

Environmental Integrity Project

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Assessing State Enforcement: Too Many Claims, Too Little Data

Improving Public Access to Environmental Enforcement Data

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“Assessing State Enforcement: Too Many Claims, Too Little Data” focuses on how difficult it is for the public and state agency personnel to obtain basic data on state enforcement actions that address significant violations of federal environmental law. To highlight this problem, the Environmental Integrity Project (EIP) attempted to acquire basic enforcement information from Illinois, Indiana, Michigan, Wisconsin and Minnesota through information requests.

EIP found that, in general, basic data on state actions that address violations of federal environmental law are not readily available to the public. In this report, EIP makes recommendations for how to make state enforcement data more publicly accessible.

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Executive Summary

Americans have a right to know when their environmental laws are broken, what actions the government has taken to stop those violations, and whether those who broke the law have paid for their misconduct and corrected the problem. Enforcement data that are transparent and publicly available can help answer these and many other important questions:

- How well are the environmental laws we celebrate in principle obeyed in practice?
- What are the consequences to human health and/or the environment when these laws are broken?
- Is government effective at finding and correcting the most serious violations? How do state enforcement programs compare?
- When environmental laws are broken, what is the government's response? For example, are violators required to pay back any economic benefit they have earned from breaking laws with which other companies have spent money to comply?
- Are some companies repeatedly violating federal environmental laws, and if so, what is being done about it?
- What are the appropriate roles of federal and state governments in enforcing federal environmental laws? Should federal enforcement staff and resources be shifted to states because they do most of the enforcement, as the Environmental Council of States (ECOS) argues? Or, do some states in fact rely on the federal Environmental Protection Agency (EPA) to enforce environmental laws against the toughest defendants?

The Environmental Integrity Project (EIP), with support from the Joyce Foundation, attempted to answer these questions by obtaining enforcement data from five Midwestern states including Illinois, Indiana, Michigan, Wisconsin and Minnesota. EIP found that, in general, basic data on state actions that address significant violations of federal environmental law are not readily available to the public or to state agency personnel. In many cases, state personnel and citizens can only obtain the information through laborious, file-by-file hand searches. Often these files are scattered among state offices and can only be accessed by citizens through time-consuming Freedom of Information Act or comparable state "sunshine" law requests. In addition, some states charge fees for public information that extend well beyond the means of the average citizen or non-profit organization. For example, the Michigan Department of Environmental Quality charged EIP over \$2,000 to fulfill EIP's request. Where states did provide

enforcement information online, they did not have consistent and complete core enforcement data, including violation notices, enforcement actions, compliance schedules and penalties. EIP notes that the Indiana Department of Environmental Management (IDEM) was the only agency that responded to EIP's request in a timely and complete manner and waived all fees. Out of the five states, IDEM also maintains the best publicly accessible enforcement database.

In the past, state agencies have resisted efforts to publish compliance and enforcement data for specific companies, complaining that federal data systems are outdated, contain inaccurate data, and focus on enforcement activities rather than environmental results. There are important elements of truth to this critique, even though EPA has made some improvements in recent years. It is also true that EPA and states have been laboring over this problem for the past decade, spending tens of millions of dollars in the process. We have reached the point where the search for a consensus behind an ideal set of performance measures for state and federal environmental agencies has been used to justify postponing good practices that could be put into place today. Instead of delaying efforts to make improvements, states and the federal government should implement the following practices:

- Providing public access to enforcement data should be a funding priority for both EPA and the states. EPA has made grants to states totaling over \$100 million dollars in recent years for improvements in data systems. More recently, Congress appropriated \$25 million to EPA for state grants to support an information exchange network. EPA should require states that receive these funds to make public access to compliance and enforcement data a priority.
- All states should establish a "Right-to-Know" office with the authority to press for continual improvements in the public's access to basic data about compliance with environmental laws. Millions of dollars are spent each year on compliance assistance for the regulated community, including industries and municipalities. States should develop corollary programs to help citizens obtain and understand information about how well companies comply with the law.
- All states should periodically have their environmental enforcement programs audited. Independent audits will allow states to identify and correct deficiencies in their enforcement programs, including improving data systems. Only one of the five states from which EIP sought data has conducted an external or internal audit of its enforcement program since January 1, 1997.
- All states should make it a priority in the short-term to make enforcement and compliance data easily accessible through searchable web-based systems. Several of the states examined have already begun to do so

including Indiana and Michigan. Citizens and others should be able to access key data such as inspections performed, violation notices, enforcement actions, compliance schedules, and penalties assessed by sector and by environmental medium (e.g., air, water, hazardous waste). States should also make information searchable by facility and provide links to permits and other enforcement documents related to the facility.

- Until such data are made accessible, all states should adopt public access policies that eliminate or significantly limit charges to citizens and citizen groups seeking enforcement data.

Much of the work needed to build accessible data systems is already underway. EPA's new Enforcement Compliance History Online (ECHO) system provides an initial template for states to use to make information on permitting, enforcement and inspections available. Joint state and EPA working groups have also developed the National Environmental Information Exchange Network, a framework for data improvements and data sharing, including creating common definitions for enforcement and compliance data elements.

EIP plans to continue its research to better inform the ongoing debate about state and federal roles in enforcing environmental laws. A final report of our findings is targeted for release later this year.

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STATE PUBLIC ACCESS SUMMARY

STATE	PROVIDED COPIES OF REQUESTED CASES	WEB ACCESS TO CORE ENFORCEMENT INFORMATION	WEB SITE SEARCHABLE BY KEY INDICATORS	STATE DATA BASE SEARCHABLE BY HIGH VALUE CASES, INJUNCTIVE RELIEF	AUDITS OF STATE ENFORCEMENT PROGRAM	STATE POLICIES/REPORTS ON THE VALUE OF INJUNCTIVE RELIEF	STATE PROVIDED INFORMATION FREE OF CHARGE
ILLINOIS	NO*	NO	NO	LIMITED	NO	NO	PENDING
INDIANA	YES	YES	YES	YES	NO	NO	YES
MICHIGAN	YES	LIMITED	NO	NO	NO	NO	NO
MINNESOTA	LIMITED	LIMITED	NO	NO	PARTIAL	NO	YES
WISCONSIN	NO*	NO	NO	LIMITED	NO	LIMITED	PENDING

Explanation of Table:

Column 1: Indicates whether states provided hard copies of or electronic access to requested documents; does not indicate level of difficulty in searching for them (for example, MI and MN responses necessitated hand searches of Agency files).

Column 2: Indicates whether key enforcement information is available on the web, such as compliance status of facilities, types of violations, the nature and value of injunctive relief obtained in enforcement actions.

Column 3: Indicates whether the state has searchable, web-based enforcement information for key indicators, such as type of facility, violations, injunctive relief and penalty amount.

Column 4: Indicates whether states have the ability to search their data bases by key enforcement indicators, such as type of violation and value of injunctive relief.

Column 5: Indicates state response to whether they had any internal or external audits of federally delegated environmental enforcement programs.

Column 6: Indicates state response to whether they had any state policies or reports pertaining to the value of injunctive relief obtained in their cases.

Column 7: Indicates whether states charged EIP for access to the requested information

* These states provided EIP with lists of cases and asked EIP to determine which cases were responsive to its request. However, these lists did not contain sufficient specificity on the value of cases, or the types of violations involved to permit such identification.

