ACKNOWLEDGEMENTS

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EXECUTIVE SUMMARY

October 18, 2002 marks the 30th anniversary of the Clean Water Act, landmark legislation that set the ambitious goals of making all waterways fishable and swimmable by 1983 and eliminating the discharge of pollutants into the nation's waterways by 1985. Although we have made important strides in water quality since the birth of the Clean Water Act, we are far from realizing its original vision.

In August 2002, U.S. PIRG and the State PIRGs released their annual report, *Permit to Pollute*, documenting the lax enforcement of the Clean Water Act by the U.S. Environmental Protection Agency (EPA) and state environmental agencies. We found that nearly 30% of major facilities examined were in Significant Non-Compliance with their Clean Water Act permits for at least one quarter during the 15 months beginning January 1, 2000 and ending March 31, 2001.[1]

Using previously non-public information provided by EPA in response to a Freedom of Information Act (FOIA) request, this report builds on the findings of *Permit to Pollute.* Rather than focusing on facilities categorized by EPA as in Significant Non-Compliance for permit exceedances or paperwork violations, for the first time we analyze all major facilities exceeding their Clean Water Act permits, reveal the type of pollutants they are discharging illegally in our waterways and detail the extent to which these facilities are exceeding effluent permit levels. We focus on permit exceedances for high hazard pollutants: toxicants known or suspected to cause cancer, reproductive and developmental disorders, and other serious non-cancer health effects.

On the Clean Water Act's 30th anniversary, we find that facilities across the country continue to violate the letter and spirit of the law, at times egregiously, for high hazard chemicals.

KEY FINDINGS INCLUDE:

Thousands of facilities continue to break the law.

Ò Nationally, 5,116 major facilities (81%) exceeded their Clean Water Act effluent permit limits at least once between January 1, 1999 and December 31, 2001, including 1,768 facilities (28%) for discharging chemicals known or suspected to cause cancer and/or serious non-cancer health effects.

Ò The ten states or territories that allowed the highest percentage of major facilities to exceed their Clean Water Act effluent permit limits at least once for high hazard chemicals are Puerto

Rico, Ohio, Rhode Island, District of Columbia, Virgin Islands, New York, Arizona, Massachusetts, West Virginia and Indiana.

These facilities often break the law more than once and for more than one pollutant.

Ò Nationally, 262 major facilities exceeded their effluent permit limits for at least 10 reporting periods between January 1, 1999 and December 31, 2001 for chemicals known or suspected to cause cancer and/or serious non-cancer health effects.

Ò Nationally, major facilities reported almost 88,000 exceedances of their Clean Water Act effluent permit limits between January 1, 1999 and December 31, 2001, including 15,803 exceedances for discharging chemicals known or suspected to cause cancer and/or serious non-cancer health effects.

Ò The ten states or territories that allowed the most exceedances of Clean Water Act effluent permit limits between January 1, 1999 and December 31, 2001 for high hazard chemicals are Puerto Rico, Ohio, Pennsylvania, Texas, New York, Indiana, Massachusetts, Connecticut, Louisiana and Florida.

These facilities often break the law egregiously.

Ò Major facilities, on average, exceeded their effluent permit limits for high hazard chemicals by 849%, or more than eight times the legal limit, between January 1, 1999 and December 31, 2001.

Background: The State of America's Waterways

While the 1972 Clean Water Act has made strides in cleaning up some waterways, the "fishable and swimmable" goal of the Act remains the unmet benchmark of water quality in the United States. Consider the following:

• A majority of Americans live within 10 miles of a polluted river, lake, stream or coastal area.[2]

• Approximately 39% of our rivers, 51% of our estuaries, and 46% of our lakes are impaired for one or more uses and thus still too polluted for safe fishing or swimming.[3]

• Although the precise number is not known, EPA believes that more than 20,000 bodies of water throughout the country are too polluted to meet basic water quality standards.[4]

