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## An Investigation and Analysis of the Environmental Problems at Prisons

By

Garth Connor\*

The Office of Enforcement, Compliance, and Environmental Justice (OECEJ) within U.S. EPA Region III has an ongoing multi-media initiative involving both enforcement and compliance assistance activities at prisons in the mid-Atlantic states. Staff from OECEJ has completed six multi-media inspections at different kinds of prisons and has found widespread non-compliance at all of them. All six of the prisons were recipients of multi-media enforcement actions and were assessed penalties.

Generally, prison management and staff do not fully appreciate environmental issues, especially with respect to how environmental regulations apply to a prison's industrial activities, and do not have knowledge of environmentally-protective practices. All of the inspected prisons had manufacturing areas or industrial shops which utilized a combination of civilian and inmate labor in order to produce a variety of manufactured goods. This article will analyze some of the common environmental problems found at these prisons and discuss several different tactics that have been tried to improve the environmental compliance rates within the prison sector.

### I. Sector Background

The overall size and complexity of the prison sector has grown dramatically over the last few decades. The total number of men and women in our nation's prisons has quadrupled from about 502,000 in 1980 to over 2 million inmates in 2002.<sup>1</sup> The United States presently has the highest incarceration rate of any

country in the world and incarcerates prisoners at a rate five to eight times greater than any other industrialized nation.<sup>2</sup> One result of the high incarceration rate — in combination with the imposition of lengthy prison sentences — is that many states have had a difficult time maintaining adequate space for their ever-increasing number of inmates. For example, the Commonwealth of Pennsylvania recently passed the 40,000 inmate mark in its state prison system for the first time.<sup>3</sup> Pennsylvania has twenty-six state-run prisons operating at or above capacity and is presently building two additional prisons.

OECEJ serves as the multi-media enforcement and coordination office in Region III. In the late 1990s, OECEJ began receiving tips and environmental complaints from various sources about overcrowded prisons with long-neglected environmental problems. The complaints included noxious odors from overloaded sewage treatment plants to improper storage and disposal of hazardous waste. Although there was uncertainty as to the validity of the complaints, OECEJ decided to schedule two multi-media inspections at Region III prisons.

### II. The Targeting Approach

The prisons chosen for inspection were not randomly selected for an inspection, and the initiative was not an attempt to create a statistically significant non-compliance rate for the prison sector. After the first two inspections indicated serious non-compliance, OECEJ decided to make the prison sector a major initiative of its inspection and enforcement efforts. OECEJ staff targeted for inspection large, overcrowded prisons with significant industrial areas within each state. Data on the design capacity and inmate population for each prison can be easily obtained from state websites. Several of the prisons were also targeted because they had a history of enforcement actions as a result of past non-compliance with environmental regulations. OECEJ was most interested in inspecting prisons having a variety of manufacturing areas (industrial shops) that generated hazardous waste in some quantity. A final factor in the targeting approach was geographical diversity; we wanted to inspect at least one prison in each state in Region III.

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### III. Multi-Media Non-Compliance

The six multi-media inspections revealed egregious non-compliance with applicable environmental regulations. One inspected prison had been generating hazardous waste for over twenty years, but had never applied for or received an ID number to allow for proper disposal. Another prison had been a chronic violator of the effluent limits in its wastewater permit and its staff did not understand how to properly conduct the sampling and analysis portion of its permit. All six of the inspected prisons were in non-compliance with both the hazardous waste regulations of the Resource Conservation and Recovery Act (RCRA) and the oil-spill prevention requirements contained in the Spill Prevention Control and Countermeasure (SPCC) regulations. The likelihood of this degree of non-compliance (0% compliance with two different regulations) at targeted facilities is low, even in a non-traditional sector that normally doesn't attract a great deal of environmental attention. All of the prisons inspected were issued administrative complaints. The average assessed penalty was slightly greater than \$100,000 (see chart # 1 on page 5).

