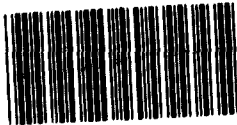


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STATEMENT OF
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RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION

BEFORE THE
SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
OF THE
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
ON

EPA AND STATE PROGRESS IN ADMINISTERING THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT PROGRAM

Mr. Chairman and members of the Subcommittee:

We are pleased to be here today to present our observations and concerns regarding the management of the National Pollutant Discharge Elimination System (NPDES) permit program--the principal means of controlling the nation's water pollution. Our comments will be based primarily on issues presented in our most recent report on the program entitled "Wastewater Dischargers Are Not Complying With EPA Pollution Control Permits" (GAO/RCED-84-53) issued on December 2, 1983.

Considering the magnitude and complexity of the NPDES program, which involves about 65,000 municipal and industrial dischargers, it cannot be expected to operate without some problems. What concerns us, however, is that we have reported serious noncompliance with permits for over five years. The persistence of these problems compromises the water quality and related environmental benefits of the billions of dollars invested in the construction and operation of wastewater treatment facilities. EPA most assuredly needs to improve its management,

monitoring, and enforcement of the permit program to achieve the goals of the Clean Water Act.

THE NPDES PERMIT PROGRAM

The Clean Water Act established the NPDES permit program in 1972 as the principal tool for controlling pollution entering our waterways from point sources, such as factories and sewage treatment plants. The act requires that any facility discharging pollutants into the nation's waters must have an NPDES permit. The permits specify discharge limitations for particular pollutants, actions and time frames for complying with permit limits, and self-monitoring and reporting requirements. The permits must be renewed and upgraded at least every 5 years.

The permit program is managed by EPA or by the state where EPA has delegated program responsibility to the state. As of January 31, 1984, 36 of the 56 states and territories had received program delegation. Of the 65,000 permits issued as of January 1984, 49,000 were to industrial facilities and 16,000 to municipal facilities. EPA has classified about 8,000 permits as "major" based on discharge volume, the type of pollutants in the discharge, and, in the case of municipal facilities, the number of people served.

The four key questions we sought to answer in our most recent review were:

- Is noncompliance with permit limits widespread and, if so, what are the causes of noncompliance?
- What measures are employed by EPA and the states to monitor compliance with permit limits and what assurance is there that noncompliance is reported?
- What enforcement actions against noncomplying permittees are available and used, and what are the results?

--What controls exist to assure that all point sources of water pollution apply for and receive permits and upgrade permit limits when required?

We performed our work in three EPA regions and in six states: Iowa, Louisiana, Missouri, New Jersey, New York, and Texas. EPA administers the program in Texas and Louisiana, and the other four states have been delegated responsibility for administering the program.

NONCOMPLIANCE WITH
PERMIT LIMITS

We reported in 1978 that significant noncompliance with permit limits existed at industrial facilities.¹ Again in 1980 we reported that significant noncompliance with permit limits existed at major municipal facilities.² Our most recent report showed that noncompliance with permit limits for both industrial and municipal dischargers remains widespread, frequent, and significant.

The numbers tell the story. Based on a random sample of 531 major dischargers--274 municipal and 257 industrial dischargers--in the six states, we estimated that 82 percent of all the dischargers in the six states exceeded their permit limits at least once during the 18-month review period ending March 31, 1982. More importantly, we estimated that 31 percent of the dischargers in the six states which exceeded their permit limits during the 18-month period were in significant noncompliance. We considered a discharger in significant noncompliance when concentration or quantity limits were exceeded by 50 percent or

¹More Effective Action by the Environmental Protection Agency Needed to Enforce Industrial Compliance With Water Pollution Control Discharge Permits, CED-78-182, Oct. 17, 1978.

²Costly Wastewater Treatment Plants Fail to Perform As Expected, CED-81-9, Nov. 14, 1980.

more for at least one permit parameter in at least 4 consecutive months during the 18-month period. The municipal dischargers were in significant noncompliance more often than industrial dischargers by better than a two to one ratio.