• Since 1988, there have been almost 61,000 beach closings and advisories and 231 extended closings and advisories (six to 12 weeks) at U.S. beaches. During 2001 alone, there were at least 13,410 days of closings and advisories, 46 extended closings and advisories (six to 12 weeks), and 73 permanent closings and advisories (more than 12 weeks) at U.S. ocean, bay, Great Lakes, and freshwater beaches. Including extended days, the total comes to 16,408 closings and advisories.[5]

• Every state in the country except for Wyoming issued fish consumption advisories in 2001, urging limited consumption of fish from their waters due to contamination caused by substances such as mercury, PCBs, chlordane, dioxins, and DDT and its byproducts (which continue to persist in our environment). The number of lake acres under advisory increased from 26% in 2000 to almost 28% in 2001, and the number of river miles under advisory increased from 10.5% in 2000 to 14% in 2001.[6]

• According to EPA's Toxic Release Inventory, polluters discharged more than 260 million pounds of toxic chemicals into our waterways in 2000 alone.[7]

As troubling as these findings are, the complete picture could be even worse. According to a report written by current and former environmental officials, EPA is not rigorous in its monitoring of water quality. In fact, the report concludes that the states are "free to manipulate numbers in order to falsely portray continuing progress in water quality when, in fact, what fragmentary reliable information exists often suggests the exact opposite."[8]

THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

As authorized by the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) permit program aims to control water pollution by regulating point sources— industrial, municipal, and other facilities that discharge pollutants directly into surface waters of the United States. It is illegal to discharge pollutants through a point source without a NPDES permit, which contains limits on what can be discharged and in what amounts, as well as monitoring and reporting requirements.[9]

The term pollutant is defined very broadly by the NPDES regulations and generally includes any type of industrial, municipal, and agricultural waste discharged into water. For regulatory purposes, pollutants have been grouped into three general categories under the NPDES Program: conventional, toxic, and non-conventional. There are five conventional pollutants, as defined in Section 304(a)(4) of the Clean Water Act—five day biochemical oxygen demand (BOD5), total suspended solids (TSS), pH, fecal coliform, and oil and grease. Toxic pollutants, or priority pollutants, are those defined in Section 307(a)(1) of the Clean Water Act and include metals and manmade organic compounds. Non-conventional pollutants are those which do not fall under either of the above categories and include such parameters as ammonia, nitrogen, phosphorus, chemical oxygen demand (COD), and whole effluent toxicity (WET).[10]

EPA is authorized under the CWA to directly implement the NPDES Program. EPA, however, may authorize States, Territories, or Tribes to implement all or parts of the national program. Currently, 44 states have the authority to implement the NPDES program, with Alaska, Arizona, District of Columbia, Idaho, Massachusetts, New Hampshire, New Mexico and Puerto Rico remaining under federal jurisdiction.[11]

EPA and the states are responsible for monitoring and enforcing the NPDES permits. NPDES permits require the facility to sample its discharges and notify EPA and the state regulatory agency of these results periodically—be it weekly, monthly or quarterly—and whether or not it is in compliance with the requirements of its permit. EPA and state regulatory agencies also will send inspectors to facilities in order to determine if they are in compliance with the conditions imposed under their permits. If facilities violate the terms of their permits, EPA and state regulatory agencies may issue administrative orders, requiring facilities to correct violations and assessing monetary penalties. The law also allows EPA and state agencies to pursue civil and criminal actions that may include mandatory injunctions or penalties, as well as jail sentences for persons found willfully violating permit requirements.[12]

Water Quality Permitting: Quantity vs. Concentration

A facility's NPDES permit can contain several different discharge limits for each parameter (pollutant), depending on the permit writer and parameter regulated. The permit limits generally fall within two categories: quantity and concentration.

Quantity refers to the mass of a pollutant discharged into a waterway and most commonly is measured in kilograms per day. A NPDES permit may set a *quantity average* that the facility may not exceed for a specified parameter. Quantity average refers to the quantity of a pollutant discharged averaged over the reporting period, which may be a week, month, quarter, etc., depending on the permit writer and the parameter.

