
**INTERNATIONAL NETWORK FOR ENVIRONMENTAL COMPLIANCE
AND ENFORCEMENT**

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KEYNOTE ADDRESS PRESENTED AT WEDNESDAY LUNCHEON

Good afternoon. It is a great honor to participate in this INECE conference and to meet so many distinguished and committed people working throughout the world to use effective enforcement to ensure that we protect our environment for ourselves, our children, and our grandchildren. Our presence here, and the level of discussion and evident enthusiasm for our task, underscores that pollution knows no borders and that both the pollution and the cleanup that occurs in one part of the globe ripples across the world. Also, our world's natural resources, our forests, minerals and wildlife, cross the boundaries of our nations. Certainly the human relationships we form here encompass the globe and will contribute to a cleaner planet. I want to start by particularly thanking Cheryl Wasserman, whose hard work, persistence, and great charm have made such a contribution to getting this event to happen.

I will address the topic of the relationship between the legal arm of government and the line environmental agency or ministry. I come to this topic as the Assistant Attorney General in charge of the Environment and Natural Resources Division in our United States Department of Justice. We represent the United States and federal agencies in court, on environmental cases. Our client agencies include pollution protection agencies, public land management agencies, agencies responsible for natural resource management and protection, and federal government agencies that undertake activities subject to pollution regulation themselves. I supervise 400 lawyers and we handle cases that arise under well over 100 federal laws. My theme—and a secret to at least some success—is communicate, consult, coordinate, cooperate—the 4 Cs. It may not work as the 4 “seas” in other languages, but in English, at Monterey on the Bay, in this U.N. year of the oceans, it is an easy-to-remember theme. It is an aspect of in-country networking. While the structure and exact relationship between the legal arm of government and the environmental protection ministry may vary from country to country, the fact is that some kind of such an institutional arrangement occurs worldwide.

In the United States, our federal agencies have a decentralized component. At the Justice Department, my office is mostly in Washington, DC. Separate from us, but also working on many issues including some environmental cases, are the 93 United States Attorneys' Offices, one in each judicial district, which is a state or subdivision of a state, and which I do not supervise or control—with which we communicate, consult, coordinate, and cooperate. And our nation's environmental protection agency, the Environmental Protection Agency (EPA), has ten regional offices throughout the country that have a fair level of autonomy and that require, as we work together, the 4 C's. Further, in the United States, and in many countries, pollution control is handled by a combination of the federal/national government, and states or other subnational units of government. Often, these subnational governments—and in the United States that includes some sovereign governments of Indian tribes—have their own departments of justice, and a version of the relationship between the

justice ministry and the pollution control agency occurs at that level. All of us must address the potential for disagreements, disjunctions or overlap between the national governments and the subnational units. Because those relationships as well require communication, consultation, coordination, and cooperation, and because they are of interest to so many of us, I will discuss those as well. So, my theme is 4 C's times three—it is about relationships between and among environmental agencies and justice agencies at the national and subnational level.

I will focus on the system in the United States not because I think it is the only way or even the best way, but because I am most familiar with it. The 4 C's approach we are using, and the specific steps we are taking to implement those 4 C's, may be of some help in your own systems and countries. So fasten your seat belts, and let's set sail.

1 DEPARTMENT OF JUSTICE WORK

First, what is the work of our Environment and Natural Resources Division of the federal Justice Department? The purpose of a central Department of Justice in my country is to assure that the United States, with its many agencies, laws and points of view, takes one position and speaks with one voice when we go to court. Part of our job, therefore, is to work with agencies to assure a consistent and unified position. Further, in our system, criminal cases can be prosecuted only by prosecuting agencies—the Justice Department at the federal level, state attorneys' general offices at the state level, and district attorneys at the local level. At the federal level, EPA has its own lawyers, and they do important work, including administrative enforcement but when the case goes to court it requires Justice Department action.

The work of the Environmental and Natural Resources Division at the Justice Department falls into five categories:

First, we litigate pollution cases. These include civil enforcement actions, where we go to court to get orders requiring companies to come into compliance with the pollution protection laws, or to clean up hazardous waste sites, and orders to pay a civil money penalty. We work to be sure that the penalty recovers the economic benefit of non-compliance—what the company saved by breaking the law, plus, so that others will be deterred from unlawful conduct, and so that we create a level playing field—that is, companies that break the law do not get economic advantage over law-abiding companies. We also prosecute polluters criminally if the environmental harm is serious; if the conduct impairs the integrity of the system, such as falsifying reports; or there is repetitive misconduct. These pollution cases are referred to us by EPA, the Coast Guard, the Department of Transportation, which is responsible for pipeline safety and pipeline spills; the Army Corps of Engineers, which protects wetlands; the FBI, which investigates some environmental crimes; the Customs Service, which polices shipments into and out of the country; and other agencies.

