

U.S. Congress hikes EPA's police-state powers

The seemingly unrelated problems of environmental enforcement and banking regulation have been brought together in a frightening manner by a group of laws, passed by the 101st Congress, which bring criminal punishments, and even harsher civil penalties, for a vast array of regulatory violations. The measures contained in the Clean Air Act and the White Collar Crime portions of the Omnibus Crime Bill have moved the United States a giant step toward the point where there is no meaningful distinction between civil and criminal law, creating a situation where it requires the legal resources of a multinational cartel to manage or finance any process manufacturing operation in the United States.

The expanded powers granted to the bureaucrats of

the Environmental Protection Agency typify the problem. Amendments to the Clean Air Act have brought violations of that statute into conformity with the criminal penalties recently attached to the Clean Water Act and the Resource Conservation Recovery Act (RCRA) which make "knowing violations" of the act a felony, with maximum prison terms of five years. New provisions will allow the government to imprison for up to 15 years those persons who "knowingly endanger the lives of others" by releasing toxic chemicals, the list of which includes common substances used throughout industry. The vague and pliable notion of negligent endangerment is also made a crime.

The bill gives the EPA new authority to issue administrative penalty orders up to \$200,000, and field citations up to \$5,000 for minor infractions. The presumption of innocence otherwise guaranteed to defendants facing such sanctions, is out the window in this case, and the burden of proof falls entirely on the producer, since sources of emissions (factories, small businesses, and family farms) will be required to certify their compliance, and the EPA

government is supposed to be at arm's length from the corporation, but two government representatives on the corporation's board have been able to call the shots on government borrowings, and influence government policy toward the corporation.

The Minister for Primary Industries and Energy, John Kerin, has used his government-granted power of veto to force the Wool Corporation to lower the floor price of wool from 870¢ down to 700¢ a kilogram, without consulting growers, and against all logic. Even wool buyers did not want a floor price drop, and castigated Kerin for his high-handed actions.

In early 1990, Kerin forced the floor price down, and boosted the support levy up to 20%. This saw producers receive an effective 40% drop in real income. Within six months, he again turned the screw. He raised the levy from 20% up to 40% of their income from the wool clip. Kerin's public statements on the need to lower the floor price have also caused buyers to hold back from buying, pending more price drops. As of mid-October, only about 25% of the wool offered has been sold. There is talk of scrapping the reserve price altogether, which will lead to a free-for-all market, with no holds barred against the wool growers.

When farmers are forced to undergo such a drop in income as that now experienced by the wool producers, they must reduce their stock numbers to attempt to stay solvent. This has effectively ruined the sheepmeat trade, with a glut on the market forcing prices down until producers cannot even cover the cost of transport.

Our government has just decided that it must initiate the shooting of 30-40 million sheep to remove this "oversupply" problem. The rationale is that 40 million sheep will be shot and buried, because if they are allowed to flood the market it will bring down prices all over the world and cause a worldwide collapse. Slaughtering the sheep is totally unjustified and immoral because of the closure of 50% of our slaughterhouses. Our capacity to process mutton has been significantly depleted. This is criminal, when you think of all the starving people in the world.

The slaughter of these sheep is proposed by the government to be paid for by the farmers themselves, by means of an 8% further tax on wool sales. One farmer from Queensland observes, "I don't know how you can compensate yourself!" So far, not many sheep have been shot.

The heavy intervention of cartels in buying, marketing, and pricing of sheepmeat, is easily seen in meat prices and availability for consumers.

- In Australia, mutton in the shops is selling for around 99¢ a kilogram, or U.S. 36¢ a pound.

- In U.S. supermarkets, one of the cheapest cuts (shoulder chops, called lamb for American consumers, but technically mutton) is selling for U.S. \$3.49 per pound. This would cost Australian consumers \$9.60 a kilogram.

- Libya is among the countries unable to obtain sheepmeat from Australia. According to inside information in Australia, the AMLC (Australian Meat and Livestock Corporation) and the National Farmers Federation will not deal with them.

will be authorized to issue administrative subpoenas for compliance data. The EPA will also be authorized to issue compliance orders, with compliance schedules of up to one year. A visit from an EPA inspector can generate a mountain of paperwork, enormous expense, and a jail term if obscure reporting requirements are not met.