Similarly, a permit may set a *quantity maximum* that the facility may not exceed for a specified parameter. Quantity maximum refers to the highest quantity of a pollutant recorded on any given day during the reporting period. The logic is that, for some pollutants, if an entire month's allowable amount was discharged all in one day, a waterbody might be severely damaged.

Concentration refers to the mass of a pollutant in a given volume of water, generally measured as milligrams per liter or parts per million. A NPDES permit may set a *concentration average* that the facility may not exceed for a specified parameter. Concentration average refers to the concentration of a pollutant discharged averaged over the reporting period.

Similarly, a permit may set a *concentration maximum* that the facility may not exceed for a specified parameter. Concentration maximum refers to the highest concentration of a pollutant recorded on any given day during the reporting period. In addition, a NPDES permit may set a *concentration minimum* that the facility may not fall below for a specified parameter. This permit requirement is rare and applies to parameters such as dissolved oxygen.

ANALYSIS: CHEMICALS POISONING AMERICA'S WATERWAYS

ach year, U.S. PIRG and the State PIRGs release an annual report, *Permit to Pollute*, documenting the lax enforcement of the Clean Water Act by EPA and state environmental agencies. The 2002 report, released in August 2002, found that nearly 30% of major facilities examined were in Significant Non-Compliance

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Table 1, continued

State or Territory	# Violators: All Pollutants	% of Permitted Facilities	Rank	# Violators: High Hazard Chemicals	% of Permitted Facilities	Rank
Nevada	8	80.0%	**28**	1	10.0%	**46**
New Hampshire	58	96.7%	**2**	17	28.3%	**21**
New Jersey	118	72.4%	**39**	26	16.0%	**38**
New Mexico 21	20	58.8%				

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Table 2. Facilities with Most Reporting Periods in Exceedance of Effluent Permit Limits for High Hazard Chemicals

# of Reporting Periods in Violation	State	NPDES Permit #	Permittee	City	Pa

ationally, major facilities reported almost 88,000 exceedances[b] of their Clean Water Act effluent permit limits between January 1, 1999 and December 31, 2001, including 15,803 exceedances for discharging chemicals known or suspected to cause cancer and/or serious non-cancer health effects. The ten states or territories that allowed the most exceedances of Clean Water Act effluent permit limits between January 1, 1999 and December 31, 2001 for high hazard chemicals are Puerto Rico, Ohio, Pennsylvania, Texas, New York, Indiana, Massachusetts, Connecticut, Louisiana and Florida.

Table 3. Number of Exceedances of Effluent Permit Limits: By State or Territory

State or Territory	# Violations: All Parameters	Rank	# Violations: Hazardous Chemicals	Rank
Alabama	2610	12	140	29
Alaska	438	39	49	35
Arizona	469	38	194	22
Arkansas	1089	26	19	45
Colorado	595	34	109	32
Connecticut	2357	13	689	8
Delaware	386	41	65	34
District of Columbia	71	51	7	47
Florida	1983	15	553	10
Georgia	1740	18	219	18
Hawaii	565	36	182	23
Idaho	379	42	25	41
Illinois	2817	10	493	12
Indiana	2675	11	734	6
Iowa	2341	14	214	21
Kansas	769	32	7	47
Kentucky	1696	19	161	27
Louisiana	3857	7	635	9