Introduction

Federal laws that protect the quality of our air and water mean little if governments are unwilling to enforce their requirements. Historically, the federal and state governments have shared responsibility for environmental enforcement. Under federal law, the Environmental Protection Agency (EPA) can authorize states to implement and enforce environmental laws, including the Clean Water and Clean Air Acts. Over the last decade, EPA has authorized states to implement an estimated seventy-five percent of federal environmental programs.¹ Some of these authorizations have been controversial, and, in recent years, the EPA's Inspector General² and citizen groups³ have criticized states for poor implementation of authorized programs. Despite these criticisms, the Bush Administration had proposed in its fiscal years 2002 and 2003 budgets to shift even more enforcement responsibility to the states by reducing federal enforcement personnel and by transferring federal enforcement dollars from the federal government to the states.⁴

To ascertain whether states are able to take on additional enforcement responsibilities, EIP first wanted to determine how well states are currently enforcing federal environmental laws. To help answer this question, the Environmental Integrity Project (EIP) sought data from Illinois, Indiana, Michigan Wisconsin and Minnesota through Freedom of Information Act requests (See Appendix 1), phone conversations with state officials, and Internet searches. Rather than simply tally up the number of enforcement actions in each state, EIP

intended to evaluate the type and relative value of state enforcement actions by requesting the following information:

- **Final orders or decrees resolving violations of Clean Air Act new source review (NSR) requirements or violations of Clean Water Act combined sewer overflow (CSO) and stormwater requirements since January 1, 1997.** EPA lawsuits against utilities, refineries, steel plants, and other industries for NSR violations have been controversial, but few doubt their environmental value, as settlements to date have reduced sulfur dioxide and nitrogen oxide emissions by a combined total of over 500,000 tons a year.⁵ Similarly, EPA has achieved significant environmental results in its combined sewer overflow and stormwater cases. For example, a single combined sewer overflow settlement lodged in Ohio in September 2002 will eliminate the discharge of over 800 million gallons of raw sewage each year.⁶ Because evidence of these violations is widespread, and because of the environmental significance of these types of violations, stormwater, combined sewer overflow and NSR violations have been EPA enforcement priorities since 1998. EIP wanted to determine the role states have played in enforcing these important requirements.
- **Final orders or consent decrees that involve penalties of \$50,000 or more since January 1, 1997.** High penalty cases are also cases in which substantial injunctive relief (*i.e.*, pollution controls or cleanup) is more likely to be compelled. EIP wanted to determine what types of state cases have involved significant injunctive relief.
- **Final orders or decrees involving actions against local units of government or other state agencies since January 1, 1997.** Few enforcement actions are as difficult as those brought against other governmental entities. Such cases often present significant problems for state agencies because they are politically sensitive. EIP wanted to determine the extent to which states have taken on these difficult cases.
- **Assessments of the value of injunctive relief obtained through state enforcement actions, or the amounts violators spent to prevent or clean up pollution.** Earlier studies, notably one undertaken by the Environmental Council of States (ECOS), simply counted the number of enforcement actions, assigning equal weight to each one. This kind of “bean counting” assumes that a warning letter for a paperwork violation is as important as a consent decree that compels a large utility to spend tens of millions of dollars on control technology to reduce emissions. Measuring the value of injunctive relief helps to distinguish the more

significant cases from routine “traffic tickets.” A critique of the ECOS report is attached as Appendix 2.

- **Internal or external audits of state enforcement programs since January 1, 1997.** EPA’s enforcement programs are frequently audited by the Agency’s Inspector General and by the U.S. General Accounting Office. These audits evaluate whether enforcement activities reflect sensible priorities, can measure achievement, or comply with important laws and policies. EIP wanted to ascertain whether states subject their enforcement programs to similar scrutiny, and what information was gathered by such audits.

As discussed below, EIP found that basic enforcement information is not readily available to the public or state agencies. The inability to obtain this basic information has broad implications. Compliance and enforcement data that are transparent and publicly available is necessary to secure environmental and public health protections. Public access to enforcement information is critical because it allows citizens to make informed decisions regarding environmental issues that affect their communities. Citizens also need compliance data in order to assist EPA and the states in ensuring that environmental violations are resolved. Finally, the public’s ability to directly access compliance information provides incentives for regulated entities to be in, or return to, compliance.

Equally important, states and the federal government need access to compliance data to target serious environmental problems and to effectively manage increasingly scarce federal and state resources. Moreover, enforcement data, along with permitting and monitoring data, allow regulators to determine whether and how enforcement contributes to environmental results.

General Findings

The information needed to assess enforcement efforts is virtually impossible to obtain without significant cost and delay to both states and the public. Although most of the state agencies contacted have been very cooperative, the process of obtaining the targeted enforcement data has proven to be enormously difficult. Specifically, to identify available information, its location, and how it can be retrieved takes weeks for states to complete and, even then, the data must be reviewed by time-intensive file-by-file hand searches. Hand searches are required either because electronic databases are not maintained at all or the databases are not searchable by key terms such as the amount of penalty involved, the statute involved, the nature of the relief sought and obtained, or the common term for the type of enforcement action.

Because this data is not usually available in electronic files, one state asserted that the request for information may be “unduly burdensome” and therefore outside of the scope of the state FOIA law. Other states indicated that EIP would have to pay significant copying charges or fees for staff time needed to gather the information. Still other states told EIP that the information is available only through a repository at the agency’s office.

In addition to the inability of some states to provide copies of enforcement orders or decrees, no state provided separate assessments of the value of injunctive relief obtained in its cases. Furthermore, only Minnesota had an audit performed of only one program since 1997.⁷

Many states have not yet been able to provide a complete set of data that responds to EIP's open records request despite the fact that many months have passed since their receipt of the request. When important public policy decisions depend on the clear understanding of how states are enforcing environmental laws, this is an unacceptably long delay.

The states' inability to respond to EIP's request is difficult to justify as EPA has given states significant grants over the years to improve their databases. In addition to providing funding under core program grants, EPA's Information Office and program offices have doled out over \$100 million dollars for data improvements and data system upgrades in recent years.⁸

More recently, Congress appropriated \$25 million to EPA for state grants to support the development of the National Environmental Information Exchange Network.⁹ The National Environmental Information Exchange Network is a new environmental information system being jointly developed by EPA and the states. The system will eventually replace the numerous and outdated media-specific data systems that EPA has used, and required the states to use in the past to manage data for federally authorized environmental programs.

The Network allows the states to use the system to support their own data needs while still permitting EPA to tap into the state system electronically to collect the data needed for national programs. EPA will be able to use the Network to analyze program implementation and to insure that the states are meeting the requirements of their delegation agreements. Much of the data that will be collected for this new system are enforcement data. The system is

primarily being constructed to allow EPA and the states to exchange data. While far less attention has been paid to the need for public access, the architecture of the system will allow public access to data if the states decide to permit it. Furthermore, EPA and the states have recently completed the critical task of creating a common set of definitions for enforcement activities that will allow enforcement data to be compared across states and between EPA and the states.¹⁰

In addition to the Network, EPA's new Enforcement and Compliance History Online System (ECHO)¹¹ system provides a basic template that states can use to make information on permitting, enforcement and inspections available to the public. ECHO allows web users to search for enforcement actions by city, zip code, or facility name. Searches can be sorted by media and by current enforcement status (e.g., high priority violator, in violation, on compliance schedule, compliance schedule unknown, or in compliance).

The data available in ECHO are derived from EPA's Integrated Data for Enforcement Analysis (IDEA) system, which in turn draws its data from information submitted by states to EPA's media databases. As a result, the data are only as accurate and up-to-date as the data states provide EPA, and, in some cases, can be outdated or inaccurate.¹² To deal with this problem, EPA encourages anyone who becomes aware of data errors to submit them to EPA immediately through a data correction link on the web site.

While the site provides members of the public with better access to enforcement information, it does not support the kind of enforcement research

that EIP is conducting as the site does not provide details about the substance of enforcement actions and does not provide links to enforcement documents. Furthermore, ECHO only provides data for the past two years, making trend analysis impossible without obtaining additional information through open records requests.

State Findings

The findings for each targeted state are set forth below by category of information sought. As can be discerned from the narrative, some states were more responsive than others.

Illinois

- 1. Ability to Identify Cases by Issue (e.g., stormwater, new source review).** In Illinois, enforcement documents are only available through hand searches of agency files. The Illinois Environmental Protection Agency (IEPA) provided a computer printout of all orders entered in enforcement actions between January 1, 1997, and November 25, 2002. Most entries provided a short description of the type of violation which gave some insight into the regulatory program involved. For example, one printout indicated that there was a water case against a municipality, but it was impossible to know whether there was a CSO violation. EIP must review the list, identify which orders it wants to have copied, and submit a second open records request. Based on the limited information provided,

however, it will be difficult for EIP or state agency personnel to narrow the universe of orders to those requested.

- 2. Ability to Identify Relevant Cases by Penalty.** IEPA provided a list of cases with penalties of \$50,000 or more obtained in enforcement cases since January 1, 1997, but it was impossible to ascertain the nature of the cases from the list. IEPA, however, did provide tables that included the values of supplemental environmental projects (SEPs) for cases settled from 1997 through October 15, 2002.
- 3. Policies on Obtaining Injunctive Relief.** IEPA does not have any policy or guidance documents related to injunctive relief.
- 4. Summaries of the Value of Injunctive Relief Obtained.** IEPA does not have records that summarize the value of injunctive relief obtained through its enforcement actions beyond the tables of SEP values.
- 5. Audits of the Enforcement Program.** There have been no internal or external audits of IEPA's enforcement program since January 1, 1997.
- 6. Costs for Data Access.** Illinois may charge fees reasonably calculated to reimburse it for the actual cost of reproducing and certifying public records.¹³ These fees, however, cannot include any of the costs for searching for the requested records, and cannot exceed the cost of reproduction.¹⁴ Illinois must provide documents without charge or at a reduced charge if it determines that a waiver or reduction is "in the public interest."¹⁵ Illinois has not made a decision on EIP's fee waiver request.

