Requirements?...What Sanctions? Enforcement of Federal Pollution Control Legislation & the Lessons Learned from Federal Facility Compliance Problems

by Tracy Knorr

I. Introduction

There is a disabling element inherent in federal pollution control regulation. This element weakened pollution control structures from within by allowing certain offenders to operate outside the confines of pollution control laws. The element at issue is the Federal Government's sovereign immunity. Federal facilities are some of the worst polluters, but the Federal Government's sovereign immunity shielded them from bearing the cost of noncompliance.[1] This paper will examine the history of the waivers of sovereign immunity in the Clean Air Act (CAA), the Clean Water Act (CWA), and the Resource Conservation and Recovery Act (RCRA). These waivers should have given States a full range of tools to enforce federal pollution control legislation. Instead, poor drafting an strict judicial interpretation diluted their intended effect. This paper will discuss the lessons learned from States' inability to effectively enforce pollution control regulations against federal facilities. Drawing on those lessons, we can analyze California's "fair share" argument and other future problems from a broader perspective.

As a policy matter, States should not be forced to bear the full burden of compliance under federal pollution control legislation when there are significant sources that contribute to the overall pollution problem that their enforcement mechanisms cannot reach. The 1990 Clean Air Act amendments created this kind of scenario by exempting certain significant pollution sources from State regulation. Thus, California's "fair share" argument in its most recent CAA State Implementation Plan (SIP) proposal is a creative and reasonable solution to part of California's nonattainment problems.

States should not be forced to bear the full burden of compliance under federal pollution control legislation when there are significant sources that contribute to the overall pollution problem that their enforcement mechanisms cannot reach.

II. The Achilles' Heel of State Enforcement Efforts

Congressional intent to comprehensively waive the federal government's sovereign immunity in the CAA, CWA and the RCRA is clearly evidenced in the legislative history to the Acts. A combination of poor drafting and judicial reluctance to enforce the waiver provisions deprived States of a full range of effective enforcement tools. The result? While States had to carry the full burden of compliance, there were significant federal sources contributing to the overall pollution problem that could essentially pollute with impunity. Admittedly separation

of powers doctrine mandates that courts may not place an interpretation on a statute that the statute's plain language will not bear. However, overly narrow readings of comprehensive waivers of immunity in federal antipollution laws also amounts to judicial re-writing of Congressional legislation. The history of the waivers in the CAA, the CWA and the RCRA supports this assertion.

A. Federal Regulatory Pollution Control: Structure

The CAA, and the CWA regulate emissions of pollutants into the air and navigable waters of the United States, respectively; the RCRA regulates solid waste disposal methods, and encourages development of technologies to reduce the overall amounts of solid waste.[2] The Achilles' heel of State enforcement efforts under a comprehensive federal pollution control system is inherent to the structure of our government. Under our system, the States retain "The powers not delegated to the United States by the Constitution."[3] Any federal pollution control laws must be careful not to impinge on State sovereignty. Thus, one of the basic problems with federal pollution control legislation is one of implementation. The federal government cannot, consistent with the Constitution, commandeer States' regulatory authority and dictate specific action regarding pollution problems.[4] Yet federal control is essential: without a comprehensive pollution control system, industries in individual States that implemented pollution control regulations where other States did not would suffer an enormous competitive disadvantage.

Federal regulatory immunity ... shield[ed] recalcitrant federal facilities from state enforcement efforts.

To avoid infringing on State sovereignty, Congress had to craft elaborate, comprehensive regulatory structures, and at the same time respect the principles of federalism. The CAA, the CWA and the RCRA represent just such an effort.

> The basic pattern of the three Acts is similar. The EPA promulgates a series of standards for the regulation of a particular aspect of the environment, mandates the States to set up programs modeled after the EPA standards and then turns over control of the programs to each State once the State program is approved.[5]

What Congress did not foresee when it carefully crafted these statutes to accommodate State sovereignty, was that federal regulatory immunity would spring up later to shield recalcitrant federal facilities from State enforcement efforts.

