MFI

Department of Justice

110358

STATEMENT

OF

ROGER J. MARZULLA
ACTING ASSISTANT ATTORNEY GENERAL
LAND AND NATURAL RESOURCES DIVISION

BEFORE

THE

SUBCOMMITTEE ON TRANSPORTATION, TOURISM,
AND HAZARDOUS MATERIALS
COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

CONCERNING

THE SOLID WASTE DISPOSAL ACT

ON

MARCH 10, 1988

Mr. Chairman and Members of the Subcommittee:

On behalf of the Department of Justice, I am pleased to have this opportunity to present our views on the five bills currently being considered by your subcommittee and on other issues related to ensuring compliance with environmental laws and regulations by federal facilities. This Administration is committed to comprehensive federal facility compliance with the environmental laws, just as we are committed to attaining private party compliance with those same laws. To this end, the Department of Justice has dedicated unprecedented resources to an environmental enforcement program which has attained impressive successes in the courtroom and at the negotiating table. Through vigorous advocacy, our lawyers have obtained judicial interpretations of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) which have created the foundational doctrines of joint and several liability, denial of pre-enforcement review, retroactive application and administrative record review upon which this success rests. They have also achieved extraordinary results in enforcing the Resource

Conservation and Recovery Act (RCRA), obtaining stiff injunctions requiring that hazardous waste facilities come into compliance with the law or shut down. And our record in enforcing the Clean Air Act, Clean Water Act, and Safe Drinking Water Act is no less impressive.

This outstanding record is no accident. From fiscal year 1983 to the present, the Environmental Enforcement Section of the Land and Natural Resources Division has added 95 new lawyer positions, a five-fold multiplication of its original size.[1] In calendar year 1987 alone, the Division filed nearly 300 civil cases, including 58 CERCLA cases, 93 Clean Air Act cases, 77 Clean Water Act cases and 34 RCRA cases. Under CERCLA alone, we have obtained in excess of $400 million dollars in cost recovery and clean-ups.

Nor have we ignored the criminal penalties which Congress has enacted to punish willful violators of the environmental statutes. Indeed, prior to 1983 these criminal provisions lay virtually dormant. In that year, we established an Environmental Crimes Unit of four lawyers to begin the arduous task of creating a credible federal criminal deterrent to environmental lawlessness. The record of that group (which has now grown to 20 lawyers) is so impressive that in 1987 the Attorney General authorized the creation of a separate Environmental Crimes

---

[1] These figures do not include additional lawyers in the Environmental Defense Section of the Land and Natural Resources Division, which has responsibility for enforcing wetlands regulation under the Clean Water Act.

Section within the Land and Natural Resources Division, dedicating its full efforts to the prosecution of environmental criminals. I am extremely proud of the accomplishments of these environmental prosecutors: since 1983 they have filed 368 indictments, obtaining 277 pleas and convictions resulting in the assessment of $6.786 million in criminal fines and over 57 years of actual confinement. We have established excellent working relationships with the Criminal Division of the Justice Department, the FBI, EPA's Office of Criminal Investigations and the Defense Command Investigative Service.

I want to emphasize that the Justice Department agrees dedication to compliance with environmental laws and regulations does not stop at the door to our own house. Indeed, I believe that federal facilities should be viewed as models of this nation's commitment to a clean environment. The federal government has an obligation, no less than that borne by private parties or state and local governments, to protect the public health and preserve the environment. This is a difficult job, one which taxes both our ingenuity and our resources. Nevertheless, I believe that we have recently made significant strides toward the goal of environmental compliance by federal facilities. The Justice Department has served as intermediary in helping to negotiate several major federal facility cleanup agreements:

-- Rocky Flats Agreement. The State of Colorado, EPA, and DOE signed this agreement in July of

1986. The parties agreed that radioactive mixed waste at the Rocky Flats facility would be regulated under RCRA where compliance with RCRA is not inconsistent with the requirements of the Atomic Energy Act. It is fully enforceable by the State and citizens under the citizen suit provision.

-- Fernald Agreement. The DOE and EPA entered into a federal facilities compliance agreement in June, 1986, to govern problems at the facility under RCRA, CERCLA and the Clean Air Act. Although the agreement does not specifically include an enforceability clause, the regulations therein would of course be enforceable under the citizen suit provision of the statute.

