

ENVIRONMENTAL INJUSTICE

GOVERNMENT AS POLLUTER

## The nation's dirty, big secret

Even as the EPA pursues private polluters, certain US agencies preside over some of the deadliest waste sites in the country - and there is little that can be done to stop them

By David Armstrong, Globe Staff, 11/14/99

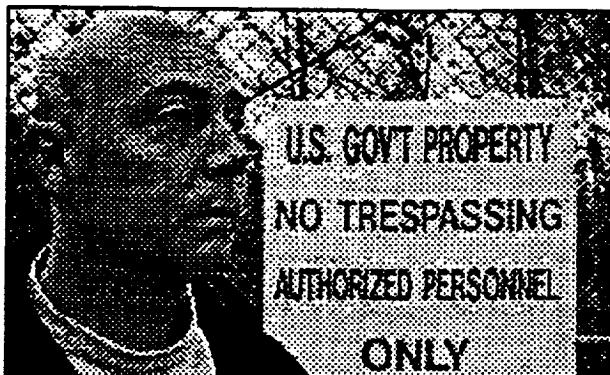
*First of four parts*

**T**he United States government, which acts as steward and protector of the nation's environment, is itself the worst polluter in the land.

Federal agencies have contaminated more than 60,000 sites across the country and the cost of cleaning up the worst sites is officially expected to approach \$300 billion, nearly five times the price of similar destruction caused by private companies.

But the real cost is likely tens of billions of dollars more, according to government audits.

Nearly every military base and nuclear arms facility in the country is contaminated. The pollution extends from the US Mint, which released hazardous chemicals into the air when producing



BOB STANTON, who has a rare form of cancer, lives near South Weymouth Naval Air Station, which the EPA says is contaminated with volatile organic compounds and heavy metals. Neighbors suspect a link to increased cancer rates. (Globe Staff Photo / Tom Herde)

### Chart: Environmental challenges facing federal agencies

**Links:** Information available on-line to determine if you live near a federal site that has been polluted:

- [Formerly Used Defense Sites](#)
- [CERCLIS sites accessible by county](#)
- [Right to Know Network databases](#)
- [DOE environmental management reports](#)

commemorative coins, to the national parks, where leaky oil tanks and raw sewage are polluting pristine rivers.

Even the Environmental Protection Agency, charged with enforcing the country's environmental laws, has been fined for violating toxic waste laws at its laboratories. At the EPA's lab in Lexington, for example, mercury was discovered leaching into the ground water three years ago.



TREATED EFFLUENT being discharged last June at Yellowstone National Park, where the antiquated sewage system often fails. (AP Photo / Barry Williams)

The impact of government pollution has been severe and widespread. Some of the most contaminated spots on earth are the property of the United States. Toxic waste on government land has been linked to increased cases of cancer and other illnesses among people living near such sites.

Much of the pollution is historical residue that can be blamed on some of the century's defining events: from America's quest to put a man on the moon to winning the Cold War against the former Soviet Union. But the polluting by federal agencies is perpetuated by a system in which there are often two sets of rules: one for the government and another for private companies. There is also growing concern among environmentalists and some enforcement officials that instead of getting tougher with government polluters, Congress and federal regulators are creating new loopholes and further relaxing enforcement.

"Some sites have been cleaned up, but the government remains the nation's premiere environmental felon," said Jonathan Turley, a lawyer who directs George Washington University's Environmental Crimes Project.

Despite the legacy of pollution, federal agencies remain exempt from some environmental laws. Only last month, in a move that surprised regulators, Congress added language to a budget bill that would make it virtually impossible for the EPA to fine the military for environmental violations.

The government is also caught in a classic conflict of interest: It is both the criminal and the cop.

In some cases, federal regulators have been accused of ignoring evidence of environmental recklessness by their official brethren. But even when doing their job, the regulators are handicapped. The government can sue private companies to force them to clean up contaminated sites and if warranted, take criminal action against the firms and their employees. Yet those tools are off-limits to officials when

the polluter is the government itself.