Federal supremacy stems from the Supremacy Clause.[6] As interpreted by *McCulloch v. Maryland*, Federal law is supreme over State regulatory authority.[7] Federal instrumentalities are thus immune from State regulatory control. Accordingly, the Federal Government's sovereign immunity shields it from suits brought against it without its consent, and that immunity cannot be abrogated by State action. However, Congress can expressly waive the Federal Government's sovereign immunity. Because of the "distinctive variety of cooperative federalism" that the CAA, the CWA and the RCRA create, (in which States implement and enforce federal pollution control legislation), Congress wrote express waivers of sovereign immunity into all of these environmental laws.[8]

Federal facilities are often the worst polluters.[9] This is partly because priorities of federal facilities are skewed when they do not have to consider the cost of noncompliance.[10] Though congressional intent to comprehensively waive the Federal Government's sovereign immunity has been consistent, courts insisted there was not "satisfactory clarity" in the language chosen to implement the waivers of sovereign immunity.[11] The doctrinal clarity requirement began in 1977 with two Supreme Court decisions. These decisions held that federal facilities had to comply substantively with State implemented plans under the CWA and the CAA. Unfortunately, the Acts did not waive the federal government's sovereign immunity with sufficient clarity to require federal facilities to get permits to operate from State regulatory authorities.[12] The result was that while States had the full burden of implementation and compliance under the statutory structure, they had no meaningful ability to enforce federal facility compliance. Thus, federal facilities continued to pollute with impunity, while all others were subject to the Acts' permit requirements.

Federal facilities are often the worst polluters ... partly because their priorities are skewed because they do not have to consider the cost of noncompliance.

B. The "Clear and Unambiguous" Requirement

In *Hancock*,[13] the Supreme Court granted certiorari to review the Kentucky Air Pollution Control Commission's claim that certain federal facilities were required to secure an operating permit under Kentucky's EPA-approved CAA State Implementation Plan. The Court drew heavily upon doctrinal principles of sovereign immunity, and held that federal facilities were not required to get permits from State air pollution control authorities.[14]

The EPA's subsequent construction of the language of the CAA after 1970 amendments was important to the Supreme Court's decision. The Court discussed a letter to the federal facilities in question, wherein the EPA supported the proposition that federal facilities did not have to get permits from State regulatory agencies.[15] Thus, the Supreme Court held that though the 1970 amendments to the CAA required federal facilities to comply substantively with EPA authorized State Implementation Plans, "requirements" under CAA § 118 did not include procedural permit requirements. The Court said "an authorization of State regulation is found only when... there is a 'clear congressional mandate ... specific Congressional action' that makes this authorization of State regulation 'clear and unambiguous.'"[16]

The Supreme Court decided a companion case the same day it decided *Hancock*. In *EPA v. California*,[17] California and Washington brought suit under § 509(b)(1) of the (CWA), requesting review of the EPA Administrator's determination that the EPA "[did] not have the prerogative to delegate permit issuance for Federal facilities to any State."[18] The Supreme Court reversed the decision of the Court of Appeals, and held that § 313 of the CWA does not extend a waiver of immunity broader or clearer than the CAA does in § 118. The Supreme Court relied on the same "constitutional principles governing submission of federal installations to State regulatory authority" that governed its decision in *Hancock*.[19]

Taken together, *Hancock* and *EPA v. California* established the rule that courts will narrowly construe the scope of waivers of immunity as a matter of interpretation. The Supreme The Supreme Court sent Congress a message on how to clarify the waiver in the CAA and in the CWA--amend the statutes.[20] Congress did amend the CAA and the CWA in 1977.

C. The Clean Air Act Section 118 Meets the Clear and Unambiguous Standard

The plain language of the CAA § 118 as amended meets *Hancock's* "clear and unambiguous" standard. The legislative history and the case law support this interpretation.[21] The May 12, 1977 report of the Committee on InterState and Foreign Commerce summarized the need to strengthen States' enforcement tools, clarify legislative intent in areas of judicial and administrative dispute, and to fundamentally overturn *Hancock's* interpretation of § 118.[22] The amendments mirrored the recommendations of the committee, extending the waiver of immunity in the CAA to include civil penalties in express and unambiguous language:

Civil penalties are essential to effective State enforcement of pollution control legislation.

