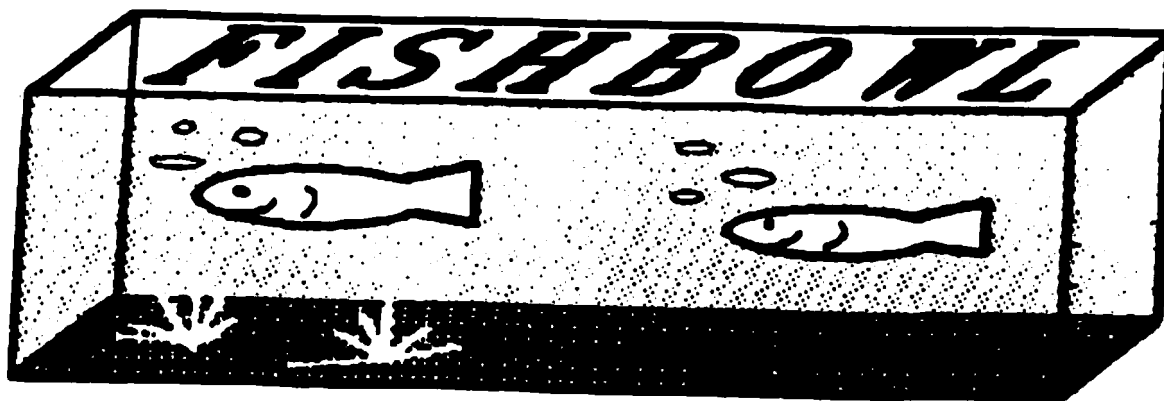


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# INSIDE THE



**NATIONAL FEDERATION OF FEDERAL EMPLOYEES  
LOCAL 2050**

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***"We must conduct our affairs at EPA as if we worked inside a  
fishbowl ----" William Ruckelshaus, former Administrator,  
U. S. EPA***

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**NFFE LOCAL 2050 -- JOIN TODAY**

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**Editorial Policy:** Articles from any source are considered for publication by the Editorial Board. Items should be submitted on disk to UN-200. Articles indicating authorship reflect the views of the author, not necessarily those of Local 2050. We do not publish anonymously submitted articles, but when requested, may conceal the author's identity.

**CORRECTION:** The Protecting Integrity & Ethics pamphlet recently distributed to members should have stated that 2050 is the Professionals' Union at EPA, not the "EPA Scientists Union". Under invited speakers, Dwight Welch is President-Elect of Local 2050 not "President", and the Local should be listed as "2050" not "250". Local 2050 did not have opportunity to comment on the draft before it was printed by PEER.

News:**TRANSIT SUBSIDY BREAKTHROUGH**

Dwight Welch and James Handley met with EPA management on September 15, regarding the transit subsidy. EPA management has expressed willingness to implement a transit subsidy program in the near future. The only issues remaining are the specific amounts of the subsidy and the exact dates for implementation, which are dependant upon the FY '94 budget.

Local 2050 Vice President Freshteh Toghrol obtained information about how the program is being implement at NIH and at the Patent Office, which were used to develop our proposal for implementation at EPA. Although the program's implementing legislation contained a sunset provision ending the program this year, our contacts on Capitol Hill indicate that it will be renewed. Thus, we expect that we will soon be able to provide employees with incentives for doing the environmentally correct thing -- riding Metro or carpooling instead of driving to work alone.

In order for the program to cover all forms of public transportation we need information about the services our bargaining unit members use to commute. Fishbowl readers can help with implementation of this plan by notifying us of what public transportation companies you use. (We already have information about Metro, Virginia and Maryland Van Pool Associations, Virginia and Maryland commuter rail, and Ride-on buses.)

**NEW DAWN IN LABOR RELATIONS**

by Bill Hirzy

A new day seems to have dawned in labor-management relations. NFFE is now dealing with Jim Jackson, who reports directly to Chief of Staff Kathy Aterno. Although we also dealt with Jackson in the bad old days, then he was reporting through four layers of anti-union supervision, so relations with the top level of the Administration were filtered by the bureaucratic structure.

The three meetings of the Labor-Management Committee since the new relationship was born have made great strides. Local 2050 and AFGE Local 3331 will be meeting with Kathy Aterno personally every other month -- access unheard of in previous Administrations. Negotiations on the transportation subsidy are progressing well (see related story); negotiations on generic move criteria (which will facilitate moves and guarantee employee needs are met) began a week ago. An experienced Union representative, former President Bill Coniglio is devoting his considerable talent and skill to these negotiations.

