate his pollution within the time specified in the notice

When water quality standards are violated, EPA can move somewhat faster because cases can be referred to the U.S. attorneys for court actions 180 days after polluters are notified of the violations. This 180-day waiting period appears unreasonable in some cases, however, because it gives recalcitrant polluters 6 additional months to take, or to agree to take, long overdue abatement actions.

The Refuse Act has provided EPA with more effective enforcement authority with regard to industrial plants which discharge wastes into navigable waters. The act prohibits the discharge of any matter, other than liquid wastes flowing from streets and sewers, into navigable waters without a permit from the Corps of Engineers Under the act EPA and the Corps are implementing a permit program to regulate the discharge of industrial pollutants into navigable waters

Violations of the act can be referred without delay to the Department of Justice for court actions.

The act, however, does not provide EPA with the comprehensive authority needed to adequately carry out the Federal water pollution control enforcement program because municipalities discharging wastes in a liquid state and industrial plants discharging wastes into municipal sewers generally have not been subjected to enforcement proceedings under the act. Enforcement authority under the act, with regard to the permit program, is split between EPA and the Corps of Engineers.

Proceedings under the act have tended to subjugate the primary role of the States in abating and controlling water pollution. Under the Federal Water Pollution Control Act, the Federal Government can act only when the States fail to act; in contrast, Federal enforcement actions can be initiated under the Refuse Act regardless of State actions

We believe that there is a need for a comprehensive permit program that applies to all industrial plants and municipalities. We believe also that all Federal enforcement authority--including that for a permit program--should be included in EPA's basic legislation, the Federal Water Pollution Control Act In view of the (1) primary role of the States in the control and abatement of water pollution and (2) large number of municipalities and industrial plants that would be required to obtain permits, however, we believe that the States should be responsible for administering the permit programs and that EPA should assume such responsibility only when States fail to implement and administer acceptable programs.

The following chapters discuss in more detail our findings and conclusions concerning State and Federal water pollution control enforcement programs

CHAPTER 3

STATE ENFORCEMENT PROGRAMS

The six States included in our review have been aware of water pollution problems and of the need for control measures for decades. As early as 1921 one State passed legislation to control pollution of potable water supplies Three States later initiated stream classification programs to establish water quality standards for their waters These earlier pollution control programs were usually the responsibility of the State health agencies and were initiated prior to the enactment of the Water Quality Act of 1965 which required the States to establish water quality standards for interstate waters and to include in these standards plans for implementing and enforcing the standards.

Prior to 1966 the enforcement programs of all six States included in our review generally involved negotiations with polluters in which the States relied heavily on the polluters' voluntary compliance with State requirements Few cases were referred to the States' attorneys general for court actions. Many polluters did not comply with State requirements, and the State enforcement programs generally were not implemented effectively except when the pollution was considered either a public nuisance or a public health hazard. As a result the States generally had limited success in abating and controlling discharges into State waters

Since about 1966, and especially since 1970, the enforcement programs of the States included in our review have improved substantially. Improvements noted in the various State enforcement programs included the establishment of comprehensive implementation plans pursuant to the Water Quality Act of 1965, enactment of stronger enforcement legislation, creation of separate environmental organizations to administer the abatement programs, increased personnel and funding for the pollution programs, establishment of better coordination between the State water pollution control agencies and State attorneys general, and increased use of the courts to enforce pollution abatement laws

Our review showed that, although the State enforcement programs improved over the last 5 years, the States, in varying degrees, were encountering difficulties in obtaining compliance with implementation plans We found that some States were prompt in initiating enforcement actions against polluters while other States continued to rely heavily on voluntary compliance and were reluctant to initiate enforcement actions.

In some cases the implementation plans did not provide an adequate basis for timely enforcement In other cases the States needed to more effectively use the enforcement tools available to them and to be adequately informed as to the status of abatement actions taken by polluters

Because not all polluters voluntarily comply with State pollution requirements, a timely and effective enforcement program is needed to ensure that all polluters on a waterway take necessary action to abate their pollution so that the benefits in terms of improved water quality are achieved. The following sections discuss some of the improvements made by the States and the areas in which we believe further improvements are necessary to effectively accomplish the objectives of the water pollution control program

LIMITED ENFORCEMENT OF STATE IMPLEMENTATION PLANS

The implementation plans prepared by the States pursuant to the Water Quality Act of 1965 were to include all municipal and industrial sources of pollution on interstate and coastal waters and were to specify the extent of treatment required to meet the standards and the time frame for constructing the necessary treatment facilities Some State plans included only the dates by which the municipalities or industries were to complete construction of waste treatment facilities The plans of other States contained not only dates for completing construction of facilities but also interim dates for such phases as submission of preliminary and final plans and start of construction

Implementation plans that included interim dates for compliance with State requirements provided a more effective basis for (1) measuring the progress in constructing waste

treatment facilities and (2) taking timely enforcement action when progress lagged

Interim dates were included in the implementation plans of 16 States, however, the dates were not included in the plans of 13 other States although the States had established such dates. In addition, five States established interim dates only for polluters against which the States had taken enforcement action or which had been involved in earlier Federal-State enforcement conferences.

Of the six States included in our review, three established interim dates in their implementation plans submitted to OWP for review and approval and three included only final completion dates in their original plans but subsequently established interim dates. The usefulness of interim dates as a basis for the timely initiation of enforcement action is demonstrated by the following example.

In May 1967 a State issued an order to one of its municipalities, as part of the State's implementation plan, which required that the municipality's existing waste treatment facilities be improved. The municipality was given 90 days to contest the following time schedule but did not do so

Preliminary plans	October 1968
Final plans	June 1969
Start construction	September 1969
Complete construction	October 1970

Preliminary plans were not submitted in October 1968, contrary to the requirement In March 1969 the State water pollution control agency referred the case to the State attorney general A court order was issued in July 1969 that required the municipality to make the necessary improvements. Subsequently the municipality reached agreement with the State to participate in a regional waste treatment system.

In this case enforcement action was initiated after the municipality failed to comply with the interim date for submission of preliminary plans As a result a court order requiring the municipality to improve its treatment facilities was obtained 15 months prior to the date on which construction was scheduled to be completed

States that did not use interim dates generally took action against polluters not complying with implementation plans only after the date construction was to have been completed In such cases enforcement action by the States frequently consisted primarily of extension of the dates for compliance.