> The conferees intend, by adopting the House amendment, to require compliance with all procedural and substantive requirements, to authorize States to sue Federal facilities in State Courts, and to subject such facilities to State sanctions.[23]

In addition to clarifying that federal facilities were subject to permit requirements, the 1977 CAA amendments also clarified another critical issue. Civil penalties are essential to effective State enforcement efforts in all contexts. States' ability to assess civil penalties against federal facilities was dubious at best after *Hancock*. The 1977 CAA amendments took care of that problem, leading the "Federal Government...[to] conced[e] waiver of immunity to civil penalties under the Clean Air Act waiver [as amended]."[24]

The executive branch conceded that the 1977 amendments subjected federal facilities to civil penalties in two ways.[25] One concession was made in a report from the Comptroller General Accounting Office to the Justice Department.[26] Under the subheading "Appropriations-Availability- ... Fines," the report says:

> civil penalties imposed administratively on federal facilities by State or local agencies for violations of local air pollution regulations must be paid from federal agency's appropriation if incurred in the course of activities necessary and proper or incidental to fulfilling the purposes for which the appropriation was made.[27]

Thus, the Comptroller General, a part of a coordinate branch of government, recognized that the 1977 amendments to the CAA did in fact subject federal facilities to administratively imposed civil penalties, and this report dealt with the source of the funds to pay those penalties.

President Carter also reinforced the 1977 amendments by passing Executive Order 12088, mandating federal facility compliance with all State pollution control requirements.[28] Executive Order 12088 provides in part that "'Applicable pollution control standards' *means the same substantive, procedural, and other requirements that would apply to a private person.*"[29]

Though they do not control judicial decision making, Exec. Order 12088 and the Comptroller General report provide evidence that the Federal Government recognized that the plain language of the 1977 amendments subjects federal facilities to civil penalties.[30] Perhaps more importantly, these actions by the executive branch highlight support of the executive for the spirit of the 1977 amendments.[31]

An analysis of the evolution of the language of the CAA waiver shows that over time, the waiver has become clearer, while procedural safeguards have been set to ensure that States will not abuse the power the waiver gives them. To reach this conclusion, § 118, the sovereign immunity waiver provision, must be read in conjunction with § 304, the civil suits provision. This is because States can bring suit under § 304 to enforce the provisions of the CAA, including adherence to State Implementation Plans.

Procedural safeguards added over time include the President's power under § 118(b) to exempt federal facilities from compliance under § 118(a), "if he determines it to be in the paramount interest of the United States to do so."[32] Another safeguard is the penalty fund under § 304(g).[33] Other amendments allowed the EPA administrator to "substitute itself for the plaintiff in those actions with regard to any claims for civil penalties."[34] Thus, the 1977 and 1990 CAA amendments reaffirmed States' power to rely on civil penalties to enforce EPA-approved CAA SIP's. At the same time, Congress created safety nets to allay the traditional fear that States would rush to court to enforce their laws against federal facilities, motivated by money awards.

Congress intended the waivers in the CWA and in the RCRA to be comprehensive as well but poor drafting and strict judicial interpretation narrowed their scope.

D. Poor Drafting and Strict Judicial Interpretation
Narrowed the Waivers in the CWA and the RCRA

Executive Order 12088 spoke to federal facility compliance with pollution laws in general, and provided support for a broad reading of the waivers in the CWA and the RCRA as well. However, a 1992 Supreme Court case interpreted the waivers of immunity in the CWA and in the RCRA as not providing States with broad authority to assess civil penalties against polluting federal facilities.[35]

In *DOE v. Ohio*,[36] Ohio sought to gain civil fines against the Department of Energy (DOE) for past violations of the CWA and of the RCRA. The parties settled on all issues except for the issue "whether sovereign immunity precluded imposing civil penalties on the Federal Government."[37] The Supreme Court granted certiorari to review the Sixth Circuit's holding that while the CWA allowed States to assess punitive fines against federal facilities, RCRA had

no such waiver. The Supreme Court reversed the lower court's decision as to the CWA because "the exclusion of the United States from among the 'persons' who [could] be fined in the Acts' civil penalties sections... render[ed] the civil-penalties sections inapplicable to the United States."[38]

The Supreme Court's decision turned on the interpretation of the word "sanction." The court examined the CWA § 313(a), and found that although "§ 313(a) subjects the Federal Government to all State requirements, process [sic], and sanctions, use of the term "sanction" is broad enough to cover coercive and punitive fines, and does not necessarily imply that a reference to punitive fines is intended."[39]

Use of "sanctions" in conjunction with "judicial process" was construed as evidence that sanctions were only available in conjunction with coercive enforcement of injunctions. The court held that the RCRA's waiver was "most reasonably interpreted" to reach a similar result: that federal facilities had to comply substantively, but punitive fines were available only as coercive enforcement for violations of injunctions.[40]