7. Internet Access to Enforcement Data. IEPA provides almost no enforcement data on its web site. The Bureau of Water's pages include a reference to Quarterly Non-compliance Reports (QNCRs) and link the viewer to an EPA Region 5 website. The Region 5 website includes links to QNCRs for each of the five states in the Region, including Illinois.¹⁶ QNCRs are prepared by each of the five states and include a list of non-compliance events for major facilities, state or federal responses to these events, and information about the current compliance status for major dischargers. Records are available from 1994 through 2002. This site is not searchable and does not provide links to underlying documents.

The Illinois Pollution Control Board (IPCB), created by the Illinois Environmental Protection Act and independent from IEPA, does have the text of its administrative enforcement orders on its website.

However, EIP could not find any administrative orders that addressed NSR, stormwater or CSO violations.

IEPA is in the process of developing a new "Agency Compliance and Enforcement System" (ACES) that will allow enforcement data to be maintained electronically. This system is expected to be in place later in 2003. IEPA intends to include all enforcement information that is required to be made public, including all judicial orders and IPCB administrative

orders, in the ACES database. IEPA also intends to make ACES accessible to the public.

Indiana

- 1. Ability to Identify Cases by Issue (e.g., stormwater, new source review).** The Indiana Department of Environmental Management (IDEM) provided a number of computer printouts including (1) two lists of stormwater permit cases; (2) a list of Prevention of Significant Deterioration cases; and (3) a list of cases where a city, town or state government agency was a defendant. These lists were fairly descriptive and most orders could be accessed through the internet by entering each case number on the list into an IDEM web address.
- 2. Ability to Identify Cases by Penalty.** IDEM provided a list of all cases with penalties assessed over \$50,000 since January 1, 1997. This list was also very descriptive and copies of the orders are available on the Internet.
- 3. Policies on Obtaining Injunctive Relief.** IDEM's policy documents can be found on the web at <http://www.in.gov/idem/enforcement/oe/policy/index.html>. There were no policies on IDEM's website that specifically addressed injunctive relief.
- 4. Summaries of the Value of Injunctive Relief Obtained.** IDEM does not have records that summarize the value of the injunctive relief obtained through its enforcement actions.

5. **Audits of Enforcement Program.** There have been no internal or external audits of IDEM's enforcement program since January 1, 1997.
6. **Costs for Data Access.** While the Indiana statute expressly requires public agencies to set copying fees, the agencies are not expressly required to charge the fees.¹⁷ IDEM has determined that in many instances it is in the public interest to waive in whole or in part copying fees for individuals and organizations engaged in nonprofit activities.¹⁸ As requested by the state, EIP filled out IDEM's fee waiver form and has not been charged for the information IDEM provided.
7. **Internet Access to Enforcement Data.** IDEM maintains an enforcement database on its web site that contains over 5,000 cases from 1997 to the present at [http:// www.in.gov/serv/idem_oe_order](http://www.in.gov/serv/idem_oe_order). (See Appendix 3). Viewers can sort the database by media, type of enforcement action or order and date. The full text for most of the listed enforcement actions can be obtained through the site.

Michigan

1. **Ability to Identify Cases by Issue (e.g., stormwater, new source review).** Enforcement documents are only available through hand searches of agency files. However, the Michigan Department of Environmental Quality (MDEQ) sent EIP responsive enforcement documents from the Air Quality Division, the Waste and Hazardous Materials Division and the Water Division.

2. **Ability to Identify Relevant Cases by Penalty.** In its set of responsive documents, MDEQ included cases where penalties of \$50,000 or more were obtained.
3. **Policies on Obtaining Injunctive Relief.** Not provided.
4. **Summaries of the Value of Injunctive Relief Obtained.** MDEQ does not have records that summarize the value of the injunctive relief obtained through its enforcement actions.
5. **Audits of Enforcement Program.** There have been no internal or external audits of MDEQ's enforcement program since January 1, 1997.
6. **Costs for Data Access.** MDEQ may charge a fee for providing a copy of a public record.¹⁹ MDEQ may also charge for search, examination, and the separation of exempt information in instances in which failure to charge a fee would result in unreasonably high costs to MDEQ. MDEQ may reduce or eliminate the fee if it determines that it "is in the public interest."²⁰

MDEQ charged EIP \$2,035.72 for fulfilling its FOIA request. The itemized charges include \$1,621.72 for labor, \$392.30 for copying costs and \$21.70 for mailing expenses.

MDEQ maintains that the labor charges were high because the staff had to review approximately 200 individual files in the Air Quality Division in order to comply with EIP's request.²¹ MDEQ denied EIP's request for a

fee waiver. According to MDEQ officials, MDEQ's unwritten policy is to charge nonprofits for the costs of producing documents if the nonprofit has "paid staff."²² This policy appears to have no basis in statute. It therefore should be set forth in writing for public comment or rescinded.

7. Internet Access to Enforcement Data. Some data on enforcement are available on Michigan's website for the air, water and waste programs. However, the available data and the format of the data varies by program. MDEQ's Air Quality Division maintains a list of public notices, proposed consent orders, and staff activity reports dating back approximately twelve months at [http:// www.michigan.gov/deq/0,1607,7-135-3310_4106-13056--,00.html](http://www.michigan.gov/deq/0,1607,7-135-3310_4106-13056--,00.html). (See Appendix 4). The staff activity reports summarize the nature of the enforcement action and the terms of the consent decree. The site does not provide links to underlying permits or final consent decrees.

The Water Division provides a list of settled "escalated" enforcement cases from 2001 through 2003 and a separate list of cases settled in fiscal year 2003 at http://www.michigan.gov/deq/0,1607,7-135-3313_3682_3712---,00.html. These lists include the name of the facility involved, the date of the settlement, and the order number. Dollar amounts for costs, civil penalties, supplemental environmental projects, and for natural resources damages are also included. These lists are not linked to permits or the text of the orders.

The website also includes summaries of administrative orders dating back to 1996 at [http:// www.deq.state.mi.us/eos/orders_entered.asp](http://www.deq.state.mi.us/eos/orders_entered.asp). These summaries are not linked to permits or the text of the orders.

The Waste and Hazardous Materials Division maintains a list of “recently resolved cases” that includes cases resolved as recently as January 2003 and dating back to February 1999 at www.michigan.gov/deq/0,1607,7-135-3312_9280-33542--,00.html. While this site includes brief summaries of each of the enforcement actions, it is not linked to underlying documents.

Minnesota

- 1. Ability to Identify Cases by Issue (e.g., stormwater, new source review).** Enforcement documents are only available through hand searches of agency files. Although the Minnesota Pollution Control Agency (MPCA) maintains an internal enforcement database, it is not searchable by the type of action or type of defendant (e.g., government entity). MPCA provided EIP with copies of fourteen enforcement orders, stipulation agreements or consent decrees that had been executed since 1999. Two of the fourteen documents were not responsive. MPCA stated that, beyond the fourteen documents it sent to EIP, “EIP’s request was too voluminous and could involve a significant cost to EIP.”²³

- 2. Ability to Identify Cases by Penalty.** MPCA's database is not searchable by penalty. Eleven of the fourteen documents sent to EIP involved penalties at or above \$50,000.
- 3. Policies on Obtaining Injunctive Relief.** Not provided.
- 4. Summaries of the Value of Injunctive Relief Obtained.** MPCA does not keep any information on the value of injunctive relief obtained through its enforcement actions.
- 5. Audits of Enforcement Program.** The Minnesota legislature audited MPCA's water program, including the enforcement program, in 2002. MPCA did not reveal this audit pursuant to EIP's information request.
- 6. Costs for Data Access.** The Minnesota code requires that the agency maintain government data in a manner that is "easily accessible" and requires that the agency insure that all requests for government data are complied with in an "appropriate and prompt" manner.²⁴ The agency may charge a reasonable fee for providing copies of public data, including the cost of staff time, as well as the costs of making, certifying, compiling and electronically transmitting copies of the data.²⁵ The agency may not charge a fee for inspecting public government data.²⁶
- 7. Internet Access to Data.** Minnesota publishes quarterly summaries of enforcement actions. That information is available on the agency's web site, although it is somewhat difficult to identify because it is located under a "news/notices" category and then under "news media center" rather than under a media program or enforcement heading. (See Internet pages at

Appendix 5). MPCA published the first of the quarterly reports for the period of October through December 2000. The reports include the date of the action, the company or individual involved, the location of the facility, the nature of the violation, the type of penalty imposed, a contact name, and in some cases a copy of the press release associated with the action. See [http:// www.pca.state.mn.us/newscenter/enforcement.html](http://www.pca.state.mn.us/newscenter/enforcement.html).