The mere establishment of interim dates, however, does not guarantee timely enforcement For example, one State established interim dates, to be met by all municipalities and industrial plants, for submission of preliminary and final plans, start of construction, and completion of construction. The State's implementation plan contained a statement, however, that the construction program for municipalities would be contingent upon Federal and State financial aid

Many municipalities and industrial plants did not submit their plans in accordance with the interim dates. In addition, Federal funds were appropriated in amounts significantly less than expected. According to State officials, if the plans for the municipal projects had been completed in accordance with the originally established dates, the State would have been unable to finance many of these projects

The State held conferences with the municipalities and industrial plants not in compliance with the implementation plans and generally extended the dates for compliance and established new interim dates in the process Even though the State established interim dates, in many instances it did not require the municipalities and industrial plants to comply with its requirements

Our review included 259 municipalities and industrial plants in the six States that, as of February 28, 1971, had not constructed waste treatment plants in compliance with the States' implementation plans. Our review showed that the projects were behind schedule from an average 14 months in one State to 31 months in another State According to State, local, and industrial officials, the delays were attributable to one or more of the following reasons

--A lack of Federal and State financial assistance

--Reluctance of some municipalities to participate in regional waste treatment systems

--Failure of voters to approve local bond issues for the construction of facilities

--Inability to find economical methods to treat wastes

--Recalcitrance on the part of some polluters to comply with the States' implementation plans

Our review showed that, although the implementation plans were to serve as a basis for initiating enforcement actions, their use in that regard was limited. All too frequently the States did not take enforcement actions against polluters not complying with the implementation plans but, rather, merely extended the dates for compliance According to EPA officials 34 States have extended, by as much as 6 years, the dates included in their implementation plans.

INCREASED USE OF STATE ENFORCEMENT TOOLS

The six States included in our review used, to varying degrees, similar enforcement tools to require polluters to comply with State water quality requirements. These tools included administrative orders, hearings, court actions, and permit programs.

Administrative orders, hearings, and court actions

Administrative orders (also referred to as consent or abatement orders) were issued by the six State water pollution control agencies to polluters who violated State statutes. Generally an order specified the type and place of the violation and either a date by which corrective action must be taken or a date by which the polluter must meet with State officials to discuss the violation and the corrective action needed.

One State issued administrative orders to all polluters listed in its implementation plan Four States issued such orders to polluters which were not complying with the States' implementation plans. The remaining State, which relied heavily on voluntary compliance with implementation plans, issued administrative orders to polluters which were not working to solve their pollution problems.

One of the six States had issued administrative orders for many years prior to enactment of the Water Quality Act of 1965. During the 12 years prior to 1966, the State issued 192 administrative orders to polluters Between 1966 and February 1971, the State issued 353 additional administrative orders.

Hearings were used by the six States, in conjunction with administrative orders, to bring together State officials and polluters to discuss pollution abatement requirements, to decide upon appropriate corrective actions, and to resolve differences of opinion concerning needs, compliance dates, or approaches to pollution abatement.

In three States polluters which had received administrative orders could request hearings within 30 days after

the order was issued For the most part hearings were held only at the request of polluters

In another State preliminary orders were issued to polluters, which specified the violations and which required the polluters to meet with State officials within 90 days to discuss their pollution problems and to decide upon acceptable abatement schedules Subsequent to these meetings administrative orders were issued which set forth the agreed-to schedules

The remaining two States held hearings with polluters before issuing administrative orders The States held hearings when violations of the implementation plans occurred or when the State identified polluters not previously listed in the implementation plans

The six States, to some extent, held follow-on hearings and issued amended administrative orders extending the original compliance dates when polluters did not comply with the initial orders.

When polluters failed to comply with the dates stipulated in the administrative orders and when acceptable reasons for the failures did not exist, some States referred the cases to the State attorneys general. Officials of these States expressed the belief that these actions had a positive effect on their programs Other States either did not use administrative orders extensively or were reluctant to refer pollution violations for court actions.

The total number of cases referred to the attorneys general for court actions has been increasing. Between fiscal years 1968 and 1970, 94 cases were referred to the attorneys general in the six States In the first 8 months of fiscal year 1971, however, 64 cases were referred to the attorneys general in the six States

The two States that placed the least reliance on voluntary compliance referred the most cases to their attorneys general for court actions Pollution violations were referred to the attorneys general on a more timely basis in these States

Officials of the two States which emphasized voluntary compliance stated that they were reluctant to refer cases to their attorneys general for court actions because of the difficulty in obtaining evidence needed for such actions or because of delays that might occur should the violators refrain from taking actions until the courts ruled on their cases. Our review showed, however, that, in the two States where the most cases were referred to the attorneys general, court actions were initiated, on the average, about 6 months after referral Officials of these States told us that they experienced no significant problems in developing the evidence needed for court actions.

The following examples illustrate the manner in which the States have used administrative orders, hearings, and court actions to obtain compliance from polluters which did not comply voluntarily with implementation plans

Example 1

A municipality having a population of about 41,000 was to upgrade its facilities to provide adequate treatment in accordance with the following schedule included in the State's implementation plan.

Preliminary plans	April 1968
Final plans	March 1969
Start construction	June 1969
Complete construction	October 1970

The State gave the municipality the option of either upgrading its facilities or participating in a regional waste treatment system. As of December 1970, 32 months after the scheduled date, the municipality had not submitted preliminary plans The case was referred to the State's attorney general and in February 1971 was recorded for court action A State official told us that the municipality subsequently agreed to participate in a regional waste treatment system

Example 2

A second State's implementation plan required an industrial plant to construct a waste treatment facility in accordance with the following schedule.

Preliminary plans	April 1968
Final plans	February 1969
Start construction	April 1969
Complete construction	April 1970

The plant did not comply with the schedule because it considered the treatment facility to be too costly An alternative of participating in a joint facility with a municipality also was considered to be too costly

In August 1968 the plant signed an order issued by the State that changed the construction dates, as follows

Preliminary plans	December 1968
Final plans	August 1969
Start construction	November 1969
Complete construction	November 1970

The plant did not comply with the revised schedule for constructing the facilities Court orders were obtained in October 1970 and April 1971, the latter order required the firm to cease its pollution by December 1971 Failure to comply with the order would subject the firm to a fine of $1,000 for each day thereafter

Example 3

In July 1966, after about 2 years of meetings and discussions with an industrial plant, a third State held a hearing and issued an administrative order which required the plant to complete an improvement to its treatment facilities by January 1967 In March 1967, 2 months after the date the improvement should have been completed, the State amended its order and extended the completion date to December 1967 In January 1968, when the improvement had not been made, the State agency referred the case to the State's attorney general A court order was issued in July 1968 that required completion of the improvement by October 1969 The plant completed its improvement in October 1969

In this case action was not taken by the State until the scheduled completion dates had passed without the improvements having been made Although an administrative order required improvements to be completed within

6 months, 2 years had elapsed before a court order was issued The court order allowed 15 additional months for the plant to complete its improvement After receiving the court order, however, the plant complied with the State's requirements. In January 1972 a State official told us that the State recently had begun to initiate more timely action against polluters

State permit programs

Five of the six States used permit programs in conducting their water pollution control programs The primary purpose of the permit programs varied from State to State in that permits were required for (1) discharging wastes into waterways, (2) constructing waste treatment facilities and sewer extensions to treatment facilities, or (3) operating waste treatment facilities.