Table 3, continued				
State or Territory	**# Violations: All Parameters**	**Rank**	**# Violations: Hazardous Chemicals**	**Rank**
Nevada	78	50	1	50
New Hampshire	1152	25	143	28
New Jersey	880	29	104	33
New Mexico	165	46	25	41
New York	4999	3	934	5
North Carolina	4572	5	331	15
North Dakota	129	47	0	52
Ohio	6780	2	1747	2
Oklahoma	1398	22	176	26
Oregon	396	40	27	40
Pennsylvania	4111	6	1133	3
Puerto Rico	9180	1	1940	1
Rhode Island	807	31	43	37
South Carolina	1645	20	218	19
South Dakota	86	49	20	44
Tennessee	2933	9	216	20
Texas	4941	4	1098	4
Utah	338	43	34	39
Vermont	285	44	40	38
Virgin Islands	170	45	6	49
Virginia	914	28	130	30
Washington	575	35	182	23
West Virginia	1940	16	537	11
Wisconsin	956	27	228	16
Wyoming	96	48	1	50
TOTAL	**87,717**		**15,803**	

THESE FACILITIES OFTEN BREAK THE LAW EGREGIOUSLY.

ajor facilities, on average, exceeded their effluent permit limits for high hazard chemicals by 849%, or more than eight times the legal limit, between January 1, 1999 and December 31, 2001.

Table 4. Average Exceedance of Clean Water Act Effluent Permit Limits: By State or Territory

[redacted]

557.28 203.94 1.5

[redacted]

ationally, major facilities reported 1,562 instances between January 1, 1999 and December 31,

he ten states or territories that allowed the greatest number of egregious permit exceedances—at least 500%, or five times, over the effluent permit limits— between January 1, 1999 and December 31, 2001 for high hazard chemicals are Puerto Rico, Ohio, Pennsylvania, Texas, West Virginia, Indiana, Louisiana, Missouri, Maine and North Carolina.

Table 6. Number of Exceedances of Effluent Permit Limits for High Hazard Chemicals: 500% (Fivefold) or Greater

Rank	State	# of Violations	Rank	State	# of Violations
30	Alabama	12	48	Nevada	0
48	Alaska	0	18	New Hamps	.6

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THE BUSH ADMINISTRATION'S ATTACK ON THE CLEAN WATER ACT

"I believe water is the biggest environmental issue we face in the 21st century in terms of both quantity and quality. In the 30 years since its passage, the Clean Water Act has dramatically increased the number of waterways that are once again safe for fishing and swimming. Despite this great progress in reducing water pollution, many of the Nation's waters still do not meet water quality goals. I challenge you to jo

and coastal waters that remain polluted, rank them for priority attention, and then develop pollution limits for each body of r oposingovarious legisiolave “fixes” so n delayo foweakeno0T, new rule.d Ino0T, faceoy of Julyry o20.0,nr ohibitingoEPA srom f implemtteingo0T, ne CircuimoCourt so postpon, aclatiotiooll legstaf admin strolatiot viewsrshe rule , ann acceptable so ciorics.d n rts indic(wa s thaEPA mayouseo,)]TT*Ts-0.0106 Tc0.080 Tw0Tisot viewras an opporlunoritso guto0T, , tteife TMDLor

• Allowing states to rely upon predictions of future pollution reductions from non-point sources to compensate for increases in

stringent review – if any – by the Corps than individual permits.

Specifically, the changes included in the Corps' weakened nationwide permits include:

• Allowing the Corps to waive the 300-foot limit on stream destruction for certain streams, meaning a developer could dig or fill a mile (or more) of a stream under a general permit that is only supposed to allow "minimal adverse effects."

• Loosening restrictions on filling wetlands in floodplains

• Bypassing the minimum requirement that there be at least one acre of wetlands protected or created for every acre destroyed (1:1 acreage mitigation)

• Eliminating the subdivision cap on water impacts for commercial and institutional developments, thus allowing developers of malls, industrial park and other uses to fill up to ½ acre of wetlands or other waters on each lot of any non-residential subdivision. This will result in a far greater loss of wetlands and streams than allowed under the current subdivision provision.

The new nationwide permit rule followed closely on the heels of an announcement by the Corps in late 2001 that eliminated the 1:1 acreage requirement for wetlands mitigation and weakened the standards developers must follow to compensate for wetlands destruction.

