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Maryland Failing to Enforce Clean Water Laws, Letting Polluters off the Hook, Says New Report

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Across Last Decade, Number of Registered Polluters Went Up, But State Now Has Even Fewer Inspectors to Monitor Compliance

(Washington) -- The state of Maryland is failing to enforce existing water pollution laws, allowing illegal pollution that damages Maryland waters and the Chesapeake Bay, a new report released today finds. The report, [*Failing the Bay: Clean Water Act Enforcement in Maryland Falling Short*](#), was commissioned by The Abell Foundation and written by the Center for Progressive Reform, a network of scholars.

"Our state and federal water laws are strong, but they can't protect our water if they aren't enforced stringently," said report co-author Robert Glicksman, a Professor at the George Washington University Law School and Member Scholar of the Center for Progressive Reform. "Right now Maryland is letting polluters off the hook, and our streams and the Chesapeake Bay pay the price. The state legislature needs to fund more inspectors and the Department of the Environment should get tougher on polluters who break the law."

The report focuses on the Maryland Department of the Environment (MDE), the agency primarily responsible for overseeing water pollution control in the state. In 2009, the agency's Water Management Administration employed 46.4 full-time inspectors to monitor 54,942 permits, which specify pollution limits. Each inspector was responsible for monitoring an average of 1,184 permits in 2009 -- triple the number of permits per inspector in 2000. Inspectors are only able to check on a portion of their sites, and even many of those reviews entail looking only at self-monitoring reports. According to MDE data, in 2008 there were nearly twice as many paper reviews as on-site reviews for Surface Water State and NPDES permits. In 2009, this difference grew to three times as many paper reviews as on-site reviews.

The report authors found that when MDE does catch polluters breaking the law, the violations are not necessarily addressed promptly. In fact, 325 of the 816 cases of potential violations that MDE identified in 2009 have yet to be taken up by the Office of the Maryland Attorney General.

As troubling, the report found that the penalties MDE assesses amount to a small fraction of what the law allows. The agency's penalty policy even fails to recover the violator's economic benefit from breaking the law, thus failing to create an incentive to follow the law. Between 2000 and 2009, the average penalty obtained per enforcement action was approximately \$1,260 -- a fraction of what the Department is empowered to impose. Under Maryland law, for example, the maximum penalty for each *single day* of violation of the Clean Water Act is \$10,000. Other water protection statutes enforced by MDE allow higher penalties.

The report draws three primary conclusions:

- ***Insufficient Funding Hinders Enforcement.*** MDE is drastically underfunded. For its Water Management Administration alone, the overall budget between 2000 and 2009 declined by almost 25 percent, coinciding with a doubling of permits-in-effect. As a result, the agency does not have sufficient resources to enforce federal and state water quality laws. The funding shortages are especially pronounced with respect to the enforcement workforce and the number of inspections. The total number of WMA inspector positions, including both filled and vacant positions, has decreased by 12 percent, while the number of active, full-time inspectors has decreased by 25 percent. Funding shortages also dramatically curtail the ability of MDE's legal counsel to pursue and effectively litigate enforcement actions. Funding gaps have persisted for so long that MDE's staff has internalized an unacceptably low level of expectations for the agency's enforcement performance.
- ***By Handing Down Small Penalties, MDE Fails to Deter Polluters From Breaking the Law.*** MDE has not designed its enforcement program to effectively deter dischargers from violating the CWA and state water quality laws. MDE also fails to fully disclose the range of enforcement actions taken by local programs with delegated enforcement authority, resulting in an incomplete picture of enforcement activities across the state.
- ***MDE Has Failed to Take Advantage of Citizen Enforcement Suits.*** MDE has often failed to take advantage of lawsuits filed by Maryland citizens seeking enforcement of the Clean Water Act. The agency has preempted these lawsuits, taking over the cases and denying citizens the opportunity to represent their own interests. MDE has asserted, however, that it has preempted only one citizen suit in the last two years, although no systematic data are available to support this assertion. MDE should view these suits as a supplement its own enforcement actions, as other states do, thus allowing it to maximize its limited resources.

Glicksman and co-author Yee Huang, a CPR Policy Analyst, examined data from MDE's Annual Enforcement and Compliance Reports, reviewed scholarly research on effective enforcement program design, and conducted a series of interviews with stakeholders across the state to prepare the report. MDE was given and accepted an opportunity to respond to the authors' preliminary findings.

Visit www.progressivereform.org/articles/mde_report_1004FINALApril.pdf for the full report. An article summarizing the report in The Abell Foundation's newsletter is available on the Foundation's website, at <http://abell.org/publications/index.asp>.

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