

Is the ecological police out of control in the United States?

by Rogelio A. Maduro

Since 1983, the Justice Department's Environmental Crimes Unit has secured convictions of various people in small business and industries amounting to 248 years of imprisonment for "environmental crimes." Three times as many individuals have been prosecuted as have corporations, the strategy being to jail as many corporate officials as possible. According to Henry Haicht, former Assistant Attorney General for Land and Natural Resources, and now the Deputy Environmental Protection Agency (EPA) Administrator, "It has been and will continue to be Justice Department policy to conduct environmental criminal investigations with an eye toward identifying, prosecuting, and convicting the highest ranking . . . corporate officials." The FBI, which had originally agreed to investigate at least 30 environmental cases annually, has actually investigated many times that amount.

These prosecutions exemplify the police-state tactics being used by environmentalist Gestapo entrenched in the EPA, the Justice Department, and state Attorneys General's offices, to shut down American industry and destroy small and medium-sized industries on behalf of giant cartels. A fanatical body of enforcers has shifted the U.S. government's policies from investment in basic infrastructure to resolve any "environmental problems," to putting alleged "environmental criminals" behind bars.

In an Aug. 16 press release, the EPA boasted that "EPA set a record in fiscal year 1988 for penalties obtained against violators of environmental laws. The agency obtained \$36.8 million in civil penalties in federal courts and in administrative proceedings." The press release continues, "EPA's criminal enforcement effort also got results in 1988. Fifty defendants were convicted of environmental crimes. . . . Environmental criminals were sentenced to 30 years of jail time in 1988, with 8 years ordered after suspension."

EPA Administrator William K. Reilly said in a press conference, "I am pleased to see these record enforcement numbers. They show EPA and the federal government generally are getting tougher on enforcement, which is the cornerstone of EPA's environmental programs. We expect to see even more activity in the future as we improve compliance

with the nation's environmental laws."

EPA's analysis indicated that few violators got away without a penalty. Penalties were assessed in an extraordinary 92% of those enforcement cases filed by EPA under statutory provisions that provide for penalties. The fines and jailings are just the tip of the iceberg, however. Many individuals are jailed for "environmental crimes" by state agencies, and companies and individuals may have to spend from hundreds of thousands to tens of millions of dollars to clean up "hazardous waste sites," under EPA orders.

Cost to the economy

What is the real cost to the economy of all this policing? No one really knows for sure. The official figure cited by EPA officials is \$86 billion a year. According to EPA, the cost of enforcing two statutes, the Clean Air Act and the Clean Water Act, has been over \$820 billion since 1970. Yet industrial experts estimate that the annual cost to the economy, and the taxpayer, is closer to \$160 billion a year, and that all the different environmental statutes have cost the economy over \$2 trillion since 1970.

Companies are not the only target. On Oct. 4, the EPA and the Department of Justice announced the filing of suits against the cities of Detroit, Phoenix, El Paso, and San Antonio for violating the Clean Water Act, which requires cities to control industrial discharges of "hazardous" wastewaters into their sewage systems. Fifty-seven other cities have also been named in recent judicial actions and administrative orders seeking penalties for similar alleged violations.

EPA head Reilly and Attorney General Richard Thornburgh gave a joint press conference announcing the insane measures. Although penalties against these cities are being sought, the amounts are trivial, most being in the \$30,000 range. The cities are not being sued for polluting their waterways, but for allegedly not being forceful enough in monitoring whether industrial pretreatment processes are eliminating all "hazardous pollutants" before they are discharged into the sewer systems of the cities. These sewer waters are not discharged into any rivers, however, since all these cities

have municipal wastewater treatment facilities which treat all this wastewater, and all are in compliance with the EPA standards! So why the suits?

The real purpose of the suits is to establish the precedent that any state, city, or municipal body, and its officials, who fail to fully enforce environmental regulations, can be held responsible for any pollution, with the officials facing personal bankruptcy and jail terms. Attorney General Thornburgh warned, "Local officials have a legal and moral responsibility to those they represent and to other users of our nation's waterways to make sure local industries abide by the rules; otherwise they in effect become polluters themselves by permitting the very discharge they are supposed to police."