Bargaining over a program to train all H.Q. employees and managers in the role of the two unions is set to resume later in September.

(These discussions were begun in 1987, but were abandoned in 1988 under Charles Grizzle's direction.) Getting the message out on what, why and how the unions should operate will be a huge step forward in overall employee relations; if this training had been available four years ago, much of the grief employees suffered, including poor air quality and oppressive management, might have been avoided.

The unions' role in Total Quality Management program will also be the subject of bargaining to open this month. Other topics covered at the LMC meeting included the need to reverse the erosion that has occurred over the past several years in honoring agreements between Local 2050 and management. One example is the refurbishing of offices in several areas of Waterside Mall that is proceeding without the required bargaining. We see the hand of old line, anti-union managers at work here, and we intend to bring that to a halt.

The phase-down in GS-14/15/SES positions is also on the agenda. Local 2050 is meeting with several offices on their implementation plans, but we need to have a Headquarters-wide program. We cannot effectively bargain with fifteen different offices, and this would be inconsistent with the Local's representational authority to bargain for all Headquarters professionals.

Complaints about the Diners Club program have been streaming into the Union office, and these have been raised with Jim Jackson in the LMC. For starters, we've asked the Administrator to write to the financial management office asking them to stop harassing EPA employees to pay Diners Club bills before they've received reimbursement. We also want to reopen negotiations on the Diner's program as a whole.

For information on any of the above topics, please call the Union office at 260-2383.

## **OE REORGANIZATION TASK FORCE REPORT PRESENTS FOUR OPTIONS TO BROWNER, HYBRID OPTIONS BEING DEVELOPED:**

The Office of Enforcement reorganization task force report, released on September 3, developed four organizational options for reorganizing the enforcement functions at EPA. The report outlines the pros and cons of each option, but does not make specific recommendations. NFFE Senior Vice President, James Handley has been attending many of the task force meetings and provided comments on the report, conveying local 2050 members' concerns. These included the desire by Office of Mobile Sources and Superfund attorneys to be included in the reorganized EPA, the need for the task force to look more broadly at DOJ resources and Regional organizations and to consider carefully the impact on staff of implementation of each proposal.

The straw proposals committee initially recommended the industry "sector" approach which caused much concern among staff about the problems with implementation and the potential for undue influence by industry -- concerns which were conveyed to the Task force. Subsequently, the task force decided not to make recommendations among the options.

The four approaches in the task force report are:

**The Media approach**, which was modified from the original proposal to include the multimedia function as a separate office in order to increase its clout and ability to work with other offices. (The exact location of this office was described as an "optics" issue.) Nancy Marvel, Region 9 Regional Counsel suggested to the Task Force that the multimedia office have authority to handle litigation without going through the media offices.

**The "Bio-resource" approach** (formerly the Geographic approach) would have divisions for coastal areas, land resources and watersheds, urban areas, and remediation response, as well as criminal, NEIC, intergovernmental activities (including Federal Facilities and International.) Advantages include integration of programs, melding of professional disciplines, compatibility with regions, and with other agencies, most notably Interior. Dave Ullrich (Deputy R.A. for Region 5) commented that this approach offers increased satisfaction to staff who, in his experience, identify with cleaning up a particular resource area. Disadvantages include difficulty in drawing lines between bio-resource areas, duplication of media expertise, and possible overlap with regional functions. Bruce Diamond quipped that although the approach is creative, it still "crashes at the end of the runway," an assessment apparently shared by many.

**The Sector approach**, designed to provide multi-media enforcement for various industry sectors, breaks the AA-ship down into offices for Federal, Energy and Transportation, Manufacturing, along with divisions for Criminal, NEIC, Site Remediation (including Superfund and UST).

**The Functional approach** would divide the AA-ship into functions for Criminal, Federal, Site Remediation, Enforcement Policy, Compliance Assurance, and Litigation and Administrative action.

Unresolved issues for all four options include whether Mobile Sources would become part of OE, and whether the "applicability determination" function which occurs both in interpreting regulations and in deciding to enforce, is properly an enforcement function. There may also be some further refinement of how "Site Remediation" including Superfund, will be structured.

