

They expect to be treated as productive, intelligent adults who know their jobs and have something to contribute." (Washington Post Editorial, August 17, 1993.)

Local 2050 has been encouraged by recent improvements in our relations with management. (See articles on transit subsidies, OGC move and OE reorganization.)

In order for the "reinvention of government" not to become a case of reinventing the wheel, EPA employees and their unions must be involved from the beginning. With the help of EPA employees, "reinventing government" will be an opportunity to increase the responsibility and effectiveness of EPA staff and eliminate bureaucratic and institutional barriers to effective environmental protection. But if "reinventing government" becomes an excuse to cut workers and contract out more work at an agency that is being asked to do ever more to protect the environment, it is bound to meet with stiff resistance.

### **DIETRICH'S LAW** by William Sanjour

Under federal law, the U.S. Environmental Protection Agency (EPA) may investigate but cannot prosecute violations of environmental law. Prosecution is handled by state attorneys, by a U.S. Attorney or, most often, by the Environmental Crimes Section (ECS) of the U.S. Department of Justice (DOJ). In 1990, rumors and occasional press reports were circulating about sweetheart deals between ECS and major polluters. At EPA headquarters, disquieting reports were coming in from EPA field criminal investigation agents, indicating that DOJ was dropping criminal cases against executives of Fortune 500 companies. Richard Emory, Acting Director of EPA's Criminal Enforcement Counsel Division, warned his superiors about the situation and was promptly ordered to investigate. What he found was shocking, even by the standards of the Reagan-Bush years. He documented at least 20 cases of sweetheart settlements by DOJ. Here are a few examples reported by Congressional investigators: Congressman Dingell, heading the House Subcommittee on Oversight and Investigations, said: "Disturbing trends emerge from these cases. First, there seems to be a disinclination to prosecute the responsible corporate officers of large corporations. In the case of Weyerhaeuser... the DOJ overruled both the EPA and the U.S. Attorney, and no individuals were charged even though the investigation showed that a Weyerhaeuser [paper] mill... had KNOWINGLY dumped toxic... waste... into a stream for at least a decade."<sup>1</sup> [Emphasis added.] Dingell went on to point out that, in contrast, a

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<sup>1</sup> John Dingell, "The Department of Justice Undercutting the Environmental Protection Agency's Criminal Enforcement Program," memorandum to the Subcommittee on Oversight and Investigations, Sept. 9, 1992. See also Dingell's opening statement to the subcommittee Sept. 10, 1992.

small businessman with a plant near the Weyerhaeuser mill was convicted of felony charges for illegally burying ten drums of dried paint. Dingell says further: "Another closely related trend that we are finding is the tendency to settle criminal cases by only having a corporation pay a monetary fine. By substituting fines for individual accountability, environmental crime becomes just another cost of doing business and the whole purpose of the criminal law, which is to establish individual responsibility, is undermined." He cites the example of PureGro, a subsidiary of the giant Unocal company. Corporate officials had KNOWINGLY allowed toxic waste to be dumped in an open field, poisoning farm animals and perhaps causing the death of one person. When caught, the company was willing to plead guilty to a corporate felony and pay a substantial fine, but the state attorney's office rejected the offer in order to pursue criminal charges against responsible corporate officials.

DOJ took over the case and allowed the company to plead guilty to one misdemeanor and to pay a \$15,000 fine. Case after case showed that corporate officials, who had knowingly allowed illegal dumping and other mismanagement of toxic wastes, and who could have been sent to prison as a result, were let off the hook by DOJ. Additional corporations named by Dingell and by a second Congressional report<sup>2</sup> were Chemical Waste Management, United Technologies, U.S. Sugar, Hawaiian Western Steel, and the Thermex Energy Corp. The most notorious case, however, and the one that received the most publicity, was the Rocky Flats nuclear weapons plant in Colorado, run by Rockwell International for the U.S. Department of Energy. This plant is extensively contaminated with plutonium and toxic wastes and will cost more than one billion dollars to clean up. A third Congressional report, from Representative Wolpe, Chairman of the House Subcommittee on Investigations and Oversight,<sup>3</sup> points out that, "Rockwell officials responsible for the facility knowingly violated the law over prolonged periods of time and aggressively resisted all efforts to force them to comply with environmental standards."

Among the violations mentioned in the report, which Rockwell officials were aware of, were: the burning of plutonium-laced hazardous waste in an illegal unlicensed incinerator for at least ten years as part of a phoney "plutonium recovery" scheme; illegal unlicensed storage of mixed toxic and so-called low-level nuclear

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<sup>2</sup> Jonathan Turley, CRIMINAL ENVIRONMENTAL PROSECUTION BY THE UNITED STATES DEPARTMENT OF JUSTICE [prepared for Rep. Charles E. Schumer, Subcommittee on Criminal Justice, House Committee on the Judiciary]. Washington, DC: National Law Center, George Washington University, Oct. 19, 1992.

