

Executive Summary

Environmental enforcement programs in North Carolina have rarely received adequate attention, resources, or political support to protect the public from violations of our natural resource laws, nor have the programs been adequately funded to allow enforcement of the permits intended to regulate pollutant dischargers.

Examples of inadequate enforcement of existing environmental laws and related enforcement data analyses reveal ongoing trends that threaten public health and the environment, ranging from children playing in sewage sludge to communities threatened by toxic emissions from a hazardous waste incinerator for years, in spite of ongoing permit violations, fines, and legal suits (see *Case Study 1* for more details).

The shortfalls in the state's environmental enforcement programs are the result of a series of interrelated factors:

- **State agencies face severe resource limitations:**

NC's enforcement programs rely largely on self-monitoring reports submitted by the permitted dischargers themselves. The level of resources available to state agencies to audit these reports is severely limited, and inspections are carried out at infrequent intervals. For example, inspections of NPDES dischargers are conducted an average of once a year for major dischargers and once every five years for minor dischargers.

- **Lack of political support:** State agencies face resource limitations largely because legislative decision-makers either place environmental enforcement low on the priority list or actively wish to curtail state enforcement activities affecting their political constituents. As an example, 130 sedimentation and erosion control inspectors were recommended statewide to make monthly inspections; since then, annual requests for staff have gone from 30 more positions to just 3, and on average, less than 0.3% of those requested positions were filled, with only 32 inspectors currently working statewide.

- **Unavailable data:** The public is reliant on state records to track violators, but the availability of this data is severely limited. Computer systems for the enforcement agencies are fragmented and outdated, and funding for improvements has been denied. Even within DENR, permit and enforcement information is not easily shared between divisions, and staff may not know how well a company that has multiple permits is complying with the permits issued by other divisions.

In order to review state records of dischargers' permits, violations, and state responsive actions, it is necessary to review individual hard copy files in regional DENR offices and/or in the central Raleigh office during business hours. These files are often registered under a number of different names for the same discharger.

- **Enforcement agency timidity:** After years of being faced with budget shortfalls and imbalanced political pressures, and in spite of a number of staff who support stronger enforcement and regulations, DENR is often reduced to taking a less proactive role on enforcement. Assessed fines are regularly significantly lower than allowed, and rarely take into account the economic benefits to a discharger of its non-compliance, thereby creating no disincentive to polluting. Injunctive relief is rarely utilized to close plants with repeated violations.

- **Adjudicatory system design:** The current system for adjudication and appeal from civil penalties and other enforcement actions creates extensive delays, encourages ill-supported appeals, and encourages enforcement agencies to settle cases for substantially reduced penalties.

To address these problems in North Carolina's environmental enforcement strategy and implementation, the Conservation Council recommends a series of actions:

1. ***Increased Resources:*** More resources in staff and funds are required to adequately address North Carolina's enforcement needs:

- Consolidate environmental compliance and enforcement data into an integrated system readily accessible to all state enforcement offices and the EPA. Additionally, make this system capable of receiving direct electronic reporting by permittees, and make this data available to the public via web access.
- Increase field enforcement staff to levels sufficient to conduct direct inspections of each major discharger twice annually, each minor discharger at least annually, and erosion and sedimentation control plan sites at least monthly.
- Increase staff within the Department of Justice's Environmental Section to levels adequate to pursue environmental enforcement cases to final administrative action, including pursuit of any injunctive relief.

2. New Executive Policies: Environmental law enforcement efforts are hindered by agency reluctance to make vigorous use of the legal tools already at their disposal. To correct this, the Governor should issue executive orders directing the Secretary of Environment and Natural Resources to implement the following policies:

- All civil penalties shall incorporate the savings and other estimated economic benefits to the violator of its non-compliance with the violated environmental laws or permit conditions.
- Civil penalties shall incorporate a factor related to the size of the relative discharge, sufficient to ensure that major dischargers are fined at a level adequate to provide a meaningful incentive to compliance.
- Special Orders by Consent (SOCs) for bringing non-compliant dischargers into compliance shall incorporate substantial and non-waivable penalties for failure to meet their schedules for compliance.
- Non-compliant dischargers that fail to return to compliance promptly, or enter into an SOC compliance schedule where appropriate, shall have their permits revoked. In cases where this is not appropriate, alternatives such as civil contempt citations or court

appointment of alternative operators shall be pursued.

- Civil penalties not paid promptly shall be vigorously pursued in court.
 - No permit renewals or new permits shall be issued to parties with unpaid civil penalties.
- 3. Adjudicatory System Reform:** In order to reduce enforcement delays, encourage vigorous agency enforcement efforts, and discourage frivolous appeals, the N.C. General Assembly should make the following procedural reforms:
- The “Civil Penalty Remissions” process should be eliminated.
 - Administrative Law Judges (ALJs) should not be authorized to reduce civil penalties assessed by agencies unless there was no violation or penalties exceed maximum authorized.
 - Civil penalties should be legally considered unfinalized until either accepted by the penalized party, or finalized by the Secretary. These recommended civil penalties then could be adjusted by the final administrative decision-maker, either up or down, in accordance with a pre-established civil penalty schedule.



4. Effective Public Involvement:

Effective public involvement is made much less likely by the current difficulties in accessing current and comprehensive data on dischargers and their compliance histories. The Governor should mandate by executive order the following remedies:

- All data on permits shall be made accessible to the general public electronically. The Governor’s budget request to the General Assembly should include funding for this task.
- DENR shall keep written records, accessible to the public, of all requests by third parties (including legislators) for the reduction or elimination of civil penalties, or expediting of requests by applicants regarding the status of enforcement or permitting actions.

Seeing No Evil Raleigh’s award-winning wastewater treatment plant has been in violation of North Carolina’s environmental regulations for over ten years.