Turning Waterways into Waste Dumps for the Coal Industry

Mountaintop removal coal mining is prevalent in West Virginia, Kentucky, and Virginia and parts of Pennsylvania and Tennessee. "Mountaintop removal" all too literally describes this devastating practice, in which mining companies blow off hundreds of feet from the tops of mountains to reach the coal beneath, creating millions of tons of waste that is then dumped into nearby valleys and streams. According to a draft Environmental Impact Statement obtained by the *Charleston Gazette* through a Freedom of Information Act request, mountaintop removal mining could eventually destroy much of the Appalachian environment. The study found that without more stringent regulation, future mountaintop removal coal mining could obliterate 230,000 acres of ecologically diverse hills and hollows in West Virginia, western Virginia, eastern Kentucky and Tennessee. Already, between 1985 and 1999, at least 562 miles of Appalachian streams were buried under mining waste from mountaintop removal.[19]

Citizen lawsuits have challenged the legality of mountaintop removal under the Clean Water Act. However, the Bush administration moved to legalize this practice by finalizing a rule in May 2002 to remove a 25-year old regulation prohibiting waste dumping in waterways. The Bush administration changed a rule that defines the scope of the Army Corps of Engineers' ability to issue permits under the part of the Clean Water Act that regulates filling wetlands, streams and all other waters. (This is separate from the NPDES program detailed in this report). Remarkably, the Army Corps of Engineers has been permitting coal companies to dispose of mountaintop removal waste into streams for years, even though the agency has had no legal authority to do so. The Corps can issue permits to allow companies to fill streams, wetlands and other waters for development purposes but forbids the Corps from allowing the use of waste material to fill waterways. The Bush administration

deleted the language excluding waste as fill in order to let mining companies dump their wastes into streams—legally.

In a temporary victory for the environment, a federal judge in May 2002 ordered the U.S. Army Corps of Engineers to stop allowing coal companies to deposit millions of tons of waste from their mountaintop-removal mining operations into streams and valleys. U.S. District Judge Charles Haden II in Charleston, W.Va., said that the Bush administration's proposal to make the "valley fills" legal violated the Clean Water Act. He wrote in his decision, "The agencies' attempt to legalize their long-standing illegal regulatory practice must fail. ... The regulators' practice is illegal because it is contrary to the spirit and the letter of the Clean Water Act."[20]

Polluting Beaches and Threatening Public Health

Sanitary sewers carry wastes from buildings to sewage treatment plants. When these sewers are overloaded, inadequately maintained or obstructed, they often overflow, dumping raw and inadequately treated sewage into basements, streets, and waterways. EPA estimates that there are at least 40,000 sanitary sewer overflows nationally each year. Because sewer overflows contain raw sewage, they can carry bacteria, viruses, protozoa (parasitic organisms), helminths (intestinal worms), and borroughs (inhaled molds and fungi) and a host of other organisms that cause beach closings and kill fish. People coming into contact with these organisms, most often through drinking water, swimming in contaminated waters, or direct contact in basements and streets, may become seriously ill. Sewage-contaminated waters can cause illness ranging in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis.[21]

In January 2001, EPA proposed to clarify and expand permit requirements for 19,000 municipal sanitary sewer collection systems in order to reduce sewer overflows. The proposed Sanitary Sewer Overflow Rule, the product of federal advisory committee that met for five years, would help communities improve some sanitary sewer systems by requiring facilities to develop and implement new capacity, management, operations, maintenance and public notification programs.[22] This rule would, among other things, require sewer operators to monitor sewers and notify health authorities and the public when overflows could potentially harm public health.

Within the next few months, EPA will decide whether to go forward with these proposed regulations or bow to the requests of special interests such as the Association of Metropolitan Sewerage Authorities (AMSA). AMSA argues that the Clean Water Act's requirement that all sewage be treated before it is discharged is too costly and difficult and favors a weakened rule.

