



Department of Justice

"OUR BLUE PLANET: A LAW ENFORCEMENT CHALLENGE"

KEYNOTE ADDRESS

BY

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TO THE

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I am delighted to join you here in New Orleans this morning to open this fifth conference on environmental law enforcement. I know you're set for some hard-working sessions, over these next few days, but the first thing I want to do today is to recommend -- next time you're in Washington -- that you take in a movie.

The movie is called Blue Planet, and it is now playing to packed houses at the Air and Space Museum. Most of the footage was shot by our astronauts, from way out in space. They got some spectacular shots that capture how beautifully blue Earth is when you see it with Heaven's Eye. I give it four stars, because it so graphically shows why we are all working so hard to preserve the ecological health of our planet.

What make the planet so blue, of course, are its oceans -- pure azure over two thirds of Earth's surface. But there are some other, more dangerous colors you can also spot in this film -- picked up by these same astronaut cameras. Murky greys at river mouths, dark smokes from burning forests, other man-made palls rising from our planet -- visible even at that tremendous distance, from the window of a space capsule.

These are the stains of pollution. In some cases, what they also are -- from your and my point of view -- are evidence of a crime.

A great crime with many victims -- altogether, every affected human being among Earth's five billion people. It is a crime against the fragile environment, and for such depredation, some must be held accountable. The plain truth is that humankind has a growing responsibility for the present upkeep and future condition of this blue planet. We are not here as mere loiterers. Either man -- conscious of nature -- remains an inhabitant, or man -- careless of nature -- turns into a trespasser.

Luckily -- as you will vividly see from the film -- our planet is still far more blue than any other color. That is where your good work comes in -- through enforcement of our environmental laws, put on the books to stop trespasses against nature. These days -- as the President observes -- those who foul the earth, quickly run afoul of the law.

I

I can think of no more appropriate moment to voice that succinct forewarning to all polluters than now, on the very morrow of the Clean Air Act Reauthorization, passed just this past November. Much of this legislation came from President Bush's initiatives, and I am proud that we fought to advance environmental safeguards that have been stalled in Congress for over a decade.

Several of those safeguards are truly innovative -- for example, the new emission trading system that utilizes market incentives to reduce sulphur dioxide pollution, so often linked to acid rain. We count on this market approach to achieve significant reductions in acid rain -- at a far cheaper rate, and without sole resort to sanctions. But we are also pleased that the Clean Air Act strengthens all necessary sanctions for environmental law enforcement -- both criminal and civil.

These have consistently been this Administration's priorities -- to establish felony-level sanctions for knowing violations and to enhance civil penalties.

And I will also add, these have long been priorities of my own. I began seeking stronger environmental law enforcement back when I was United States Attorney for Western Pennsylvania in the early 70s. Hazardous industrial waste was being indiscriminately dumped into the Monongahela River. We had to dust off the old Refuse Act -- from back in 1899 -- to establish legal grounds for a first conviction against the Pennsylvania Industrial Chemical Company, ultimately upheld in the Supreme Court.

Later, as governor of Pennsylvania, I kept pressing for protection of the environment. We contributed \$10 million to reduce pesticidal run-off into the Chesapeake Bay, and spent nearly \$1.5 billion on sewage treatment plants. But that was

largely remedy, not rule of law. Now we have established a strong working relationship with state attorneys general to push environmental law enforcement to new cooperative limits. But it wasn't until I returned to the Department of Justice that I found in place entirely separate enforcement sections to enforce environmental laws. It was like arriving in a strange environment -- some dark precinct after midnight -- and finding the first footsteps you hear are of a cop actually on the beat.

You have been helping the good cops since the 70s -- all along acting as prosecutors for cases referred chiefly by the EPA. But formal focus on these crimes against the planet began in 1982, and I think it's only fitting that, almost a decade later, we take a look at the record of our environmental law enforcement -- both criminal and civil.

II

Here is how that record reads, on the criminal side. Since the founding of the Environmental Crimes Section, our prosecutors have returned a total of 761 indictments, resulting in 549 convictions. Over \$57 million in penalties, restitutions, and forfeitures have been assessed, and significantly, more than 348 years of jail time have been imposed.

But what is more telling than this impressive record of convictions is its rising pace. The vast majority of these indictments and increased penalties were obtained in the last two years. In Fiscal Year 1990, we indicted 33% more defendants than the previous year, and our rate of conviction was also at a record high of 95%. And 55% of those individuals convicted of environmental crimes were sentenced to prison.