The court looked at the term "sanction" within the context of § 313 and found that the waiver used the phrase "the United States shall be liable only for those civil penalties arising under Federal law or imposed by a State or local court to enforce an order or the process of such court."[41] The majority found the use of "civil penalties" in a second phrase in § 313, ("civil penalties arising under federal law"), "problematical," and said: "the first modifier suggests that the civil penalties arising under federal law may indeed include the punitive along with the coercive."[42] Thus, the CWA does not waive immunity for civil penalties because, the Supreme Court said, as between "the tension between a proviso suggesting an apparently expansive but uncertain waiver and its antecedent text that evinces a narrower waiver with greater clarity,...*under our rules* the... narrow construction" prevails.[43] While there was indication from the legislative history and the language of the CWA itself that Congress intended a comprehensive waiver of immunity, the Supreme Court chose to mandate adherence to its rules and read that waiver narrowly.

A 1992 Supreme Court decision held that the waivers in the CWA and in the RCRA did not waive sovereign immunity for punitive assessment of fines against federal facilities.

E. Interpretation of the CAA § 118 after *DOE v. Ohio*

Though the waivers in the two statutes are similar, there is limiting language in the waiver in the CWA that is not present in the CAA. This limiting language, ("civil penalties...imposed by a State or local court to enforce an order or the process of such court"), is the same language that the Supreme Court focused on in *DOE v. Ohio*.[44] That difference is why courts have given § 118 of the CAA a broad reading but read § 313 of the CWA narrowly, (even though the waivers were both amended in response to the *Hancock*-era narrow interpretations).

DOE v. Ohio was decided on April 21, 1992, the Federal Facilities Compliance Act (FFCA) was passed Oct. 6, 1992. The 1992 FFCA amended the definition of "person" in the RCRA to "include each department, agency, and instrumentality of the United States," making it absolutely clear that as to RCRA, the Federal Government had waived its immunity for civil penalties purposes.[45] The Conferees intended a comprehensive document

> clarify[ing] that all civil and administrative penalties and fines includes penalties or fines that are punitive or coercive in nature or are imposed for isolated, intermittent or continuing violations....In doing so, the conferees *reaffirm the original intent* of Congress...this amendment overrules the Supreme Court holding in *Department of Energy v. Ohio*...the scope of the waiver is not limited to either the civil penalties described in that decision or the enforcement tools specifically listed in section 6001.[46]

Thus, the legislative history indicates that Congress thought it had indeed waived the Federal Government's sovereign immunity for civil penalties purposes in the earlier version of the RCRA.

In his Statement upon signing H.R. 2194, the Federal Facility Compliance Act of 1992, Oct. 6, 1992, President Bush Stated that the bill was a step towards "mak[ing] the Federal Government live up to the same environmental standards that apply to private citizens...." [47] The President stressed the importance of cooperation between regulators and the parties affected, and fair assessment of penalties and fines under the new Act.

Subsequent case law recognized that the 1992 FFCA effectively overturned *DOE v. Ohio*. In *United States v. State of Colorado*, the United States brought an action seeking declaratory and injunctive relief to prevent the State of Colorado from asserting jurisdiction to regulate the Rocky Mountain Arsenal under an EPA authorized State hazardous waste program.[48] The Tenth Circuit Court of Appeals in *Colorado* reviewed RCRA's structure, which is similar to the CAA and CWA: EPA may authorize State hazardous waste control programs, which are then 'carried out' 'in lieu of' RCRA.[49] The court noted that under this framework, a State may demand that "the Federal Government...comply...'to the same extent as any person'."[50] Here the court took notice of the fact that while *DOE v. Ohio* held that federal agencies retained sovereign immunity from State civil penalties under RCRA, Congress had since amended RCRA's waiver provision to unambiguously subject the Federal Government to civil penalties.[51]

The 1992 FFCA reaffirmed the original intent of Congress.