<sup>3</sup> Howard Wolpe, THE PROSECUTION OF ENVIRONMENTAL CRIMES AT THE DEPARTMENT OF ENERGY'S ROCKY FLATS FACILITY (Washington, D.C.: Subcommittee on Oversight and Investigations, House Committee on Science and Technology, Jan. 4, 1993.

waste which leaked into nearby public waters; and false certification that the company was in compliance with government environmental standards. Representative Wolpe's report goes on: "Although the prosecution collected significant evidence of criminal wrongdoing on the part of high-level Rockwell officials, they did not indict them on either felony or misdemeanor charges. In fact, before they had even directed their investigators to finally compile the evidence that had been collected against individuals, and before they had formally reviewed that evidence, the prosecutors had established a 'bottom line' for settlement purposes that there would be 'no individual felony indictments.'"

However, Rockwell's notoriety is not due to the nature of its violations. Indeed, there are even worse among the 20 cases that Richard Emory initially investigated. Rocky Flats/Rockwell hit the front pages because the grand jury hearing the case rebelled and refused to go along with the DOJ cover-up. A Colorado reporter following the story wrote:<sup>4</sup> "[The prosecutor] refused to subpoena a witness jurors wanted to question. They directed witnesses not to answer questions posed by the jurors. They refused to help the jurors draft an indictment they wanted to issue. They told the jurors it would be 'inadvisable' for them to continue to meet. They refused to help the jurors draft a report.... There's a legal term for this pattern of conduct: obstruction of justice." Finally, the jurors drew up their own indictment, which the prosecutor refused to sign. The grand jury then drew up its own report, which it released to the public. At that point the FBI began investigating the grand jury, thus placing the federal government in the absurd position of preparing to prosecute grand jurors for pointing out the government's failure to prosecute criminals.<sup>5</sup> The FBI investigation continues today. The head of the Environmental Crimes Section of the Department of Justice was Neil Cartusciello. His name, and that of Criselda Ortiz, one of the supervisory lawyers working under him, appear frequently in the Congressional reports as two of the principal perpetrators of these sweetheart settlements. These reports show that, typically, when a case would be prepared against a big name polluter by a U.S. Attorney or a state attorney general which included criminal charges against individual corporate officials, Cartusciello or Ortiz would arrange to take over the prosecution and regardless of how much evidence had been amassed it would always be, in their view, insufficient.

By early 1992, reports of these goings-on had also reached Congressman Dingell (who is known as "the junk yard dog" of the House of Representatives), and his staff started investigating. EPA gave

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<sup>4</sup> Byron Abas, "Dingell's Justice Probe is Justified," WALL STREET JOURNAL (July 22, 1993), pg. A15.

<sup>5</sup> Jonathan Turley "Free the Rocky Flats 23," WASHINGTON POST Aug. 11, 1993, pg. A19.

Richard Emory the task of responding to the Committee's inquiries. The Committee staff did not know about the internal investigation that Emory had been conducting and Emory didn't particularly want to tell them, knowing the potential for embarrassment to the Bush administration. Nevertheless, when the direct question was put to him, he felt he had no choice but to tell the truth, thus providing Dingell with the material that served as the basis of the three Congressional reports and several Congressional hearings. As a reward for telling the truth, instead of lying and covering up (as ambitious bureaucrats are expected to do when the administration's reputation is at stake, especially during a presidential election year) Emory was removed from the position he had held for a year and a half and was ordered to stop all work connected with these "problem cases". In spite of numerous citations for efficiency and excellent performance over the years, he was treated like a pariah and reassigned to a meaningless low-level job. Meanwhile, Rep. Dingell held hearings in September, 1992. Dingell tried to follow up on Emory's revelations by questioning the DOJ officials, but DOJ stonewalled him. It became a campaign issue when then-Sen. Albert Gore claimed that, "George Bush and Dan Quayle are protecting their rich friends who own the smoke stacks and pollute our environment."<sup>6</sup> However, despite Al Gore's brave words, the stonewalling did not end with the election of Bill Clinton. Only when a Congressional panel voted to authorize subpoenas did Clinton's Attorney General, Janet Reno, decide in June 1993 to conduct a 12-week internal investigation of the Environmental Crimes Section. Meanwhile the FBI continues its investigation of the Rocky Flats grand jury, while neither President Clinton nor Janet Reno has responded to the Rocky Flats grand jury's request for an investigation into the government's actions.<sup>7</sup> Meanwhile, Neil Cartusciello and Criselda Ortiz are still in their jobs. The man who removed Richard Emory, his boss, Earl Devaney, a retired bodyguard for Dan Quayle, is still in place. It didn't take a 12-week internal investigation to remove Dick Emory, the only person punished in this whole scandal, who is now spending more money than he can afford in legal fees to try to restore his reputation. An EPA whistleblower once formulated "Dietrich's Law,"<sup>8</sup> which says, "No one in EPA ever gets sent to jail, or loses his job, or suffers any career setback for failing to do what the law requires, and the corollary, many people ruin their careers in EPA by trying to do what the law requires."

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<sup>6</sup> Michael Isikoff, "Reno Probes Environmental Crime Unit," WASHINGTON POST (June 16, 1993), pg. A12.

<sup>7</sup> Abas, cited above in note 4.

<sup>8</sup> William Sanjour, WHY THE EPA IS LIKE IT IS AND WHAT CAN BE DONE ABOUT IT (Annapolis, Md.: Environmental Research Foundation, 1992).