
EVOLUTION OF ENVIRONMENTAL ENFORCEMENT WITHIN THE UNITED STATES: STRATEGIC APPROACH TO ENFORCEMENT AND ITS GROWING ROLE IN INTERNATIONAL TRADE

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Good Morning.

It is my great pleasure to join my co-Chair Pieter Verkerk in welcoming you to Oaxaca, México, for our Third International Conference on Environmental Enforcement. As I begin, I want to extend my personal appreciation to Governor Diodoro Carrasco of Oaxaca, Mayor Carlos Sada, and Mrs. Julia Carabias who is here representing Minister Carlos Rojas, and for México's gracious hospitality in hosting the Conference. We could not have found a more beautiful and hospitable place for this Conference. I also would like to thank my fellow sponsors Minister Alders, Mr. Arsenio Rodriguez representing UNEP and Mr. William Eichbaum of World Wildlife Fund, and the members of the Executive Planning Committee who helped shape a program that we hope will be inspiring and practical to everyone here.

We are at a remarkable time for environmental enforcement both within the U.S. and around the world. Through our dialogues surrounding the NAFTA, the GATT and other international agreements, we are realizing more and more that economic well-being goes hand in hand with environmental well-being. Environmental enforcement is an integral component of achieving environmental well being and sustainable development—something for which we all are striving.

The United States is privileged to be a part of this week's international dialogue. President Clinton, Vice President Gore, and EPA Administrator Carol Browner, are firmly committed to a healthy environment, and the U.S. Environmental Protection Agency is leading the effort to make the United States a world leader in environmental protection. I am pleased to have this opportunity to share with you the environmental priorities that the EPA, under Administrator Browner, is working to achieve. But, like all of us, I am also here to learn, especially at a time when the EPA is taking a fresh look at its own enforcement program. I look forward this week to hearing your views and reactions to EPA's enforcement program, and also to hearing about your goals, and the ways you are using enforcement to reach those goals.

1 ENVIRONMENTAL PROTECTION PRIORITIES IN THE UNITED STATES

In the United States, Administrator Browner has established five key priorities to protect human health and the environment:

- First, pollution prevention—prevent pollution before it happens.
- Second, environmental justice—provide equal protection from environmental harms to all.
- Third, protect whole ecosystems.
- Fourth, base our actions on good, quality science.
- Fifth, promote new environmental technologies that can get the job done cheaper and better.

While we are uncompromising about our commitment to these goals, we will be flexible while working to achieve them. To make these priorities work, EPA is moving toward tailoring environmental protection to the specific characteristics of different communities, ecosystems and industrial sectors. We want to avoid "one size fits all" approaches. My job at EPA is to make sure that our civil and criminal enforcement program is strong and effective. Enforcement must be the backbone of all of EPA's other efforts. Enforcement makes the regulated community and the public take environmental laws seriously, it gives credibility to all of our agency's activities.

2 THE REORGANIZATION OF EPA'S ENFORCEMENT PROGRAM

I was very fortunate to have been chosen by President and the Administrator to head EPA's enforcement program at this very exciting time. Last July, Administrator Browner decided to reorganize the enforcement program. This bold action of her's, bold because she acted decisively where others had only talked for more than 10 years—provides a unique opportunity to incorporate the Agency's new directions into an improved and streamlined enforcement organization.

Our new Office, known as the Office of Enforcement and Compliance Assurance, will bring together the many enforcement-related activities that for several years were scattered throughout the Agency. Our Headquarters Office will double in size from 400 to 800. But our enforcement reorganization is about much more than building a new structure and increasing staff. It is mainly about building a new approach to enforcement. That new approach has five key features:

First, we will maintain an imposing enforcement presence to deter noncompliance. Tough criminal sanctions, monetary penalties that recoup the economic gains of violations and punish violators, and injunctive relief that forces violators to correct environmental wrongs are all essential parts of the strong enforcement program which is ongoing at EPA.

Second, while enforcement actions will remain a primary means for achieving compliance, it will not be the only one. We will also use compliance assistance and other innovative tools to promote compliance in the regulated community. For example, by offering technical advice, teaching compliance seminars, or doing on-site compliance assessments, we can help the regulated community avoid breaking the law in the first place.