In addition to the responsibility of complying with constantly changing EPA regulations, the businessman or farmer risks politically motivated harassment, since the law adds *qui tam* provisions to encourage and reward individual citizens to bring suit against alleged violators. "Money-laundering" statutes will now apply to environmental violations as well, since the Crime Bill contains a provision that would expand the list of "predicate crimes" supporting a conviction of money laundering to include environmental crimes as well as the bank fraud crimes. The bill also provides for criminal forfeiture in cases involving criminal violation of the money laundering laws.

The forfeiture laws are a prime example of the dangers inherent in these schemes, since they not only destroy the presumption of innocence, but allow the government to

freeze assets and destroy a business before an investigation is even completed. The statutes are equally dangerous in their civil guise, and there are now some 100 civil forfeiture statutes in the United States, as well as punitive RICO (racketeering) and Anti-Trust laws which carry enormous destructive powers. Despite the fact that such civil penalties are often more severe than criminal penalties, a defendant is not entitled to due process protection or the proportionality requirement of the Eighth Amendment, which forbids cruel and unusual punishment, since courts generally hold that civil laws may not trigger the constitutional safeguards present in criminal actions.

The nightmare world created by RICO, in which the more lenient civil standard of proof is used to trigger severe criminal penalties, is inexorably spreading into the highly politicized realm of environmental law, while Congress is making punishment, not regulation, the central focus of these statutes. The big winner here is the Justice Department, which has now been made central to the functioning of the entire regulatory apparatus.

—Leo F. Scanlon

As of the end of October, a farmer might get only \$10 for a prime, young sheep—with wool, unshorn, when a year and a half ago he might expect to get \$38-45 a head. Sale sheep are only averaging \$2.50 (A\$) per head. Most sheep are simply unsalable right now. You can get a sheep pen for 10¢! This will cause many bankruptcies.

The myth of Australia being a low-cost producing nation is entirely false! The economic problems have compounded through the years, to the extent that many rural producers are now mining their land rather than nurturing it, as they would prefer to do. The debt level of the majority of rural producers has hit an all-time high, with the average Australian farm owing \$250,000.

Besides low commodity prices, Australian farmers are burdened with the highest income tax rate in the world, high interest rates, a 20% sales tax on almost all parts and supplies, and a 25% tax on the gross value of wool produced, with the prospect of a 50% tax next year.

Farmers are working extremely long hours and still often require a second income just to support their families. According to statistics, we have approximately 150,000 primary producers who grow more than \$20,000 worth of rural commodities per year. Various forecasts show that the number of rural enterprises and landholders could well diminish by 70% in the next decade, joining the already high number dispossessed.

The effect that this has on the morale of people is shocking. Since 1975 the rural male youth suicide rates have soared by 570%. In the rural shires of New South Wales, male youth

suicides increased from 3.5 per 100,000 people in the 1960s to more than 20 per 100,000 in the late 1980s.

The destruction of food and food potential

Worse than the destruction of food, is the destruction of the capability to produce food. Australia has been subjected to repeated episodes of government-sponsored, or -encouraged, programs to destroy food output potential in the name of the argument that "reducing supply" would increase prices for farmers.

- Cattle kill-off. In 1974 there was a program to induce cattle producers to kill off stock. Many cattle had to be shot because of the effects of the drought; however, there were no government programs to ameliorate the kill-off, for example, "slaughter and store."

- Tree-pull. A "tree-pull" government program has been in effect off and on for 15 years, to reduce fruit output. The government pays so much per tree, depending on the variety and location. The rationalization was based on the mythical "supply and demand" notion that reduced output would lead to higher farm prices. Millions of trees have been lost, and thousands of orchards of peaches, pears, apples, cherries, and other fruits have been obliterated.

There are dozens of other examples of the destructive role of the cartel companies in terms of fruit and vegetable output in Australia.

- Potatoes. Just this 1990 crop season, the potato price was slashed by 60% for the producers in the Atherton Tablelands district in north Queensland. There is a small potato