The result, critics say, is a system where the deck is stacked in favor of the federal agency that violates the environment. "The government," said Virginia attorney Harry Kelso, a former federal environmental crimes prosecutor, "has a license to pollute."

### **Yellowstone's sewage problem**

Every summer tourists migrate to Yellowstone National Park to admire the ancient canyons, the magic of "Old Faithful," and the dark blue lakes and rivers that make up the 3,400-square-mile historic site.

As visitors from across the world admire the natural wonders, the antiquated sewage system at the park struggles behind the scenes to process the waste generated at park lodges and public toilets. It often fails.

In the past two years, tens of thousands of gallons of raw sewage have flowed untreated into the lakes and streams of Yellowstone National Park, in clear violation of the federal Clean Water Act. Park officials have been embarrassed by the contamination, but complain that for years their pleas to Congress to upgrade the system have been ignored.

If the park were the property of a private company -- and not the federal government -- the state of Wyoming or the EPA could punish the polluter with fines and lawsuits. When the violator is the National Park Service, however, there is little regulators can do.

"I see many examples of the federal government failing to live up to its own rules," said Gary Beach, the administrator of the water quality division of the Wyoming Department of Environmental Quality.

"I should be spending my time on the private sector," he said. "I shouldn't have to be spending my time getting the federal government to comply with their laws. I think it is embarrassing when the Park Service, which is supposed to be a defender of the environment, is polluting it."

Like every other federal agency, the Park Service is exempt from enforcement under the Clean Water Act, the historic measure approved 30 years ago to protect the country's rivers and lakes.

The inability to penalize federal agencies that pollute waterways is costly to the environment. Federal facilities are more likely to violate water standards than private companies, EPA records show. In addition, according to a report issued earlier this year by the EPA Inspector General, federal agencies are increasingly violating the law, with 27 percent of all government facilities out of compliance in 1996, the latest year figures were available, compared to 10 percent in 1992.

In Maryland, federal agencies have sent raw sewage flowing into rivers and improperly disposed of waste from laboratories, hospitals, and military installations, according to Mary Sweeney, an assistant state attorney general who prosecutes environmental violators. "There is simply no reason for federal facilities to continue to be held to a lower standard than private industry," Sweeney said.

In the past decade, Congress has waived the government's immunity from punishment under several environmental laws, including hazardous waste disposal requirements and the release of toxins into the air. The threat of fines in those areas, regulators say, has prompted the government to pollute less frequently.

In addition, the military has been credited with improving its daily environmental compliance in the past decade and becoming more responsive to community concerns about contamination.

"We've been spending a hell of a lot of money for quite a while now," said Gary Vest, the principal assistant deputy undersecretary of defense for environmental security. "It's almost at 30 years now of having a formal environmental program at DOD. We spent \$5 billion a couple of years ago. When you spend so much money on clean air and clean water, you would hope that you are getting somewhere."

Exemptions and loopholes remain, however.

Federal agencies are still exempt from many state environmental laws, which in some cases are more stringent than federal requirements. The US Navy, for example, is immune from state laws and Coast Guard regulations governing oil spills. In Washington, state regulators have repeatedly complained of Navy spills spoiling Puget Sound. Last year, 6,000 gallons of jet fuel from the aircraft carrier USS Kitty Hawk fouled the sound, one of three Navy spills that year.

Washington officials said the spills were the result of negligence and would have resulted in fines of \$90,000 if the Navy were a private company. Instead, the Navy policed its own cleanup, paid no fines, and even prevented state environmental experts from boarding ships.

The situation is similar in California, where the Navy is the largest spiller of oil, according to state officials. In San Diego, environmental activists say information has been withheld on some incidents, including a 6,000-gallon oil spill at a Navy pier last year and the 1996 release of mercury into the bay from a submarine.

"If they had to play by the same rules everyone has to, it would be a better situation," said Laura Hunter, the director of the Clean Bay Campaign, an advocacy group that monitors US Navy pollution. "We

get less protection than guaranteed by law because of the presence of the Navy."

The Navy, in a statement, acknowledged that it is granted "flexibility" by Congress because of its "unique mission," but said it does not misuse that privilege.