Two States required that permits be obtained for (1) the construction or extension of sewers which connected with municipal waste treatment plants and (2) the operation of waste treatment facilities A third State required that permits be obtained for constructing both waste treatment facilities and sewer extensions and for operating waste treatment facilities

A fourth State, after identifying the sources of pollution, required the polluters to file applications for temporary permits to discharge wastes into the State's waters The temporary permits stipulated the actions required of polluters to abate their pollution Since November 1971 the State also has stipulated interim dates by which certain phases of the required actions must be completed If polluters did not comply with the permit requirements, the State issued administrative orders

The fifth State adopted its permit program in March 1970, at which time it required all actual and potential polluters to file applications for operating permits or to request exemptions from the permit program In either case the State required them to provide full details on the nature of their operations and on the quantity and content of wastes discharged

The State issued operating permits when the waste treatment facilities were considered to be adequate When improvements were needed to meet water quality standards, the State issued temporary permits to those polluters that proposed to take adequate abatement action The State also required a construction permit to ensure compliance with water quality standards

A comprehensive permit program can be a useful enforcement tool To be most effective, the permit program should be applicable to all municipal and industrial dischargers and the permits should

--specify limitations as to the volume and content of wastes discharged,

--require the reporting of all wastes discharged,

--stipulate dates by which construction of waste treatment facilities must be completed, and

--prescribe minimum treatment requirements

The permits issued by one State stipulated (1) the dates by which construction must be completed, (2) the minimum degree of treatment required, and (3) the detailed information to be reported concerning the contents of wastes discharged into waters

A second State's permits stipulated the dates by which construction must be completed and specified limitations on the volume and content of wastes discharged A third State required the reporting of wastes discharged The other two States' permit programs met none of the above criteria

STATES NEED TO KNOW STATUS OF EFFORTS TO ABATE POLLUTION

To initiate enforcement actions on a timely and effective basis, States must be aware of the progress, or lack of progress, of municipalities and industrial plants in abating their pollution. In the six States included in our review, we found wide variances in the extent to which the States were aware of the status of pollution abatement efforts. Examples of these variances follow.

In one State water pollution control officials divided the State into basin areas and assigned a staff to each area to monitor the progress of polluters. We found that, as a result of this monitoring, the State was able to take timely enforcement action.

An official of another State told us that the State did not have an adequate system for determining the status of any particular project and did not maintain information concerning the status of polluters' compliance with implementation plan interim dates. In April 1971 we requested information from the State on the status of a municipal project. State officials told us that the project probably was under construction. We learned, however, that the project was completed and has been in operation since November 1970.

Water pollution control officials in a third State had little knowledge of polluters' abatement efforts until 1969 when they reviewed the results of these efforts and found that little progress had been made. They subsequently improved their monitoring program and began initiating more timely enforcement actions.

A fourth State did not have an effective monitoring program prior to mid-1970 when it established interim dates for many of its polluters. The State has since increased its surveillance activities and has required its major industrial plants to submit monthly operating reports.

NEED FOR CLOSE WORKING RELATIONSHIP BETWEEN STATE POLLUTION CONTROL AGENCIES AND STATE ATTORNEYS GENERAL

A close working relationship between a State's water pollution control agency and attorney general's office is important to the success of a State's enforcement program. We noted that the States which took timely enforcement actions were those in which the water pollution control agencies received substantial assistance from the offices of the attorneys general

In one State, prior to 1966, the water pollution control agency and the attorney general's office did not have a close working relationship and the enforcement program was not effective In one case the water pollution control agency wrote to the attorney general's office in April 1955 requesting enforcement of a previously issued order It was not until April 1966 (11 years later) that a consent judgment was signed.

State officials told us that, in the past, the attorneys assigned to pollution cases were young, inexperienced, and remained on the job for only a year or so before moving on to other assignments or into private practices. As a result little continuity existed in the support provided by the attorney general's office.

Since 1966, the attorney general has assigned career attorneys to work exclusively on water pollution cases and a close working relationship has developed with the State's water pollution control agency. As a result, most pollution cases referred to the attorney general are now processed in a few months and the effectiveness of the State's enforcement program has increased significantly.

In another State, where cases referred to the attorney general have been pending for several years, the attorney general recently has established an environmental law section which is physically located at the State water pollution control office Other States also are moving toward the assignment of experienced career personnel to water pollution cases, which has provided greater continuity and more effective enforcement support to the water pollution control agencies.

Some States' water pollution control agencies, in the past, referred few cases to the attorneys general These States generally relied heavily on voluntary compliance by municipalities and industrial plants with State water quality requirements

In one State, for example, only three cases were referred to the attorney general between July 1967 and February 1971. These cases involved (1) a pesticides spraying operation, (2) a mobile home park, and (3) a sand and stone operation Only one case involved delay in construction of a facility One attorney had been designated to handle the water pollution cases but had not been able to devote sufficient time to water pollution matters.

According to the chief of the water pollution control agency, State attorneys were not available in many instances when legal assistance was needed The chief stated that his agency needed at least one attorney assigned to work on a full-time basis on water pollution matters. In January 1972 he told us that an attorney recently had been assigned to the agency.

We believe that enforcement programs have been strengthened considerably in those States where the attorneys general have been providing adequate support to, and coordinating effectively with, the water pollution control agencies We believe that enforcement programs in other States can be improved greatly by better coordination between these offices

STATES ARE PROVIDING MORE PERSONNEL AND FUNDING

In our report to the Congress entitled "Controlling Industrial Pollution--Progress and Problems" (B-166506, Dec. 2, 1970), we commented on the relationship between the size of a State's water pollution control agency staff and the agency's ability to maintain an effective enforcement program and pointed out that a State agency that had fewer employees than were considered needed was not able to effectively perform all necessary enforcement activities.

An effective enforcement program requires sufficient staff to make studies of waterways, to review plans for construction of waste treatment facilities, to make plant inspections, to test water quality, to monitor the progress of pollution abatement efforts, to review operating reports, to gather evidence necessary for enforcement actions, to administer permit programs, and to conduct hearings.

The funding and personnel available for administering the water pollution control programs in the six States for fiscal years 1968 and 1971 were as follows

	Fiscal year 1968	Fiscal year 1971	Increase
Personnel	259	363	104
Funding	$3,424,000	$4,777,000	$1,353,000

State agency officials told us that the increases in personnel and funding were contributing factors in the general improvement of State enforcement programs. They said, however, that the 1971 levels of personnel and funding still were not sufficient to enable them to adequately perform all functions necessary for an effective enforcement program. In some States, for example, insufficient staff has caused the water pollution control agencies to concentrate enforcement efforts only on the larger polluters.