Nor were these prosecutions levelled against small-fry polluters. We brought actions against all types of businesses -- from shipbuilding to dry-cleaning -- but most especially, against companies engaged in the transportation, storage, treatment, or disposal of hazardous waste. Most indictments over the past year named corporations, along with their top officers. These add to the number of large, Fortune 500 companies we have charged over the past decade -- such as Exxon, Texaco, Nabisco, Ralston-Purina, Keebler, W.R. Grace & Co., Ashland Oil, Orkin Exterminating Co., Ocean Spray Cranberries, and Pennwalt.

Generally, these crimes were either rogue acts in direct violation of environmental regulations -- so-called "midnight dumping" -- or surreptitious maneuvers that undermine the regulatory system through concealment or fraud. Sometimes both. In addition, there was also criminal negligence -- in which careless disregard of environmental regulations caused potentially disastrous results.

A variety of environment statutes apply here, some of which you have already heard Assistant Attorney General Dick Stewart discuss in detail. But let me cite two of those "million-dollar cases," from the past two years, to show how we are moving ahead to impose penalties that are commensurate with the magnitude of the crime but also restorative to the health of the planet.

First, consider the flagrant offenses of a Wyoming chemical blending operation, Unichem International, which sells its product to oil field operators. Unichem generates ignitable and hazardous chemical wastes, which the company routinely stored in 55-gallon drums without a permit, as required by the Resource Conservation and Recovery Act (RCRA).

But here was the company's real ploy. Unichem illegally had the contents of these drums vacuumed into waste water trucks. Between 1985 and 1987, these trucks transported their hazardous contents -- without manifests or RCRA permits -- to various unpermitted facilities in Wyoming, and even as far away as New Mexico. And there they dumped their dangerous chemicals on surface impoundments, disposing of this hazardous waste as if it were only harmless rinse water. By deliberate deceit, Unichem added one more toxic taint to our blue planet.

For these illegal acts, Unichem received the highest penalty to date for RCRA violations -- a fine of \$1.5 million on three

felony counts. But further sanctions are designed to prevent any future pollution. The company was also sentenced to an unspecified period of probation, during which its engineers must conduct an environmental audit -- the kind of accounting-for-the-future that Dick Stewart described earlier -- at its three blending facilities. Unichem must then implement all reasonable recommendations made through the audit to ensure compliance with RCRA, Superfund and the Clean Water Act.

The second case happens to bring our long fight -- and some of my own efforts -- against environmental crime around full cycle. On March 9, 1989, in the Western District of Pennsylvania, we obtained the largest criminal penalty ever for Clean Water Act violations against Ashland Oil Company. Ashland was fined \$2.25 million under the Alternative Fines Act for criminal violations of the Clean Water Act and the Refuse Act. What was Ashland's crime? A 48-year-old oil storage tank had suddenly collapsed -- because of Ashland's negligent inattention -- and discharged more than 700,000 gallons of diesel oil. . . into the good old Monongahela River!

Deja vu, all over again. Only this time, the oil spill affected the drinking water supplies in three states, and plant and animal life for more than one hundred miles downstream. So that old 1899 Refuse Act is still of use, but now the penalty to the polluter -- through alternative fines -- is so much more

appropriate. Fines of this magnitude provide a very effective deterrent against the likelihood of similar future violations. They dramatically raise the ante for any polluter.

III

On the civil side of environmental law enforcement, our major actions have evolved largely out of litigation under the Superfund. "Earlier statutes regulated pollution," Dick Stewart has aptly said. "Superfund cleans it up." But the principle remains: "The polluter should pay," so we sue culpable offenders to reimburse the Superfund.

In 1989, our actions requiring defendants to clean up hazardous-waste sites drew down over \$1 billion in Superfund expenditures and commitments. And we managed to recover some \$61 million in toxic waste cleanup costs from these same polluters to offset Superfund expenditures.

In Fiscal Year 1990, court-ordered Superfund expenditures on environmental cleanup exceeded \$1 billion for the second straight year. Such billions dwarf all other sums in litigation. Still, over \$30 million in civil penalties were collected under environmental statutes outside the Superfund. These penalties have convinced skeptics that this administration demands

compliance with all environmental laws, whatever latitude was once been allowed.

Under the Clean Water Act, for example, cities must ensure that those industries discharging wastewater into city sewer systems first treat such wastes. We brought actions against some 60 municipalities for failure to maintain their water purity, including Philadelphia (which paid a \$1.5 million penalty and will rehabilitate its sewage plant); Phoenix (which has paid a \$450,000 penalty); San Diego (which has agreed, by consent decree, to spend \$2.5 billion for sewage treatment improvements).