This database is not searchable or linked to underlying documents.

Wisconsin

- 1. Ability to Identify Cases by Issue (e.g., stormwater, new source review).** Enforcement documents are only available through hand searches of agency files. The Wisconsin Department of Natural Resources (WDNR) has no centralized location for records; therefore, its Records & Forms Officer initially told EIP that it would have to separately contact WDNR staff in all of the regional offices and bureaus to obtain enforcement documents. Each regional office or bureau would have to advise EIP further on how to locate records and have copies made.

The Officer also advised EIP to talk with the Wisconsin Department of Justice (WDOJ). The WDOJ maintains a Casetrack database for judgments going back to the early 1990s. The first component of the database consists of quarterly judgment tables. These tables include the program (e.g., air or wastewater) and the amount of fines or penalties assessed. For cases resolved in the last couple of years, the logs may

include the dollar value of the injunctive relief or SEP. The second component of the database includes the more recent logs which consist of copies of the judgment, stipulation or decision, and the complaint for each case listed in the quarterly tables. WDOJ told EIP that someone could go to its office to review the logs and make copies of the quarterly tables or individual judgments or complaints.

WDNR sent EIP a report listing all of the judgments entered into the Casetrack system since January 1, 1997. It is not possible to tell what the underlying violations are in each case from this list. WDNR also sent a list of Watershed and Air Management referrals. The referral list is not responsive to EIP's request since EIP asked for all *final* orders, consent decrees, stipulation agreements or equivalent documents. Furthermore, although the referral list included short descriptions of the violations, EIP could not identify the nature of most of the cases because the descriptions were too brief.

- 2. Ability to Identify Cases by Penalty.** EIP can determine which cases on the judgment list included penalties of \$50,000 or more.
- 3. Policies on Obtaining Injunctive Relief.** WDOJ has no policy or guidance documents related to injunctive relief.
- 4. Summaries of the Value of Injunctive Relief Obtained.** WDNR and WDOJ do not keep any information on the value of injunctive relief

obtained through their enforcement actions other than what may be provided on the judgment logs.

- 5. Audits of Enforcement Program.** There have been no internal or external audits of WDOJ's or WDNR's enforcement program since January 1, 1997.
- 6. Costs for data access.** WDNR may impose a fee which may not exceed the actual, necessary and direct cost of reproduction and transcription of the record. WDNR also has the option of providing copies of a record for no charge or reduced charge if it determines that it is in the public interest.²⁷ A WDNR guidance document that addresses copying records states that requesters may make arrangements to use an approved copying firm to photocopy records and arrange for the copying firm to bill them directly.²⁸ A requester must contact WDNR staff to obtain information on firms that meet Department standards for handling state records.
- 7. Internet Access to Enforcement Data.** Wisconsin does not make enforcement data available on its web site except to the extent the data is part of the agency's "FACT" data system that provides environmental information about regulated facilities in the state. The FACT system is not highlighted on the DNR's home page but is available through a "topics" drop down menu located on the home page. The system allows facility level searches by name of facility, by city or by standard industrial codes.
See

http://prodmtext00.dnr.state.wi.us/pls/inter1/pk_esr_web.facility_search.

Available data includes a list of DNR programs that have been involved with the facility and the amount of waste that each facility reported it produced per calendar year pursuant to air, water and hazardous waste regulatory programs. This database does not provide information about enforcement actions, nor does it provide links to permits or other compliance requirements.

Recommendations

EPA and the states have been laboring over how to improve their environmental data systems for years and have spent millions of dollars in the process. Given such large expenditures, the problem seems to be not a lack of funds for data system improvements but failure on the part of federal and state governments to effectively manage enforcement data and to make it available to state personnel and the public. EIP recommends the following practices that states should put in place today. In its recommendations, EIP addresses budget shortfalls by discussing where current funds exist that states can use to modernize and improve their environmental data systems.

- 1. Focus Existing Funds on Public Access.** States should be able to improve public access to enforcement documentation despite budget shortfalls. As discussed above, EPA has historically given states generous grants to improve their data systems. States have used these funds to focus on data management rather than on public access. EPA

should mandate, and states should ensure, that a significant portion of the federal grant dollars and available state funding is allocated to creating enforcement databases that are publicly accessible. These improvements should be made immediately as funding is currently available.

In addition to EPA grants, states have access to other sources of funding that can be used to improve public access to enforcement data. For example, a number of state statutes authorize agencies to collect fees from regulated entities to recoup the costs of administering an environmental program. A portion of these fees should, and in some cases must, be used to improve public access to enforcement data even if it means that the fees need to be increased. Providing enforcement information for internal and external use is an essential part of state programs that should be supported by fees. The Minnesota Pollution Control Agency, for example, may collect a permit fee and an additional enforcement fee to cover the cost of implementing and enforcing all of its permit programs.²⁹ In addition, the agency must collect an annual fee from facilities subject to the Clean Air Act's Title V operating permit program to pay for all direct and indirect costs associated with administering the program.³⁰ The statute specifically enumerates that these costs include "implementing and enforcing statutes, rules and the terms and conditions of permit" and "providing information to the public

about these activities.”³¹ States should not overlook these types of fees as funding sources for public information programs.

- 2. Right- to- Know Advocate.** States should establish a “Right-to-Know” office with the authority to press for continual improvements in the public’s access to fundamental environmental data, including data about compliance with environmental laws. Trying to get information about how well a state has enforced environmental laws is a frustrating and time-intensive process well beyond the reach of most citizens and citizen groups. As EIP’s research demonstrates, it is nearly impossible to get timely data about a category of activities that might help to shed light on a state’s performance or provide a concerned community with information about a local polluter. Too often, data collected from industry at considerable expense is essentially hidden from the public even where the law requires it to be made public.

To be effective, a Right-to-Know advocate should do much more than route callers to another office for a response. Instead, the office should be charged with developing and implementing an affirmative strategy with clear goals for assembling environmental data, including enforcement data, and improving public access to it. The office should also design and maintain websites as well as docket services for those who lack electronic access. The task need not be expensive. In fact, providing electronic access to data that are already required to be made available to the public

could reduce the cost of responding to cumbersome and paper-intensive open records requests. Right-to Know advocates in the Great Lake states should work together to standardize methodologies for tracking environmental progress and reporting that information to the public.³²

The Right-to-Know advocate should also act as an ombudsman for the public in order to help citizens resolve issues that they have with the public agency. States regularly provide this type of service to the regulated community. For example, the state of Wisconsin has established a Bureau of Cooperative Assistance which provides “cross media, technical and compliance assistance to businesses and specific business sectors.”³³ This Bureau has business sector specialists that “act as conduits into DNR and their work with various industrial and commercial sectors.”³⁴ These specialists serve as the first point of contact for the regulated community and offer coordinated cross-media technical and compliance assistance. Wisconsin’s website made no reference to a similar Bureau for citizen assistance.

A few states, including Illinois and Indiana, have community relations offices. These offices, however, appear to be primarily responsible for disseminating already available information to the public rather than advocating for improved access to agency records.

- 3. Audits.** States should take steps to periodically audit the effectiveness of their environmental enforcement programs. Four of the five Midwestern states that EIP studied, including Michigan, Minnesota, Illinois and Wisconsin, have new administrations. These turnovers in administrations provide ideal opportunities to conduct comprehensive and independent audits of the effectiveness of existing environmental programs, including audits of enforcement programs. Since 1997, the Inspector General and the General Accounting Office have reviewed federal and state enforcement programs over twenty times;³⁵ however, some states, including Michigan under the former Administration, have argued that federal oversight of their enforcement actions should be eliminated or greatly reduced. Those arguments deserve little credence absent evidence of any critical oversight from either the state legislature or an independent authority such as an inspector general.
- 4. EPA and the States Should Incorporate into their Public Websites Searchable Databases of Enforcement Activities.** States should build on work that has already been completed by EPA and the states to build the following criteria in their databases:

 - (a) **Easy Access.** Enforcement data should be easily accessible through EPA's and the individual state's websites. In particular, enforcement databases should be easy to find from the agency's home page (i.e., not buried deep in the site) and easy to

understand. EPA and the states should also provide an explanation of the scope and limitations of the data on the site.