CHAPTER 4

FEDERAL ENFORCEMENT PROGRAM

Historically the States have had primary responsibility for enforcement of water pollution control laws. The Federal role in enforcement is to back up the States, that is, to initiate enforcement actions when the States fail to act or when the States request Federal assistance. Because of the increasing public concern over the problem of water pollution and because of the limited enforcement activity by many of the States, the Federal Government has placed more emphasis on initiating enforcement actions against polluters since 1970--and particularly since the establishment of EPA in December 1970.

Although the increased Federal enforcement activity has served as an important stimulus toward abating water pollution, certain factors continue to limit the effectiveness of the Federal enforcement program. These factors include legislative constraints, shared responsibility among Federal agencies, a lack of adequate Federal-State coordination, and inadequate Federal knowledge as to the progress being made in abating pollution in accordance with State implementation plans.

The following sections discuss the Federal enforcement actions taken and the improvements needed to enhance the effectiveness of the Federal enforcement program.

FEDERAL ENFORCEMENT, INEFFECTIVE IN PAST, HAS BECOME MORE FORCEFUL

Federal enforcement actions against the polluters of our Nation's waterways can be initiated under authority of (1) the Federal Water Pollution Control Act, the basic legislation for the Federal water pollution control program, or (2) the Refuse Act of 1899, which since March 1970 has been put to substantial use to initiate enforcement actions against certain industrial plants discharging pollutants into navigable waters.

Enforcement actions taken under
Federal Water Pollution Control Act

The Federal Water Pollution Control Act of 1956 authorized Federal enforcement actions when pollution of an interstate waterway from one State endangered the health or welfare of persons in another State. A 1961 amendment to the act authorized Federal actions in cases of intrastate pollution, when requested by the Governor of a State. The enforcement procedure involves three steps.

1. A conference between Federal and State water pollution control officials to identify polluters and to decide on required corrective action.

2. A public hearing involving a specific polluter or polluters not following the recommended correction plan

3. Federal court action, as a final resort, against a polluter not making reasonable efforts to abate pollution.

Enforcement conferences are convened to resolve widespread problems of pollution, to identify new sources of pollution, to attempt to solve technical problems, and to seek voluntary compliance by the polluters involved. In this last respect the conferees normally establish plans, including timetables, to be followed by the municipalities and industrial plants in abating their pollution. In most cases the timetables include interim dates by which the planning, construction, and operation phases of the abatement actions are to be completed.

OWP obtains information on polluters and pollution abatement projects through periodic compliance reports submitted by the States, specific requests to State agencies or polluters, inspections, and examinations of State records.

As of February 28, 1971, OWP had held 51 enforcement conferences involving over 1,300 municipalities and 1,700 industrial plants, had conducted four hearings, and had taken one court action.

Although numerous conferences were convened and, in some cases, reconvened, OWP showed reluctance to hold hearings and to take court actions when the conference recommendations were not implemented. No formal hearings were held after 1961, and the only court action under the act was taken in October 1961.

Our review of enforcement conference proceedings showed that, in many instances when the conference recommendations were not followed, the conferences merely were reconvened and the dates for compliance were extended. For example, during one conference held in 1964, a plan, including interim dates, was established for the control of pollution by municipalities and industrial plants. Most of the polluters did not comply with the plan. In 1967 the State submitted, as part of its water quality standards, an implementation plan which included later dates for compliance by the municipalities and industrial plants. These dates were approved by the Secretary of the Interior in 1968.

In the latter part of 1968, the conference was reconvened and the previous conference compliance dates were revised to conform with the dates approved in the water quality standards implementation plan. A number of these dates were revised again through unilateral extensions by the State. The following table shows the extensions granted to two municipalities which were identified as polluters in the initial conference.

	1964 conference recommendation	Water quality standards' dates	State-modified dates
Municipality A			
Final plans	5-66	3-71	1-73
Start construction	5-67	6-71	4-73
Complete construction	(a)	6-73	4-75
Municipality B			
Final plans	5-66	3-69	1-70
Start construction	5-67	7-69	4-70
Complete construction	(a)	7-71	4-72

[a]The 1964 conference did not establish dates for completion of construction

In another example recommendations were made at a 1963 conference for abatement measures to be taken by 17 polluters (three municipalities and 14 industrial plants). None of the polluters abated their pollution in accordance with the established schedule. In 1967, the conference was reconvened and the time schedules were extended.

As of February 28, 1971, the status of the 17 projects was as follows

	Number
Corrective action completed	7
Business closed	2
Corrective action not completed	5
Preliminary plans not submitted	3
Total	17

Although the conferences have served as a stimulus for some municipalities and industrial plants to abate their pollution, these examples are illustrative of the need for more forceful Federal follow-up action to ensure that all polluters take the necessary actions to achieve water quality goals in accordance with approved plans. Without such enforcement the public, including those who comply with the conference recommendations and who incur expenditures to abate their pollution, does not receive the benefits expected in terms of improved water quality or increased water uses.

Beginning in fiscal year 1970, the Federal Government placed more emphasis on initiating enforcement actions against polluters. Such actions were taken primarily under the authority contained in the Water Quality Act of 1965 and the Refuse Act of 1899.

The Water Quality Act gave the Federal Government authority to abate pollution where the discharge of matter into interstate waters or portions of such waters reduced the quality of such waters below the established State water quality standards. The Federal Government can initiate court actions 180 days after notifying the violators and interested parties of the violations. The 180-day notices are issued to

give the violators time to take, or to agree to take, actions voluntarily to meet the water standards.

OWP officials told us that 180-day notices were issued, in instances of severe and gross pollution, to polluters which had failed to meet implementation dates and which had violated water quality standards.

It was not until August 1969 that the first 180-day notice was issued. As of February 28, 1971, OWP had issued fourteen 180-day notices to municipal and industrial polluters. Of the 14 polluters, eight had taken, or agreed to take, appropriate action; one industrial plant had closed, two municipalities were attempting to resolve technical and funding problems; and three industrial plants were the subject of court actions filed by the U.S. attorneys under provision of the Refuse Act.

Many of the 180-day notices were issued to municipalities and industrial plants that had failed, for extended periods, to abate their pollution in accordance with Federal and State implementation schedules. We found that 11 of the 20 notices issued as of April 28, 1971, had been sent to municipalities and industrial plants that were, on the average, 16 months behind schedule in complying with State requirements. The following examples are indicative of the lack of compliance for long periods of time on the part of many polluters and of the lack of timely enforcement by OWP.