Third, we will organize our compliance strategies, and often our traditional enforcement activity as well, around sectors of the economy, and ecosystems. By focusing our resources, we will understand better how a particular sector or ecosystem functions as a whole, and we will know better when, where, and what action is needed to achieve compliance or make environmental improvements. With this targeted approach, we will remain true to the need to be consistent in how we enforce environmental laws, and recognize that "one-size-does-not-fit-all."

Fourth, we will take multi-media, whole-facility approaches wherever possible. When we provide technical assistance, inspect facilities or plan and bring enforcement actions, we will more and more base our actions on all of our environmental statutes, and not simply look at only the air, water, solid waste or toxics. We will aim to reach comprehensive solutions to pollution problems, and avoid approaches that fix a problem in one medium only to have a problem in a different medium worse or unaddressed or create a new problem.

Fifth, we will measure the success of our program by improvements in compliance rates and environmental quality, not just by the number of cases we bring or the amount of the penalties we collect. Instead of looking only at the quantity of cases, we will highlight the quality of our cases.

3 FEDERAL FACILITIES

I also want to emphasize that in enforcing the law, we treat other agencies of the federal government the same way we treat other members of the regulated community. Federal agencies are routinely involved in activities within the scope of our environmental laws. By complying with the

law, the Government leads by example and increases the credibility of the law in the eyes of the public. Our Office of Federal Facilities Enforcement is committed to holding the federal government accountable to the public for its environmental record. Where appropriate, EPA levies fines and penalties against agencies of the federal government.

4 USING ENFORCEMENT TO REACH OUR GOALS

Our new approach will also advance Administrator Browner's five main priorities.

First, we will constantly seek creative ways to use enforcement to promote pollution prevention. Pollution prevention is the opposite of end-of-the-pipe controls—by preventing pollution in the first place, the regulated community avoids the cost of control technologies and waste cleanups or does society as a whole. Administrator Browner has called pollution prevention “the central ethic” and “guiding principle” in everything we do at EPA. Enforcement will be no exception.

A strong enforcement program that the regulated community takes seriously prevents pollution in and of itself by deterring violations of the law. And in individual cases, violators are agreeing more and more to perform pollution prevention projects, often in exchange for penalty reductions. To illustrate, a company might agree to eliminate the use of a toxic chemical, or to conduct a pollution prevention audit of its operations. These projects change the way violators do business and prevent or reduce pollution long after an enforcement action is over.

Another benefit of these projects is that they often also end up saving companies money. For example, the Dupont Company recently completed a Waste Minimization Study as part of an EPA enforcement settlement agreement. Dupont found that for a one time \$6 million investment, it will reduce its production of hazardous waste by 9 million pounds per year and reap back an astounding \$15 million in savings per year. Best of all, Dupont will share its study with other companies so that they, too, can save money by preventing pollution in the first place.

Our compliance assistance activities will also help prevent pollution by giving companies the information they need to comply with the law. We intend to focus compliance assistance on specific industries and other economic sectors and improve their ability to get the resources they need to comply with environmental laws.

Second, our improved enforcement program will promote the Agency's goal to provide equal environmental protection to all people. Minority, low-income and other historically disadvantaged communities must not bear an unfair burden of environmental risk. In February of this year, President Clinton signed an Executive Order that directed all federal agencies to address environmental justice concerns. At EPA, we will be the lead federal agency in this effort and we will make environmental justice concerns a part of every decision we make.

Third, we will use enforcement to protect whole ecosystems. To ensure a healthy and productive environment, all the interdependent parts of an ecosystem must be healthy. We will work to identify ecosystems of special concern, and locate areas where enforcement is the best tool for protecting against environmental harms. Our emphasis on multi-media approaches wherever possible will be an important component of protecting ecosystems. EPA has already conducted several “pilot” multi-media initiatives targeting sensitive areas, including the Great Lakes, the Gulf of Mexico and the Chesapeake Bay. We will continue to build our program to protect these sensitive ecosystems and expand our efforts to others.

Fourth, we will base our enforcement and compliance assurance actions on good, quality science and data. EPA typically relies upon and needs complete and accurate data in order to do its job. We intend to standardize compliance and enforcement information to improve our ability to track our progress and plan for the future. We will rely on “good science” and “good data” to assess the impact of compliance and enforcement efforts. To see whether we are truly succeeding, we need to improve our collection of data on pollution emissions, as well as on compliance rates. And we will look for ways to see whether, ultimately, our enforcement activities are improving the quality of the environment—the air we breathe, the water we drink.