(b) **Complete, Current Data.** Data should be maintained at each stage of enforcement beginning with citizen complaints and continuing with data on inspections, notices of violation, agency orders, compliance agreements, administrative penalty orders, settlement agreements, consent decrees, court orders, compliance schedules and “return to compliance” determinations. The enforcement data should provide links to applicable permits. EPA and the states should include enforcement data extending back at least five years. This will allow the public to track whether individual facilities and states are following through on enforcement actions, to analyze the entire enforcement system, and will help the public in gathering information about pending permit decisions. Data should be entered into the system promptly and kept current.

(c) **Searchable by Relevant Fields.** In order to be useful in analyzing enforcement programs and making judgments on changes in national or state enforcement policy, enforcement data must be searchable by the following fields:

1. Name of the facility,
2. Facility identifier,
3. Standard industrial code,

4. Location of the facility by latitude and longitude, city, county and state,
5. Type of enforcement action,
6. Significant noncompliers/ Chronic or repeat violators,
7. Compliance status,
8. Date of the enforcement action,
9. Amount of penalty,
10. Citation to the statute and the rule involved in the violation,
11. The common reference for the statute such as “NSR” or “stormwater,”
12. The nature of relief involved other than penalties including injunctive relief, stop work orders, and other remedies,
13. The environmental benefits from enforcement actions, including the pounds of pollution reduced from the air or water (EPA has incorporated this data into its reporting since 1999),
14. Whether Supplemental Environmental Projects were included in the settlement and the type and value of SEPs, and
15. The nature of the enforcement target, such as government entity or type of industry.

With these field searches available to the public, a significant range of questions about enforcement programs could be answered through the analysis of enforcement data. Absent the ability to search by these fields, questions will either go unanswered or

the answers will only be available if the parties involved are willing to incur the high cost associated with hand searches of extensive enforcement files.

(d) **Links.** The web site should provide links to the full text of permits and enforcement documents such as notices of violations, agency orders, compliance agreements and other relevant information.

(e) **Interim Steps.** Until enforcement data are available on websites searchable through the fields we have suggested, state agencies should adopt policies concerning public access that limit the costs to citizens and public interest organizations for staff time and copying charges associated with gathering enforcement data. The fees that Michigan charged, for example, were cost prohibitive and extended well beyond the means of average citizens or grassroots organizations. EPA and the states should also not require a requester to go to an agency's home office to get copies of enforcement data if the requester is not local.

APPENDIX 1 Sample Open Records Request

ENVIRONMENTAL INTEGRITY PROJECT
Rockefeller Family Fund
437 Madison Avenue, 37th Floor
New York, New York 10022

October 11, 2002

Indiana Department of Environmental Management
Office of Enforcement
P.O. Box 6015
Indianapolis, IN 46206-6015
ATTN: Ms. Nancy Coker, Public Records Manager

Dear Ms. Coker:

Pursuant to the Indiana Access to Public Records Act, Ind. Code § 5-14-3-1 *et seq.*, the Environmental Integrity Project (EIP) requests copies of the following documents that are in the possession of the Indiana Department of Environmental Management (“IDEM”).

We seek information about major enforcement actions involving injunctive relief. We understand that information on injunctive relief is maintained, and the results of injunctive relief are measured in different ways in different states. As a result, if the questions below do not get at information that you believe better reflects the extent or value of injunctive relief obtained through your state’s enforcement actions, we welcome any additional information that you believe would better reflect this information.

Information request 1: Please provide a copy of any final consent decree, consent agreement, stipulation agreement, administrative penalty order or equivalent document for any agency enforcement action for which a penalty of \$50,000 or more was assessed since January 1, 1997, as well as any press releases issued related to the cases and any summary or assessment of the value of injunctive relief achieved through the cases.

Information request 2: To the extent not provide in response to request # 1, please provide a copy of any final consent decree, consent order, stipulation agreement, administrative penalty order or equivalent document for any agency enforcement action involving the New Source Review program, stormwater permits and combined sewer overflows since January 1, 1997, as well as any press releases issued related to the cases and any summary or assessment of the value of injunctive relief achieved through the cases. For the purpose of this letter, the term “New Source Review” shall include “Prevention of Significant Deterioration.”

Information request 3: To the extent not provide in response to request # 1 and # 2, please provide a copy of any final consent decree, consent order, stipulation agreement, administrative penalty order or equivalent document for any agency enforcement action involving a local unit of government or state government agency since January 1, 1997, as well as any press release issued related to the cases and any summary or assessment of the value of injunctive relief achieved through these cases.

Information request 4: Please provide a copy of any agency policy or guidance document related to obtaining injunctive relief in agency enforcement actions.

Information request 5: Please provide a copy of any reports, summaries or assessments prepared by the agency of the value of injunctive relief obtained through agency enforcement actions.

Information request 6: Please provide a copy of any internal agency audit or program review, or any external audit or program review of the agency that has examined the agency’s enforcement programs since January 1, 1997.

If any of the information is electronically available, please provide the **specific web address** in lieu of providing responsive documents. In the event such information is not available on your website, we respectfully reserve our right to request hard copies.

This request encompasses documents in the broadest sense of the term including without limitation all memoranda, letters, correspondence, notes, petitions, records of conversations (telephone, electronic mail, etc.) records of meetings, computer files and other meetings.

We ask that you disclose these materials as they become available to you without waiting until all documents have been assembled. Furthermore, if any of this information is organized and available in a publicly accessible database,

please contact Louis Piels at 212.812.4254 to discuss how we can access the electronic information before responding to the request.

The Environmental Integrity Project's (EIP) request does not involve a commercial interest; quite literally, the request does not "further a commercial, trade or profit interest" as those terms are commonly understood. EIP is a non-profit, tax-exempt organization created to safeguard federal and state environmental laws by improving the quality of federal and state enforcement and permitting.

In accordance with Section 5-14-3-8 of the Indiana Code, I request a waiver of any fees for duplication of pages. Release of this information is in the public interest because it will contribute significantly to public understanding of government operations and activities. Additionally, the purpose of this request is to disseminate information regarding the health, safety, welfare or the legal rights of the general public. It is my understanding that while the statute requires public agencies to set copying fees, there is nothing that expressly requires the agencies to charge the fees.

If my request is denied in whole or in part, I ask that you justify all deletions by reference to specific exemptions of the act. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I look forward to your reply within seven business days, as the statute requires.

Thank you for your assistance. I look forward to your reply.

Very truly yours,

Louis I. Piels, Esq.
Environmental Integrity Project

APPENDIX 2 ECOS

Critique of the Environmental Council of States' 2001 Report on State Agency Contribution to Compliance and Enforcement

States, through the Environmental Council of the States (ECOS) have asserted in a report that states now do more than 90 percent of all environmental enforcement.³⁶ This figure, however, includes simple letters known as “notices of violation” or “warning letters”—activities that EPA has historically not counted as “enforcement actions.” Moreover, ECOS does not differentiate these simple types of actions from usually more time consuming administrative penalty orders, or from complex judicial enforcement cases that can involve hundreds of thousands of dollars in penalties and millions of dollars in injunctive relief. Instead every enforcement action in the ECOS report and its 90 percent figure, whether simple or complex, counts as “1” enforcement case. “Enforcement actions” are not fungible commodities; they dramatically differ from the simplest to the most complex. Thus, while the ECOS figure may be a fair representation of the percentage of all cases (each case counting as “1”) that are handled by the states, it likely does not represent the real allocation of time or effort dedicated to enforcement between EPA and the states.

Increasingly, EPA has focused its enforcement efforts on more complex and time-consuming cases that involve significant injunctive relief. Further, there are vast differences in the penalties collected by the states and federal

government. The ECOS report states that the total of penalties collected by states in 1999 was \$91,970,702. The total penalties collected by the federal government in FY 1999 was \$227,700,000.³⁷ The federal penalties are more than double the state penalties cited by ECOS, and perhaps indicate not only a significant difference in the complexity and size of cases but also differences in approaches to penalty assessment between the states and federal government.

