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**BRIEFING FOR NATIONAL ASSOCIATION OF ATTORNEYS GENERAL  
MARCH 13, 1989  
WASHINGTON, D.C.**

**THANK YOU... I'M VERY HAPPY TO BE HERE.**

**JUDGING FROM THE KIND OF WORK THIS ASSOCIATION HAS  
BEEN DOING LATELY, I KNOW WE'RE FIGHTING THE SAME  
BATTLES.**

**- 2 -**

**THE TWO COMPREHENSIVE REPORTS YOU ADOPTED THIS  
WINTER -- ON ENVIRONMENTAL PROTECTION, AND ON DRUG  
CONTROL STRATEGIES -- PUT YOU OUT FRONT ON TWO ISSUES  
THAT ARE CENTRAL TO MY AGENDA FOR THE FUTURE, TO BUILD  
A BETTER AMERICA.**

**THE APPROACHES YOU'VE TAKEN REINFORCE MY CONVICTION  
THAT, TOGETHER -- ON EVERY FRONT WHERE WE HAVE SHARED  
CONCERNS -- WE'RE GOING TO FIND SOLUTIONS. WE'RE GOING  
TO DEFINE STATE AND FEDERAL ROLES THAT WORK.**

- 3 -

AND WE'RE GOING TO APPLY LIMITED RESOURCES IN A COORDINATED MANNER.

AT THE FEDERAL LEVEL, ON MANY ENVIRONMENTAL ISSUES, I THINK THE TIME FOR STUDY HAS PASSED. SO I'M PROPOSING LEGISLATION TO REAUTHORIZE THE CLEAN AIR ACT. I WANT TO WORK WITH CONGRESS ON A COMPREHENSIVE ACID RAIN PROGRAM. AND I INTEND TO THROW THE BOOK AT THOSE WHO ENGAGE IN ILLEGAL OCEAN DUMPING.

- 4 -

OVER THE LAST DECADE, THE STATES HAVE TAKEN ON A LEADERSHIP ROLE IN PROTECTING OUR ENVIRONMENT -- AND THAT'S GOOD NEWS.

I WILL WORK CLOSELY WITH YOU ON THOSE ENVIRONMENTAL QUESTIONS WHERE WE SHARE RESPONSIBILITY. WE NEED TO STEP UP THE SUPERFUND CLEAN-UP PROCESS, AND IMPROVE ENFORCEMENT. TOGETHER, WE MUST ASSURE COMPLIANCE WITH HAZARDOUS WASTE LAWS.

- 5 -

AND WHERE ENFORCEMENT OF ALL OF THE LAWS THAT PROTECT OUR ENVIRONMENT ARE CONCERNED, I'D LIKE YOU TO THINK ABOUT THOSE MOST SERIOUS CASES WHERE WE MUST MOVE BEYOND CIVIL PENALTIES, TOWARD CRIMINAL ENFORCEMENT -- BOTH AS A SANCTION, AND AS A DETERRENT.

IN A FEW MINUTES, BILL REILLY WILL OUTLINE IN DETAIL OUR AGENDA ON THE ENVIRONMENT.

- 6 -

YOU WILL CERTAINLY FIND HIM -- TODAY, AND OVER THE COURSE OF THIS ADMINISTRATION -- TO BE AN ENVIRONMENTAL EXPERT, AN OUTSTANDING ALLY AND FELLOW SOLDIER IN THE STRUGGLE.

BUT BEFORE I HAND OVER THE PODIUM, I WANT TO ENLIST YOUR SUPPORT ON ANOTHER PERVASIVE PROBLEM: THE NATIONAL FIGHT AGAINST DRUGS.

WE MUST SEE THAT ALL GREAT CITIES ARE NOT HELD HOSTAGE BY CRACK DEALERS.

- 7 -

AND OUR SCHOOLS NOT LOCKED IN A STATE OF SIEGE.

YOU KNOW, DRUGS ARE LIKE CHEMICAL WEAPONS THAT A SOCIETY TURNS ON ITSELF. THEY BREED THE MOST INSIDIOUS FORMS OF DOMESTIC TERRORISM. AND THEY WILL BE STOPPED.