Finally, we will look for opportunities to promote new environmental technologies. Through our compliance assistance program, we will improve our understanding of specific industries and help them find new environmental technologies that will make the most sense for them—both economically and environmentally. Our federal facilities program is a leader in this area. We are cooperating with other federal agencies such as the Energy Department and the Defense Department to develop, experiment and test new environmental technologies. In our enforcement actions, we will continue to enter into agreements where violators commit to develop environmental technologies that reduce or prevent pollution.

5 WORKING WITH OUR INTERNATIONAL PARTNERS

Whatever goals we have at EPA, our chances of success are much better when we develop partnerships both domestically and internationally. In particular, our international partnerships are becoming ever more important. In the environmental enforcement arena, partnership is especially essential in view of the rapid evolution of the global marketplace. A number of international developments, both regional and multinational, have highlighted the role of environmental enforcement in ensuring sustainable economic development across the globe.

The historic North American Free Trade Agreement—NAFTA—along with its side agreements, is a leading example. The parties to the NAFTA recognized the need for strong environmental enforcement and agreed on three key elements that provide for a strong enforcement program. First, Mexico, Canada, and the United States committed to effective environmental enforcement in each of their own countries. Second, an innovative dispute resolution process allows each signatory to hold the others accountable for ineffective enforcement of domestic environmental laws. Third, and even more importantly, the countries are creating a new trilateral enforcement network that will promote opportunities for cooperation well into the future. Strong trilateral and bilateral cooperation on environmental enforcement will be essential to the sustainable regional development that the NAFTA promises.

Increased cooperation in environmental enforcement in North America parallels other developments around the globe:

- The entry into force of the Basel Convention on Transboundary Movement of Hazardous Wastes—including the Parties' recent decision to ban exports of hazardous waste to developing countries—underscores international recognition of the need for tough enforcement against illegal waste traffickers.
- Interpol's Working Group on Environmental Crime is working to improve international cooperation in investigating illegal shipments of hazardous waste.
- The U.N. Commission on Crime Prevention and Criminal Justice is also promoting cooperation in criminal enforcement. The Commission is working to develop international consensus on the nature of environmental crime and helping national governments develop effective environmental criminal laws.
- The world community's shared concern with global climate change and ozone depletion has also led to international partnerships. New restrictions on ozone-depleting chemicals in amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer, and implementation of the Global Convention on Climate Change, will present new challenges to the architects of domestic environmental enforcement programs and policy.
- Similarly, international agreement on the need to protect the fragile and pristine ecosystem of Antarctica has included recognition of the need for effective enforcement. The U.S. and other parties to the Antarctic Treaty are setting up domestic programs to implement the new environmental protocol to the treaty. Enforcement will be an essential element to preserving the unique Antarctic environment for future generations.

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- GATT Parties have recently decided to create a Committee on Trade and the Environment and an environmental work program of the new World Trade Organization, which will replace the GATT. The Committee and work program will provide an important new opportunity to address the relationship between trade and the environment, including issues of enforcement. More and more, we are all realizing that one nation's failure to enact and enforce good environmental laws may be unfair to the rest of the global community. Hopefully, the Trade and Environment Committee's work program will promote the need for strong domestic enforcement of environmental laws, as well as new opportunities for cooperation. Together, the international community can create a level playing field for freer world trade.

6 CONCLUSION

In closing, I cannot help but mention this Conference as yet another important opportunity to build international partnerships and promote international cooperation in environmental enforcement. Our world is getting smaller and smaller. Everything we do, or do not do, especially with regard to our precious and fragile environment, affects us all. Thus, our efforts must get closer and closer. We must work together. I am very excited about Administrator Browner's environmental agenda for the United States. I hope EPA's program for protecting the environment, including its strong role for enforcement, will give this group some food for thought as we begin this Conference. This gathering is especially timely for EPA's enforcement organization — I know I will emerge from this Conference with new ideas from all of you, on how to develop our revitalized enforcement program. By sharing our ideas and experiences this week, we can, together, take another step toward ensuring the healthy global environment that is essential to a healthy global economy.