One explanation for the non-compliance with respect to environmental regulations is that none of the inspected prisons had dedicated environmental staff. In general, prison staffs do not have the necessary environmental expertise in order to understand and comply with the relevant environmental regulations. Most inspected prisons only had facility management staff on hand to talk to the EPA inspectors, and these staff members were required to perform environmental duties as their second or third jobs. The inspectors were often asked simplistic questions, such as: "What does RCRA mean?" "The SPCC regulations don't apply to us, right?" "Does a multi-media inspection mean that you're bringing newspaper and television reporters to the inspection?" The prison staff also did not understand basic environmental jargon, often an indicator of environmental non-compliance. Facility management staff is generally skilled at keeping the facility operating properly and maintaining adequate security, but environmental compliance is outside its area of expertise. Many state prison systems only

have experienced environmental staff at their headquarter offices, which in some cases are hundreds of miles from the environmental problems of the individual prisons. Another serious problem is training. In the prisons inspected, the staffs are far from compliance with respect to required training. Generally, there is no budget for travel for members of the staff to attend offsite environmental training courses.

### IV. RCRA Issues

Most prisons have a segment of their property containing an array or strip of industrial shops and are therefore regulated by RCRA. In these shops, prisoners can acquire new skills, such as car repair or maintenance, which help to increase their employment opportunities when they are eventually released from prison. Selected prisoners are paid below-minimum wage to perform tasks like making and repairing furniture, creating highway signs, manufacturing license plates, and running large-volume print shops. Many of these prison shops produce hazardous waste on a regular basis. None of the prisons inspected were in compliance with RCRA. Inspected facilities stored waste for years (instead of months), didn't properly close or label hazardous waste containers, and didn't properly train their staffs regarding hazardous waste management procedures. During our six inspections, we have examined over a hundred hazardous waste drums and did not see a single drum with an accumulation start date. All of the inspected prisons had inadequate training of staff members who were working in their industrial areas. Several of the inspected prisons notified as small-quantity generators, but were actually large-quantity generators of hazardous waste. Another of the inspected prisons notified as a conditionally-exempt small-quantity generator but was actually a small-quantity generator. Because RCRA regulations become more stringent and more complex as a facility moves up from one waste category to another, the quantity of waste generated by a facility is significant.

Case Study of Prisons Inspected by ECEJ  
 June 1998 to March 2003

PRISON	VIOLATIONS FOUND	TYPE OF PRISON	ASSESSED PENALTY
Prison A Lorton, VA	RCRA, UST, SPCC	Federal	\$163,000 Case split with VADEQ & settled
Prison B Graterford, PA	SPCC, RCRA, WATER	State	\$92,000 Case settled
Prison C Jessup, MD	RCRA, SPCC, UST	State	\$177,000, case settled with a major SEP
Prison D Philadelphia, PA	SPCC, RCRA, and AIR	Local	\$64,000, case settled with an EMS SEP.
Prison E Smyrna, DE	RCRA, SPCC, and Air	State	\$96,000, in negotiation.
Prison F Mt. Olive, WV	RCRA & SPCC	State	\$10,560, in negotiation.

Violation Detection Rate = 100%

Average Assessed Penalty = \$100,426, all have been multi-media administrative cases.

#### V. Wastewater Treatment Plants

Some of the older and larger prisons own and operate their own wastewater treatment plants and are required to have National Pollution Discharge Elimination System (NPDES) permits. These onsite wastewater plants capture and treat the prison's industrial and biological wastewater. One problem that arises is that some of the prisons are a thousand inmates or more overcapacity, which can overload the design capacity of the nearby wastewater treatment system. We inspected an overcrowded prison that had chronic NPDES violations and was also doing improper sampling and analysis at a small laboratory within the treatment plant. The sewage treatment plant manager was doing the best he could under the circumstances, but the treatment plant needed additional equipment, improved maintenance, and staff training.

#### VI. SPCC Issues

None of the inspected prisons had an SPCC plan, and all six of them were well beyond the oil-storage threshold where a professionally-certified plan is required to be on hand. An SPCC plan contains procedures for a facility to follow if there is a significant oil spill or a tank rupture. Prisons generally have gasoline or diesel tanks for fueling the prison vehicles and also have larger heating-oil tanks for heating the buildings or for backup power generation. The SPCC regulations do not get a great deal of national attention, and it is a regulation that is often overlooked by a facility until an oil spill occurs. Many of the prison staff we talked to about the federal SPCC regulations had never heard of such a thing and did not realize it was applicable to their facility.

#### VII. Clean Air Act Issues

Several of the inspected prisons were found to be in non-compliance with certain portions of the Clean Air Act. The most widespread air pollution problem was related to the chlorofluoro carbons (CFCs) used in recharge of air conditioning units. Prisons often have staff members who repair and/or recharge air conditioning units. The refrigerants used in this type of

work are CFCs, an ozone-depleting substance. As a result of this environmental impact, the refrigerant equipment must be registered with EPA, and the technicians doing the work must be appropriately certified. Several of the prisons also had air pollution sources in their industrial area that were somehow excluded or not listed in their air permit.

