

Costly Encounters of the Worst Kind

Should you run afoul of the EPA, and encounter an "enforcement action," expect your cost to be about \$36,500. That's the average paid by 1,350 individuals and businesses in 1997 to satisfy EPA enforcement actions. These are the lucky people. Civil actions in court were brought against 207 offenders who had to pay an average penalty of \$308,000.

When the EPA is really upset, they have the authority to file criminal charges; 446 offenders were so charged in 1997, and paid an average of \$124,035 in criminal fines. More than 100 offenders were given jail time that averaged 21 months.

About half the "crimes" were related to "emission of hazardous substances." The EPA has listed more than 700 such substances, and may also designate non-hazardous substances as "pollutants" if discharged into "waters of the United States." Under the extremely fluid "wetlands" regulations, virtually all land is subject to designation by the EPA as "waters of the United States."

The remaining crimes related to the more than 1500 species listed as endangered or threatened. Should the EPA or the Department of Interior decide that one of these species may want to use private property as habitat, the federal government needs only to declare such property as "critical habitat." Alteration of that habitat, even though it may be privately owned, can bring down the enforcement wrath of the government.

Nine out of ten defendants plead guilty when brought to court. By the time a case gets that far, the victim is either broke, or is broken in spirit, or both. Environmental crimes reverse the time-honored tradition of "innocent until proven guilty." When the EPA issues a cease and desist order, the victim is assumed to be guilty, and forced to prove his innocence. If the victim has the financial resources to hire an attorney to fight through the administrative

procedures and eventually the court battle, should he lose, he still must confront the financial penalties that can mount at the rate of as much as \$50,000 per day while fighting the battle.

As the numbers in the prosecution report suggests, environmental crimes are not limited to the occasional victim that makes the news. Prosecution of infractions of environmental regulations are widespread and growing. Ignorance of the law or regulation is no defense. Private property owners, especially those who have some hope of using the natural resources on their land, are automatically subject to scrutiny by dozens of federal agencies, and are increasingly targeted for enforcement action - or worse.

Private pond may cost millions...

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ordered him to fill in the pond.

Mondgock appealed to the Office of Administrative Law Court, which found the Administrative Order to be "unduly punitive and out of proportion" to his actual culpability. The Appellate Division stated, "We cannot overlook the testimony of DEP personnel who indicated that construction of a pond within a flood plain is at times approved." They concluded that Mondgock should be allowed to reapply for a pond permit.

To date, Mondgock is still applying. Each time, his application is sent back with an ominous warning that the approval process "will not be inexpensive." He has been threatened with fines totaling \$2,500 a day and \$1,500 for each offense - the total is now in the millions of dollars. DEP is presently demanding a "donation" of over \$12,000.

Mondgock has spent more than \$83,000 and 14 years of his life fighting the state. "If I did have an extra \$12,000 to donate, it would certainly go for a needier cause, such as cancer research for children."

John K. Carlisle is director of the Environmental Policy Task Force at The National Center for Public Policy Research. He can be reached at Jcarlisle@nationalcenter.org.

Foundation points to outrageous regulatory stories

The Heritage Foundation, a Washington, D.C. based think tank, keeps track of what it calls "outrageous" and "absurd" regulatory stories on its web site, www.regulation.org. According to the foundation, 55 federal regulatory agencies and more than 130,000 staff members develop implement and enforce a myriad of regulations, with more than 2,000 new rules issued every year. Regulations now cost \$677 billion or nearly \$7,000 per household and absorb about 19 percent of a family's after-tax budget.

One of the Heritage Foundation's outrageous regulation stories details the lengths the government goes to protect wildlife that may or may not exist on someone's property.

In Florida, Anita Cragg bought an existing subdivision in 1992 with plans to expand and build new homes. Her permits were in order, and she had buyers ready to build and settle in. While surveying for waterline extensions in 1993, U.S. Fish and Wildlife Service (USFWS) officials noticed two scrub jays flying onto Craggs' lots. The scrub jay is listed as threatened under the Endangered Species Act. Officials decided Craggs' development posed a potential hazard to land "suitable for occupation by scrub jays" and suspended construction.