Example 1

An implementation schedule applicable to all municipalities in a State was established during the initial session of an enforcement conference held in August 1965, as follows

Completion of plans and specifications	August 1966
Completion of financing	February 1967
Construction started	August 1967
" completed	January 1969

The conference was reconvened in March 1967, and a revised implementation schedule with extended dates was established for municipality A. According to the revised

schedule, a report and general plans were to be submitted to Federal and State pollution control officials by July 1967, detailed plans were to be submitted by August 1968, and construction was to be completed by February 1972. This schedule was included in the State's water quality standards.

The municipality submitted the report and general plans in July 1967. The detailed plans, however, were not submitted by August 1968, and the State extended the deadline for submission to June 1969. When the plans were not submitted by that time, the State extended the deadline again to September 1969. On August 30, 1969, 4 years after the first enforcement conference, a 180-day notice was issued by OWP to municipality A. In September 1969 municipality A submitted its detailed plans to the State water pollution control agency, and the plans were approved subsequently.

Example 2

OWP issued a 180-day notice to an industrial plant in August 1969 for failing to comply with a schedule established during the first session of an enforcement conference held in August 1965. The plan required all industrial plants to have waste treatment facilities completed and in operation by January 1, 1969.

During a subsequent session of the enforcement conference held in March 1967, a revised schedule was established for this plant's construction of additional waste treatment facilities. According to the revised schedule, plans were to be submitted by May 1, 1968, and construction was to be completed by August 1, 1969. This schedule was included in the State's water quality standards.

The plans had not been submitted by June 1969. In August 1969 a 180-day notice was issued to the plant.

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EPA's use of the 180-day notice increased significantly during the period May to December 1971. As of December 31, 1971, a total of eighty-seven 180-day notices had been issued.

Enforcement under Refuse Act of 1899

In addition to acting under the Federal Water Pollution Control Act, in March 1970 OWP began to initiate water pollution enforcement actions under authority of the Refuse Act of 1899 The Refuse Act prohibits the discharge of any refuse matter into navigable waters, except for matter flowing in a liquid state from streets and sewers, without a permit from the Corps of Engineers. Until about March 1970 the Federal Government generally had interpreted the act to apply only to matter which would obstruct or impede navigation. Since then, however, the interpretation has been expanded to apply to pollutants discharged into navigable waters by industrial plants.

Violations of this act can be referred without delay to the Department of Justice EPA officials told us that the enforcement procedures available under this act were used when immediate action was required and when the discharge was hazardous and a threat to health and welfare

On December 23, 1970, the President issued Executive Order 11574 which directed the executive branch of the Federal Government to implement a permit program under the Refuse Act to control industrial discharges of pollutants and other refuse matter into navigable waters.

The Corps of Engineers has the responsibility for granting, denying, or revoking the permits, the States have responsibility for certifying that the discharges will not violate applicable State water quality standards, and EPA has the responsibility for reviewing applications for permits and for making recommendations to the Corps in matters involving water quality The program requires industrial plants discharging matter directly into navigable waterways to disclose, in detail, information on the matter being discharged, including chemical composition, temperature, acidity, oxygen demand, and solids content

The Corps required industrial plants discharging wastes into navigable waters to file permit applications containing certain basic information by July 1, 1971, and required some plants to supply more detailed or difficult-to-obtain laboratory data by October 1, 1971 The Corps

sent warning letters to those plants that did not file applications by the July 1, 1971, deadline. The U.S attorneys can seek court injunctions to halt discharges by industrial plants that have not filed permit applications. Plants that discharge without permits are subject to fines of $500 to $2,500 for each violation

As of October 31, 1971, the Corps had

--received 19,000 applications for permits,

--forwarded 8,000 applications to EPA for review,

--sent about 16,000 warning letters to industrial plants, and

--issued six permits

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Under the authority of the Refuse Act, Federal enforcement has been more forceful, more timely, and more effective than that under the authority of the Federal Water Pollution Control Act. As of October 1971 EPA had referred 73 cases to the Department of Justice for court actions because of violations of the Refuse Act.

IMPROVEMENTS NEEDED IN ADMINISTERING FEDERAL ENFORCEMENT PROGRAM

Although the emphasis on the Federal enforcement program has increased since 1970, we believe that certain improvements are needed in the administration of the program to make it more effective. We found that Federal enforcement actions had not always been coordinated adequately among the Federal agencies and with the States and that Federal actions had been unpredictable and had caused confusion among the States as to when and under what circumstances the Federal Government would initiate enforcement actions.

In addition, OWP needs to maintain current information on the status of abatement actions to more effectively monitor the progress of polluters and the adequacy of State enforcement efforts.

Need to improve coordination among Federal and State agencies

The Federal Water Pollution Control Act underscores the intent of Congress that the primary responsibility for the abatement, control, and prevention of water pollution remains with the States.

Federal enforcement actions have been initiated by OWP under authority of both the Federal Water Pollution Control Act and the Refuse Act of 1899 and by the U.S. attorneys under authority of the Refuse Act. Some of these actions have been taken without coordination among the Federal agencies and/or without consultation with the State water pollution control agencies. Such actions tended to downgrade the primary enforcement role of the States, particularly when the States were taking, or planned to take, enforcement actions against polluters.

State officials told us that OWP had issued 180-day notices to municipalities and industrial plants without notifying the State agencies in advance. They said that in some cases the notices had been issued when the States were taking, or had plans to take, enforcement actions against the municipalities or industrial plants receiving 180-day notices. The officials stated that OWP needed to define

its enforcement policy in terms of when, and under what circumstances, OWP would initiate enforcement actions.

In our opinion, advance public knowledge as to the circumstances under which the Federal Government would take enforcement action, in effect, would force polluters, State agencies, and State courts to act within specified time constraints to avoid Federal intervention.

With respect to actions under the Refuse Act, the Department of Justice, on June 13, 1970, issued guidelines to the U.S. attorneys for use in pursuing litigation under the act. The guidelines emphasized the Department's intent that actions not be taken under the Refuse Act when actions could be taken under the Federal Water Pollution Control Act. The guidelines provided that under the Refuse Act

--Actions not be initiated by U.S. attorneys on their own authority (that is, without the approval of the Department of Justice) against industries which continuously discharge refuse into navigable waters or their tributaries, since appropriate enforcement actions in these cases already may have been initiated by OWP or States.

--The Department of Justice and U.S. attorneys are to coordinate actions under the Refuse Act with OWP to ensure that such actions do not conflict with actions taken or planned to be taken under the Federal Water Pollution Control Act.

Our review showed, however, that, before and after issuance of these guidelines, many enforcement actions were initiated by the U.S. attorneys against polluters included in the implementation plans of the States without coordination with OWP and the States. We identified cases in which OWP regional staff had developed information on polluters which had not complied with the implementation plans and had submitted the information to OWP headquarters with recommendations that 180-day notices be issued.