-- Idaho National Engineering Laboratory Agreement. DOE and EPA entered into a consent order and compliance agreement under RCRA Section 3008(h) in July, 1987. The agreement sets out schedules and corrective action requirements. It establishes the EPA Administrator as the final decision-maker, and it is fully enforceable by the State and citizens under RCRA's citizen suit provision.

-- TCAAP Agreement. The State of Minnesota, EPA and the Department of the Army entered into an agreement in August, 1987, to govern the cleanup

at the Twin Cities Army Ammunitions Plant. The agreement sets out a detailed dispute resolution process with the EPA Administrator as final decision-maker, and is fully enforceable by the State and citizens.

-- Rocky Mountain Arsenal Consent Decree. On February 1, 1988, the Justice Department lodged a consent decree between the United States and Shell Oil Company to cleanup the Rocky Mountain Arsenal site near Denver, Colorado. The settlement establishes a process by which the Arsenal will be cleaned up, with EPA in the role of resolving any disputes that arise in the course of the planning and implementation of the cleanup. It also resolves how Shell and the Army will share the cleanup costs, which we currently expect to be in the $750 million to $1 billion range. Regrettably, as the State of Colorado testified last week, the State did not join in the decree because it does not give the state ultimate authority over the cleanup under state law and it is continuing its litigation. The decree does, however, give the State the right to participate in all phases of the process of selecting the appropriate cleanup plan for the Arsenal. Under the decree, as required by CERCLA, the final

remedy will attain all applicable state environmental law standards and the State will have the right to go to court to compel compliance with any State standard that it believes will not be attained.

Building upon the experience of these successful agreements, we were able to assist EPA in developing its guidance on Enforcement Actions Under RCRA and CERCLA at Federal Facilities, issued January 25, 1988. The procedures set forth in that document, together with the prototype language contained in the various compliance agreements already hammered out, will help to standardize the process and speed up the negotiation of further compliance agreements and orders.

In keeping with our commitment to federal facility compliance with environmental laws and regulations, we have sued governmental contractors operating at such facilities. For example, we have filed suit against General Dynamics for alleged Clean Air Act violations, and in responding to the defendant's motion to dismiss, we have argued forcefully that its status as a government contractor does not insulate them from environmental compliance.

Our Environmental Crimes Section has also prosecuted a number of persons who, in the course of carrying out contracts with the federal government, violated environmental criminal statutes. And recently, we indicted three federal employees in connection with a fraudulent scheme to dispose of hazardous waste

generated at the Bastrup, Texas correctional facility. (U.S. v. Kruse, et al., W.D. Tex.).

Some have noted that despite our considerable activity in the area of federal facilities environmental compliance, much remains to be done. To expedite this effort, some suggest that the United States sue itself in Federal court as a mechanism for attaining environmental compliance at federal facilities. Although federal suits against private parties have produced some impressive results as the previous discussion reveals, there are more effective ways to achieve federal agency compliance with environmental laws. Congress has the authority to appropriate funds for specific environmental purposes, and to exercise oversight to ensure that those purposes are carried out. Moreover, federal agencies are answerable to the President who is, in turn, answerable to the electorate. This joint exercise of authority by Congress and the Executive Branch is the way in which the ordinary business of government is accomplished.

Mindful of the duty of federal facilities to serve as a model for private sector compliance, the important role of judicial enforcement in attaining private sector compliance, and the process by which government customarily accomplishes its goals, we proceed to analyze the five bills which are before this Subcommittee today.

H.R. 3781 -- DOE Waste Cleanup Act of 1987

This bill would establish an Office of Waste Management within the DOE and set up separate accounting and budget

authority for hazardous waste treatment, storage, disposal and corrective actions programs under RCRA, and clean-up of hazardous substances, pollutants and contaminants under CERCLA. We support the bill's objective of providing adequate funding for DOE's environmental compliance requirements under RCRA and CERCLA since we believe that providing the necessary funding for environmental compliance is the fundamental issue here. However, we defer to other agencies as to whether this bill's method of addressing the issue is the appropriate solution.

H.R. 3782 -- Congressman Swift's Bill

This bill would amend RCRA by establishing a "Special Environmental Counsel" to enforce RCRA compliance at federal facilities if EPA has not negotiated a consent order within ninety days of a violation or if the Special Counsel has not consented to such an order.

This bill, as well as H.R. 3785, raises serious constitutional problems. These Constitutional objections are discussed later in this testimony. The other Federal agencies present today will address their significant policy objections to the bill, such as duplication of efforts already required by RCRA or CERCLA, or the problems inherent in the Counsel having non-discretionary enforcement responsibilities.