#### VIII. Settlements Involving Supplemental Environmental Projects

One of EPA's main objectives during the negotiation phase of these enforcement actions was to help these facilities return to compliance with all the applicable regulations. Several of the prisons have agreed to settlements involving payment of a somewhat reduced penalty by also agreeing to do a Supplemental Environmental Project (SEP) of some kind. The SEPs have included having a prison develop an Environmental Management System (EMS) to help them keep track of and monitor all their environmental requirements. Another prison has decided to hold EMS and regulatory training sessions, not just for staff at the inspected prison, but for all its staff in the entire state prison system. This SEP has the added benefit of improving the overall compliance at all the prisons in that particular state instead of just the one inspected prison.

#### IX. Compliance Assistance Activities

In the 1967 prison movie *Cool Hand Luke*, there is a famous line: "What we've got here is a failure to communicate."<sup>4</sup> In the prison sector, many of the environmental requirements have not been communicated to the appropriate prison staff. One explanation for this is that prisons are somewhat like small rural towns in that they are isolated from the mainstream culture. Prison staff members are not often in attendance at environmental conferences or workshops intended for the regulated community. As a result of this relative isolation, many of the staff working in this sector are difficult to reach with compliance assistance. In some sectors, compliance assistance can be quite effective in bringing a sector up to speed on a new regulation. In other sectors, such as

the prison sector, enforcement seems to be the only effective tool. OECEJ staff members have gone to prison conferences and made presentations to numerous prison officials over the years. Unfortunately, the people at a typical conference aren't the ones actually doing the environmental work at a prison. There is generally no travel or training budgets for prison staff members who are actually doing the environmental work. Thus, they rarely go to conferences and are not exposed to the nuances of the applicable environmental regulations. Therefore, compliance assistance has been largely ineffective.

Perhaps with the enforcement actions taken in these six cases, others involved in the prison sector will become more aware of the environmental laws and regulations that affect their activities and will work to come into compliance.

#### ENDNOTES

1. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. On June 30, 2002, there were 2,019,234 prisoners held in federal, state, and local prisons in the United States. The total inmate population was 502,000 in 1980 and 338,000 in 1970.
2. Incarceration rates are normally described as number of inmates per 100,000 population. According to the Correctional Service of Canada, in June 2001, the incarceration rates in various countries were: United States — 690; Austria — 86; France — 88; Germany — 96; Canada — 123; Norway — 57.
3. Pennsylvania's Department of Corrections issues a monthly population chart; there were 40,606 inmates in the state's prison system as of March 31, 2003.
4. The Captain, played by Strother Martin, is the first to utter what has become one of the most oft quoted line from a movie. The lead character, Luke, played by Paul Newman, mockingly repeats it later in the movie.

#### DECISIONS

##### Attorneys

**Court Approves Use of SAUSAs:** *United States v. Anthony D. Smith*, No. 02-CR-24 (7th Cir. Apr. 7, 2003)

##### Background

Anthony Smith was convicted, after a jury trial, of being a felon in possession of a handgun and of seventeen rounds of unfired ammunition, both in violation of 18 U.S.C. § 922(g)(1). On appeal, Smith argued, *inter alia*, that the indictment should be dismissed because Nelson Phillips III, the attorney representing the federal government before the grand jury, was an unauthorized attorney.

Phillips, an assistant district attorney for Milwaukee County, Wisconsin, was appointed as a Special Assistant United States Attorney in May 2001. One of the conditions of his appointment was that he would serve without federal compensation; instead, he was to continue to receive his salary from the state while serving under the direction of the U.S. Attorney for the Eastern District of Wisconsin.

Smith argued that federal law did not authorize that type of arrangement and moved to dismiss his indictment. The district court denied the motion.

##### Holding

Smith's argument was based on his reading of several federal statutes. First, The Federal Rules of Criminal Procedure specifies which individuals may participate in federal grand jury proceedings. Rule 6(d)(a) provides that "attorneys for the government," including "an authorized assistant of a United States Attorney" are among those individuals who may be present. 28 U.S.C. § 543(a) authorizes the Attorney General of the United States to "appoint attorneys to assist United States Attorneys when the public inter-