Subsequently OWP decided not to issue the notices when it became aware of actions initiated by the U.S attorneys under the Refuse Act. OWP regional officials stated that

in many cases they were not aware of enforcement actions initiated by the U.S. attorneys until those actions were reported in the newspapers. State officials advised us that actions by U.S. attorneys had been taken without advance warning to them.

The unpredictability of Federal enforcement in the past and the confusion that has resulted from the lack of well-defined Federal enforcement policy have had an adverse impact on Federal and State enforcement efforts. The following examples illustrate the problems encountered and the need for improved coordination among OWP, the U.S attorneys, and State water pollution control agencies.

Example 1

A large industrial plant discharging about 25 million gallons of waste a day into interstate waters received a State abatement order in May 1967 that stipulated the following compliance dates.

Preliminary plans	October 1968
Final plans	April 1969
Start construction	October 1969
Complete construction	October 1970

The industrial plant did not comply with the State abatement order, and, after unsuccessful negotiations, the State referred the case to its attorney general for litigation in January 1970. On March 6, 1970, OWP regional officials recommended to OWP headquarters that a 180-day notice be issued to the plant for violation of water quality standards.

On April 24, 1970, the State superior court ordered the plant to appear before the court on May 15, 1970. OWP issued a 180-day notice to the plant for violation of water quality standards on May 19, 1970. On July 7, 1970, the State superior court issued an order to the plant that stipulated that it complete construction of abatement facilities by April 1972. As of September 1971 the plant was complying with the requirements of the court order.

In this case the polluter was not complying with the State's implementation plan, but the State was taking enforcement action against the plant during the period of time when OWP was considering issuing a 180-day notice to the plant

Example 2

A large industrial plant had been treating its waste for 20 years and, as of 1968, was considered by the State as being in compliance with the State's requirements. In 1970, however, State inspections and tests disclosed the need for the plant to provide additional waste treatment facilities to meet established water quality standards.

The industrial plant voluntarily agreed to provide these facilities and agreed also to meet with State officials early in 1971 to review the plant's pollution abatement proposal. On February 19, 1971, however, a U.S. attorney filed a civil suit under the Refuse Act charging illegal discharges into interstate waters. A pretrial conference was scheduled in a Federal court for June 15, 1971.

Because of the Federal suit, the plant canceled its conference with the State but agreed to schedule another conference at the conclusion of the Federal litigation.

State officials informed us that in this case the State was taking positive action to abate this pollution problem and that the Federal action not only duplicated and jeopardized efforts by the State but also may have delayed efforts to resolve the matter. An EPA official told us that the U.S attorney had not coordinated the filing of this case with EPA.

Example 3

A large municipality was delayed in meeting the implementation dates established in an enforcement conference held in February 1970. The delay was due primarily to a problem in arranging financing. The State required the municipality to submit final plans by December 14, 1970. The records showed that subsequently both the State and OWP

became aware that the municipality would not submit its plans by that date

According to State officials the State planned to issue an administrative order to the municipality on December 15, 1970, requiring that the municipality immediately initiate an abatement program and complete construction of secondary treatment facilities by December 31, 1972.

On November 16, 1970, OWP regional officials requested that EPA headquarters issue a 180-day notice to the municipality. OWP officials advised the State that they planned to announce the issuance of the 180-day notice on December 10, 1970 (4 days before the scheduled compliance date). Consequently the State revised its plans and issued its order on the same day that OWP issued the 180-day notice.

Following receipt of the State administrative order and the OWP 180-day notice, the municipality increased its water and sewer rates to help finance the construction of the waste treatment facilities and proposed a modified implementation schedule which called for secondary treatment of its waste by April 1973. The State agency approved the municipality's schedule. According to a State official, Federal action was not necessary in this case.

OWP officials told us that they were aware that the State was planning to take enforcement action. In this case the OWP action duplicated State efforts. With limited resources available at both the State and Federal levels, it seems to us that a more efficient utilization of these resources would dictate that Federal and State enforcement personnel work together to avoid duplication of effort. Because the States have the primary responsibility for water pollution control, OWP enforcement efforts could be directed better to those instances in which the States are not taking adequate steps to control pollution.

Action taken to improve coordination

While our review was in progress, the Department of Justice, on April 7, 1971, issued further guidelines to the U.S. attorneys for litigation under the Refuse Act. The guidelines stipulated that U.S. attorneys initiate actions

under the Refuse Act only on cases referred to them by the Corps and EPA pursuant to a memorandum of understanding between the Corps and EPA. This memorandum stated that EPA would evaluate the existence and adequacy of State enforcement efforts before a case was referred to the U.S. attorneys for Federal enforcement action

On June 25, 1971, EPA issued "Guidelines on Water Pollution Enforcement" to its regional offices. These guidelines stated that the offices should discuss all proposed enforcement actions with State agencies well in advance of recommendations or referrals for actions and that, before recommending any enforcement actions, the offices should notify the State pollution control agencies of the proposed actions.

The guidelines and the memorandum of understanding, if properly implemented, should improve the coordination not only among the Federal agencies but also with the State water pollution control agencies.

Need for OWP to maintain current information regarding construction progress

To evaluate the adequacy of State enforcement measures and to initiate its own enforcement actions when necessary, OWP should maintain current information pertaining to the identification of polluters and the status of municipal and industrial efforts to abate pollution

OWP obtains information on polluters and pollution abatement projects through periodic compliance reports submitted by the States, specific requests to State agencies or polluters, inspections, and examinations of State records In addition, OWP has used enforcement conference proceedings to update its information

As discussed on page 24, the States' knowledge of polluters' efforts to abate pollution varied considerably We found that generally OWP had inadequate information concerning polluters and the status of pollution abatement efforts in the States Even when the States had relatively current information on the status of pollution abatement projects, the information in OWP's records was not current

Our comparison of the records of five States with OWP regional status reports, which included information on abatement requirements and programs, showed significant differences OWP's records were incomplete and were not current with regard to the total number of abatement projects, compliance dates, and status of many of the projects. For example, our comparison of records maintained by one State with OWP status reports showed that, for 40 selected municipal projects, OWP's data was inaccurate or incomplete for 28 projects OWP's status reports for industrial plants had not been updated since July 1969.

OWP's records did not show

--That one industrial plant's treatment of wastes was inadequate and that the State had canceled the plant's permit and was contemplating court action

--That another plant's primary treatment plant was in poor condition and that the State had established a date by which improved treatment must be provided to meet water quality standards

--That a municipality had received a State order restricting sewerage connections until improved treatment was provided.