Reilly added, "These lawsuits and penalties against cities in 21 states are designed to send a message to city and county officials: The law requires you to control the discharge of toxic wastewaters from industrial sources into your sewer systems."

The role of individual states in prosecuting "environmental criminals" is critical in the ecological police-state now in place. The Attorneys General in three states—Mary Sue Terry in Virginia, Neil Hartigan in Illinois, and John Van de Kamp in California—have led the assault with their persecution of individuals and companies that are "polluting."

Illinois: Hartigan's Gestapo

The state of Illinois, once the center of the nation's manufacturing heartland, has taken the lead in creating whole new categories of "environmental crimes." Using stringent, costly, and sometimes simply unachievable environmental standards, the state is making it impossible for virtually all but the largest industrial interests to stay in business.

Much of this sorry state of affairs can be credited to state Attorney General Neil Hartigan, who has made the prosecution of environmental crimes a top priority, and is responsible for a series of environmental legal initiatives which include some of the harshest penalties on the books.

Hartigan was the driving force behind the recently adopted Illinois Criminal Damage to the Environment Act, which criminalizes many environmental violations, and imposes fines of up to \$500,000 *per day* per offense, and jail terms ranging from two to seven years, on those convicted of Class Two felony charges—for example, the "calculated criminal disposal of hazardous waste." Previously, the maximum total fine was \$10,000.

The law also contains sweeping forfeiture provisions, which permit the state to seize vehicles and other equipment, plus monetary profits, from firms accused of having violated hazardous waste regulations.

Like the federal Racketeering Influenced and Corrupt Organizations (RICO) statutes, this provision throws out the concept that a defendant is innocent until proved guilty, a cornerstone of the U.S. Constitution. Hartigan's law permits

these seizures of assets to take place at the time of the execution of a search warrant, or at the time of the arrest of the accused—long before any trial takes place, let alone a conviction. If the accused turns out to be innocent, but has lost his business in the process, well, says Hartigan, in effect, that's his tough luck.

"We really wanted to hammer these people," said an official of the environmental control division of the Attorney General's office. "We felt we needed to go after their profits, because people save huge amounts of money by not complying with environmental regulations."

Another objective is to make money for Hartigan's office. "We hope to make the environmental control division self-sufficient," the same spokesman explained. "The more assets we seize and sell off, the more manpower we'll be able to hire, and the more investigations and prosecutions we'll be able to pursue."

Hartigan's law is particularly odious, because the state's environmental regulations are so strict that many businesses simply cannot afford the expensive new equipment needed to meet them. Thus, they have a choice of going out of business, laying off their employees and dealing one more blow to the Midwest's dying industrial economy, or facing the strong possibility of going to jail.

Innocence is no defense

Innocence is no longer a defense from criminal prosecution in pollution cases, according to attorney George Mannina, Jr., who warned in the August 1989 issue of *Petroleum Independent* journal that any corporate officer can be put in jail for the mistakes of his subordinates or even if the company is ignorant of its violations of the complex environmental regulations.

Mannina writes, "In an ominous development for individual businessmen and women, the courts have ruled that civil liability for violating environmental regulations may be imposed on a corporate officer personally just because of that officer's position in the corporation. Thus, a corporation's president without direct responsibility for hazardous waste management can be personally liable for environmental violations because the president had the ultimate authority to prevent the violations.

"The issue of criminal liability," according to Mannina, "is equally disconcerting." He adds, "In considering what level of personal knowledge or intent is required for criminal conviction, the courts have held that environmental laws are public welfare statutes which only require that an individual acted 'knowingly' or 'willfully.' In public welfare statutes, it has repeatedly been held that 'knowingly' and 'willfully' only mean intentionally (i.e., you knew what you were doing even if you did not know you were violating the law) and voluntarily (i.e., no one made you do it)."