The ECOS report is also problematic because, as the National Academy of Public Administration found in its June 2001 review of the ECOS report, definitions of key terms used by the states were not uniform.³⁸ Moreover, the number of program offices varied significantly from state to state as well as the number of program offices reporting from each state. Finally, the baselines used by the states for figures such as the number of regulated facilities in the state were not clearly set out and may have been affected by how thorough the state was in identifying the universe of regulated facilities.³⁹ For these reasons, the National Academy of Public Administration warned that usefulness of the data in the report is “limited because they are not comparable” from one state to another or between EPA and the states.⁴⁰

Despite the limited usefulness of its report, ECOS used the assertion that states conduct more than 90 percent of all enforcement cases to support a proposal for Congress to provide \$25,000,000 in additional funding for new grants to states to support state enforcement efforts.⁴¹ Although ultimately rejected by Congress in 2002 and 2003, the House of Representatives initially proposed to fund the additional state grants by reducing EPA’s enforcement

budget by a similar amount, potentially significantly curtailing EPA's enforcement capability. More recently, ECOS has asked EPA to assign EPA enforcement staff to states to help states meet inspection commitments as states struggle with severe budget deficits.⁴²

Indiana Department of Environmental Management

Office of Enforcement Monthly Actions and Orders

Each month, the Office of Enforcement publishes a list of enforcement [actions and orders](#) that were finalized during the previous month. New documents are added on a cycle around the middle of the month. Using the form below, you can search a database of those published actions and orders. Your search results will return as a hyperlinked list of documents. If an enforcement action or order appears on that list but is not hyperlinked, that means the document will be published with the next cycle.

[Search Tips](#)

Company Name/Person: <input type="text"/>	
Case Number: <input type="text"/>	
Old Case Number: <input type="text"/>	
County: <input type="text" value="All"/>	
Media of Interest: <input checked="" type="checkbox"/> All <input type="checkbox"/> Air <input type="checkbox"/> Water <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Solid Waste/Underground Storage Tank	Type of Actions/Orders: <input checked="" type="checkbox"/> All <input type="checkbox"/> Notice of Violation <input type="checkbox"/> Agreed Order <input type="checkbox"/> Commissioner's Order <input type="checkbox"/> Emergency Order
Start Date: <input type="text" value="Jan"/> <input type="text" value="01"/> <input type="text" value="1997"/>	End Date: <input type="text" value="Dec"/> <input type="text" value="17"/> <input type="text" value="2002"/>

Output format: All Records 50 records/page

For questions about these reports or reports prior to 1997,
please contact [Nancy Coker](#)

[Disclaimer](#)

For more information regarding the compliance history of a Company Name/Person that have not resulted in an enforcement action or order please search [Company Name/Person Compliance History](#) or you may visit [IDEM's Public File Room](#).

For more information about the IDEM's enforcement procedures, go to our [Administrative Enforcement Process Flowchart](#)



Indiana Department of Environmental Management
Indiana Government Center North
100 N. Senate
P.O. Box 6015
Indianapolis, IN 46206-6015
Phone: (317) 232-8603 or 1-800-451-6027 (Toll-free in Indiana)

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APPENDIX 4 Michigan Website

www.michigan.gov

(To Print: use your browser's print function)

December 03, 2002

Proposed Consent Orders & Staff Activity Reports

Loftworks, LLC	Public Notice	Staff Activity Report	Consent Order
Carl Schlegel, Inc.	Public Notice	Staff Activity Report	Consent Order
Allied Roofing & Siding Company	Public Notice	Staff Activity Report	Consent Order
Detroit Edison Company, Marysville Power Plant	Public Notice	Staff Activity Report	Consent Order
KCS Resources, Inc.	Public Notice	Staff Activity Report	Consent Order
Dynaflex Corporation	Public Notice	Staff Activity Report	Consent Order
Ford Motor Company, Romeo Engine Plant	Public Notice	Staff Activity Report	Consent Order
William Beaumont Hospital	Public Notice	Staff Activity Report	Consent Order
Seerco, Inc./N&B Trucking/Velmeir King Co./CVS Trenton, LLC	Public Notice	Staff Activity Report	Consent Orders
Molded Plastic Industries, Inc.	Public Notice	Staff Activity Report	Consent Order
Robert Bosch Corporation, Chassis Division	Public Notice	Staff Activity Report	Consent Order
All-Cote Coatings Co. LLC	Public Notice	Staff Activity Report	Consent Order
Viatec, Inc.	Public Notice	Staff Activity Report	Consent Order
Valassis Communications, Inc.	Public Notice	Staff Activity Report	Consent Order
MacKenzie Environmental Services, Inc./Lansing Board of Water and Light	Public Notice	Staff Activity Report	Consent Orders
Dearborn Federal Savings Bank/Dallas R. Kitchen Building Company	Public Notice	Staff Activity Report	Consent Orders
Decker Manufacturing Corporation	Public Notice	Staff Activity Report	Consent Order
Sturgis Municipal Power	Public Notice	Staff Activity Report	Consent Order
Collins & Aikman Plastics, Inc., Inc.	Public Notice	Staff Activity Report	Consent Order
Gage Products Company	Public Notice	Staff Activity Report	Consent Order

Day International, Inc.	Public Notice	Staff Activity Report	Consent Order
MetoKote Corporation	Public Notice	Staff Activity Report	Consent Order
General Motors Corporation Flint Operations	Public Notice	Staff Activity Report	Consent Order
Calumet Electronics Corporation	Public Notice	Staff Activity Report	Consent Order
Koyo Corporation	Public Notice	Staff Activity Report	Consent Order
Valley Asphalt Company	Public Notice	Staff Activity Report	Consent Order
Coated Fabrics, a division of Dennison Manufacturing	Public Notice	Staff Activity Report	Consent Order
Brunswick Bowling and Billiards Corp.	Public Notice	Staff Activity Report	Consent Order
Internal Grinding Abrasives, Inc.	Public Notice	Staff Activity Report	Consent Order
Stealth Composites, LLC	Public Notice	Staff Activity Report	Consent Order
Carbone of America.	Public Notice	Staff Activity Report	Consent Order
Westside Gas Co.	Public Notice	Staff Activity Report	Consent Order
Advanced Heat Treat Corporation.	Public Notice	Staff Activity Report	Consent Order
Central Michigan University.	Public Notice	Staff Activity Report	Consent Order
Adept Plastic Finishing, Inc.	Public Notice	Staff Activity Report	Consent Order
Spartan Asphalt Paving	Public Notice	Staff Report	Consent Order
General Motors Powertrain Saginaw	Public Notice	Staff Report	Consent Order
Padnos Iron & Metal	Public Notice	Staff Report	Consent Order
Finish Corp.	Public Notice	Staff Report	Consent Order
Michigan Consolidated Gas Co.	Public Notice	Staff Report	Consent Order
Howard Plating Industries, Inc.	Public Notice	Staff Report	Consent Order
BFI Waste Systems	Public Notice	Staff Report	Consent Order

Staff Activity Report

December 2, 2002

RESPONDENT

Loftworks, LLC
150 Atkinson
Detroit, Michigan 48202

SUMMARY

The Department of Environmental Quality ("MDEQ"), Air Quality Division ("AQD") is proposing action on a Consent Order to resolve past violations of the federal asbestos

National Emission Standards for Hazardous Air Pollutants ("NESHAP"). These standards are adopted by reference in the Michigan Register 2000 MR 18, State Rule

R 336.1942. Both owner and operator of a demolition or renovation activity are responsible to comply with these regulations. According to our investigation, Loftworks, LLC, owns the facility and Loftworks, LLC, performed renovation activities at the facility.

FACILITY DESCRIPTION AND LOCATION

The facility has been designated as the Chaps Building, located at 2843 East Grand Blvd., Detroit, Michigan. The building is a vacant commercial facility on the Southeast

corner of East Grand Blvd. and Oakland.

SIGNIFICANT DATES

1/9/02 MDEQ, AQD, Detroit Office, receives a citizen complaint alleging asbestos removal in a renovation project by unauthorized persons at the facility located at 2843 East Grand Blvd, Detroit, Michigan.

1/9/02 Inspection by AQD staff reveals renovation occurring at the site and possible violations of the Asbestos NESHAP. Potential asbestos samples were taken.

1/10/02 A second inspection at the site reveals no one at the site at time of inspection, however, material has been disturbed since the initial inspection on 1/9/02.

1/16/02 Staff met with Loftworks, LLC (respondent) at 2843 E. Grand Blvd., Detroit site.

Staff Activity Report—Page 2

Loftworks, LLC

December 2, 2002

1/22/02 Samples were delivered to the MDCIS laboratory in Lansing. One sample was analyzed and found to contain 15% Chrysotile asbestos.