RECOMMENDATIONS

Thirty years after passage of the Clean Water Act, with its most basic promises still unfulfilled, it is clear that we need to tighten enforcement of the law and strengthen the Act's fundamental principles. Unless illegal pollution is stopped, polluters punished, and legal pollution phased out by technological improvements, we will never realize the Clean Water Act's vision of waters free of toxic pollutants and safe enough for fishing and swimming.

The Bush Administration Should Strengthen, Not Weaken, the Clean Water Act

As detailed above, the Bush administration has suggested, formally proposed or enacted policies designed to limit the Clean Water Act in scope and in strength. Thirty years after the birth of this landmark legislation, more than 300,000 miles of river and shoreline and five million acres of lakes remain too contaminated for recreational use. Rather than weakening the Clean Water Act, the Bush administration should:

Ò Fully fund EPA at the levels necessary to hire adequate environmental enforcement staff.

Ò Direct EPA to adopt a strict interpretation of "isolated" waterways and wetlands based on hydrology and biology rather than politics.

Ò Direct EPA to abandon efforts to weaken the TMDL program, the Clean Water Act's primary program for cleaning up polluted waters.

Ò Declare "valley fills" and dumping of waste from mountaintop removal coal mining and other industrial operations into waterways to be illegal and contrary to the spirit and letter of the Clean Water Act.

Ò Direct EPA to implement the proposed rule to regulate sanitary sewer overflows and improve public notification of overflows that threaten human health.

Ò Direct the Army Corps of Engineers to abandon efforts to weaken wetlands protection in its permitting process.

Policy-Makers Should Tighten Enforcement of the Clean Water Act

As documented in *Permit to Pollute,* nearly 30% of major facilities examined were in Significant Non-Compliance with their Clean Water Act permits for at least one quarter during the 15 months beginning January 1, 2000 and ending March 31, 2001.[23] The Bush administration and Congress should act to strengthen lax enforcement of the Clean Water Act and enact new "teeth" to help reach the goal of fishable and swimmable waters.

Ò Prevent Facilities from Profiting from Pollution

The existing Clean Water Act allows "economic benefits" to be taken into consideration when assessing penalties. Unfortunately, this authority is greatly underutilized; EPA has acknowledged that penalties rarely recover the profits companies gain from their non-compliance. In other words, under current Clean Water Act enforcement practices, it often pays to pollute illegally, which creates incentives to break the law, allows states and violators to cut sweetheart deals, and places those who comply with the law at a competitive disadvantage. Courts and administrative hearing officers must assess a penalty that exceeds the amount of economic benefit gained by the polluter as the result of its

and eliminating the use and discharge of such pollutants at a measurable rate.

Specifically, the pollution prevention plans should:

- Set a specific pollution prevention goal and timeline that fits within the overall context of moving toward zero discharge.

- Identify specific steps (material substitutions, technology changes, process changes) the facility can take to reduce its uses (inputs) of toxic chemicals, so that there is less pollution to control at the end of the pipe.

Ò Remove Current Obstacles to Citizen Suits

Citizens should be allowed to sue for past violations of the Clean Water Act, similar to the 1990 amendments to the Clean Air Act. Furthermore, citizen suits should not be precluded by inadequate government enforcement actions. Only judicial or enforcement actions that recoup the full economic benefit gained by violating the law should be allowed to preclude subsequent citizen enforcement.

Ò Citizens Should Be Able to Bring Penalty Actions Against Polluting Federal Facilities

Currently, the federal government enjoys sovereign immunity from penalty actions in the event of a Clean Water Act violation. Federal facilities that pollute illegally should be subject to the same enforcement mechanism as other facilities.

database easily available to the public, including online Internet access which should be searchable by facility and location in a national database format.