Last year Mr. F. Henry Habicht II, the former Assistant Attorney General for the Land and Natural Resources Division, testified that RCRA did not waive sovereign immunity with respect to section 3008(a) orders because these enforcement

mechanisms are not requirements within the meaning of section 6001 of RCRA, the waiver of sovereign immunity section. Section 6015, the last section of the bill, does NOT effectively waive the federal agencies' sovereign immunity because that provision does not amend section 6001. However, even if Congress were to amend section 6001 to waive sovereign immunity clearly here, such a provision would still violate the Constitution. Nevertheless, the language of this bill would grant to the Administrator of EPA the statutory authority to issue 3008(a) orders.

H.R. 3783 -- Congressman Wyden's Bill

This bill would prohibit federal agencies from contracting with specified persons convicted of violating RCRA requirements and would make contractors joint holders of facility permits with the Federal government. It also prevents the federal government from paying costs, fines and penalties assessed against contractors.

This bill has three parts which deserve separate analysis:

Section 1 requires that RCRA permits for government owned, contractor operated (GOCO) facilities must be issued to both the Federal Agency and the government contractor. The Department believes that this section is intended to clarify the contractor's liability as an operator and is thus consistent with the RCRA definition of operator. It is our understanding, however, that at the present time in some cases the federal agency is considered the owner, not the operator. The effect of

this bill would be to add the agency to the operator permit in those situations where the permit is issued to the contractor. We do not believe this is the intent of the bill's author.

Section 2 provides that the government may not contract with any person "who is convicted of any offense under this Act or with any affiliate of any such person." If the basic objective of this section is to prohibit the government's contracting with persons who have been in gross violation of RCRA, then the Department supports its intent. We are concerned, however, that the bill as presently drafted may inadvertently limit contracting to a greater degree than Congress intends. For example, the bill does not distinguish between minor and significant "offenses" and permanently bars any contractor who falls into either category -- with no ability for rehabilitation. This appears to be far more stringent than contractor disbarment requirements for other programs and could actually impede clean up of these facilities.

The Department also supports contractor accountability and to the extent section 3 furthers that goal, we are in agreement with its intent. We recognize, however, that the concerns of contractors and other federal agencies must be addressed to avoid driving contractors from activities related to government-generated hazardous waste. We are also concerned about the effect the bill as presently drafted could have on existing contractual obligations. We have pledged to work along

with other agencies to review present indemnification procedures and provide to the Subcommittee on conclusions.

H.R. 3784 -- Chairman Luken's bill

This bill would amend RCRA to codify the existing DOE regulations regarding RCRA authority over mixed hazardous and radioactive wastes. The regulation of these mixed wastes under RCRA is an important step in ensuring that they are handled and disposed of in an environmentally sound manner. We note that this bill is essentially a codification of the DOE's May 1, 1987, rule which recognizes that DOE non-exempt hazardous waste activities are subject to the requirements of RCRA. However, section 1 (c) of the bill apparently limits the regulation of mixed waste material to RCRA alone. It is our belief, shared by the other federal agencies, that regulation of mixed waste material is appropriate under both RCRA and the Atomic Energy Act (AEA). Limiting regulation to RCRA alone would not be sufficiently protective of the public health because RCRA does not adequately deal with nuclear wastes. Therefore, the Department opposes the bill.

H.R. 3785 -- Congressman Eckart's bill

This bill broadens the existing RCRA provisions that waive sovereign immunity. In Mr. Habicht's April 1987 testimony, he explained to the Oversight subcommittee that the Department, on a statute-by-statute basis, must carefully analyze the degree to which Congress exposed federal agencies to liability. The long-standing rule that courts must interpret any waivers of

sovereign immunity strictly and narrowly, see, e.g., Hancock v. Train, 426 U.S. 167 (1976), protects Congress' constitutional authority to decide how government funds may be spent. U.S. Const., Art. I, Sect. 9. [2] Unless Congress has made a clear decision that it intends funds to be spent in a specific manner, the courts are loathe, as well they should be, to make that decision for Congress.

Last April, we testified that RCRA section 6001 did not provide the specificity, in clear and unambiguous language, necessary to waive sovereign immunity for penalties. It is my belief that this bill evidences a clear and effective waiver of sovereign immunity for penalties. We do believe, however, that the Federal agencies may have good policy reasons to support retaining sovereign immunity in certain circumstances.