We also brought an infamous pollution case to a conscionable end. We negotiated a settlement with Syntex Corporation to undertake a complete cleanup of Times Beach, Missouri, and to incinerate the waste from 27 other sites of dioxin contamination in Eastern Missouri. As you may recall, in Times Beach dioxin contamination was so widespread that the United States bought the site and relocated its residents. The cleanup will now extend even to the dioxin that was mixed with waste oil and used to control dust on horse tracks. The estimated value of the cleanup: approximately \$100 million. And Syntex has also agreed to pay the United States \$10 million to reimburse the Superfund for costs already incurred.

Finally, in the largest single settlement ever obtained by the United States against one business for violation of federal environmental statutes, Texas Eastern Transmission Corporation has paid a \$15 million civil penalty and agreed to perform work at 85 sites located in 14 states that are contaminated with PCBs. Texas Eastern violated the whole environmental law book -- the Toxic Substances Control Act, RCRA, and Superfund -- by disposing of hazardous substances, including PCBs, in a number of unlined earthen pits at compressor station sites located all along the length of its natural gas pipeline. Estimated cost for remediation of these sites: \$400 million.

IV

To round out your record of success against environmental crime, I should also mention both wetlands and wildlife. On wetlands protection, we have been alert and far-reaching. This past May, we won a record civil judgment of \$1.3 million against the Sumitomo Construction Company for filling in water's edge for a golf course on the island of Guam. Again restitution has been court-ordered -- in fact, the creation of two acres of wetlands for every one of the 4.2 acres the Japanese company tried to turn into golf links. We also obtained the single largest criminal fine ever -- including a \$1 million fine, \$1 million in restoration, and future protection of over 2500 acres, against Paul Tudor Jones, in Maryland.

On endangered species, two undercover operations -- by the Fish & Wildlife Service -- helped us this past year break up both an illegal traffic in native cacti and an international bird-smuggling ring. Operation Singapore netted some 150 parrots, macaws, and cockatoos. The exotic quality of these feathered "illegals" -- let alone a Pacific Ocean wetlands case successfully prosecuted against the Japanese -- give you some idea of the growing international reach of environmental law enforcement. You will be hearing in more detail about our increasing efforts at international cooperation to protect -- and police -- the environment. Let me say here that it only further extends the deep concerns we are all share for the ecological welfare of our blue planet.

In the end, however, concern for the planet invariably comes down to local cases -- and often the arrest and apprehension of the offending party. I want to make that point strongly this morning because you should be fully cognizant of what kind of criminal we are facing in environmental law enforcement.

And there is an irony here. Outside some inadvertent polluters Dick Stewart described earlier, we are dealing with offenders who do some of the dirtiest work ever done to human health and the quality of life. They illicitly trade in sludge, refuse, waste, and other pollutants, and they pursue their noxious concealments only for the sake of gain. Everywhere -- on

our land, in our water, even in the air we breathe -- they leave their touch of filth.

But invariably, they are styled white-collar criminals.

Environmental crime is, in fact, dirty white-collar crime -- as insidious in its own way as the financial fraud we have lately uncovered in our financial communities. It involves a similar betrayal of the public trust -- often through a like evasion of regulations and accountability -- and it is always a rip-off. Only here, the white-collar criminal is not ripping off our life savings. He is ripping off life itself, such life as our precious environment can fragilely sustain. And all out of greed.

But we are finding that nothing so concentrates the mind of responsible management upon the environment as our putting their own pocketbooks and persons in jeopardy. Indeed, the sudden realization that culpable mismanagement might actually result in jail time concentrates such minds even more.

So let us resolve to take a more realistic, truly proportional view of these grave offenses against the environment, and pursue white-collar environmental criminals as vigorously as we have chased down other white-collar rip-off artists. I do not exaggerate when I suggest that the ultimate

environmental damage to our earth from too much criminal trespass -- taken economically, leaving aside other life consequences -- will far outweigh any half-trillion-dollar loss from the S & L debacle.

That's why -- this past Earth Day -- we changed the name to the Environment and Natural Resources Division -- to emphasize our commitment. Ever since the New Year, that's how the sign reads right outside Dick Stewart's door. Over future decades, we as prosecutors are going to be engaged in one of the greatest attempts ever at criminal deterrence: to keep humankind from vandalizing the only home we own -- and have fully furnished -- in the universe.

And if you want to lift your hopes on that score -- maybe even steel yourself to the task -- take a look at Blue Planet, and see what a blue-ribbon job you're doing on our home so far.