F. The Future: CWA Revisions

The CWA is still under review. In May 1994, the Committee on Environment and Public Works recommended its amendments to the Act.[52] The Committee said that the FFCA was enacted "partially in response to *DOE v. Ohio*."[53] While the FFCA clarifies the waiver in the RCRA, "neither States nor citizens may obtain punitive penalties from Federal violators of the [CWA]."[54] Thus, while the FFCA clarified the waiver in the RCRA, ability of States

to curtail federal facility violations of the CWA is still hampered. The report goes on to say that hampered State and Federal administrative enforcement has resulted in a "low priority ... [being] assigned to correcting violations and ensuring compliance with pollution control requirements."[55]

The amendment proposed by the committee for the CWA is consistent with the stronger version of the 1992 FFCA:

> The bill ... clarif[ies] the intent to waive the United States' sovereign immunity and allow citizens (including States as citizens) to seek penalties for violations of the Clean Water act by Federal Facilities....This amendment is consistent with the FFCA, which clarified the waiver of sovereign immunity under RCRA. [56]

Thus, legislative intent has remained consistent in all of the Acts examined in this paper. The 1992 FFCA made the RCRA emphatically unambiguous, and the CWA will soon follow that trend. Unfortunately, in the interim between judicial interpretation and legislative amendment of the waivers in the CAA and the RCRA, Federal facilities continued to be the worst polluters where both Congress and the Executive wanted them to be models and leaders. One can only hope that the CWA amendments will be rapidly enacted. Courts should interpret the waivers in these amended Acts as comprehensive to avoid the revolving door effect that has occurred over the last two decades. It is time for federal facilities to clean up their acts and shoulder their share of the costs of cleanup, or face the cost of noncompliance.

III. California's "Fair Share" Argument

In a presentation on November 17, 1994, Mike Kenny, Chief Counsel of the California Air Resources Board discussed an innovative concept in California's CAA State Implementation Plan (SIP) proposed to the EPA for approval the same week.[57] State SIP's set up the regulations that create the enforcement and sovereignty issues discussed in this paper. California seeks to avoid the Federal Implementation Plan (FIP) hanging over it by producing a satisfactory State SIP, or by "SIP[ing] the FIP."[58] California is threatened with a FIP because it is in nonattainment for the South Coast Air Basin, Sacramento and Ventura.

In his presentation, Kenny first noted that FIP's may create resentment in States. For example, the FIP for California, if implemented, will cause extreme social and economic dislocation resulting from drastic reductions in allowable emissions levels. California is making an innovative "fair share" argument in this latest SIP. The "fair share" name correlates with the suggestion that the EPA should allow California to include emissions reductions in the SIP that the EPA itself would enforce. Under the 1990 CAA amendments, Congress exempted certain sources including some planes, interState trucks, ships, and trains from State regulation.[59] Thus, California has been battling with these mobile sources that

> ***We should look to the past to find the basis for sound decisions in the future. Federal regulatory agencies should accept their "fair share," and federal facilities must "live within [the Federal Government's] own laws."***

contribute to the overall nonattainment problem but that it cannot reach. This may ring a bell. States faced a similar scenario because sovereign immunity barred effective enforcement against federal facilities.

California confronted what it perceived to be a forced subsidy to these exempted sources by asking the EPA to shoulder its "fair share" of emissions reduction enforcement in the SIP. If the EPA approves the SIP with this understanding in it, the SIP will become enforceable as law. Coming full circle, this could open the EPA administrator up to citizen suits under CAA § 304.[60]

IV. Conclusion

We should look to the past to find the basis for sound decisions in the future. The EPA should accept its "fair share," and federal facilities must "live within [the Federal Government's] own laws."[61] The way to ease this latter difficulty within the regulatory framework is for the judiciary to uphold Congressional intent rather than undermine multi-faceted, tiered environmental infrastructures based on fine points of law.

Congress must choose its words with care, but in statutes that span many pages, a "list approach" to what aspects of immunity are waived is neither desirable nor should it be mandated.[62] When Congress provides a comprehensive waiver of sovereign immunity, especially given the repeated recognition by both Congress and the Executive that the threat of administrative assessment of civil penalties is essential to force compliance by federal facilities, courts should not "writ[e] the waivers out of existence" with "unduly restrictive interpretation[s]."[63]

Tracy Knorr is a 2L at King Hall and Co-Editor of Environs.

NOTES

1. S. Rep. No. 101-553, 101st Cong., 2nd Sess. 1990 (Oct. 24, 1990) at 4.

2. Clean Air Act 42 U.S.C. §§ 7401 to 7671q; Clean Water Act (Federal Water Pollution Control Act) 33 U.S.C. §§ 1251 to 1387; Resource Conservation and Recovery Act (Solid Waste Disposal Act) 42 U.S.C. §§ 6901 to 6992k.

3. U.S. CONST. amend. X.

4. *New York v. United States*, 112 S.Ct. 2408.