"The Navy recognizes that with this flexibility comes responsibility," the statement said. "As a good steward of the environment, [the] Navy has implemented its own spill contingency planning, spill response, and spill reporting. It reports every single spill."

Instead of toughening standards for federal agencies, enforcement officials are worried pollution standards are being softened. "Things are getting worse," said Vicki Peters, an environmental prosecutor with the Colorado attorney general's office. "I am seeing backpedaling.... Anyone living around a federal facility is not getting the same amount of protection as someone living around a private site."

The recent reorganization of the Department of Energy, prompted by concerns of security breaches at top-secret weapons plants, also has had the effect of placing those plants outside the grasp of environmental regulators.

President Clinton approved the new arrangement last month, but said he had reservations about a number of the provisions, including the section exempting the country's nuclear weapons complex from environmental regulation. The new arrangement so worried state environmental prosecutors that 43 of the 50 state attorneys general in the country signed a letter warning Congress of the consequences.

"For over four decades, DOE and its predecessors operated with no external oversight of [the] environment," they wrote. "Over the past 12 years or so, the disastrous consequences of this self-regulation have become plain. DOE now oversees the largest environmental cleanup program in the world."

And last month, in a decision that several federal regulators termed outrageous, Congress approved a defense spending plan that would "prohibit the payment of environmental fines or penalties unless authorized by law."

Clinton, when approving the spending plan, said he was troubled by the fine provision. Environmental regulators said the measure effectively takes away the ability to penalize the Department of Defense when it pollutes.

"It's a breathtaking attack on federal enforcement," US Representative William Delahunt, a Massachusetts Democrat, wrote in a letter to

colleagues last month. "At stake is the capacity of the EPA and Justice Department to enforce pollution standards with the tools essential to back up their sanctions."

### **Costly government cleanup**

The environmental contamination by the US government is so severe and widespread that every region of the country is affected in some way.

The cost of cleaning up all of the privately-owned Superfund sites in the United States -- properties operated by chemical and oil companies, rubber manufacturers, huge industrial concerns, and others -- is estimated by the EPA to cost \$57 billion.

Cleaning up Superfund properties polluted by the federal government, according to the EPA, could cost as much as \$280 billion -- nearly five times the amount of private industry.

Still, the Superfund list accounts for only a fraction of the sites polluted by the federal government. In 1996, a panel of government officials identified 61,155 sites across the country contaminated by federal agencies.

The Department of Defense alone generates 750,000 tons of hazardous waste each year, more than the combined production of the country's five largest chemical companies, according to a study by a task force of governors and attorneys general.

The cost of cleaning up sites not on the Superfund list is expected to add billions more in costs. Though by most estimates the cleanup of the government sites will take many more decades, not enough money is being allocated to keep pace with established timetables.

DOE's budget for environmental cleanup has repeatedly been cut during this decade. The Federation of American Scientists, a Washington arms-control group, projects a shortfall of \$4.4 billion in the agency's cleanup budget through fiscal 2006.

This year, Congress drastically slashed the budget for cleaning up military bases scheduled for closure, likely delaying cleanups at those sites. And within the Department of Defense, the amount needed to restore contaminated sites is being underreported, according to several audits. In 1998, the Pentagon estimated it will cost \$34.2 billion to clean up environmental hazards at bases across the country. But that figure is inaccurate and the true cost is much higher, according to a report issued in July by the Pentagon's Inspector General.

The report found that the Navy failed to account for the cost of disposing of nuclear reactors and nuclear waste, an amount that could be

as much as \$13.2 billion. And the Army did not include estimates for the cleanup of unexploded bombs, which could also cost billions of dollars.

Officials say the most expensive cleanup will occur at weapons plants operated by the Department of Energy, where a half century of nuclear missile and bomb production has contaminated 475 billion gallons of ground water.

DOE this year told Congress it will spend at least \$147 billion to cleanup 113 sites across the country -- and that the work will take another 75 years to complete. Former workers at nuclear weapons plants across the country are charging in lawsuits that they were sickened and colleagues died from years of exposure to radioactive waste.