EPA does not agree with our statistics. Its analysis of our data on the 531 dischargers showed noncompliance rates that were 7 to 12 percent lower than our rates. The difference is attributable to differences in the universe analyzed and in the reporting methodology. EPA's universe excluded dischargers with enforceable, interim permit limits, that is, facilities working toward more stringent limits. EPA included only those dischargers with final permit limits. About 25 percent of the 531 dischargers in our sample had interim limits. We included both types of permittees in our analysis because both interim and final permits are legally enforceable and, if exceeded, result in the discharge of more pollution than allowable. We note that subsequent to our report EPA changed its compliance reporting to include dischargers with both final effluent limits and with interim effluent limits.

Also, EPA derives its quarterly significant noncompliance rate by dividing the number of permittees not meeting the criteria at the end of a particular quarter by the total number of permittees. This methodology has certain limitations which tend to understate noncompliance. For example, if a permittee is in significant noncompliance for April and May but returns to compliance in June, the end of the quarter, that permittee would not be reported as being in significant noncompliance. The reporting method EPA uses shows only the compliance at a specific

point in time; it does not show that permittees may have been in significant noncompliance for many months before the reporting month. Our use of an 18-month period is intended to overcome this end of the quarter "snapshot" limitation by presenting noncompliance data over a much longer historical time frame.

ADEQUACY OF COMPLIANCE MONITORING

EPA and state agencies rely heavily on discharge monitoring reports (DMRs) to inform them of permit noncompliance. Not submitting or submitting incomplete DMRs could conceal serious discharge noncompliance.

Our most recent review showed that of the 531 major municipal and industrial dischargers in our sample, 40 dischargers--or 8 percent--did not submit one or more DMRs and 196 dischargers--or 37 percent--submitted one or more incomplete DMRs during the 18 months reviewed. Data excluded were the amount of toxic and conventional pollutants actually discharged, therefore making it impossible for EPA and the states to determine if there was noncompliance with the specific permit limits.

The accuracy of DMR data is questionable in many cases. Major municipal and industrial dischargers often use independent laboratories to analyze the discharged effluent and to complete the DMRs. But EPA studies have shown that the laboratory data is often inaccurate. Through its Laboratory Quality Assurance Program, EPA showed that in 1980 and 1982, 68 percent and 58 percent, respectively, of permittees sampled nationwide did not report results within acceptable limits for one or more pollutants. EPA published a third study in 1983 which showed that

50 percent of the permittees did not report results within acceptable limits.

Because self-monitoring by the discharger is not always an effective means of determining compliance with permits, EPA routinely performs various types of inspections to verify the accuracy of the self-monitoring data. The most complete inspection--the compliance sampling inspection--includes independent sampling and analysis of the discharger's effluent. The number of these inspections nationwide are dwindling: they declined 20 percent for municipal facilities and 48 percent for industrial facilities from fiscal years 1979 through 1981. EPA and state officials told us that limited resources are a contributing factor.

ENFORCEMENT POLICIES ALLOW
CONTINUED PERMIT NONCOMPLIANCE

Compliance with permit conditions is the primary goal of enforcement action. Our work in the six states showed many instances of noncompliance continued for extended periods before formal enforcement action was taken, and in some cases continued for years even after enforcement action had been taken. Nationally, the number of EPA enforcement actions declined from 1,523 in fiscal year 1977 to 410 in fiscal year 1982. EPA enforcement actions declined by 41 percent from 1980 through 1982. Part of the explanation for the significant drop in enforcement actions in 1982 can be attributed to changes in EPA enforcement policy during that year. EPA's policy ranged from nonconfrontational to strong and aggressive and back to nonconfrontational. EPA has advised us that its enforcement

activities increased significantly since our review--to a total of 875 enforcement actions in fiscal year 1983.

Several factors contributed to the continued permit noncompliance. Both EPA and the states have had a general policy which exempts from enforcement those municipalities which have applied for federal funds to upgrade existing or build new treatment facilities. This policy allows noncompliance to continue as long as grant funds are pending or construction is underway, which can take years. However, in January 1984, EPA issued a municipal enforcement compliance policy reversing its handling of noncomplying municipal dischargers. The policy provides that municipal dischargers must be required to meet permit conditions regardless of the status of federal grant funds.