---

[2] Some have criticized the Department for utilizing the well-settled law of sovereign immunity to protect the public fisc against civil penalties. However, courts have consistently found that such immunity has not been waived under the Clean Water Act or RCRA. See, M.E.S.S. v. Navy, 25 E.R.C. 1480 (E.D. Cal. 1986); Meyers v. Coast Guard, 644 F. Supp. 221 (E.D.N.C. 1986); United States v. Washington, No. C-87-291-AAM (E.D. Wash., Jan.22, 1988); California v. Walters, 751 F.2d 977 (9th Cir. 1984). Admittedly, in Maine v. Navy, a United States Magistrate has recommended to the United States District Court a finding that the Navy's sovereign immunity has been waived under RCRA and CWA. This recommendation has not yet been ruled upon by the Judge.

We do not understand these court decisions to shield federal agencies from effective compliance with environmental laws. The Department of Justice has consistently supported bifurcation of the penalty issue so that the crucial business of adjudicating environmental compliance can go forward expeditiously.

Moreover, as discussed earlier, section 1(b) of this bill is inconsistent with the very elaborate and well-thought out enforcement procedures for federal facilities recently issued by EPA. Because they are in some ways different, EPA has and must continue to treat federal agencies differently from private parties. Although the means for achieving compliance may be different, the end -- compliance with the requirements of RCRA and CERCLA -- is identical for both public and private facilities.

H.R. 3782 and H.R. 3785 -- Constitutional considerations

Both H.R. 3785 and H.R. 3782 suffer from serious constitutional defects. H.R. 3782 contains provisions establishing a special counsel who is not accountable to any executive officer, directing the President to submit particular legislation, and directing court resolution of intrabranch disputes. H.R. 3785 authorizes the Administrator to commence an administrative enforcement action against a federal facility and appears to withdraw all enforcement discretion. Upon careful analysis, we have concluded that these provisions would unconstitutionally intrude upon the separation of powers principles embodied in Articles II and III of the United States Constitution, including the unitary executive principle embodied in Article II. As a result, the Department would recommend that the President disapprove these bills if they are passed in their present form.

Article II, Section 1 of the Constitution provides that "[t]he executive Power shall be vested in a President of the United States of America." Article II, Section 2, Clause 2, the "Appointments Clause", provides that individuals appointed by the head of an agency are inferior officers of the United States. Section 3 of Article II requires that the President "take Care that the Laws be faithfully executed," and provides that he shall "recommend . . . such Measures as he shall judge necessary and expedient." Article III of the Constitution, the other provision here at issue, limits the judiciary to hearing "cases or controversies."

The vesting of the executive power in the person of the President by Section 1 of Article II, coupled with the command in Section 3 that the President "take Care that the Laws be faithfully executed" confers upon the President the obligation and the authority to exert "general administrative control over those executing the law," Myers v. United States, 272 U.S. 52, 161-164 (1926), and ensures constitutional accountability. Such accountability is of special importance given the multiplicity of laws that must be enforced. Ultimately, one person must have the final authority and responsibility for the coordination of potentially conflicting obligations if there is to be any coherence in the administration of the laws of the United States. The need for supervision and coordination was well recognized by those who drafted the provisions of the Constitution at issue. Alexander Hamilton, in The Federalist No. 70, at 427-428 (A.

Hamilton) (C. Rossiter ed. 1961), noted that "one of the weightiest objections to a plurality in the executive . . . is that it tends to conceal faults and destroy responsibility." James Madison, in the Great Debate of 1798, referred to this basic constitutional concept as "the great principle of unity and responsibility in the Executive Department." 1 Ann. Cong. 499 (1798). The Framers of the Constitution consciously made the choice to adopt the unitary executive principle. They rejected the familiar, and previously widely-used, privy counsel (cabinet) approach.