We also defend pollution cases when the regulated community or the NGO environmental community challenges EPA regulations; or they challenge pollution-related decisions. We also defend other agencies that have the same obligations as private companies to comply with pollution protection laws (such as the Departments of Defense and Energy and the Interior).

Second, we handle cases related to the management of our public lands and natural resources. In the United States, the federal government owns and manages about 30% of our lands, including national forests and national parks. The management of these areas,

including oil and gas leasing, grazing permits, and strip mining, is often controversial—for example, the Forest Service sets the balance between timber cutting and wildlife protection in our national forests. Our client agencies include the Department of the Interior, the Forest Service, and the National Oceanic and Atmospheric Administration—and we work hard to assure one voice in court. A component of this work is handling cases, and advising agencies, related to environmental impact statements.

Third, we bring and defend cases under the federal fish and wildlife laws. These cases include civil and criminal enforcement actions to protect endangered species and to stop the illegal smuggling of birds and other protected wildlife; and to defend challenges to agency decisions that implement the Endangered Species Act. An important part of this work is defending cases related to fisheries management and the coastal zone. In this International Year of the Ocean, this work is noteworthy.

Fourth, we handle cases to carry out the United States' trust responsibility to Indian Tribes; and defend federal agency actions related to tribes and individual Native Americans when they challenge decisions in court.

Finally, we handle cases to acquire private property for public uses, including establishing compensation for federal government actions which in effect constitute a "taking" of property as required under our Constitution.

It is a wide range of cases, and our docket sometimes puts us in the middle of disputes between and among federal agencies. On the pollution front, for example, EPA and the Army Corps of Engineers sometimes have different ideas about what the wetlands protection law means, and a court deadline helps us force a resolution of the issue.

As you can see from this description of our duties, there is a great need and opportunity for the 4 C's of communication, consultation, coordination, and cooperation. So that you may have a specific sense of steps we use to apply the 4 C's, I will focus on our work with EPA on enforcement of the pollution protection laws. EPA is charged by law with protecting our waters, drinking water, air, and land, as well as with regulating pesticides and other chemicals, and related work. To carry out our task of representing EPA in Court, and to facilitate EPA in its work, we have communicated, consulted, coordinated and cooperated in at least 12 concrete ways:

- 1 We have a framework Memorandum of Understanding, put in place in 1977, which commits our two agencies to work together, gives the Justice Department certain schedules for reviewing cases, requires reports on case status, and gives EPA certain rights if we decide not to bring a case. This is a clearly communicated basis for our work together.
- 2 Steve Herman and I, as heads of our respective components at the enforcement office of EPA and the Justice Department, have made clear that we will not tolerate fights over which agency has the right or authority to act we call these turf fights and that our staffs should work cooperatively in handling cases.
- 3 We have collaborated to develop a series of policy and guidance documents that inform our case decisions. An example is guidance about calculating penalties in Clean Water Act cases resolved by negotiated settlements. This guidance helps ensure consistency in cases, and agreement between the staffs at the two agencies.
- 4 We have monthly meetings with senior managers in both agencies. The meetings have an agenda agreed to in advance, and provide a regular opportunity for sharing information and exchanging views. Any problems or

- disagreement can be put on the agenda, and solved at the meeting. We get to know each other, so that working together and solving problems during the remainder of the month is made easier.
- 5 We have regular docket review sessions. Justice Department enforcement lawyers are assigned to particular EPA regions, and supervisors for those Justice Department enforcement lawyers go to the EPA Regions every few months to review all existing and prospective enforcement cases on the docket. Discussions cover what these cases are, how to handle them, whether they should be settled, and any policy problems that need resolution.
 - 6 We help train each other's staffs. Training covers technical matters and legal and litigation issues. The common knowledge and understanding this training promotes among the people who do the work is a great contributor to smoother relationships.
 - 7 We "detail," or assign, a few lawyers to each other's offices for six-month periods. This exchange creates greater appreciation for the work of the other office—a direct example of walking in someone else's shoes, or should I say paddling the other person's boat.
 - 8 We have what I call an early warning request. If EPA is considering taking a major or difficult action, or, on the defense side, is working on a controversial regulation or action that is sure to be challenged in court, we urge EPA to let us know early, so that we can discuss approaches and how to assure that the case will be one we can win in court.
 - 9 One of my deputies or I, as well as other supervisors, attend the periodic meetings EPA holds of regional directors for particular media "air, water and land" programs. At the meetings, we can identify and resolve issues, and work to assure consistency across the country. This also helps address some of the problems that decentralization can cause. This has been especially successful for our Superfund hazardous waste cleanup program, where we have created a real partnership between the staffs.
 - 10 We invite EPA officials to speak and teach at training sessions we conduct for Assistant United States Attorneys. Again, this helps to ensure enthusiasm for working together and nationwide consistency in the Justice Department's somewhat decentralized system.
 - 11 Our attorneys work with EPA to train state and local prosecutors, investigators, and technical personnel in the development of environmental enforcement cases.
 - 12 We have established a number of task forces on enforcement, and invite EPA participation. These include task forces on CFC smuggling and on cleaning up our Mississippi River I will discuss these more fully in a moment.