In January 1972 an EPA official informed us that, because EPA's records were updated mainly from (1) 6-month status reports submitted to EPA by the States on polluters subject to enforcement conferences and (2) the States' annual plans, a built-in gap existed between the States' information and EPA's information

If EPA is to initiate timely, effective enforcement actions and is to avoid unnecessary duplication of State actions, it is essential that EPA have current information on the sources and types of pollution, State implementation plans, requirements, and compliance schedules, State abatement actions, and status of polluters' progress in abating their pollution

LEGISLATIVE CONSTRAINTS LIMIT EFFECTIVENESS OF FEDERAL ENFORCEMENT EFFORTS

Under the Federal Water Pollution Control Act, EPA can take action against polluters only when pollutants cross a State boundary, when the Governor consents, in writing, in cases of intrastate pollution, or when substantial economic injury results from inability to market shellfish Our review of the implementation plans for four of the six States included in our review showed that 45 percent of the polluters listed in the plans discharged their wastes into intrastate waterways Thus many polluters were not subject to Federal enforcement actions unless the States consented to such actions or unless shellfish were affected

The act also does not authorize swift enforcement actions to halt the discharge of pollutants when the health and welfare of persons is endangered Under the act EPA can initiate an enforcement conference when the health and welfare of any person is endangered by interstate pollution, but a minimum of 32 weeks is required between the time that EPA notifies interested parties, including alleged polluters, of its decision to hold an enforcement conference and the time that EPA can hold a formal hearing if the conference recommendations are not followed.

After the hearing EPA can issue a notice specifying a period of not less than 26 weeks within which the pollution must be abated EPA can refer the case to the Attorney General for court action only if the polluter is not taking reasonable action to abate the pollution within the time specified in the notice

When water quality standards are violated, EPA can move somewhat faster, because court actions can begin 180 days after the polluters are notified of the violations. The 180-day waiting period gives polluters time to take, or to agree to take, voluntary actions to abate their pollution to meet the State's water quality standards

Many of the 180-day notices have been issued to polluters which, for long periods of time, failed to abate

pollution in accordance with Federal and State implementation schedules For example, of the 20 notices issued by OWP as of April 28, 1971, 11 were issued to polluters which were, on the average, 16 months behind schedule in abating their pollution This waiting period appears to be unreasonable in some cases because it gives recalcitrant polluters 6 additional months to take, or to agree to take, long overdue abatement action.

The inability to move swiftly under the act was highlighted in March 1970 when OWP, in an effort to control mercury discharges from 10 industrial plants, resorted to the use of authority under the Refuse Act of 1899 rather than the authority under its basic legislation, the Federal Water Pollution Control Act.

EPA can take enforcement action under the Federal Water Pollution Control Act only after water pollution becomes a problem One of the factors that limits the EPA enforcement program is the lack of authority to enforce specific effluent restrictions Under present law violation of water quality or endangerment to health and welfare must be shown This showing may be difficult and costly. In addition, it may be difficult to relate a change in water quality to a specific municipality or industrial plant

The use of specific effluent restrictions would permit the setting of treatment requirements for municipalities and industrial plants before pollution became a problem Under such a system enforcement actions also would be easier. Showing a failure to meet the established effluent restrictions, rather than showing that the polluter's discharge caused a violation of the water quality standards, would be sufficient grounds to initiate enforcement actions.

The Refuse Act has provided EPA with more effective enforcement authority Civil or criminal actions can be initiated promptly against industrial plants that are discharging wastes into navigable waters or their tributaries--intrastate as well as interstate--without permits from the Corps of Engineers In addition, the Federal permit program allows the Federal Government to inventory and regulate the quantity and content of industrial wastes discharged into navigable waterways and their tributaries

The Refuse Act, however, does not provide the comprehensive authority needed to adequately carry out the Federal water pollution control enforcement program

In general municipalities discharging wastes in a liquid state and industrial plants discharging wastes into municipal sewers have not been subjected to enforcement proceedings under the Refuse Act, although they represent a significant part of the problem In addition, proceedings under the Refuse Act have tended to subjugate the primary role of the State in abating and controlling water pollution and enforcement authority under the act is split between EPA and the Corps of Engineers

Because the permit program generally does not apply to municipalities or to the large number of industrial plants discharging wastes into municipal sewers, there is a need for a comprehensive permit program that applies to all industrial plants and municipalities

CHAPTER 5

LEGISLATIVE CHANGES BEING CONSIDERED BY THE CONGRESS

FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1971

In November 1971 the Senate unanimously passed Senate bill 2770, entitled "Federal Water Pollution Control Act Amendments of 1971 " On December 15, 1971, House bill 11896, which is similar to the Senate bill, was ordered to be reported out of Committee by the House Committee on Public Works

Both bills declare that national policy be, among other things, (1) the elimination of the discharge of pollutants into navigable waters by 1985 and (2) the achievement, whenever attainable, of an interim goal of water quality that provides for protection and propagation of fish, shellfish, and wildlife and that provides recreation in and on the water by 1981 In addition, the bills state that the policy of the Congress is to recognize, preserve, and protect the primary responsibilities and rights of the States to prevent and eliminate water pollution

The bills would replace existing enforcement procedures, including conferences and 180-day notices for violations of water quality standards, and would substitute a system of enforcement based on discharge permits and effluent limitations

Some of the provisions of the bills that deal with the water pollution control enforcement program follow

1 Expansion of Federal enforcement authority to municipal discharges into all navigable waters, both interstate and intrastate.

2 Federal authority to establish and enforce specific effluent limitations In addition, the Administrator of EPA would be required to establish standards of performance, applicable to new sources of pollution within certain specified industries, that

reflected the greatest effluent reduction achievable through the use of the latest available technology The Administrator would be required also to set (1) effluent limitations for the discharge of toxic water pollutants and (2) pretreatment standards for the discharge of pollutants into publicly owned treatment works

3 Establishment of a Federal permit program, for all point sources[1] discharging pollutants into navigable waters, to replace the existing Refuse Act permit program The States would have the option of administering the permit programs in lieu of EPA if their permit programs met certain requirements

4 Federal authority to take more timely enforcement action The Administrator would initiate court action against polluters violating permit requirements and effluent limitations In the case of a violation of effluent limitations, Federal court action would be initiated if the State did not take appropriate enforcement action 30 days after the State and the polluter had been notified by EPA of the violation

5 Federal assumption of enforcement authority within a State where the Administrator finds widespread violations of effluent limitations

6 Federal authority to issue orders requiring immediate abatement of pollution which is a source of imminent or substantial endangerment to the health or welfare of persons In addition, the Administrator would be authorized to institute civil actions for relief in instances in which pollution presented a substantial economic injury to persons due to their inability to market shellfish

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[1]According to the bills, "The term 'point source' means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, from which pollutants are or may be discharged "

7 Submission by the Administrator of a report to the Congress by July 1, 1973, describing the specific quality of all U S waters as of January 1, 1973 The report would identify and inventory all point sources of discharge together with an analysis of each discharge In addition, the States would be required to issue to EPA, by July 1, 1974, and each year thereafter, reports describing the quality of their navigable waters and analyses of the extent to which the discharge of pollutants had been, or would be, eliminated

CHAPTER 6

CONCLUSIONS

In our opinion, the legislative changes proposed by the cognizant legislative committees are designed to provide reasonable solutions to the problems we identified with regard to the Federal enforcement program.