The courts have long recognized the unitary executive principle as a fundamental principle of American constitutional government. The Supreme Court, in Myers v. United States, 272 U.S. 52, 135 (1926), explicitly noted that the President, as head of the Executive Branch, must "supervise and guide" executive officers in "their construction of the statutes under which they act in order to secure that unitary and uniform execution of the laws which Article II of the Constitution evidently contemplated in vesting general executive power in the President alone." The importance of a unitary executive is underscored by the Appointments Clause which grants the President the power of appointment and removal, a power which is critical to the President's ability to discharge his own constitutional duty to ensure that the laws are faithfully executed. Id., at 134-135; Buckley v. Valeo, 424 U.S. 1, 136 (1975). If the President's authority and obligation to supervise and guide executive

officers is to have any meaning at all it must clearly contain within its scope the power to resolve disputes between them.[3] As the legal structure of the United States grows more complex, it is equally clear that the need for a unitary executive is greater, and not less, than at the time of the adoption of the Constitution. More recent decisions by the Supreme Court, such as Bowsher v. Synar, 106 S.Ct. 3181 (1985), and INS v. Chadha, 462 U.S. 919 (1982), reinforce this constitutional principle.

H.R. 3782 and H.R. 3785 contain provisions that seriously conflict with the principles of separation of powers, unitary executive, and justiciability discussed above. Together, they direct the Administrator of EPA to appoint a Special Environmental Counsel who will be an "independent instrumentality" while shielding the Counsel from any responsibility to, or supervision by, the President or the executive officer appointing him, allowing him to be removed from office "only for inefficiency, neglect of duty, or malfeasance of office," without specifying who may exercise the power of removal. These bills would also permit the EPA, either through the Administrator or the Counsel, to take unilateral action against other Executive Branch agencies without the necessity of first elevating any dispute to the President or his designee for

---

[3] Obviously, the President does not personally supervise every officer of the executive branch. He may delegate the authority to do so to others and frequently does. However, the President retains and exercises his authority through his control over the officers to whom he has delegated supervisory and dispute resolution authority.

resolution. H.R. 3785 would authorize the EPA Administrator to commence an administrative action against such agencies. H.R. 3782 would permit the EPA Counsel to (1) assess civil penalties against an Executive Branch agency of up to $25,000; (2) issue orders requiring compliance by an agency within a specified time; and (3) file suit against an agency in district court to collect a penalty or seek "other appropriate relief, including a temporary or permanent injunction."

These provisions violate the above discussed principles in three respects. First, the Special Counsel provisions obstruct the President's ability to ensure that the laws are faithfully executed in derogation of the obligation imposed, and authority granted, by Article II. They do this by shielding the counsel from executive supervision and removal,[4] powers that the Myers court, supra, found to be indispensable to controlling that officer's performance and necessary to the President's ability to discharge his own constitutional duty. The President's removal power is particularly critical in this case as the Counsel proposed by H.R. 3782 would be engaged in the core

---

[4] The fact that the bills do refer to conditions under which the counsel may be removed without stating who has the power of removal might be read to mean that removal power remains in the President or his designee will not necessarily save that provision. It seeks to unconstitutionally restrict the removal power to specific circumstances, thereby unconstitutionally limiting the President's discretion to exercise the removal power, which the Supreme Court has found to be absolute with respect to executive branch officers engaged in Executive Branch functions.

Executive Branch function of deciding whether and when to initiate a prosecution.

The D.C. Circuit's recent decision in In re Sealed Case, Nos. 87-5261, 87-5264, 87-5265, which held that the independent counsel statute (the Ethics in Government Act) is unconstitutional, also demonstrates that both H.R. 3782 and H.R. 3785 are constitutionally flawed. The D.C. Circuit found that statute violative of the appointments clause, separation of powers doctrine, and the removal and supervisory authority of the President. These bills raise similar constitutional concerns. Note, however, that the Department's view that these bills are unconstitutional is not dependent on the D.C. Circuit opinion alone. Our view is based on the text of the constitution, documents evidencing the Framers' intent in drafting it, and the Supreme Court cases to date that have addressed the appointment and removals power of the President, the separation of powers, and the concept of a unitary executive.[5]

---

[5] The Department's view that H.R. 3782 is an unconstitutional infringement of the President's removal power is not inconsistent with Humphrey's Executor v. FTC, 295 U.S. 602 (1935). The limitation on the President's removal power in Humphrey's Executor involved an FTC commissioner, who, as the Supreme Court stressed, is an officer of an independent agency, primarily engaged in quasi-judicial and quasi-legislative functions. In contrast, the Environmental Counsel would be an executive branch officer engaged in the core executive branch function of prosecution. Furthermore, the Counsel would be engaged in resolving intra-executive branch disputes among officials responsible to and removable by the President. Such an unchecked force could seriously disrupt normal executive branch dispute resolution mechanisms in derogation of the constitutional design of executive branch unity.