5. Nancy E. Milsten, *How Well Can States Enforce Their Environmental Laws When the Polluter is the United States Government?* 18 RULJ 123, 123. (1986).

6. U.S. CONST. art. VI, cl. 2.

7. 17 U.S. (4 Wheat) 316 (1819).

8. *United States Department of Energy v. Ohio*, 503 U.S. __, 22 Envtl. L. Rptr. 20804, 12 S. Ct. 1627, 1633(1992). The waiver of immunity in the CAA is found at 42 U.S.C § 7418; in the CWA at 33 U.S.C. § 1323; in the RCRA at 42 U.S.C. 6961.

9. S. REP. NO. 101-553, 101ST CONG., 2ND SESS. (1990).

10. *Id.*

11. *Hancock v. Train*, 426 U.S. 167 (1976).

12. *Id.*; *Environmental Protection Agency v. California ex rel. State Water Resources Control Bd.*, 426 U.S. 200 (1976).

13. 426 U.S. 167 (1976).

14. *Id.* at 178.

15. *Id.* at 175.

16. *Id.* at 179.

17. 426 US 200 (1976)

18. *Id.* at 208.

19. *Id.* at 201.

20. *Hancock v. Train*, 426 U.S. 167, 167 (1976).

21. *See United States v. South Coast Air Quality Management District* 4748 F.Supp. 732, (C.D.CA 1990); *Alabama ex. rel. Graddick v. Veterans Administration*, 648 F.Supp. 1208 (1986).

22. PUB. L. NO. 95-95, H.R. REP. NO. 294, 95TH CONG., 1ST SESS. (1977).

23. *Id.*

24. J.B. Wolverton, *Sovereign Immunity and National Priorities: Enforcing Federal Facilities' Compliance with Environmental Statutes*, 15 HELR Vol. 2 (1991), 578.

25. *Id.* at 570-580.

26. The Comptroller General's report is titled "In the matter of civil penalties imposed on federal agencies for violations of local air quality standards-source of funds for payment." 58 Comp. Gen. 667, 668 (1979).

27. *Id.* at 671.

28. 43 Fed. Reg. 47707, (1978).

29. *Id.* at § 1-103, italics added for emphasis.

30. *See* Wolverton, footnote 24 *supra*, at 580.

31. *Id.*

32. Clean Air Act Section 118(b); 42 U.S.C. § 7418(b).

33. Section 304(g); 42 U.S.C. § 7604(g).

34. Pub. L. No. 101-549, 104 Stat 2399 (1990).

35. *United States Department of Energy v. Ohio*, 503 U.S. __, 12 S. Ct. 1627, 22 Envtl. L. Rep. 20804 (1992).

36. 503 U.S. __, 12 S. Ct. 1627, 22 Envtl. L.Rptr.20804 (1992).

37. *Id.* at 20804.

38. *Id.*

39. *Id.*

40. *Id.*

41. *DOE v. Ohio*, 22 Envtl. L. Rptr. at 20807.

42. *Id.* at 20808.

43. *Id.*

44. Section 313(a); 33 U.S.C. 1323(a).

45. H.R. CONF. REP. NO. 886, 102ND CONG., 2ND SESS. 1992, *See also* identical to language at 42 U.S.C. 6903(15).

46. S. REP. NO. 67, 102ND CONG., 1ST SESS. (1991), italics added for emphasis.

47. 1992 USCC&AN 1337-1; Statement by President of the United States upon signing H.R. 2194, 28 Weekly Compilation of Presidential Documents 1868, October 12, 1992.

48. 990 F.2d 1565, 1568. (1993)

49. *Id.*

50. *Id.*

51. *Id.* at 1570.

52. S. REP. 103-257, 103RD CONG., 2ND. SESS. (May 1994).

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. Mike Kenny, informal presentation to Richard Frank's Environmental Law Class, UC Davis School of Law, Nov. 17, 1994.

58. *Id.*

59. *Id.*

60. *Id.*

61. 1992 USCC&AN 1337-1; Statement by President of the United States upon signing H.R. 2194, 28 Weekly Compilation of Presidential Documents 1868, October 12, 1992.

62. *United States v. South Coast Air Quality Management Dist.*, 748 F. Supp. 732 (C.D. Cal. 1990).

63. *DOE v. Ohio*, 22 Envtl. L. Rptr. 20804, 20809-20810. (In Dissent)