The proposed legislation, which expresses the intent of the Congress to preserve the primary role of the States in abating and controlling water pollution, also greatly strengthens Federal authority to initiate enforcement actions. We believe that the proposed legislation, if effectively implemented, should

--Result in more timely and forceful Federal enforcement actions because EPA could initiate actions against all polluters of navigable waters, both interstate and intrastate, when they violated effluent restrictions. It would not be necessary to prove a violation of water quality standards; proving such a violation could be a difficult and time-consuming process.

  EPA could initiate court actions against polluters 30 days after notifying the States and the polluters of the violations. In addition, EPA could act to immediately abate pollution which was a source of imminent or substantial danger to health or welfare or a source of substantial economic injury to persons because of their inability to market shellfish.

--Minimize the problem of coordination and duplication between Federal and State water pollution control agencies because all enforcement authority would be contained in the Federal Water Pollution Control Act and would be the responsibility of EPA. House bill 11896 provides that no permits for the discharge of pollutants into navigable waters be issued under the Refuse Act after the 180th day after the date of enactment of this bill.

  Furthermore both the Senate and the House bills provide that, after EPA has notified a State and

polluters of violations, EPA initiate enforcement actions only if the State has not commenced appropriate enforcement actions 30 days after notification.

--Minimize the duplication of Federal and State permit programs. EPA would have responsibility for the issuance of permits for discharging pollutants into navigable waters, but the States would have the option of establishing and administering permit programs that met certain requirements of EPA.

--Eliminate the problem of EPA officials' lack of awareness of the status of pollution abatement actions because of the requirement that EPA send to the Congress, by July 1, 1973, a report on the quality of all U.S. waters, an inventory of all point sources, and an analysis of each discharge. The States would be required to issue to EPA, by July 1, 1974, and each year thereafter, reports describing the quality of their navigable waters and analyses of the extent to which the discharge of pollutants had been, or would be, eliminated.

FEDERAL AND STATE COMMENTS

In January 1972 drafts of this report were submitted to EPA, the Department of Justice, the Corps of Engineers, Department of the Army; and the State water pollution control agencies of the six States included in our review.

EPA agreed, in general, with the matters discussed in the report and stated that the report showed a good understanding of the problems involved in implementing an enforcement program. EPA stated also that it had been working to resolve the problems brought out in the report and noted the enforcement actions it had taken after it was established in December 1970. (See app. I.)

The Department of Justice agreed, in general, with the matters discussed in the report. The Department stated that, in general, it found many of our conclusions to be unassailable. The Department's comments were directed primarily to what it considered

> "*** the confused state of Federal law that Congress has empowered and directed Federal officials [under the Refuse Act of 1899] to play a primary role in what the courts have held to be the general field of water pollution control, while, on the other hand, stating at the same time [in the Federal Water Pollution Control Act] that States are to play the primary role in abating such pollution."

The Department's comments were evaluated and appropriately considered in the body of our report.

The other recipients of the draft report agreed, in general, with our findings. Their comments were evaluated and appropriately considered in the body of our report.

ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D C 20460

February 2, 1972

Mr Edward A Densmore, Jr
Assistant Director
Civil Division
General Accounting Office
Room 736, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20852

Dear Mr Densmore

We have reviewed the General Accounting Office Draft Report, "Water Pollution Enforcement Program Assessment of Federal and State Efforts " We generally agree with your analysis and your recommendations for improvement

Our agency was formed only three months before your field work ended Since our formation, we have worked continually to resolve the same problems brought out in your report One of the first actions of the Administrator was to announce the issuance of 180-day notices to the cities of Cleveland, Detroit, and Atlanta for violation of water quality standards By the end of the 180-day period, EPA announced agreements with each of the three cities and with the States involved for joint Federal-State-local financing of the needed $1 billion treatment facilities construction

That initial action was followed by an aggressive enforcement program in EPA's first year, resulting in 36 enforcement conference-type actions, 63 180-day notice actions, 102 cases under the 1899 Refuse Act (see enclosure), and the development of the Refuse Act permit program, EPA's most important enforcement tool

The Environmental Protection Agency's enforcement policy has become clear we will take every action possible to insure compliance with water pollution control laws In our actions we will continue to recognize the important responsibilities of the States to control water pollution and will make every effort to coordinate Federal and State enforcement action

We appreciated the opportunity to review your draft report It displays a good understanding of the problems involved in implementing an enforcement program

Sincerely yours,

Thomas E Carroll
Assistant Administrator
for Planning and Management

Enclosure

PRINCIPAL OFFICIALS

OF THE ENVIRONMENTAL PROTECTION AGENCY

RESPONSIBLE FOR ADMINISTRATION OF ACTIVITIES

DISCUSSED IN THIS REPORT

	Tenure of office	
	From	To
ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY (note a):		
William D Ruckelshaus	Dec. 1970	Present
SECRETARY OF THE INTERIOR:		
Walter J. Hickel	Feb. 1969	Nov. 1970
Stewart L Udall	Jan. 1961	Jan. 1969
ASSISTANT SECRETARY FOR WATER QUALITY AND RESEARCH (note b)		
Carl L. Klein	Mar. 1969	Oct 1970
Max N Edwards	Dec. 1967	Feb. 1969
Frank C. DiLuzio	July 1966	Dec. 1967
COMMISSIONER, WATER QUALITY OFFICE:		
David D. Dominick	Mar. 1969	Apr. 1971
Joe G. Moore, Jr.	Feb. 1968	Mar. 1969
James M Quigley	Mar. 1966	Jan. 1968

[a]The Federal Water Pollution Control Administration was transferred from the Department of Health, Education, and Welfare to the Department of the Interior in May 1966, and the title of the agency was changed to the Federal Water Quality Administration in April 1970 Effective December 2, 1970, the Federal Water Quality Administration was transferred from the Department of the Interior, its name was changed to the Water Quality Office, and its functions were incorporated into the newly established EPA

[b]Designated as Assistant Secretary for Water Pollution Control until October 1968

Copies of this report are available from the U S General Accounting Office, Room 6417 441 G Street N W Washington D C 20548

Copies are provided without charge to Members of Congress congressional committee staff members Government officials members of the press college libraries faculty members and students The price to the general public is $1 00 a copy Orders should be accompanied by cash or check