Mannina, who is an attorney at the Washington law firm of O'Connor and Hannan, warns, "*Criminal conviction does*

not require proof that you intended to break the law, or even that you knew what the law required. In one case under the Resource Conservation and Recovery Act, the defendant argued that if he did not know what the regulations required he could not possibly have had a criminal intent to violate them. The court dismissed the defendant's argument, holding instead that it is completely reasonable to charge those who choose to operate in a regulated area with complete knowledge of all the regulatory requirements. . . . In another case, the court held that to sustain a conviction under the Clean Water Act it is only necessary to show that the defendants acted willfully or negligently and that they intended to do the acts for which they were convicted. The court stated that to convict it was not necessary to prove the defendants intended to violate the law. Still another court held that to satisfy the 'knowingly' requirement for the Clean Water Act's false statement provision, the government only had to prove that the defendant knowingly (i.e., voluntarily and intentionally) made the false statement. The government did not have to prove that the defendant knew the law's requirements or purposely intended to violate the law."

It should be pointed out that there are more than 300 major federal statutes dealing with the environment, and over 20,000 "environmental laws" on the books. Hundreds of new environmental laws are added every year by federal, state, and local governments, at the same time that the definition of what constitutes "pollution" is constantly shifting within the laws already enacted. This makes it nearly impossible for the teams of lawyers in large corporations to keep up with the rapidly changing legislation. Smaller businesses, which are now going bankrupt by the thousands due to all these new environmental regulations, cannot afford to hire the hordes of lawyers needed to keep up.

Mannina says, "The unmistakable message of existing case law is that despite the intricate complexity of the environment's regulatory maze, ignorance of the law and of the corporation's practices are no excuse. The 'presumed knowledge,' 'inferred knowledge' and 'conscious avoidance' doctrines proved a basis for individual corporate officer criminal liability. And civil liability can be imposed just because you are a corporate officer with the authority to stop an environmental violation."

Child rapists and violent criminals get lower jail terms than those accused of "environmental crimes," according to Reed Hopper, an attorney of the Pacific Legal Foundation. Hopper stated, "We are becoming increasingly alarmed with the distorted social values some of our prosecutors have embraced. Regrettably, this misplaced emphasis on the so-called 'environmental crimes' is becoming institutionalized. In 1987-88, the United States Sentencing Commission established new federal sentencing guidelines which include no parole prison terms for offenses to the environment. Unbelievably, these guidelines indicate jail terms for some violations of the Clean Water Act which exceed by a wide margin

The eco-fascist statutes

There are over 300 major statutes and over 20,000 laws dealing with the environment on the books today. The most important is the *Superfund*, technically the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), which provided for "liability, compensation, cleanup and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites." It provided \$1.6 billion to clean up abandoned sites. The Superfund Amendments and Reauthorization Act (SARA), passed in 1986, authorized an additional \$8.5 billion to finance the Superfund site cleanup effort. In addition, SARA enlarged the enforcement authority for the purpose of making private individuals and companies pay for any cleanup, and increased criminal liabilities. Hazardous waste levels were also redefined, which means that sites which were in full compliance with Superfund, were now in violation. Liabilities were made retroactive, so that individuals and companies that were in full compliance before selling their property, in some cases as much as a decade before, were now made liable for further cleanup.

Other major statutes used by the environmentalist Gestapo include: Resource Conservation and Recovery Act (RCRA); Clean Water Act; Clean Air Act; Safe Drinking Water Act; Stationary Source Air; Mobile Source Air; Toxic Substances Control Act (TSCA); Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

the jail terms indicated for transporting minors for prostitution or even assault with intent to commit murder."

Have all these enormous expenditures benefited anyone? Well, the EPA claims it doesn't know, and it has refused to publish any figures showing any benefit to the American population. The only government official who has dared make any statistical claims is White House Counsel C. Boyden Gray, who recently told syndicated columnist Warren Brookes that Bush's Clean Air Act, which will add \$20 billion a year to the present whopping \$86 billion in environmental compliance costs to the economy, may result in 3,000 fewer cancers in 20 years. In other words, according to Gray, after \$400 billion, there is the possibility that 3,000 people will stand a lower risk of contracting cancer.

