



**U. S. Environmental Protection Agency  
OFFICE OF INSPECTOR GENERAL  
Nikki L. Tinsley, Inspector General**



# Quarterly Report

Fourth Quarter - Fiscal Year 2001

July 1 - September 30, 2001

## Audit/Evaluation Activities

### State Enforcement of Water Discharge Programs Could Be More Effective (Report 2001-P-00013)

State enforcement programs could be more effective in deterring noncompliance with water discharge permits and, ultimately, improving the quality of the nation's water. EPA and the states have been successful in reducing point source pollution since the Clean Water Act passed in 1972. However, despite this tremendous progress, nearly 40 percent of the nation's assessed waters are not meeting the standards states have set for them.

The state enforcement strategies we evaluated need to be modified to better address environmental risks, including contaminated runoff. EPA's core program and monitoring systems have emphasized major industrial facilities and larger sewage treatment plants, and have not sufficiently considered other sources. State strategies were also inhibited by:

- Inadequate water quality data.
- Incomplete permit data.
- Insufficient EPA-state relationships.
- State concerns over regulating small and economically vital businesses and industries.

States evaluated did not have sufficient information on dischargers to effectively implement their enforcement programs.

States also had other weaknesses in their

compliance monitoring and enforcement systems, including not reporting serious, significant violations.

We recommended that EPA collaborate with states to develop risk-based enforcement priorities, make modernizing its Permit Compliance System a high priority, better define significant violations, and routinely determine whether states are adequately monitoring and enforcing discharge programs.

### Region 6 SEPs Benefitted Violators More than Environment or Public Health (Report 2001-P-00014)

Region 6 did not effectively implement the Supplemental Environmental Project (SEP) program in a manner that primarily benefitted the environment and public health. SEPs are projects in which a violator agrees to provide substantial environmental or public health benefits in exchange for a reduction in penalties. However, in the majority of cases reviewed, violators potentially profited from SEPs.

For 6 of 10 SEPs reviewed, the total estimated cost savings or revenue gains to the violator over the useful life of the projects ranged from \$572,640 to more than \$32 million. In some cases, projects did not

provide significant environmental or public health benefits. In addition, requirements in SEP settlement

agreements, monitoring of violator compliance

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with SEP requirements, and documentation of SEP eligibility determinations were not sufficient to ensure SEPS were properly completed and consistent with SEP priorities and goals. Also, Region 6 SEPs data entered into EPA's Enforcement Docket System was not always correct or consistent, preventing adequate measurement of EPA progress.

We recommended that Region 6 establish a more effective process for evaluating SEP quality, strengthen its data entry controls, and provide additional SEP training. We also recommended that the EPA Office of Enforcement and Compliance Assurance clarify its SEP guidance, and revise the Docket Data Dictionary to more specifically identify required SEP entries.

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**States Inconsistently List Impaired Water Bodies**  
*(Report 2001-P-01225)*

States inconsistently list impaired water bodies that cross or serve as state boundaries. This occurs because the states do not collaborate with each other when assembling and evaluating data, developing monitoring approaches, and adopting water quality standards. There are many differences in how states assemble and evaluate monitoring data, and most states only use their own data and do not consider or use data from other states. The lack of collaboration may delay development and implementation of Total Maximum Daily Load (TMDL) limits and the timely cleanup of polluted waters. Increased TMDL costs may also occur.

EPA is generally not working with states on addressing the inconsistent listings under section 303(d) of the Clean Water Act for impaired water bodies that cross or serve as state boundaries. EPA does not have a system to review states' 303(d) lists for

consistency, and does not facilitate data sharing.

We recommended that the EPA Office of Water encourage collaboration among states in developing similar methods to assemble and evaluate data, monitor, and adopt water quality standards for shared water bodies. We also recommended that EPA better define the data to be used and evaluated in developing a state's 303(d) list, and improve or develop a national database to facilitate data sharing among states.

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**EPA to Disclose Penalty Information to IRS**  
*(Report No. 2001-S-00011)*

As a result of OIG's review of EPA penalty collections, EPA agreed to resume the disclosure to the Internal Revenue Service (IRS) of EPA penalty information. There could be a potential annual tax revenue increase for the U.S. Treasury of \$28.7 million.

EPA agreed to provide penalty information to IRS under a 1989 agreement. Without the deterrent effect of penalty disclosure to IRS, violators who include nondeductible penalties as business expenses on their income tax returns may reduce their tax liability with less chance of detection by IRS auditors. The reporting also helps to deter future environmental violations. However, we found that EPA had discontinued the disclosure of penalty information to IRS. The reason for the discontinuance was unclear.

According to EPA's accounting records, the Agency annually assessed an average of \$82 million in penalties from October 1, 1997 to May 24, 2001. If the violating companies deducted these penalty payments as business expenses on their corporate income tax returns (assuming nondeductible

penalties and a 35 percent corporate federal income tax rate), this could have resulted in an annual revenue loss of \$28.7 million to the U.S. Treasury.

We recommended that EPA meet with IRS

officials to update the terms of the agreement, and resume the disclosure of penalty information to IRS.