After an initial review of the options, the Administrator has asked the straw proposals committee to develop hybrids combining elements

of the four proposed approaches and to analyze how particular cases would be handled under the various options. The Administrator was originally scheduled to make initial decisions about the reorganization by September 20, but given her request for additional options, there may be some change in the schedule.

## **GENERAL MEMBERSHIP MEETING FEATURES "PEER" PRESIDENT**

Jeff DeBonis, Executive Director of Public Employees for Environmental Responsibility (PEER) was one of two guest speakers featured at last month's general membership meeting. Jeff explained the genesis of his organization, which was inspired by Local 2050. Jeff emphasized the need for constant pressure from working-level employees to keep environmental and land management agencies on an ethical course. Having good people at the top helps, of course, but political cycles are a fact of life. We need to get as much solid protection for ethical practice of our professions in place as we can right now. As employees of environmental agencies and environmentalists, we also must keep encouraging those now in authority to "do the right thing" in the face of never-ending pressure from the exploiter-developer community. (See the related article in this issue on the Protecting Integrity and Ethic (PIE) Conference set for November 5 and 6.)

Susan Laing, formerly of "Project 1992" re-named the "new building project," gave an update on EPA's new headquarters prospects. (See "Federal Triangle" article.) She reports that the Federal Triangle Building is still a possibility, subject to the political winds.

The membership voted to endorse the Union's involvement in the Early Environments Child Development Center's program to expand accessibility to all EPA Headquarters employee. Reports were given on progress in negotiations on a major move of Office of General Counsel employees, the Office of Enforcement reorganization, and completion of the NAS fluoride assessment document.

The first reading of a proposed amendment to the Local Constitution was made. The amendment would make it grounds for removal from office for an Union officer to miss three consecutive meetings or seven meetings in total of the Executive Board without good cause. The final reading and adoption of the amendment will be up for vote at the next membership meeting, September 23, in north conference room 13 at 1:30 p.m.

## **FEDERAL TRIANGLE BUILDING FOR EPA ON HOLD, DELEGATE NORTON CONTINUES TO OPPOSE EPA'S OCCUPANCY**

by James Handley

At the August local 2050 membership meeting, Susan Laing, of the new building project, reported that the federal triangle building is still a possibility for EPA. She noted however that the decision had become a political one, with Delegate Norton very opposed to EPA occupancy of the entire site. OMB director Leon Panetta ordered an economic analysis of the options and this did not tip the scale strongly one way or the other. Panetta who has been meeting with Congressional leaders about this, was asked by the White House to make a recommendation, which was due in June. It is now expected early in the next Congressional session.

Laing reported that other options for EPA still exist, including leasing the Portals building behind Agriculture, but OMB favors ultimate government ownership rather than leasing. Local 2050 board members asked Laing about measures to assure better indoor air at any new EPA facility, and Laing reported that whatever site is chosen, there will be sensitivity to indoor air issues. We will need to keep up the pressure and become involved as design decisions are made.

## **BROWNER INVITED TO "PIE" CONFERENCE**

The EPA Administrator is among the officials and activists invited to the Protecting Integrity and Ethics (PIE) Conference to be held in Bethesda this November. Jeff DeBonis, Executive Director of Public Employees for Environmental Responsibility (PEER), the invited Administrator Browner in order to create a "feedback loop" between EPA management and employees. By encouraging and empowering EPA employees to speak out against fraud, waste, and abuse and to stand up for sound science-based resource management policy, NFFE and PEER hope to assist the Clinton Administration in "reinventing" government in a way that means real environmental protection.

So far, Jim Baca, Director of the Bureau of Land Management, Dan Beard, Commissioner of the Bureau of Reclamation, and Jim Lyons, Assistant Secretary of Agriculture for Natural Resources and Environment have confirmed that they will appear at the conference. Mr. DeBonis is also working toward getting EPA employees from EPA Headquarters and all 10 regions to participate in the conference.

## **NAS Fluoride Report Continues "Politically Correct" Science**

by Bill Hirzy, Ph.D.

An August 18 report by the National Academy of Sciences is the latest chapter in a long history of "politically correct" science on

fluoride risks. Local 2050 has fought the institutional distortions of science that have characterized the federal government's actions on fluoride rulemaking activities since 1985 when an EPA scientist came to the union complaining that in order to keep his job, he was being forced to write things he did not believe were ethical.

