

For Immediate Release

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WLF PETITIONS DOJ TO REVISE ENVIRONMENT PROSECUTION POLICY

The Washington Legal Foundation (WLF) filed a petition yesterday calling upon the Department of Justice (DOJ) to revise its policy for prosecuting violations of environmental laws and regulations. The 23-page filing, addressed to Attorney General Alberto Gonzales, requests that DOJ and U.S. Attorneys establish effective procedures to screen referrals from EPA and other agencies to curtail prosecutorial abuses.

WLF's petition was filed as part of its CRIMINALIZATION OF FREE ENTERPRISE-BUSINESS CIVIL LIBERTIES PROGRAM. This program is designed to combat abusive prosecutorial practices where criminal charges are levied against businesses, owners, and plant managers for minor or bogus environmental regulatory infractions when non-criminal and less costly alternatives, such as administrative and civil remedies, are readily available and more protective of the environment.

WLF recounted examples over recent years of abusive criminal enforcement cases, including cases where armed EPA Special Agents raided small businesses in a manner that one federal judge aptly described as a "virtual SWAT Team," for trivial infractions where there was little or no environmental harm or criminal intent. One such WLF-supported case involved the prosecution of Riverdale Mills Corp. in Massachusetts and its owner, James Knott, Sr., for discharging acidic rinsewater. All charges were dropped on the eve of trial after EPA agents were forced to turn over altered crucial pH level readings that made it appear the rinsewater was too acidic. The Riverdale Mills case and another EPA raid on a small North Carolina business were featured on CBS's *60 Minutes*.

In Louisiana, yet another EPA/FBI "SWAT Team" stormed a small chemical facility, threatening the plant manager, Hubert Vidrine, and company employees. Mr. Vidrine was indicted for storing certain chemicals without a permit. After four years of costly proceedings, all charges were dropped shortly before trial when defense attorneys discovered that EPA's chief witness had a history of cocaine addiction and hallucinations and could not produce the allegedly "hazardous substance" that was the basis for the charges, even after he was hypnotized by prosecutors to recall his actions. A malicious prosecution suit against EPA is expected to be filed soon with WLF's assistance.

In a wetland case in Michigan, John Rapanos was prosecuted for moving sand on his own property that contained wetlands without a federal permit. During the sentencing hearing in 2005, the Chief Judge admonished federal prosecutors for bringing criminal charges and seeking a lengthy prison sentence for the crime of "moving sand from one area of his property to the other." The exasperated judge grilled the prosecutor: "Did [Mr. Rapanos] dump oil, radioactive substances, sewage, garbage, herbicides, pesticides, insecticides, fungicides, fertilizer, detergent,

lead, iron, copper, mercury, benzene, dioxin, PCB's, PCP's, bacteria, DDT, chlordane, nitrates or cyanide?" Unbelievably, the DOJ prosecutor responded: "[S]and is more toxic and destructive to wetlands than any of the substances the Court mentioned." The Supreme Court later ruled in the related civil case that the federal government did not even have jurisdiction over the property.

In another WLF-supported case, federal prosecutors brought criminal charges against three seafood dealers, Robert Blandford, Abner Schoenwetter, and David Henson McNab, for the "crime" of importing frozen seafood from Honduras in the wrong containers. An obscure Honduran regulation required that the frozen seafood be shipped in cardboard boxes instead of the see-through plastic bags that were used. Even though the shipments were cleared by Customs and the Food and Drug Administration, prosecutors also charged the businessmen with "smuggling" the seafood. And because the businessmen paid for the seafood through their normal operations, they were also charged with money laundering. The three defendants are each currently serving a draconian *eight-year* prison term for their so-called crimes, even though civil remedies were available to handle this minor regulatory infraction.

"The Justice Department needs to stop criminalizing business activities that are subject to complex and confusing regulations," said Paul Kamenar, WLF's Senior Executive Counsel. "There are less costly and more effective non-criminal remedies to handle environmental infractions," Kamenar added.

WLF's petition also takes issue with the controversial "McNulty Memo," a guidance document for U.S. Attorneys revised late last year by Deputy Attorney General Paul J. McNulty. While one section of the memo tells prosecutors that they "must" consider nine factors when deciding whether to prosecute a corporation, the operative section dealing with non-criminal remedies states only that prosecutors "may" consider them, thereby giving more discretion to prosecutors than they otherwise should have.

WLF also requested that DOJ revisit a 1994 directive by former Attorney General Janet Reno that gave local U.S. Attorneys broad discretion in bringing environmental prosecutions with little or no oversight by Main Justice. In some cases, successive prosecutions were unfairly brought for the same offense that has multi-jurisdictional effects. Finally, WLF asked DOJ to convene a working group of DOJ officials to address these abuses, and requested that WLF, corporate defense attorneys, and other interested parties be able to meet with them to discuss their concerns.

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For further information, contact Paul Kamenar, WLF's Senior Executive Counsel, at 202-588-0302. A copy of WLF's petition to the EPA is available on WLF's website at www.wlf.org.