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## Investigative Activities

### Environmental Firm Sentenced for Issuing Fraudulent Training Certificates (Sentencing 98-2030)

On April 13, 2001, F&M Environmental Technology, Inc. (F&M Environmental) and its president, Frankland P. Babonis, were sentenced in U.S. District Court, Eastern District of Virginia, for issuing fraudulent asbestos training certificates. F&M Environmental was sentenced to 2 years probation and ordered to pay a \$30,000 fine and \$200 special assessment. Babonis was sentenced to two 15-month jail terms, to be served concurrently, 3 years probation, and ordered to pay a \$4,000 fine and \$200 special assessment.

The sentencing followed guilty pleas entered by F&M Environmental and Babonis on February 9, 2001. F&M Environmental pled guilty to one count of false statement, and Babonis pled guilty to one count each of false statement and mail fraud. In their plea agreements, the defendants admitted that Babonis knowingly issued to an individual working with asbestos materials a fraudulent certificate of completion of training required by Section 206 of the Toxic Substances Control Act. The false certificate stated the individual had completed the requisite training for asbestos accreditation and satisfactorily passed an examination covering the contents of the continuing education course, "32 Hour EPA Workers Asbestos Abatement Training Program." The individual had never taken such a course nor satisfied any requirements of the certified training program.

Babonis also engaged in a scheme to defraud Phoenix Enviro Corporation (PEC) of Wilmington, North Carolina, by issuing

fraudulent certificates to PEC employees without providing any training to those employees. After mailing the false certificates to PEC, F&M Environmental would then bill PEC for the cost of training when, in fact, no such training had been done.

The fraudulent schemes undercut federal and state laws designed to protect workers and the public from health risks by requiring workers to be properly trained and certified to remove, handle, and dispose of asbestos-containing material.

*This investigation was conducted jointly by the EPA OIG, Federal Bureau of Investigation, and Navy Criminal Investigative Service.*

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### EPA Employee Charged in 19-Count Indictment (Indictment 00-2005)

On May 23, 2001, Luther E. Mellen III, a branch chief in EPA's Facilities Management and Services Division, was indicted in U.S. District Court, District of Columbia on charges of conspiracy to defraud the United States, theft of government property, receipt of stolen government property, and conspiracy to defraud the United States with respect to false claims. Mellen was indicted along with 11 other individuals, including his wife, Elizabeth, and eight other family members.

The 19-count indictment was the result of a lengthy investigation at the Department of Education (DOE) in connection with a large DOE contract with Bell Atlantic. The indictment charges that from about the early 1990's to December 1999, Luther Mellen's

wife, Elizabeth Mellen, a telecommunications specialist in DOE's Office of the Chief Information Officer, used her position as a contract officer's technical representative on the Bell Atlantic contact to procure over \$300,000 in computers, printers, cellular phones, cameras, Palm Pilots, and a 61-inch television for personal use.

Based on the indictment, an arrest warrant was issued for Luther Mellen, a co-conspirator for receiving stolen goods. Luther Mellon was

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placed under arrest and subsequently released on his own recognizance.

*This investigation was conducted jointly by the EPA OIG, Department of Education Office of Inspector General, and Federal Bureau of Investigation.*

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### **Former University Official Sentenced for Embezzlement (Sentencing 00-3006)**

On August 24, 2001, Gerald Todd Burd was sentenced in U.S. District Court, District of Kansas, for embezzling funds from a non-profit foundation and private trust fund. Burd was sentenced to 1 year and 1 day in prison and ordered to pay \$440,528 in restitution.

Burd, a former comptroller of the Haskell Foundation, Haskell Indian Nations University, admitted in a May 9, 2001, plea agreement that from January 1998 through December 1999 he wrote \$440,528 in checks payable to himself against the two funds he was operating. Of that amount, he embezzled \$103,979 from the Haskell Foundation, which receives funding from various environmental justice grants, and \$336,549 from a private trust fund Burd administered.

*This investigation was conducted jointly by the EPA OIG and the Federal Bureau of Investigation.*

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### **EPA Employee Sentenced in Theft of Credit Card (Sentencing 99-2004)**

On May 1, 2001, Tia M. Newman, was sentenced in U.S. District Court, District of Columbia, to three 180-day suspended sentences, 3 years probation, and ordered to pay \$4,328 in restitution to the EPA and a \$125 special assessment. In addition, Newman resigned from her EPA position. Newman, a former clerk typist in the Office of Environmental Justice, Office of Enforcement and Compliance, entered a guilty plea to a criminal information charging her with one count of receiving stolen property and two counts of theft. Newman admitted in her plea agreement that in November 1998 she removed and activated a government credit card from the office mail that was intended for a co-worker who had retired earlier that year. Newman used the credit card to make numerous personal purchases from a local toy and clothing store.

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### **Other OIG Reports Issued:**

Report 2001-S-00010 Primary Responsible Party Search Program  
Report 2001-P-00012 Cash Management Under Cooperative Agreements  
Report 2001-P-00015 Tranguch Gasoline Site  
Report 2001-P-00016 EPA Computer Security Program  
Report 2001-P-00017 Petosky Superfund Site  
Report 2001-P-00018 Total Maximum Daily Load Listings

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Questions concerning this update or requests for copies of OIG audit reports, reviews, or other documents should be directed to **Eileen McMahon**, U.S. Environmental Protection Agency, Ariel Rios Building (2441), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. **Telephone (202) 260-0401.**

If you are aware of or suspect any fraud, waste, or abuse in any EPA programs or operations, please call the OIG Hotline or the nearest Divisional Office of Inspector General. **OIG Hotline (202) 260-4977 or (888) 546-8740 .**



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