New England is home to hundreds of locations polluted by the federal government, including a dozen Superfund sites.

The soil at the South Weymouth Naval Air Station, which local officials want to convert into a massive mall, is contaminated with volatile organic compounds and heavy metals, according to the EPA. Ground water near former landfills, dumps, and training areas on the site is also contaminated with heavy metals.

At the US Army's Natick Laboratory, contamination threatens the drinking water supply for nearby residents and Lake Cochituate, where the town has posted a warning about eating fish caught there since 1996.

The government Superfund sites stretch across New England, from the Brunswick Naval Air Station in Maine to the New London Submarine Base in Connecticut.

But government pollution extends beyond the country's military and nuclear weapons facilities.

NASA has identified 913 potentially contaminated sites at 22 facilities in 10 states. The agency has estimated cleanup costs at \$1.5 billion. As of 1997, only 3 percent of the sites had been, or were being, cleaned up. The agency was slow to identify polluted areas, taking five years just to survey its facilities.

Yet despite the magnitude of the problems at federally-contaminated sites, the issue suffers from political indifference, said Kelso, the former environmental prosecutor who has forced the government to clean up some polluted sites.

"I'm not sure this country has been leveled with," he said. "I'm not even sure that Congress has been leveled with, or the president."

US added to river's woes

Fishermen still camp along the Shenandoah River, casting their lines into the lazy Virginia waterway and stretching back to take in the unspoiled view of the Blue Ridge Mountains.

If they are lucky enough to catch a largemouth bass or catfish, the anglers know what to do. The fish is unhooked, perhaps admired for a moment, and tossed back. Everyone knows you don't eat fish from the Shenandoah.

The river is contaminated with polychlorinated biphenyl, known as PCBs. For most of this decade, the state has banned the eating of fish caught in the historic river that winds for 223 miles before emptying into the Potomac River. It is just one casualty of what has been called the worst environmental disaster in Virginia history.

But instead of interceding to stop the environmental calamity in the Shenandoah Valley, the federal government helped to create and prolong it, according to military documents and memos written by government lawyers. The case is a classic example of national security interests trumping environmental concerns, a scenario that has been repeated across the country.

For 50 years, the massive Avtex Fibers factory complex at the mouth of the Shenandoah in Front Royal, an hour west of Washington, D.C., produced most of the rayon used to make tires for the military and a crucial rocket nozzle for the country's space program. Producing an artificial textile like rayon involves the use of many chemicals that, if disposed of improperly, pose a serious threat to the environment and humans.

Records show little care was taken in the disposal of those chemicals when the plant operated on the 440-acre property from 1940 to 1989. According to the EPA, waste disposal practices at the plant contaminated the ground water under the site and residential wells across the river with carbon disulfide, phenol, sodium, and heavy metals including lead, arsenic, and cadmium. About 1,300 people use wells for drinking water that draw from are part of the contaminated aquifer.

After years of pressure from Virginia environmental officials, the plant president announced the facility would shut down in November 1988.

But almost immediately, the federal government stepped in to rescue the facility. Avtex was the only producer of carbonized rayon used on NASA's space shuttle, and in Air Force missiles. At a meeting of the National Security Council, a plan was formulated to infuse the facility with \$43 million in federal funds, enough to keep it operating another year.

Virginia environmental officials said the last year of operation added greatly to the environmental disaster, and the military and NASA pushed the plant to produce at maximum levels. State officials also said the EPA knew of the plan to keep the plant operating, but did nothing to protect the environment.

"The EPA stood by while their federal government brethren continued to maim and pillage the environment, and threaten the public health, the property and the citizens . . . of Virginia," said Thomas Hopkins, the state's chief environmental officer.

Federal officials knew of the environmental harm done by the plant, according to internal memos, but were motivated by a fear that the space shuttle program would be stalled and missile production slowed if the plant shut down.

"There is evidence that DOD and NASA did not act responsibly toward the environmental problems at Avtex," acknowledged an internal memo by Air Force lawyers advising superiors about a threatened lawsuit by the former plant owner. "There is evidence that DOD and NASA knew of the huge environmental problem facing Avtex and did not take any action to ensure that these problems were solved. There is also evidence that DOD and NASA pushed Avtex for as much production as possible, all the while knowing that an environmental disaster was brewing."

