



Department of Justice

"ENFORCING OUR ENVIRONMENTAL LAWS"

REMARKS OF

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AT THE

SENIOR DAY CEREMONY

UNIVERSITY OF MICHIGAN LAW SCHOOL

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The 1970's have been properly called the "environmental decade." In the 70's, after a long period of neglect, Congress took up the task of environmental protection in earnest. Most of the state legislatures followed suit. What then occurred was the enactment of a family of legislative codes designed to protect all aspects of the environment. The statutes include the Clean Air Act, the Clean Water Act, the Surface Mining Control Act, the Toxic Substances Control Act, and many, many other acts, both broad and narrow in scope.

As a nation, we can be proud of this work -- proud because we so successfully met the challenge of environmental neglect and proud because no other single body of law has so great a potential for the enhancement of the health and well-being of the American people.

We can also be proud that the Environmental Protection Agency and the other federal and state agencies discharged their responsibility to implement these new laws. These agencies have worked hard to translate their broad mandates into specific requirements regulating the details of pollution discharges. Indeed, they have worked so hard that many in society believe they have overdone it -- that they have issued too many regulations and that they have made their regulations too tough.

The complaints mean, in part, that the agencies have done their jobs: They have implemented the law, and the law has begun to take meaningful effect.

If we look at the money that has been invested in pollution control equipment we can see that these laws have not been ignored. For example, in the 1970's industry spent seventy billion dollars for pollution control equipment to comply with the Clean Air Act and twenty-three billion dollars to comply with the Clean Water Act. The federal government has provided twenty-eight billion during the same period for sewage treatment plants.

Have we overregulated and overspent? I am not an expert in these questions, but it seems to me that in some areas, such as municipally owned sewage treatment works, we may have gone too fast. In other areas, such as toxic chemical wastes, we may have been going too slowly.

The Administration proposes to reduce spending on sewage treatment works as part of its effort to balance the budget. The Administration has proposed a large superfund to clean up toxic and hazardous waste. I personally feel that this re-ordering of priorities is correct. I believe we will see further adjustments and re-ordering of priorities as time goes on; that is natural.

Whatever the adjustments, however, one thing is certain. We will not abandon the environmental protection effort in the name of regulatory reform, economy or anything else. The James River in Virginia did not poison itself with Kepone; the Hudson River did not contaminate itself with PCB; the cattle here in Michigan did not contaminate themselves with PBBs. Self-regulation alone is not enough. We must have environmental protection laws and regulations.

I would, however, like to suggest that we change our environmental protection emphasis. I propose that we put less emphasis as a society on the writing of government regulations and the spending of tax moneys, and that we put more emphasis on the simple enforcement of the laws and regulations we already have and on the maintenance and operation of the pollution equipment we already have.

I don't mean we should abandon our regulations and stop issuing new ones. Nor do I mean that we should stop spending money on new pollution control equipment. What I mean is that the government should issue fewer regulations, and that it should spend at a somewhat slower, more deliberate rate. Concomitantly we should increase the enforcement of our existing laws and regulations and improve the operation and maintenance of our existing equipment.

We have done so much in the field so quickly -- we have issued so many regulations and spent so much money -- that society needs to slow down a bit and digest what it has done. In particular, we must ensure that we do not waste the large amounts we have spent. We must be sure that we obtain the maximum benefit from the resources we have already invested. While it may shock you, there is more than one case where a city, after receiving millions to build an elaborate new waste-treatment plant, failed to maintain it properly. I have heard of one city where a new treatment plant, after it was built, was padlocked and never operated. There is more than one example where a corporation, after having spent millions on pollution-control equipment, failed to operate it properly.

The way to deal with this is not by issuing more regulations and building more treatment works, but by reasoned enforcement. Simple equity and fairness require a stronger enforcement program. Let's face it -- some are better citizens than others. Some organizations have been good citizens and have willingly complied with pollution-control laws. Others have dragged their feet and hung back, done what they could to avoid and evade the day of reckoning. We owe it to the good citizen companies and cities that have complied to enforce the law against those who haven't. Otherwise, a grossly unfair reward will be given to the anti-social because those who don't pay the cost of clean-up will gain an unfair competitive advantage. This advantage should be thought of not only in terms of one corporation versus another, but also of one region or state versus another.

In one area in particular, stronger enforcement is necessary now to protect the public. It is an area where the regulatory scheme has not only not matured; it has not even gone into effect. I refer to toxic and hazardous wastes.

Though not as pervasive as general air and water pollution, toxic waste presents one of our nastiest problems. The discovery of conditions like that of the Love Canal in Niagara Falls has shown the need for action in this area. As a result of 30 years of disposal of hazardous wastes in a landfill in Niagara Falls, highly toxic chemical wastes contaminated a school built over the landfill and have leached from the landfill site and reached residential dwellings. While there is a

quarrel over the specific impact of this episode on the health of the people affected, no one can argue that the exposure of the public to hazardous chemicals in the quantities involved at Love Canal is acceptable.