THE BUDGET I PRESENTED TO CONGRESS LAST MONTH IS A REALISTIC, FISCALLY RESPONSIBLE PLAN THAT IDENTIFIES KEY PRIORITIES REQUIRING OUR IMMEDIATE ATTENTION. ONE OF THESE PRIORITIES IS COMBATING THE SCOURGE OF DRUGS.

- 8 -

THAT'S WHY I'M ASKING FOR \$1 BILLION IN NEW OUTLAYS FOR OUR ANTI-DRUG PROGRAM. THAT'S A 47 PERCENT INCREASE OVER 1988 -- FOR A TOTAL OF \$6 BILLION IN BUDGET AUTHORITY FOR 1990.

MOST OF THAT MONEY -- 70 PERCENT OF IT -- WILL BEEF UP FEDERAL ENFORCEMENT; PROVIDE GRANTS TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES; AND BUILD UP OUR PROSECUTION, DETENTION, AND INTELLIGENCE-GATHERING STRENGTH.

- 9 -

AS CHIEF LEGAL OFFICERS, YOU UNDERSTAND ENFORCEMENT. YOU KNOW HOW VITAL IT IS -- AND AS MY BUDGET MAKES CLEAR, I WANT TO DEVOTE UNPRECEDENTED RESOURCES TO ENFORCEMENT.

BUT WE MUST DO MORE. THIS WAR WON'T BE WON BY POLICE WORK ALONE. WHERE THERE IS DEMAND, SUPPLY WILL ALWAYS RISE TO MEET IT. WHERE THERE IS NO DEMAND, SUPPLY IS USELESS.

- 10 -

THAT'S WHY I WAS GLAD TO SEE THAT YOUR "BLUEPRINT" FOR DRUG CONTROL STRATEGIES BROADENS THE GOALS OF ENFORCEMENT. YOU SAY THAT REDUCING DEMAND MUST BE "THE IDEOLOGICAL CORNERSTONE OF ANY COHERENT DRUG ENFORCEMENT POLICY" -- AND YOU'RE RIGHT. ENFORCEMENT STRATEGIES MUST LOOK BEYOND EFFECTS, TO CAUSES.

DRUG EDUCATION, TREATMENT, AND PREVENTION PROVIDE OUR BEST HOPE FOR A LONG-TERM SOLUTION -- ESPECIALLY WITH OUR KIDS. YES, WE NEED TO TELL THEM TO "SAY NO."

- 11 -

**BUT WE MUST ALSO GIVE THEM THE WISDOM TO KNOW WHY --  
AND THE SKILLS TO KNOW HOW -- TO SAY NO.**

**I ASK YOU TO CONTINUE LOOKING CLOSELY AT YOUR DRUG  
ENFORCEMENT PROGRAMS. HOW CAN THEY HELP REDUCE DEMAND?  
LESS DEMAND MEANS MORE SUCCESS IN THE WAR ON DRUGS.  
AND TO THE EXTENT YOU CAN CUT DEMAND, YOU CAN MAKE YOUR  
JOBS -- MY JOB -- AND THOSE OF EVERYONE INVOLVED IN LAW  
ENFORCEMENT -- A WHOLE LOT MORE REWARDING.**

- 12 -

**OUR FINANCIAL RESOURCES MAY BE LIMITED, BUT OUR  
RESOLVE IS UNLIMITED. WITH THAT LIMITLESS RESOLVE, I  
KNOW WE CAN INSPIRE EVERY CHILD, TEACHER, AND PARENT;  
EVERY COMMUNITY GROUP, RELIGIOUS INSTITUTION, AND  
TENANT ASSOCIATION; AND EVERY BUSINESS AND PROFESSIONAL  
ORGANIZATION IN THIS COUNTRY. AND THEN, UNITED IN  
COMMON RESOLVE, WE WILL TRULY BE INVINCIBLE.**

- 13 -

AS I'VE SAID BEFORE, WE HAVE MORE WILL THAN WALLET.  
BUT THE ONLY LIMITS ON OUR WILL ARE THE LIMITS WE PLACE  
ON OURSELVES.