Ò

METHODOLOGY

1. Obtaining the data. To obtain the data, U.S. PIRG submitted a Freedom of Information Act (FOIA) request in November 2001, to which we received a response in March 2002. We then were informed that EPA was giving the states an opportunity to review the data and offer changes and updates. We requested an updated version of the data, which we received in August 2002.

one million gallons or more of wastewater daily, or has a significant impact on water quality. Because we only looked at major

NOTES

[1] Richard Caplan. *Permit to Pollute.* U.S. PIRG Education Fund. August 2002. Available at http://uspirg.org/uspirg.asp?id2=7545&id3=USPIRG&.
[2] EPA Inspector General Audit Report. August 2001.
[3] United States Environmental Protection Agency, Office of Water. *National Water Quality Inventory: 2000 Report to Congress.* EPA-841-R-02-001. http://www.epa.gov/305b/2000report/.
[4] General Accounting Office. *Water Quality: Inconsistent State Approaches Complicate Nation's Efforts to Identify Its Most Polluted Waters.* GAO-02-186. January 2002.
[5] Natural Resources Defense Council. *Testing the Waters 2002: A Guide to Water Quality at Vacation Beaches.* July 2002.
[6] U.S. Environmental Protection Agency, Office of Water. Update: National Listing of Fish and Wildlife Advisories. May 2002. EPA-823-F-02-007.
[7] U.S. Environmental Protection Agency. 2000 Toxics Release Inventory. http://www.epa.gov/tri.
[8] Public Employees for Environmental Responsibility. *Murky Waters.* May 1999.
[9] Office of Wastewater Management, NPDES Overview. http://cfpub.epa.gov/npdes/allfaqs.cfm?program_id=0#107.
[10] "Water Permitting 101." Office of Wastewater Management, NPDES Overview. http://www.epa.gov/npdes/pubs/101pape.htm.
[11] Office of Wastewater Management, NPDES Overview. http://cfpub.epa.gov/npdes/statestats.cfm?program_id=12.
[12] Office of Wastewater Management, NPDES Overview. http://cfpub.epa.gov/npdes/allfaqs.cfm?program_id=0#107.
[13] Richard Caplan. *Permit to Pollute.* U.S. PIRG Education Fund. August 2002. Available at http://uspirg.org/uspirg.asp?id2=7545&id3=USPIRG&.
[14] U.S. EPA, "Year of Clean Water." http://www.epa.gov/water/yearofcleanwater/.
[15] General Accounting Office. *Human Capital: Implementing an Effective Workforce Strategy Would Help EPA to Achieve Its Strategic Goals.* GAO-01-812. July 2001.
[16] *Clean Water Act and Total Maximum Daily Loads (TMDLs) of Pollutants.* CRS Report for Congress, October 30, 2001. http://www.cnie.org/nle/crsreports/water/h2o-24.pdf.
[17] Eric Pianin, "EPA Seeks Clean Water Rule Delay." *Washington Post.* July 17, 2001.
[18] Compiled from letter sent to EPA Administrator Whitman from 10 environmental organizations, dated June 4, 2002.
[19] Ken Ward Jr., Mountaintop removal could devastate region." *Charleston Gazette.* May 5, 2002. http://www.wvgazette.com/news/Mining/2002050421/.
[20] Ken Ward Jr., "Judge blocks new valley fills," *Charleston Gazette.* May 9, 2002. http://www.wvgazette.com/news/News/2002050838/.
[21] Proposed Rule to Protect Communities from Overflowing Sewers." EPA Fact Sheet, available at http://www.epa.gov/npdes/regulations/facsheet.pdf.
[22] U.S. EPA, Office of Wastewater Management. http://cfpub.epa.gov/npdes/home.cfm?program_id=4.
[23] Richard Caplan. *Permit to Pollute.* U.S. PIRG Education Fund. August 2002. Available at http://uspirg.org/uspirg.asp?id2=7545&id3=USPIRG&.
[24] Velma Smith and John Coequyt. *Clean Water Report Card.* Friends of the Earth and Environmental Working Group. March 2000.
[25] Velma Smith and John Coequyt. *Clean Water Report Card.* Friends of the Earth and Environmental Working Group. March 2000.
[26] Personal communication with Michael Barrette, EPA official, September 30, 2002.