The Congress has responded to this problem by passing a law that will establish a comprehensive regulatory scheme: the Resource Conservation and Recovery Act of 1976. EPA has been working hard on the development of the extremely complex regulations required to implement the RCRA scheme. However, it will still be some time before the scheme of that statute is effectively operating.

In the meantime, however, we have to protect the public. Fortunately, Congress gave us a tool to this end while waiting. Section 7003 of RCRA provides a remedy for imminent and substantial endangerment to the public or to the environment from hazardous wastes. That section gives the government a right to make the corporation that created the hazard take whatever action is necessary to eliminate it. We interpret Section 7003 to support as broad remedial relief as is necessary to eliminate the endangerment. As such, it is an essential tool for dealing with this problem. For example, our suit against Hooker Chemical concerning the Love Canal is based in part on Section 7003.

Because I believe that now is the time to shift emphasis to enforcement, I have made it one of my principal goals as Attorney General. Thus, I intend to increase the pace of both civil and criminal enforcement. I would like to review with you here some of the things we intend to do to ensure effective enforcement.

First let me mention the subject we have just been talking about, hazardous wastes. I intend to use Section 7003, the section that lets us act without waiting for EPA regulations, to the fullest.

I should also say that I do not intend to wait for actual harm to occur before taking action under Section 7003. Rather, whenever it is determined that harm is likely to occur in the absence of remedial action, the government will bring suit under Section 7003.

Similarly, we will not limit the scope of our litigation just to those who own or operate the dumpsites. Those who generated toxic wastes and those who transported the wastes to a dumpsite will also be held responsible where appropriate. The well-established legal principle that one engaging in ultra-hazardous activities is strictly liable for injury caused by his acts is the appropriate touchstone for this area of the law.

What else do we intend to do? Well, the environmental statutes discussed today and others often have some form of self-reporting requirements. These self-reporting requirements typically include the obligation to monitor the type and quantity of waste being released. The integrity of these environmental reporting systems are crucial to the integrity of the pollution control laws for the same reasons that income tax returns are crucial to the integrity of the income tax laws. The government has neither the desire nor the resources to review and police every industrial operation in the country. To ensure the integrity of self-reporting, our enforcement program will put

special emphasis on prosecuting those who falsify their reports.

We will also emphasize personal responsibility. I do not view violations of pollution laws as simply the acts of corporations. It is self-evident that the work of corporations is carried out by individuals. Congress has specifically recognized this by including in the criminal provisions of the pollution control laws a definition of the term "person" that includes "responsible corporate officers." Thus, we shall attempt to identify the corporate officers responsible for corporate acts so that the law may be truly enforced and its real deterrent effect mobilized.

Corporate officers will not be able to evade their responsibility by delegating compliance to a level that insulates management. Corporate management is just that: management. It is responsible for the bad as well as the good. It is its function to ensure responsiveness to environmental obligations. Any company can, of course, be victimized by careless or unscrupulous employees. Nevertheless, we expect management to adopt reasonable controls to ensure their awareness of compliance problems.

The obligation to ensure compliance with environmental laws includes the provision of adequate budgets to meet the expense of pollution control. Management must not encourage or reward employees who save money at the expense of meeting pollution control requirements. If they do, they should expect no sympathy from us.

What else? Well, we will put a great deal of emphasis on maintenance. The sophisticated testing equipment that controls and measures pollution requires careful maintenance and operation. Polluters must see to it that their equipment works properly. Faulty and misleading data created through neglect of monitoring equipment can be as damaging as neglect of the control equipment itself. In short, it is not an acceptable excuse for an inaccurate report to claim that the measuring device wasn't working properly, any more than it is an acceptable excuse for a discharge that the control equipment was not working.

Polluters can expect to see the development of a system of environmental audits to check the maintenance and operation of equipment. The development of such audits has been retarded by expense and technical problems. Equipment operation audits are becoming feasible, however, and they should become more common.

To ensure that the pollution control laws are vigorously and even-handedly enforced, I have established two new sections in the Department of Justice whose mission will be the enforcement of environmental laws. First, last October a Hazardous Waste Section was created to enforce RCRA. It is already bringing suits under Section 7003. In February of this year I directed the establishment of a section to enforce other pollution control laws, principally the Air and Water Acts. I hope to see it on line soon.

With the creation of these new enforcement sections, the Justice Department will be able to ensure the enforcement that these great laws merit. This marks the first time in the history of our efforts to enforce environmental laws that special units will exist within the Department of Justice dedicated to the enforcement of the pollution control laws with the same seriousness that we give to enforcement of the tax laws or the laws against bank robbers.

Now if you are getting the idea that I am creating a new bureaucracy and spending a lot of money, you would be wrong. Our entire effort, even after the new sections are created, will be only in the five million dollar range. And that does not count offsets for penalties we collect for the treasury. In comparison to the billions spent in this field, this is truly amazing. The beauty of enforcement is that it is not expensive. The government gets no more leverage for its tax dollar anywhere than in its enforcement dollars.

In sum, the Department of Justice intends to increase its efforts to see that the environmental laws are fairly, efficiently, and effectively enforced.