

We rightly celebrate large legislative environmental victories like the passage of the [Clean Air Act](#), the [Endangered Species Act](#) and the [National Environmental Policy Act](#). Europeans, too, are proud of accomplishments such as the establishment of the [European Union Emission Trading System](#) to address greenhouse gas emissions through cap and trade and the passage of sweeping legislation, known as [REACH](#), to regulate toxic chemicals. But two New York Times stories in the past two weeks are a sober reminder that passage of landmark legislation is merely the beginning of serious environmental reform.

In one very troubling [story](#), the Times meticulously detailed the extent to which violators of the federal Clean Water Act (CWA) and Safe Drinking Water Act routinely escape enforcement action even for serious violations. Less than three percent of CWA violators examined by the Times were subject to any significant state enforcement action or fine. And some of the violations are truly outrageous, including the polluting of drinking water supplies near Charleston, West Virginia by mining companies. The contamination is so severe that children experience skin burns and scabs when showering and bathing in the water and tests show tap water contaminated with arsenic, lead and other chemicals at levels that exceed federal standards.

In another disturbing [story](#), the Times focused on the European Union's failure to enforce its laws mandating the recycling of electronic waste like computers. In the first year following the law's passage, companies should have recycled about 7 tons of electronic waste. Instead, well less than half that amount — 2-3 tons, was recycled. What happened to the rest? It was either shipped illegally to countries in the developing world or illegally incinerated. The result may be a cure worse than the disease, with kids in developing countries who dismantle the electronics exposed to high levels of toxic chemicals and high greenhouse gas emissions and other pollutants released through incineration.

The common thread of both Times stories is a failure to enforce ambitious laws that impose significant regulatory burdens on a broad number of polluters. Enforcement lapses in both instances are not, in many respects, surprising — enforcement is expensive, difficult and unglamorous. Lax enforcement may also be a means to lessen industry opposition to stringent environmental laws.

As Congress debates the Waxman-Markey legislation, conspicuously absent from much of the conversation is how to ensure that ambitious greenhouse gas emissions goals — even if agreed upon by Congress and the President — are actually met. And yet for certain central pieces of the legislation enforcement issues are likely to be significant. For example, the offset provisions of the cap and trade program (see [here](#) for an extensive explanation of offsets) could prove to be an enforcement nightmare — if not well administered the offset

provisions could undermine the credibility of the entire cap and trade system. Similarly, Waxman-Markey [contains](#) minimum building standards for energy efficiency, standards to be implemented by states and local building inspectors. Though the standards are an important way to ensure that new buildings minimize energy usage and therefore greenhouse gas emissions, without adequate enforcement of the standards we won't achieve the emissions reductions we're counting on. The [proposed](#) federal renewable portfolio standard, more stringent appliance efficiency standards and energy efficiency programs all face similar enforcement issues.

Some obvious solutions exist for the looming enforcement problems. Providing adequate staff is the most clear cut one. And yet Congress and states routinely fail to budget sufficient resources for agency staff — the Department of Energy, for example, which administers the appliance efficiency standards program, has never met a statutory deadline, something the Congressional Research Service attributes in large measure to inadequate staffing levels (for an analysis of the program see [here](#)). The Clean Water Act enforcement failures documented by the Times are again in large measure the result of insufficient staff. Other useful enforcement mechanisms include citizen suit provisions that allow private groups to bring suits against violators, fee-shifting statutes that allow successful plaintiffs to recover their attorneys fees and stringent monitoring and reporting requirements that allow officials and the public to evaluate compliance. Congress ought to pay special attention to these enforcement mechanisms in debating climate legislation.