TOGETHER, WE CAN BUILD A CULTURE OF ZERO-TOLERANCE.  
WE CAN SEND A MESSAGE, LOUD AND CLEAR, TO THOSE WHO  
TAKE DRUGS -- AND TAKE OUR LENIENCY -- FOR GRANTED:  
THE PARTY... IS OVER.

- 14 -

LET ME NOW INTRODUCE BILL REILLY, ADMINISTRATOR OF  
THE E.P.A. HE IS A GREAT BUILDER OF BRIDGES BETWEEN  
PEOPLE -- HE'S EVEN BEEN CALLED "THE GREAT INCLUDER."

HE HAS DEVOTED HIS CAREER TO PROTECTING OUR LAND,  
AIR, AND WATER -- AND HE HAS MY COMPLETE CONFIDENCE.

THANK YOU ALL VERY MUCH. AND GOD BLESS YOU.

# # #

(Lange/Blessey)  
March 9, 1989  
4:00 p.m.

PRESIDENTIAL REMARKS: BRIEFING FOR NATIONAL ASSOCIATION  
OF ATTORNEYS GENERAL  
MARCH 13, 1989

"News" -- President Enlists Attorneys General  
in Fight for Environment, War on Drugs

Thank you... I'm very happy to be here.

Judging from the kind of work this association has been  
doing lately, I know I'm among kindred spirits.

Tom Sawyer EPA  
382-4724

Says NAG has been active,  
comprehensive

The two outstanding reports you adopted this winter -- on  
environmental protection, and on drug control strategies -- put  
you out front on two issues that are central to my agenda for the  
future.

JPD  
his Des  
Dns FTL  
America  
EPA Protection  
in the 1990s

NAG

The approaches you've taken reinforce my conviction that,  
together -- on every front where we have shared concerns -- we're  
going to find solutions. We're going to define state and federal  
roles that work. And we're going to apply limited resources in a  
coordinated manner.

JPD  
his Des

NAG

At the federal level, on many environmental issues, I think  
the time for debate has passed. So I'm proposing legislation to  
reauthorize the Clean Air Act. I want to work with Congress on a  
comprehensive acid rain program. And I intend to throw the book  
at those who engage in illegal ocean dumping.

Building O'Brien  
P. 83  
P. 89

Tom Super suggests

Nancy 6554

Concilia to  
opposed to  
using it

\*insert on back page

Where dumping of medical waste is concerned, you may remember my pledge to end the era of the needle on the beach. Well, we just took the first step. EPA has just established a medical waste tracking system, to ensure that waste goes to proper disposal facilities.

Will end dis. stop putting needle in dumpsters

home work controlled

will put in EPA

This pilot program will apply to medical facilities of all sizes. Some nine states have already agreed to participate. Those of you who haven't, yet -- let me encourage you to contact E.P.A. this month, and get on board in this important effort.

including federal facilities. A number of states are considering joining the program.

American Jobs vote like only one

Tom Super 502-4727 Building ABeller P.83

Over the last decade, the states have taken on a leadership role in protecting our environment -- and that's good news.

Building ABeller P.80

This government will work closely with you, on those environmental questions that only have shared answers. We need to step up the Superfund clean-up process, and improve enforcement. Together, we must assure compliance with hazardous waste laws, and encourage strict enforcement of pesticide use.

Building to issue

Nancy Molloy 6554 Building ABeller P.88 Leadership 2.56

And where enforcement of all of the laws that protect our environment are concerned, I'd like you to think about those cases where we must move beyond civil penalties, toward criminal enforcement -- both as a sanction, and as a deterrent.

Policy most is delisted to states Cheryl Wasserman

Tom Super 502-4727 Nancy Molloy 6554

U.S. beaches will not be completely  
free of needles until the U.S. is  
completely free of drug abusers.

To the extent that medical waste on  
beaches is generated by individuals a medical  
waste track ~~set~~ will not solve the problem.

Tom  
Super

Steve Gibson  
6697

In a few minutes, Bill Reilly will give you his thinking on the environment. You will certainly find him -- today, and over the course of this Administration -- to be an outstanding ally.

But before I hand over the podium, I want to turn your attention -- and enlist your support -- on another pervasive problem: the war on drugs.