Another factor limiting permit enforcement is EPA's lack of authority to assess monetary penalties for noncompliance. If EPA believes a discharger should be fined, the case must be referred to the Department of Justice for litigation, regardless of the nature of compliance. EPA had requested that Congress give it authority to administratively assess fines in 1977 and again in 1982. According to EPA, the Administration's current Clean Water Act legislative proposal includes a provision requesting this authority. We agree such authority would be helpful to EPA.

PERMIT APPLICATIONS NOT ACTED ON
AND EXPIRED PERMITS NOT RENEWED

The last area we would like to discuss today, Mr. Chairman, concerns the fact that thousands of applicants have not been given permits, and thousands of dischargers hold expired permits.

Both of these situations reduce the potential of the permit program to control and reduce water pollution.

The Clean Water Act requires that each facility discharging waste directly into navigable waters have a permit. However, this is not occurring. As of October 31, 1982, EPA reported that about 16,000 applications were awaiting processing: 200 applications were from major dischargers and 15,800 from minor dischargers. EPA and state officials told us that permitting priorities and limited resources were the primary reasons for the fact that not all permits were being issued. The Chief of the Water Permit Branch in Dallas told us that the Dallas region has the largest backlog of applications in EPA because it does not have the resources to issue all permits. Consequently, it can act only on major permit applications.

In October 1982, EPA reported that about 34,000 permits had expired or would expire before the end of 1982 which had not been reissued. Of these, 29,614 (87 percent) involved minor dischargers and 4,385 (13 percent) involved major dischargers. Fifty-four percent of those permits had expired before January 1, 1981. Another 16,500 permits are scheduled to expire in calendar years 1983 and 1984.

Various factors cited by EPA and state officials contribute to the large backlog of expired, unreissued permits. These include (1) the difficulties in establishing permit limits for industrial permits in the absence of EPA-developed technology guidelines, (2) a shortage of resources to rewrite permits, and (3) low priority in rewriting permits for minor dischargers.

The potential impact of not reissuing an expired permit is that the discharger may not be accomplishing the level of pollution reduction envisioned by the Clean Water Act. If these permits were rewritten, it is likely that many would contain stricter pollution limits, especially since the permits that have expired were written to control conventional pollutants, and did not always require control of toxics pollutants. The Chief of EPA's permit branch in Dallas estimated that 90 percent of second-round industrial permits would be more stringent, either by imposing limits on additional pollutants or by making more stringent the effluent limits on existing parameters.

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Mr. Chairman, our December 1983 report represents our first all inclusive review of the NPDES permitting, monitoring, and enforcement activities. As we discussed earlier, problems continue to hinder the program. Noncompliance with NPDES permit limits continues at high levels. The discharge monitoring reports need continued independent assessments of accuracy and completeness. Laboratory data need improvement. Much stronger enforcement against permit noncompliance is needed. The backlog of permit applications needs attention. Expired permits need rewriting to include toxics control and to update conventional pollutant levels.

We made a number of recommendations to improve administration of the permit program, and in February 1984, EPA agreed to adopt them. We also recommended that EPA analyze the extent of resources directed to compliance and enforcement activities and

present the Congress with the analysis as support for requesting additional resources. EPA also agreed to do this.

In summary, Mr. Chairman, we are concerned that if the permit program continues to exhibit its present high noncompliance rates and other shortcomings, dischargers may lose further incentives to operate treatment plants in accordance with their permits, knowing that little or no effective enforcement will occur. In addition, the many billions of dollars already spent to construct municipal and industrial treatment facilities will not realize their full potential.

We anticipate that the program's problems will likely continue because their underlying causes involve limited resources at both the federal and state levels. As discussed in our report, EPA and state resources expended for NPDES program activities had declined since fiscal year 1981. For example, EPA enforcement activities, funded at \$19.2 million in fiscal year 1981, dropped to \$13.3 million in fiscal year 1984.

EPA has allocated additional funds from a fiscal year 1984 supplemental appropriation for permit issuance and state program enforcement activities, and these resources should help to address some of the problems we discussed in the report. For fiscal year 1985, EPA has requested a \$2.3 million increase for enforcement.

Mr. Chairman, this concludes my prepared remarks. We will be pleased to answer any questions you may have.

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