1/23/02 Inspection at the facility reveals that the two dumpster boxes previously at the site have been removed from the site. Pipes and other material has been removed from the site.

2/13/02 Letter of Violation issued to Loftworks, LLC, alleging that several violations of the federal asbestos NESHAP had occurred.

5/22/02 MDEQ and respondent met to discuss resolution of the alleged

violations.

10/28/02 Company agrees to the terms and condition of the Consent Order.

COMPLIANCE ISSUES

According to our investigation Loftworks, LLC, was performing renovation activities at

2843 East Grand Blvd., Detroit, Michigan. The federal regulations pertaining to renovation and/or demolition of regulated facilities that apply to each owner and operator

of a demolition or renovation activity require that the responsible parties “thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II

nonfriable ACM.” [Subpart M-National Emission Standard for Asbestos §61.145 Standard for demolition and renovation]. The regulations also require that each owner

or operator of a demolition or renovation activity “Remove all Regulated Asbestos Containing Material (“RACM”) from a facility being demolished or renovated before any

activity begins that would break up, dislodge, or similarly disturb the material or preclude

access to the material for subsequent removal.”

Based on an inspection, at the facility located at 2843 East Grand Blvd by AQD staff, (prompted by a citizen complaint) the MDEQ alleges that the owner, Loftworks, LLC, violated several provisions of the federal NESHAP regulations. Specifically, in addition

to the above, the MDEQ alleges that the company failed to adequately wet and keep wet

the Asbestos Containing Material (ACM), failed to seal all the ACM in leak tight containers, failed to deposit the ACM waste material as soon as practical and failed to

have a person trained in the provisions of the NESAHP on site.

COMPLIANCE PROGRAM

The respondent has agreed to resolve the issue concerning the alleged violations by entering into a Consent Order agreement with the State of Michigan. Under the provisions of the Consent Order the respondent shall fully comply with the asbestos NESHAP regulations, including adequately wetting RACM during stripping activities, Staff Activity Report—Page 3

Loftworks, LLC

December 2, 2002

discharging no visible emissions to the outside air during the collection, processing, packaging, or transporting of any RACM. In addition, the Consent Order would require

that the MDEQ-AQD be provided the required notification which accurately describes the

work practices and engineering controls to be used to comply with the asbestos NESHAP

requirements, including asbestos removal and waste handling emission control

procedures. Failure to comply with the terms and conditions of the Consent Order could result in a maximum stipulated penalty of \$1,000.00 per violation per day. Finally, the Consent Order requires a total settlement amount payment of \$15,400.00 00 to the State of Michigan general fund.

RECOMMENDATION

Staff believe that the proposed Consent Order reflects an appropriate compliance program and resolution to the violations of the federal NESHAP regulations. Staff recommends that the Consent Order be executed barring any substantial comments received during the public comment period requiring other disposition.

Submitted by: Richard Tazreak

/KJH



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MPCA News

Media Center

Quarterly Summary of Enforcement Actions

NOTE TO NEWS EDITORS AND DIRECTORS: The table below includes all final penalties issued by the MPCA during the third quarter (July through September of 2002). We welcome your inquiries to localize these stories.

To follow up, contact the public information officer whose name and number accompanies the penalty. In some instances, a separate news release may have been issued on the case. In those cases, you will find a link to that release in the "For more information" column in the table below.



[Quarterly Enforcement Summary](#)

[Previous Quarterly Summaries](#)

[Definitions of Penalty Types](#)

Quarterly Enforcement Summary

July - September 2002

Date	Company or individual	Facility site location	Nature of violation(s)	Penalty type	For more information
7/5	Arndt Const. Co., Inc. & Contractor Prop. Dev. Co.	Rosemount	Water Quality, Stormwater	STIP - \$22,500	Mike Rafferty, 651-297-8294, Mike Martindale, 651-296-5856 News Release
7/5	Old Zumbrota Fire Station	Zumbrota	Air Quality, Asbestos	STIP - \$35,000	Mel Miland, 507-285-7151, Jackie Deneen, 651-297-5518 News Release
7/10	National Steel Pellet Company	Keewatin	Air Quality	APO - \$5,750 nonforgivable	Anne Moore, 218-723-2356, Bob Beresford, 218-723-4664
7/16	Kieger Enterprises	Hugo	Hazardous Waste, Underground Storage Tanks	APO - \$1,000 forgivable, \$3,500 nonforgivable	Jennifer Jensen, 218-529-6259
7/16	DM and IRR Company	Duluth	Air Quality	STIP - \$10,000	Anne Moore, 218-723-2356, Bob Beresford, 218-723-4664
7/22	West Side Motors	St. Louis Park	Underground Storage Tanks	APO - \$400 forgivable, \$3,280 nonforgivable	Jess Richards, 651-282-9885
7/22	Winona Excavating, Inc.	Winona	Air Quality, Asbestos	APO - \$6,000 nonforgivable	Mel Miland, 507-285-7151, Jackie Deneen, 651-297-5518
7/24	MN Department of Transportation Hwy. 169	Grand Rapids	Water Quality, Stormwater	STIP - \$20,000, SEP - \$80,000	Anne Moore, 218-723-2356, John Thomas, 218-723-4928
7/29	Design Construction Options	Winona	Air Quality, Asbestos	APO - \$3,500 nonforgivable	Melanie Miland, 507-285-7151, Mark Hugeback, 507-280-5585
7/29	Hinco Masonry	Winona	Air Quality, Asbestos	APO - \$5,000 nonforgivable	Melanie Miland, 507-285-7151, Mark Hugeback, 507-280-5585
7/29	Mueller Aart	Winona	Air Quality, Asbestos	APO - \$3,500 nonforgivable	Melanie Miland, 507-285-7151, Mark Hugeback, 507-280-5585
7/31	Walton Sauter	Bethel	Water Quality, Solid Waste, Air Quality	STIP - \$10,000	Keith Cherryholmes, 651-296-6945

8/13	Great River Energy	Elk River	Air Quality	STIP - \$15,050	Steve Mikkelson, 218-846-7390, Dave Crowell, 218-828-6100 News Release
8/15	Danewick-Poole Environmental, Inc.	Hastings	Air Quality, Asbestos	APO - \$5,000 nonforgivable	Katie Koelfgen, 651-297-8506
8/26	Broadway Resource Recovery, LCC	Minneapolis	Solid Waste	APO - \$5,600, nonforgivable	Tod Eckberg, 651-296-7737
8/26	DAVCO	St. Cloud	Air Quality, Asbestos	APO - \$3,500 nonforgivable	Katie Koelfgen, 651-297-8506
8/28	City of Richmond	Richmond	Water Quality, Wastewater Treatment	APO - \$3,981 forgivable, \$6,019 nonforgivable	Sheryl Strader, 218-828-6075
8/30	Glasstite	Dunnell	Hazardous Waste, Solid Waste, Tanks	STIP - \$95,000	Mel Miland, 507-285-7151, Jason Moran, 507-389-5286 News Release
9/19	Winona Port Authority	Winona	Water Quality	STIP - \$40,000	Mel Miland, 507-285-7151, Judy Mader, 651-296-7315 News Release

Recently closed cases from previous quarters:

Company or individual	Facility site location	Date
Louis Luestek & Sons, Inc.	Ely	9/26/01
Minnetonka Boat Rental & Charters	Mound	3/14/02
Mainstreet Repair	Hopkins	5/31/02
Winnetka Sinclair	New Hope	5/31/02
Herb's Servicecenter, Inc	Plymouth	6/4/02
Smith Bros. Service Station	Minneapolis	6/4/02
MN Dept. of Natural Resources	Forest Lake	6/13/02
Jacobsen Excavating & Trucking	Forest Lake	6/13/02

Previous Quarterly Summaries

- [April - June 2002](#)
- [January - March 2002](#)

- [July - September 2001](#)
 - [April - June 2001](#)
 - [January - March 2001](#)
 - [October - December 2000](#)
-

Definitions of penalty types

- **APO -- Administrative Penalty Order**

The MPCA issues APOs to resolve compliance problems involving state or federal environmental laws. The severity of the enforcement action depends on the environmental impact of the violation, whether it is a repeat offense, and how quickly the problem is corrected, among other factors.

An APO contains a monetary penalty and a schedule of actions the violator must follow to return to compliance. The maximum penalty that can be assessed in an APO is \$10,000.

There are three types of APOs: forgivable, nonforgivable or a combination of the two. A forgivable APO assesses a penalty, but "forgives" it if corrective actions are completed on schedule. With a nonforgiveable APO, no portion of the monetary penalty is waived.