In developing last month's report titled "Health Effects of Ingested Fluoride," NAS did not include on the assessment group such active researchers in the field as Drs. A.K. Susheela, John Lee, John Colquhoun, Mark Diesendorf, and Edward Czerwinski, and instead chose from grantees of the National Institute of Dental Research -- a major promoter of water fluoridation in the government.

The NAS press release and oral presentation used "spin control" to minimize the perceived health effects of dental fluorosis, a condition in which teeth become progressively damaged, beginning with slight mottling of the enamel and progressing to staining, pitting, cracking and breaking. The report characterized the EPA standard of 4 ppm as "appropriate" while admitting that it would probably result in severe dental fluorosis in a small fraction of the population. NAS spokesmen and the press release stated that the question of whether dental fluorosis is an adverse health effect, "is one for the regulatory agencies to decide," leaving the public with the impression that no conclusions had been reached on this issue, and that it was not important.

But at a meeting of the NAS assessment committee which I attended in May 1992, the consensus of the members was clear: severe dental fluorosis (the staining, pitting, and cracking stage) is an adverse health effect. Last month when I asked NAS representatives why they had altered their position, Committee Chairman Dr. Bernard Wagner, said that the consensus had not changed. He revealed an equivocal statement buried deep in the report to the effect that dental fluorosis severe enough to affect food choices, etc. is a serious problem.

Thus, NAS report admits -- but avoids alerting the public to the fact -- that the Committee expects adverse health effects in some people at what it calls the "appropriate" level (4 ppm) of fluoride in drinking water. This logical and ethical inconsistency seems to have caused little concern to the NAS Committee, but it probably will cause serious problems for the maintenance of the "appropriate" 4 ppm standard by EPA. The Safe Drinking Water Act requires EPA to set enforceable standards that protect against adverse health effects with an adequate margin of safety. If NAS expects the 4 ppm standard to result in induction of severe dental fluorosis in some people, then the language of the statute compels that the standard be abandoned.

The NAS report illustrates why EPA chose to contract out its fluoride risk assessment rather than give the job to sworn-to-duty Civil Service scientists. An unbiased risk assessment might lead to



publicity undermining the Public Health Service's long-standing program to promote fluoridation of U.S. public water supplies. In the broader context, EPA's practice of "shopping" for the scientific results it seeks is offensive to EPA scientists because it erodes the integrity of science and deprives them of the opportunity to do this kind of important work.

## **NEWS FROM EARLY ENVIRONMENTS CHILD DEVELOPMENT CENTER**

by Bill Hirzy

There are eleven enrollment openings at Early Environments. Three openings each exist in the 15-20 months and 3 1/2 - 4 year old classes, and five in the 4 years plus class. Early Environments provides a loving and high quality development environment for children. (My 3 year old son has been there for over two years and loves it).

After the article in last month's issue asking for donations to the Center's scholarship fund, money has started to come in. The Center, and I (as fund raising chairperson), thank you very much. Please keep it up. We continue to push hard to expand the scholarship program to make the center more accessible to all EPA employees. The support that EPA employees have shown through the Combined Federal Campaign, bake sales, and other fund raisers is greatly appreciated, and without it we could not provide the level of scholarship support we now have.

At present, among federal child development/care centers, we are about mid-range in price and in providing scholarships. Some federal centers provide no scholarship support at all, while Early Environments has about 8% of its children on scholarship support. We would like very much to expand this by several fold.

With this special need in mind, and with the vote of endorsement by the Union's membership at the August 26 meeting, I ask you to make as generous a contribution as you can to Early Environments when the Combined Federal Campaign season opens next month. In advance, thanks on behalf of the Board.

## **EXPERT TESTIMONY OF LOCAL 2050 PRESIDENT-ELECT WELCH SAVES FOGGER VICTIM FROM PRISON**

by Dwight Welch

Bad luck seems to have come in threes for Allan Paul, 12 year Navy man, and Texan. Already under the stress of an impending divorce, Mr. Paul's second brush with bad luck came when he set off three foggers in his house trailer to kill fleas. He placed one in the