All the public hears, however, after hundreds of billions of dollars spent on gadgets such as catalytic converters and

smokestack scrubbers, is that: Pollution is rampant, there are hazardous chemicals, deadly radon, deadlier alar, stalking us everywhere.

But where are the bodies of all the people who should have died, according to all the dire predictions? The fact is that U.S. cancer death rates have decreased dramatically. The major exception is cancers produced by cigarette smoking and the use of "recreational drugs" such as marijuana and cocaine, which contain massive amounts of carcinogenic substances. A 1988 report from the National Cancer Institute indicates that "the age-adjusted mortality rate for all cancers combined, except lung cancer, has been declining since 1950 for all individuals and age groups except 85 and above." There is a 13% decrease overall, with 44,000 fewer deaths than expected. The EPA cannot explain these figures; cancer rates should have soared, according to their calculations.

The real tragedy, however, is the cost in human lives and suffering that these environmental costs have caused. Funds that would have been used to build, maintain, and repair basic infrastructure, such as bridges and roads, sewer lines and water lines, hospitals and schools, have been diverted to "protection of the environment." Funding for technologies that would deal effectively with pollution, such as plasma torches, nuclear and fusion energy, has been decimated. Had even a fraction of the \$2 trillion-plus that has been wasted on "environmental protection," been channeled into a technological driver, such as the space program, all kinds of technologies would have been created that do not pollute.

The same funds would have saved the lives of hundreds of thousands of sick, indigent, and elderly people who have suffered and died from lack of financial resources to obtain medical care. Had the state of California used a small part of the hundreds of billions of dollars that have been wasted in useless environmental regulations, to instead upgrade the highway system to earthquake standards, all those motorists killed on Interstate 880 on Oct. 17 would still be alive today.

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Judge dismisses U.S. against associates

In a 106-page opinion issued in Alexandria, Virginia on Oct. 25, federal bankruptcy Judge Martin Van Buren Bostetter, Jr. threw out an unprecedented involuntary bankruptcy action which had been brought by the federal government in April 1987, and had been used by the Feds to padlock the doors of three publishing and distribution companies associated with Lyndon LaRouche. Bostetter's ruling is the first serious blow the U.S. Justice Department's "Get LaRouche" task force has gotten from any court in this country.

Judge Bostetter found the government had filed the action in "bad faith," that the government's actions were a "constructive fraud on the court," and that the action constituted "improper use" of the bankruptcy law—especially against debtors who were primarily dedicated to disseminating a political viewpoint, rather than "private monetary gain."

The three companies bankrupted by the Feds—Caucus Distributors, Inc., Campaigner Publications, and the Fusion Energy Foundation—had published and distributed, to hundreds of thousands of subscribers, periodicals on issues in which the LaRouche movement was involved.

First the Justice Department used the 1987 bankruptcy to wipe out those three companies, and to close down their publications. Next, the DoJ, along with state prosecutors in Virginia and New York, proceeded to try LaRouche and a number of his associates on "fraud" charges, for failure to repay loans which the companies could not repay, precisely because they had been closed.

Thus, in October 1988 Henry Hudson, U.S. Attorney in Alexandria, Va., brought a sham indictment against La-Rouche and six associates on fraud and conspiracy charges arising from the companies' inability to repay loans. In a three-week railroad trial before Judge Albert V. Bryan, La-Rouche and the others were convicted on all counts, having been barred by Judge Bryan from telling the jury that it was the government that had forced the companies into bankruptcy. LaRouche, 67, is now serving 15 years in federal prison for that frameup; all six of his co-defendants are also in prison.

According to *Railroad!* a book on the LaRouche trial: "To understand the Alexandria case, it is first necessary to understand the government's unprecedented . . . involuntary bankruptcy against the LaRouche political movement. . . . First the Alexandria U.S. Attorney shut down three publish-