So far, the cleanup effort has involved the treating of millions of gallons of water, the removal of hundreds of tons of soil, and the demolition of 17 acres of buildings. The cleanup is not expected to be finished for another seven years at a cost of at least \$100 million, of which the federal government must contribute \$21 million.

Nonetheless, in the end, the head environmental lawyer for the Air Force deemed the federal government's role in the Avtex case to be a success.

"Both NASA and DOD were faced with an impending disaster," wrote Air Force Major Richard E. Sarver in a 1991 memo to superiors. "This country's space and defense programs could have been devastated had Avtex remained shut down. . . . This operation was a success, and while there are lessons to be learned, there is a great deal of credit to be parceled out to the participants."

### **Regulator wears two hats**

In June 1996, a US Navy jet left Andrews Air Force Base en route to a rendezvous with an aircraft carrier off the Florida coast. On board were members of the Navy general counsel's office and other military officials.

Also along for the ride was Lois Schiffer, the top environmental official

for the Department of Justice, and another high-ranking Justice lawyer. The group spent a night aboard the nuclear-powered USS John C. Stennis.

For Navy officials, the trip to Florida was a chance to build good will with Schiffer. To others it highlighted an inherent conflict of interest at the Justice Department. Schiffer wears two hats: She is at once the highest-ranking environmental prosecutor in the country and the chief defender for federal agencies accused of violating environmental regulations.

"We do have cases for the Navy, sometimes as a polluter in cases related to aircraft carriers," she said of the trip. "It is a lot easier to figure out your position on a case if you see one."

One of the lawyers working for Schiffer has charged that the Justice Department's environmental and natural resources division actually works to protect government agencies engaged in wrongdoing.

"The problem is a systemic one, caused by the existence of a Division culture that places a premium on the protection of the government bureaucracy instead of an attorney's duties to the public interest, the truth, and the court," wrote attorney Daniel Jacobs in a letter this year to Attorney General Janet Reno, a copy of which was provided to the Globe.

Jacobs told Reno he has evidence of a US government agency that he did not name routinely destroying records.

He asserted that when he reported the alleged government wrongdoing, Schiffer allegedly retaliated against him, and later warned him that releasing documents relating to the case was illegal. Jacobs is now involved in an extraordinary legal battle with his bosses.

Jacobs's performance rating was downgraded and he was transferred to another job. Jacobs recently won a court case allowing him to show his attorney the same records he provided Schiffer. The attorney can now advise Jacobs of his legal options. Schiffer declined comment on Jacobs's case.

As it is, there is little the Justice Department can do to penalize federal agencies that pollute. The Justice Department is prohibited from filing lawsuits or issuing fines against other federal agencies. Both of these tools are frequently employed by the department when pursuing private polluters.

Although federal agencies are required by a 1992 law to comply with all environmental statutes, there are few consequences if they don't.

The small EPA office charged with keeping federal polluters in line is often overmatched politically. Several EPA officials said privately they want to take more action against federal agencies that pollute, but are hamstrung by special exemptions and political considerations, such as congressmen worried about the impact of environmental enforcement on hometown bases.

"Unfortunately, on environmental compliance, the EPA is like a David with a bunch of Goliaths, especially when it comes to the military," said Cathy Lemar, director of the Military Toxics Project, a nonprofit group that monitors base cleanups across the country.

The EPA has also stumbled internally, unable to complete even basic mandates requiring the agency to monitor the compliance of federal facilities with environmental laws, and track their spending on environmental issues.

Many frustrated regulators, particularly at the EPA, said little will change until Congress and the president toughen laws and federal agencies fear the consequences of polluting.

"What you see is what folks have been willing to pay for," said one EPA official, who agreed to an interview only if he was not named. "This is [what] I would call less than a band-aid applied against a compound fracture of the nation's skull.

"The fact is the federal government is getting away with murder and the EPA is not legally or politically powerful enough to turn the tide."

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