master bedroom, a second in the kitchen-living room area, and a third in the back bedroom and associated bath. Following the labeling directions, Mr. Paul closed all doors and windows, then went to visit his soon to be ex-wife for dinner. After dinner, Mr. Paul fell asleep in front of the TV and didn't return home until the early hours of the morning. He found his home badly trashed out by the fire which had set his bed on fire. To Mr. Paul's horror and disbelief, his call to the fire department later precipitated a charge of arson, for which Mr. Paul faced 2-10 years. The fire marshall's office in Virginia Beach based its charges on burn patterns characteristic of arson and on a single sample which revealed a petroleum distillate spike in the Gas Chromatography-Mass Spectrometry analysis. These characteristics are also common to fogger fires due to the heavier-than-air propane/butane/isobutane propellants and to the petroleum distillates present even in water based pesticides. The prosecutor argued that Mr. Paul poured an accelerant such as lighter fluid on his bed and set it on fire.

Mr. Paul's lucky break was to catch the "STREET STORIES" piece on the arson-fogger connection. Mr. Paul's attorney asked me to be an expert witness. The trial was to be held in nearby Virginia Beach, so I agreed to testify pro-bono. There was little time to visit the beach, however, my time was mostly spent investigating the accident site and waiting in Virginia Beach's toxic (very sick building) courthouse.

At the accident site I discovered two very critical pieces of evidence. In a bathroom at the opposite end of the trailer, I noted plastic materials such as the shower curtain had melted from a heat source. Whatever fire which burned there, did not burn very long as the trailer was tightly sealed and the oxygen was soon consumed. In order for the bed fire to have melted plastic in the bathroom, the heat would have had to travel the entire length of the trailer, then in defiance of the laws of physics, made a right angle turn into the bathroom. A simpler explanation was that the fogger located near the entrance to the bathroom had burned/exploded.

The clinching piece of evidence pointing to foggers as the culprits was the dry, soot-covered toilet bowl. I found the water evacuated from the bowl and soot below the usual water line, which meant that the water had been pushed out of the toilet bowl by an explosion prior to the burning of the bed, the source of the soot.

I testified last in the trial, and according to spectators with whom I spoke after the trial, was cross-examined me much more harshly and thoroughly than previous witnesses. My testimony included a demonstration of EPA's flame extension test, and a mini-drum test, which together demonstrated why the fogger was not classified as flammable (the spray put out the flame) notwithstanding intense flammability of the propellants (a short burst into a jar produced an intense orange flame after a couple of seconds passed to let the water settle.) When the prosecutor asked me if I had ever performed

such a test in an actual building, I scored bonus points with the jury by responding, "No, sir, I wouldn't want to be charged with arson," which broke the courtroom into laughter. The result of the trial was an acquittal for Mr. Paul -- and hopefully an end to his string of bad luck.

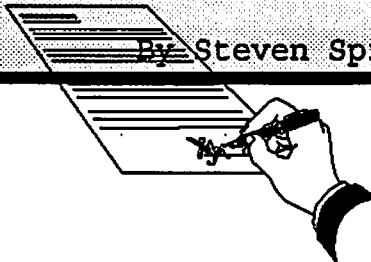
#### SPUDZOOKA--NEW WEST COAST FAD FUELED BY AEROSOL PROPANE/BUTANE

While Virginia Beach's Fire Marshall is still plodding along in the dark regarding the dangers of aerosol propellants, young people in Oregon are utilizing these propellants in the latest, quite dangerous fad. "Spudzooka," a plastic mortar tube type contraption, fires a potato dropped into the tube, a distance of several blocks. The fuel for the Spudzooka is the aerosol propellant from products such as hair spray. Oregon officials are rightfully concerned about this dangerous new fad.

#### Membership Services:

### NEGOTIATIONS

By Steven Spiegel



### OGC MOVE: INITIAL AGREEMENT REACHED

Despite the fact that management waited until the last minute (August 4, 1994) to notify NFFE of the impending move scheduled for September 2, 1993, NFFE 2050 was able to solicit comments from the a group of Office of General Counsel staff attorneys and bargain on their behalf prior to their move to Rosslyn. Chief Steward Steven Spiegel, together with President Bill Hirzy, provided the OGC attorneys with copies of management's move package, solicited their comments, provided a summary of those comments to management, held two meetings with the staff attorneys and later submitted a proposal to management which had been earlier provided to the bargaining unit employees.