In a combination APO, a portion of the monetary penalty is forgiven if corrective actions are completed on schedule -- usually within 30 days.

More information is available in the following fact sheet:



[Administrative Penalty Orders: Compliance is the Goal](#)

- **Stip -- Stipulation agreement**

Stipulation agreements are negotiated settlements used when violations are serious enough to warrant a monetary, civil penalty greater than \$10,000. They are also used when the actions needed to correct the problem are apt to take more than 30 days to complete.

Stipulation agreements also include a schedule the violator must follow to return to compliance with applicable environmental regulations. Depending on the size of the monetary penalty and the violator's ability to pay, a payment schedule may also be included in the agreement.

- **SEP -- Supplement Environmental Project**

Supplemental Environmental Projects are intended to provide "extra" environmental and public health benefits. SEPs are environmentally beneficial projects which a defendant or respondent agrees to undertake in the settlement of an enforcement action, but which the defendant or respondent is not otherwise legally required to perform.

SEPs are often used as part of a stipulation agreement



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TTY: 651-282-5332, TTY 24-hour emergency number: 651-297-5353 or 800-627-3529

Endnotes

¹ Letter from the Environmental Council of the States to Senators James M. Jeffords and Robert C. Smith (Feb. 12, 2002), available at www.sso.org/ecos/policy/letters.htm (last visited Mar. 20, 2003).

² See, e.g., Consolidated Review of Air Enforcement and Compliance Assurance Programs Programs; Office of the Inspector General, U.S. Environmental Protection Agency, Report # EIGAE5-05-0169-7100306 (Sept. 30, 1997), available at http://www.epa.gov/oigearth/ereading_room/list_997/7100306.pdf (last visited on Mar. 20, 2003); State Enforcement of Clean Water Act Dischargers Can Be More Effective, Office of the Inspector General, U.S. Environmental Protection Agency, Report # 2001-P-00013 (Aug. 2001), available at http://www.epa.gov/oigearth/ereading_room/list901/finalenfor.pdf (last visited Mar. 20, 2003).

³ See Environmental Working Group, *Prime Suspects: The Law Breaking Polluters America Fails to Inspect* (July 2000), at 9-10.

⁴ See Natural Resources Defense Council, *Effect of the EPA Budget Proposal on Key Enforcement Activities Fiscal Years 2001-2003* (Mar. 2002). The Administration has recently reversed its course by proposing to restore one-hundred additional staff positions in its fiscal year 2004 budget proposal.

⁵ CAA Enforcement Results at <http://www.epa.gov/complaine/civil/programs/caa/caaenfenvresults.html> (last visited on Mar. 20, 2003). See also, U.S. Department of Justice, *New Source Review: An Analysis of the Consistency of Enforcement Actions with the Clean Air Act and Implementing Regulations*, 20-23 (Jan. 2002).

⁶ U.S. Department of Justice, *United States and Ohio Reach Settlement with City of Youngstown and Halt Years of Sewer Overflows* (Mar. 5, 2002), available at http://www.usdoj.gov/opa/pr/2002/March/02_enrd_123.htm (last visited on Feb. 12, 2003).

⁷ Minnesota legislators audited the state's water program in 2001. The audit included an enforcement component. No other program was audited. See Office of the Legislative Auditor, Water Quality: Permitting and Compliance Monitoring (Jan. 2002).

⁸ According to conversations with Sylvia Lowrance, former Acting Assistant Administrator for the Office of Enforcement and Compliance Assurance, EPA's Information Office and Reinvention Programs have provided significant funding to states since 1996 through various grant programs such as the one-stop grant program, available at <http://www.epa.gov/reinvent/onestop> (last visited on Mar. 20, 2003) and more recently through the National Environmental Information Grants program, available at <http://www.epa.gov/neengprg/index.html> (last visited on Mar. 20, 2003).

⁹ U.S. Environmental Protection Agency, *EPA Awards First National Environmental Information Exchange Network Grants* (Aug. 8, 2002), available at www.epa.gov/epahome/headline_080802.htm.

¹⁰ See U.S. Environmental Protection Agency and Environmental Council of the States, Environmental Data Standards Council, *Standard Elements for Enforcement/Compliance* (April 26, 2002), available at <http://www.epa.gov/oei/imwg/activities.htm> (last visited on Feb. 18, 2003).

¹¹ Enforcement and Compliance History Online available at <http://www.epa.gov/echo> (last visited on Mar. 10, 2003).

¹² See Environmental Council of the States and U.S. Environmental Protection Agency, *Blueprint for a National Environmental Information Exchange Network* (undated).

¹³ § 5 Ill. Comp. Stat. 140/6 (a) (2003).

¹⁴ Id.

¹⁵ Id.

¹⁶ Quarterly Non-Compliance Reports available at <http://www.epa.gov/region5/water/weca/qncrs.htm>. (last visited on Mar. 18, 2003).

¹⁷ Ind. Code § 5-14-3-8 (1)(c) (2002).

¹⁸ Ind. Code § 13-14-11-2, cited in IDEM Form for Waiver of Copying Fee for Nonprofit Activities.

¹⁹ Mich. Comp. Law § 15.234 (1) (2002).

²⁰ Id.

²¹ E-mail from Rebecca Patrick of MDEQ's Office of Business Services (Feb. 12, 2003).

²² Telephone conversation with David Freed, Michigan FOIA Officer (Oct. 20, 2002).

²³ Letter from Thomas Sinn, MPCA's Pollution Control Compliance Coordinator, to Louis Piels (Nov. 18, 2002).

²⁴ Minn. Stat. § 13.03, Subd. 3(1) & (2) (2002).

²⁵ Minn. Stat. § 13.03, Subd. 3(c) (2002).

²⁶ Minn. Stat. § 13.03, Subd. 3 (2002).

²⁷ Wis. Stat. § 19.35(3)(e) (2002).

²⁸ Access to Wisconsin Department of Natural Resources Records (Revised: August 2002).

²⁹ Minn. Stat. § 116.07, Subd. 4d.(a) (2002).

³⁰ Minn. Stat. § 116.07, Subd. 4d.(b) (2002).

³¹ Id.

³² Michigan Environmental Council, *Greening the Governments*, 67 (Apr. 2002), available at <http://www.mecprotects.org/greening.pdf> (last visited on Mar. 21, 2003). As Michigan Environmental Council states in its report, Great Lakes states should enter into a "Right to Know" compact to standardize collection and reporting of key environmental data.

³³ Bureau of Cooperative Assistance at www.dnr.state.wi.us/org/caer/cea/what_is_cea.htm (last visited on Mar. 14, 2003).

³⁴ Id.

³⁵ Enforcement program audits are available at [http:// www.epa.gov/oigearth/ereading_room](http://www.epa.gov/oigearth/ereading_room) (last visited on February 27, 2002) and <http://frwebgate.access.gpo.gov> (last visited on February 27, 2003).

³⁶ Environmental Council of States, *State Agency Contributions to Enforcement and Compliance*, 20-21 (Apr. 2001).

³⁷ See Annual Report on Enforcement and Compliance Assurance Accomplishments in 1999, Exhibit 11 at 7, available at <http://www.epa.gov/compliance/planning.results> (last visited on Feb. 18, 2003).

³⁸ National Academy of Public Administration, *Evaluating Environmental Progress: How EPA and the States Can Improve the Quality of Enforcement and Compliance Information* (June 2001).

³⁹ The NAPA report illustrates the problems with the ECOS data by pointing out that for 1999 Oregon reported pursuing 1,988 significant violations, Pennsylvania reported only 108 such cases, and Rhode Island reported none. The Academy then notes “One would anticipate that a state of Pennsylvania’s size would have more significant violations than Oregon’s much smaller regulated universe, and that Rhode Island would have identified at least a few significant violations. It is not possible to tell whether differences in definitions, in the way states responded to the survey, or the levels of enforcement led to these disparate and counter-intuitive sets of activity data. [T]hese data discrepancies point out that it is very difficult to aggregate state data, to compare performance across states, or to draw nationwide conclusions on enforcement using current state data.” *Id.* at 24-25.

⁴⁰ *Id.*

⁴¹ Letter from the Environmental Council of the States to Senators Robert C. Smith and Harry Reid (May 14, 2001), available at <http://www.sso.org/ecos/policy/letters.htm> (last visited on Feb. 19, 2003).

⁴² Inside Washington Publishers, *EPA Asked to Assign Enforcement Staff to State Agencies to Ease Budget Woes* (Dec. 12, 2002).