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## **Wal-Mart pollution settlement changing;** EPA says old deal gave unfair privilege

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Federal officials are revising a major water-pollution settlement with Wal-Mart Stores Inc. after environmental inspectors in Dallas complained that the government was about to give the world's biggest retailer special treatment in future inspections.

U.S. Environmental Protection Agency inspectors who made the case, which stems from allegations of violations at Wal-Mart construction sites, argued that the Justice Department's negotiated settlement would help Wal-Mart ward off future enforcement, according to internal government e-mails sent anonymously to The Dallas Morning News.

The settlement also would place unusual restrictions on inspectors checking Wal-Mart construction sites, giving the chain based in Bentonville, Ark., privileges no other company has, inspectors said. One supervisor in the EPA's Region 6 office wrote that the deal would create "a Wal-Mart-only inspection protocol."

"This is the first [settlement] that I have seen where we negotiated away any of our standard procedures in favor of establishing a different procedure in writing for the defendant," James Graham, the EPA's top water-pollution enforcer for Texas and New Mexico, wrote in an e-mail to a Justice Department lawyer March 8. "To establish this in a written consent decree is a bad precedent."

As recently as March 9, the Justice Department dismissed the complaints as groundless, e-mails say. But EPA spokesman David Gray said the government was revising the settlement.

The new version, due in about a month, should address the concerns so EPA regional administrator Gregg Cooke can sign it, Mr. Gray said. The public would then have 30 days to comment.

Mr. Cooke told The News that no paperwork had reached his desk. Mr. Graham, the enforcement chief, declined to comment.

Justice Department officials did not respond to repeated requests for comment. But in an e-mail response to Mr. Graham on March 8, Justice Department lawyer Sam Blesi said the initial settlement gave the government a better deal than it could have won in court.

Wal-Mart spokesman Bill Wertz declined to discuss details but said the allegations concern procedures, not actual pollution. He said contractors are told to obey all rules.

Company's report

Wal-Mart's third-quarter earnings report for 1999 said the EPA had threatened to sue

the company and five contractors over allegations of storm-water runoff violations, with potential penalties of \$ 5.6 million.

Federal inspections resulted in allegations of violations at Wal-Mart construction sites in Texas, New Mexico and Oklahoma. The company has 411 stores under various brands in those states and 3,128 nationwide.

Runoff from construction sites can bury streams and ponds under tons of silt. Rules limit runoff from sites of five or more acres. Many Wal-Mart sites are about 30 acres.

Wal-Mart, the world's largest nongovernmental employer, has worked to develop a pro-environmental image. The company gave almost \$ 164 million to charities last year, with almost \$ 1.5 million going to environmental causes.

Wal-Mart also gave \$ 457,050 in the 1999-2000 election cycle to candidates for federal office, according to federal reports compiled by the Center for Responsive Politics. About 85 percent went to Republicans, including \$ 2,000 to President Bush's campaign.

Instead of battling in court over the allegations of pollution, lawyers for the government and Wal-Mart negotiated a settlement requiring a reduced monetary penalty and improvements on future construction projects.

One requirement, water-quality monitoring at construction sites, goes beyond routine EPA orders, the Justice Department's Mr. Blesi wrote in one e-mail.

But the settlement also put unusual limits on EPA inspectors.

According to an e-mail by Mr. Graham, the settlement would require an EPA inspector checking a Wal-Mart site to:

- \*Call Wal-Mart's "offsite representative" - probably a lawyer or engineer - before starting any inspection and again before leaving the site;
- \*Give Wal-Mart's representative an oral review of "all the facts and observations of the inspector" before leaving; and
- \*Receive a copy of the Wal-Mart representative's written account of the oral review.

One former federal enforcement lawyer said it's unusual for a settlement, which is meant to correct a company's behavior, to restrict government inspectors.

"Usually in an enforcement action, you talk about what the defendant has to do, not the agency," said Nancy Stoner, former head of planning and policy analysis in the EPA's Office of Enforcement.

Restrictions opposed

Mr. Graham, the EPA enforcement supervisor in Dallas, wrote that he opposed the restrictions on inspectors for several reasons.

First, he wrote, the steps were so detailed that Wal-Mart might avoid enforcement by complaining that an inspector didn't follow the unique procedure.

Second, if an inspector found a new violation while reviewing notes later, Wal-Mart would object because it wasn't mentioned in the oral briefing.

"Their position will be strengthened by the fact that a written record [developed by Wal-Mart at the exit interview] was provided to the inspector, and he did not object to nor request any correction to the written report provided him," Mr. Graham wrote.

Third, such treatment for Wal-Mart would start a stampede of other companies demanding the same.

"In summary, I believe this is a very poor consent decree," Mr. Graham wrote.

Mr. Blesi, the Justice Department lawyer, replied that the settlement simply put into writing what he understood was routine EPA procedure.

Wal-Mart "came out on the short end" of the deal, Mr. Blesi wrote. "I think, as do others, that this is a good precedent."