Although management has planned the move for over a year, arrangements for basic services and facilities had not been made at the time NFFE received notice of the move. Additionally, OGC had engaged in a TQM process involving management, staff and professionals, which had developed a set of principles governing the move, but which management then inexplicably declined to adopt. The Union was success in negotiating the outright adoption of the majority of these principles

and was able to defer negotiations on the principle of Divisional rotation to the new office space pending the confirmation of the new General Counsel. Steve Spiegel and Bill Hirzy were able to negotiate provisions for reasonable transportation, security, carpooling, services, equipment and legal resources for the OGC staff to perform their jobs. The Agreement also addresses professional development for the OGC attorneys, the provision of "commuter" workstations at Waterside and policies on Comp. time and Health Unit Services. The Agreement provides for additional negotiations following review of several items, in order to address any inadequacies in the current arrangements. The Agreement will shortly be sent to the membership of NFFE 2050 for ratification.

This Agreement marks a significant improvement in labor relations between the Union and Management. Special credit is due to Jim Jackson of Labor Relations and Craig Annear of OGC for their cooperation in negotiating the Agreement. Despite the improvement, hints of the old management thinking surfaced the very next morning after reaching agreement, when the Agency called to inform us that part of management was reneging on the provisions of the agreement concerning security. Following a flurry of calls, a suspension of the move, and further negotiations, including intercession by the Administrator's Office, the Agreement-in-Principle was substantially returned to its prior state to include a security guard for the employees in the Rosslyn office building.

## **AWS NEGOTIATIONS TO RESUME**

The Alternative Workspace at Crystal Station is the only EPA office space designed to accommodate chemically-sensitive EPA employees. Constructed nearly three years ago, the space is still not officially open due to stalled negotiations on an agreement governing the office space. Prior negotiations had reached substantial agreement on most points but reached an impasse despite attempts by NFFE and AFGE to conclude the negotiations. Now, with new administrations in both EPA management and the Unions, our recent requests to resume negotiations have been well received. We anticipate that negotiations will resume in the coming weeks and that an agreement will be forthcoming.

Employees should note that the NFFE-negotiated January 1989 amendment to the collective bargaining agreement is the only legally controlling document for being approved for alternative workspace. (Management guidance is not legally binding.) You must first be approved for alternative workspace, which can include working at home, before you can work in the AWS at Crystal Station. Copies of the current draft agreement for AWS at Crystal Station were made available at the August membership meeting. For further information, please contact Steven Spiegel at 305-8507.

## **QUIET ROOM A QUIET VICTORY FOR LOCAL 2050**

A "Quiet Room", where one can meditate, and get away from stress, has, for quite a while, been the pet project of Roger Connor. The recent publication of Roger's article on the subject in INSIDE THE FISHBOWL, however, helped make the project a reality. The room, located at M2117 is open on an interim basis pending an asbestos removal on the second floor of WSM. Kudos to Local 2050 member Pat Hilgard for all of her work on the project.

## **LACTATION ROOM PLANNED**

A group is being formed to address issues related to new/nursing mothers at EPA Headquarters. Possible outputs include standardized management procedures regarding mothers' needs and (a) designated Lactation Center(s). Please contact Pat Hilgard (TS-778) at 260-3491 or FAX 260-1216.

## **LOCAL 2050 MEMBERSHIP INCREASING**

During the month of August, membership increased by 6 new members.

## **EXECUTIVE BOARD WELCOMES PAT SIMS**

Pat Sims, who recently joined the Toxics Litigation Division, has replaced outgoing Secretary Chip Fletcher. As previously reported, Mr. Fletcher had to leave EPA for Florida due to a family illness. Ms. Sims, a longtime EPA employee is an advocate for women's rights and is particularly interested in pursuing health and safety issues.

## **UNION OFFICIALS HELP MINIMIZE PESTICIDE EXPOSURE THROUGH PARTICIPATION IN "PEST-QAT"**

Health and Safety Officers Kirby Biggs of AFGE Local 3331 and Dwight Welch of NFFE Local 2050, have helped prevent employees in Crystal Mall Two from being exposed to massive dose of pesticides.

Ironically, CM-2, home to much of the Office of Pesticide Programs, has been suffering from an unusually large number of cockroaches which seemed to appear following pesticide applications on non-EPA floors of the building, which probably drove roaches to EPA floors. Mr. Biggs and Mr. Welch joined a QAT team of employees assembled to deal with the problem.