Now, let's take a break from this list implementing communication, consultation, coordination and cooperation, and look at three concrete examples of how it has worked.

Our CFC initiative is an international environmental enforcement initiative that depends on significant cooperation between EPA, the Justice Department, and other agencies. As I am sure most of you know, the Montreal Protocol of 1988 requires phaseout of CFC manufacture, so that use of this ozone-depleting substance will be gradually eliminated. After the United States essentially stopped manufacture of the substance, a

black market of illegally imported CFC's developed to serve the ready market of 80 million American cars built before 1994 that generally use CFC's in their air conditioning system. An Assistant United States Attorney in Miami, Florida, prosecuted several smugglers of CFC's. Based on the example of those prosecutions, we invited investigators from EPA, the Customs Service, the Internal Revenue Service, and our FBI, as well as Assistant U.S. Attorneys from key geographic areas, to take part in a national CFC enforcement meeting. The Customs Service used its tracking systems to identify likely ports of entry. The successful meeting established networks and led to seizures of CFC's in five states and Puerto Rico. Our CFC workgroup now meets every three months, and has expanded to include investigators from most major U.S. ports and representatives from Canada. We have obtained 62 convictions with an aggregate 36 years of prison time, and more than \$58 million in fines and restitution for CFC smuggling. We have since brought additional charges, including charges related to Halon 1301, another ozone depleting substance used primarily as a fire suppressant. These efforts are a tribute to effective communication, consultation, cooperation and coordination among EPA, the Justice Department and other federal agencies.

Another case we worked on with EPA was a civil enforcement action against Texaco Pipeline and its subsidiary for 17 separate oil discharges from its pipelines, spilling more than 4800 barrels of oil into waters and land in the State of Kansas, in violation of the Oil Pollution Act. The case settled with the company agreeing to pay a civil penalty of more than \$900,000, and closing more than 580 miles of old pipeline. The company agreed that it would prevent future spills by burying pipeline of water crossings and improving inspection and maintenance programs. We developed the case and the settlement through close cooperation and coordination between EPA and the Justice Department.

Finally, there is a good example of close cooperation between EPA and the Justice Department in a series of cases where citizens' groups or NGO's played a critically important role. We actively support the citizen suit provisions of our laws, and encourage working with citizens groups on enforcement actions. Three major U.S. cities: Atlanta, Birmingham and New Orleans, had sewage treatment systems that were seriously impaired, with raw untreated sewage in the streets and streams. Citizens' groups brought suit against Atlanta and Birmingham, and eventually we worked with EPA to join in those suits with the consent of the NGO's. We have now accomplished major settlements in both cases, with the cities undertaking major steps to improve their treatment systems, and major special projects to benefit the community by purchasing riparian lands and greenways to protect the river systems. In New Orleans, EPA and we brought the suit, which we settled for a program of New Orleans completely revamping its sewage piping, and a citizen's group played an important role in developing a wonderful special project.

These cases and initiatives were carried out under our programs that are informed by the 4 C's, and are the result of those approaches.

2 RELATIONSHIP WITH STATES

While it is not strictly within the topic of relationships between the environment ministry and the justice ministry, relationships between federal environmental and justice ministries on one hand, and state environmental and justice agencies on the other, is also an important component of environmental protection that depends, similarly, on the 4 Cs. Our federal environmental laws set a national standard for pollution protection, and provide that a state can assume primary responsibility for the pollution program if it adopts laws that

are at least as stringent as the federal laws. This assures all those who live in our country a certain level of environmental protection. Many states have assumed this responsibility through delegation of specific programs. The federal government continues to have enforcement authority in all cases, and our EPA has oversight responsibility over the states' activities. EPA enters into written partnership agreements with delegated states that include enforcement. Some states are vigorous in their enforcement efforts, and others are not. Some challenge our federal government, and some are cooperative.

Nevertheless, we have made it a point to try to work cooperatively with the states to better achieve effective enforcement and environmental compliance. Implementing the 4 Cs, we have another, shorter, list of examples that you may find useful.