Secondly, these provisions also would violate the principles discussed above to the extent that they require the President to include in his annual budget submission a request for funds necessary to comply with an administrative or judicial order under the RCRA. These provisions conflict with the Constitutional mandate contained in Article II, Section 3 that the President submit legislation that "he shall judge necessary and expedient." Congress cannot direct the President to submit particular legislation. Note, however, that this would not prevent Congress from developing a reporting mechanism of one kind or another that would give Congress notice of a need for appropriations to meet such obligations which Congress may then propose without a request from the President.

Third, as former Assistant Attorney General Habicht stated in his testimony before the Oversight Subcommittee last April, the exercise by any officer at EPA of unilateral authority over another Executive Branch agency, absent a provision for elevating the dispute to the President or his designee, would be unconstitutional and clearly inconsistent with existing Executive Branch dispute resolution mechanisms. This Department has consistently taken the position that under our constitutional scheme, disputes between two or more Executive Branch agencies whose heads serve at the pleasure of the President are properly resolved by the President or by someone with authority delegated from the President. Permitting either the Administrator or the Counsel to order another agency to comply or to attempt to file

suit against it would be inconsistent with Article II of the Constitution, because it would interfere with the President's constitutional obligation to direct his subordinates in order to take care that the laws are faithfully executed.

The ultimate duty to ensure that federal facilities comply with the environmental laws remains the President's as part of his constitutional responsibility under Article II although Executive Branch agencies are subject to EPA's regulatory oversight. For that reason, Executive Branch agencies may not sue one another, nor may one agency be ordered by another to comply with an administrative order without the prior opportunity to contest the order within the Executive Branch under such review process as the President may establish. Further, the provisions of H.R. 3782 authorizing the EPA to initiate lawsuits in federal court are also inconsistent with Article III of the Constitution because they are premised on the belief that a suit between two Executive Branch agencies, the heads of which serve at the pleasure of the President, is justiciable. Except in extraordinary circumstances, where, for example, the President is disabled from deciding an inter-agency dispute because of personal interest,[6] the Department believes that the President is the only constitutionally recognized authority to settle such disputes between such agencies. Because the EPA and the agency to be sued are both accountable to the President, a dispute between such agencies simply does not create

---

[6] See United States v. Nixon, 418 U.S. 683 (1974).

a "case or controversy" for a court to resolve under Article III.[7]

In short, the Department regards this legislation as contrary to the doctrine of the separation of powers and the constitutional concept of a unitary executive. It interferes with the President's constitutional duty and responsibility to resolve disputes among Executive Branch agencies and to control the administrative discretion exercised by Executive Branch officers.

CONCLUSION

Federal agencies have achieved much over the past few years in complying with environmental requirements. Many of the problems that have interfered with full achievement of federal facility compliance with environmental laws have been solved as a result of hard work and full cooperation among the federal agencies with the Department of Justice acting as a facilitator and resource. One of the greatest obstacles to compliance enforcement was the lack of an adequately defined mechanism for resolving disputes within the Executive Branch. That obstacle has now been overcome by the issuance of the EPA guidance that I referred to earlier today. We are now in a better position to effectively enforce federal facility compliance with EPA

---

[7] See Memorandum for the Associate Attorney General from John M. Harmon, Assistant Attorney General, Office of Legal Counsel, June 23, 1978, ("EPA Litigation Against Government Agencies").

regulations, permits and compliance agreements. At the same time, we are pleased to have the opportunity to work in partnership with the Congress to develop strategies that will further the goal of complete federal facility compliance, using the full range of mechanisms available to Congress.

The Justice Department stands ready to use the full panoply of its judicial enforcement tools against GOCO-violators that are operating in federal facilities. At the same time, I fully expect that State and citizen enforcement will continue to be active in this area.

In most instances, these bills are not needed or may be counter-productive. Federal facility compliance efforts are beginning to show impressive results and many federal agencies are presently coordinating their compliance efforts with EPA, obviating the need for administrative orders. In addition, EPA has been negotiating compliance agreements with other federal agencies covering response actions at federal facilities. In those instances in which disputes remain, or may later arise, the EPA guidance signed in January of this year provides appropriate dispute resolution mechanisms, eliminating any need for judicial dispute resolution that would violate constitutional prohibitions.

The Department of Justice looks forward to working closely with Members of this Subcommittee and the various federal agencies in this most important area. I would be pleased to answer any questions you might have.

*U.S. GOVERNMENT PRINTING OFFICE:1988-202-046:82087