The initial reaction, to "nuke" the little critters with a heavy-duty pesticide, gave way to reason when an eloquent plea by Kirby Biggs

persuaded others that EPA should set an example of the right way to do it. Invoking the Collective Bargaining Agreement, the group shifted emphasis from "nuking 'em" to an integrated pest management (IPM) strategy. Both Mr. Biggs and Mr. Welch advocated using water-based rather than solvent-based pesticides, "biorationals" over carbamates and organophosphates, and crack and crevice treatment over area treatment. Interestingly, the group rejected both boric acid and pyrethrums, often recommended in IPM strategies. Pyrethrums were rejected because many people are allergic to chrysanthemum-based pesticides. Boric acid was viewed as messy, inefficacious, and is not generally used by pest control companies.

Despite an invitation, the Charles E. Smith Companies, declined to send a representative to the meeting, and indicated their reluctance to use products not listed on the GSA approved list.

Significant parts of the IPM program in CM-2 are notification of employees as to what will be applied and when, as well as education of employees to reduce the food and water available to pests at employees' work stations. The QAT suggested that the control project be linked to an "Operation Clean Up" type exercise and that employees be issued small portable vacuums (such as Dust Buster) to clean up crumbs and the like from places normally not reached by cleaning crews.

#### Legislative Update:

### **Indoor Air Bill Proposes Regulatory Authority For EPA**

Rep. Joseph Kennedy (D-MA) introduced an amendment to the Public Health Service Act, HR 2919 on August 6 which would authorize, without mandating, EPA to regulate indoor air quality. The agency would be authorized to "promulgate a national strategy to reduce human exposure to indoor air pollutants" within a two-year time frame. EPA would be delegated the responsibility for creating a list of potential pollutants, developing guidelines for identifying and controlling hazards, accrediting and certifying contractors, raising public awareness, and conducting research on indoor air quality. Unlike a similar measure introduced earlier in the year by Kennedy, HR 2919 only addresses EPA's role in the control of indoor air pollution, but does not emphasize research and development.

#### Opinion and Commentary:

### **"Reinventing Government" at EPA**

by James Handley

The newspapers are filled with discussion of Vice President Gore's proposals to "reinvent government." Many of the recommended steps

will undoubtedly help us better fulfil EPA's mission. For instance, the involvement of GSA in leasing our office space has made landlords unresponsive to EPA's needs because EPA has had very little leverage over the landlords since GSA, not EPA, signs the rent checks. Giving agencies the authority to handle their own leases would make landlords more responsive, and give agencies much more flexibility to obtain appropriate accommodations. Procurement and other procedures that are notoriously inefficient also seem like areas where reform is much needed.

On the other hand, the focus on cutting federal workers seems very misguided, especially at EPA. EPA's statutory mandates have increased drastically in the last decade, and Congress and U.S. citizens are demanding more, not less, in the way of environmental protection. If more is to be done to protect the environment, the work can be done either by EPA employees or by contractors. In many programs, the bulk of the work is already done by contractors. For instance in Superfund, approximately 90% of the fund money is spent on contractors. This means that a small number of EPA employees are responsible for overseeing ever larger amounts of contract dollars. The results have been notorious contractor abuses for which Congress routinely criticizes EPA and which waste billions in tax dollars.

Rather than just cutting federal employees across the board, a more constructive approach might be to make decisions about which federal programs are to be scaled down (the military comes to mind) and to focus on cutting federal employees and contracts in those areas. In areas where there is a consensus that more needs to be done, such as with environmental protection, it seems senseless to cut federal employees only to replace them with more expensive and undersupervised contractors. Obviously there are areas where cuts can and should be made, even at EPA, but to talk about a net reduction in EPA employees is absolutely absurd when the public demand for our services is increasing and can only be expected to escalate.

#### The Union's Role:

Mr. Gore's National Performance Review has recognized that federal employee unions have a role to play in "reinventing government," and the draft plan recommends that President Clinton issue an executive order creating a National Partnership Council to propose "a framework for a new era of labor-management relations" to develop statutory changes needed to encourage "joint problem-solving approaches for managers, supervisors and union officials." (Washington Post, Federal Page, Sept. 2.) This is an encouraging beginning. AFGE President, John Sturdivant, has called for

"a total change in the culture of the federal workplace. Unions are now viewed... as adversaries... In order to move to a high-value, high-productivity workplace, unions must be full partners. Employees are not interested in "input." They are not interested in being the subjects of "outreach" efforts or "consultation."

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).