First, I established a position in my office, a Counsel responsible for state and local environmental affairs. That person acts as a point of contact for state officials, and for our lawyers who are handling cases that affect states, to maximize the 4 Cs.

Second, we wrote a letter to each state Attorney General and each state environmental agency telling them about our Counsel and our commitment to communication and cooperation. We encourage the states to get in touch with us if they have a problem, and urge them to work jointly with us on enforcement actions.

Third, we notify the state attorney general or pollution agency before we file a civil enforcement action in that state, absent special circumstances. We use the opportunity to invite the state's participation in the case.

Fourth, in our civil docket, we are bringing more cases jointly with states. The state acts as co-plaintiff and works closely with our attorneys.

Fifth, on the criminal side, we have an especially noteworthy approach. With the United States Attorneys Offices, we establish task forces or committees, comprised of federal, state, and local, prosecutors and investigators, including EPA employees, that meet regularly to exchange information, develop leads, and use the most effective enforcement laws. The task forces and coordinating committee have been terrifically successful, and there is a strong criminal program in almost every jurisdiction that has a task force.

Sixth, senior members of my office and I participate in meetings with EPA and state environmental offices to exchange information and views, establish networks, and keep channels of communication open.

A good example that reflects the 4 Cs of communicate, consult, coordinate, cooperate, with both EPA and the states, is the final enforcement initiative I will mention the Mississippi River initiative.

The Mississippi River is a major river that flows from one of our northern states—Minnesota—the length of the country to the Gulf of Mexico. It is one of our national treasures, famous in literature—Mark Twain's famous novel *Huckleberry Finn* is set on the river—and in history and commerce.

Together with its tributaries, the Mississippi drains over 40 percent of the land in the United States, the second largest drainage of any river in the world. The river provides millions of people with drinking water, serves as the flyway for multitudes of the continent's migratory waterfowl, as a swimway for many fish species, and is a tremendous economic resource. The river is highly polluted, ending in the Gulf of Mexico with a hypoxic dead zone.

The Mississippi River initiative is a comprehensive enforcement effort to protect and restore the River, its tributaries and the surrounding communities. To protect the resources, we have begun a coordinated effort to pursue polluters to the farthest corners of the watershed. The Initiative employs the cooperative efforts of federal and state agencies: the Washington Department of Justice, the local United States Attorneys, EPA's civil and criminal enforcement offices in Washington and the EPA Regions, the United States Customs

Service, the United States Coast Guard, the United States Fish and Wildlife Service, the Federal Bureau of Investigation, and States—including state attorneys general, state environmental agencies, and other state and local agencies. We have had a series of meetings with all of these people—an expanded in-country network—to work on identifying violators, sharing information, and bringing enforcement actions. Together, these agencies have successfully brought criminal, civil and administrative cases to get violators to comply with the law and encourage others to comply as well.

To give you a flavor of the magnitude of this effort, Attorney General Janet Reno—for whom I am extremely proud to work and who loves the environment and natural resources—announced this past September the following results of our collective work over the prior year:

- 54 criminal convictions, over ten million dollars of criminal penalties and restitution, and over eight years of prison terms;
- 18 civil judicial actions worth over 18 million dollars in civil penalties;
- 93 administrative cases involving 104 facilities obtaining \$900,000 in civil penalties; and
- extensive injunctive relief to remedy past problems.

These cases address violations that included illegal dumping from barges, illegal filling of wetlands, spills of oil and other hazardous materials, sewer overflows, and discharges of chemicals such as cyanide, heavy metals, and hydrofluoric acid into the Mississippi River or its tributaries.

By combining forces across agencies at the national and subnational level, we are sending a clear message that if a company or person unlawfully pollutes the nation's premier river, that entity will be held accountable. Together, riding the 4 seas, we are moving towards accomplishing our shared goal of protecting human health and the environment and restoring this important national resource C the mighty Mississippi River.

3 CONCLUSION

I hope our voyage over the 4 seas of communication, consultation, coordination and cooperation has provided you with a picture of steps that can be taken to address some of the tensions and possible difficulties inherent when multiple agencies—at the federal/national and subnational levels, work together as our ministries of justice and of the environment do in the United States. I am moved by the work and commitment of the people at this conference, who literally cover the world, to the voyage of effective environmental enforcement.

In conclusion, in the field of environmental protection, we frequently refer to a Native American concept known as “seventh generation” decision-making. Seventh-generation thinking forces us to consider the future, to take into account not only our children and our grandchildren, but their children and so on, seven generations out. It compels us to take the long view. In everything we do to protect the environment, the Justice Department seeks the wisdom that comes from taking the long view. I look forward to our continuing voyage together, on the four seas, to the protection and preservation of our world's natural resources, and to a clean and healthy environment. Thank You.