While I'm President, great cities will not be held hostage by crack dealers. And our schools will not be locked in a state of siege.

Adelle FASANO

No. Together we are going to ban this <sup>deadly</sup> ~~chemical weaponry~~. It breeds the most insidious form of domestic terrorism. And it will be stopped.

Policy

Dave Rivait  
7234

In the budget I presented to Congress last month -- a budget, by the way, that was the first Executive budget in quite a while not pronounced "d.o.a." on Capitol Hill -- I've pushed for an increase of \$1 billion <sup>in new outlays</sup> for our anti-drug program. That's a 47 percent increase over 1988, <sup>Budget authority</sup> for a total of \$6 billion.

OMB

Bill ABA  
P.66

Dave Rivait  
7234

Most of that money -- 70 percent of it -- will go toward ~~grants to state and local law enforcement agencies,~~ to beef up federal enforcement, and to build up our prosecution, detention, and intelligence-gathering strength.

Building  
P. 75  
Dave Rivait

As chief legal officers, you understand enforcement. You know how vital it is -- and as my budget makes clear, I want to devote unprecedented resources to enforcement.

*Doc Rivest  
7234*

But we must do more. This war won't be won by police work alone. Where there is demand, supply will always rise to meet it. Where there is no demand, supply is useless.

That's why I was glad to see that your "Blueprint for Drug Control Strategies" looks beyond enforcement, to strategies for cutting the drug problem off at the knees -- beyond effects, to causes.

*JPP  
w/this  
Des*

*NDG  
materials*

Drug education, treatment, and prevention provide our best hope for a long-term solution -- especially with our kids. Yes, we need to tell them to "say no." But we must also give them the wisdom to know why -- and the skills to know how -- to say no.

*Building A/B  
3/6/95*

Let me encourage you to continue looking closely at drug enforcement programs. Consider how they can help reduce demand for drugs. To the extent you can do that, you can make your jobs -- my job -- and those of everyone involved in law enforcement -- a whole lot easier.

*JPP  
w/this Des*

*NDG*

Our resources may be limited -- but our resolve is not.

Our task is to win the hearts and minds of every child, teacher, and parent; every community group, religious institution, and tenant association; and every business and professional organization in this country.

Together, we can build a culture of zero-tolerance.

We can send a message, loud and clear, to those who take drugs -- and take our leniency -- for granted: The party... is over.

Let me now turn this party over to Bill Reilly -- Administrator of the E.P.A. He is a great builder of bridges between people -- he's even been called "The Great Includer."

He has devoted his career to protecting our land, air, and water -- and he has my complete confidence.

Thank you all very much. And God bless you.

*WP 12-28-88  
Prof. Environmentalist  
Known as 'the  
Great Includer'*

*X  
Bill Reilly  
info*

For President:

(Lange/Blessey)  
March 10, 1989  
9:00 p.m.

PRESIDENTIAL REMARKS: BRIEFING FOR NATIONAL ASSOCIATION  
OF ATTORNEYS GENERAL  
MARCH 13, 1989

"News" -- President Enlists Attorneys General  
in Fight for Environment, War on Drugs

Thank you... I'm very happy to be here.

Judging from the kind of work this association has been doing lately, I know we're fighting the same battles.

The two comprehensive reports you adopted this winter -- on environmental protection, and on drug control strategies -- put you out front on two issues that are central to my agenda for the future, to build a better America.

The approaches you've taken reinforce my conviction that, together -- on every front where we have shared concerns -- we're going to find solutions. We're going to define state and federal roles that work. And we're going to apply limited resources in a coordinated manner.

At the federal level, on many environmental issues, I think the time for study has passed. So I'm proposing legislation to reauthorize the Clean Air Act. I want to work with Congress on a

comprehensive acid rain program. And I intend to throw the book at those who engage in illegal ocean dumping.

Over the last decade, the states have taken on a leadership role in protecting our environment -- and that's good news.

I will work closely with you on those environmental questions where we share responsibility. We need to step up the Superfund clean-up process, and improve enforcement. Together, we must assure compliance with hazardous waste laws.

And where enforcement of all of the laws that protect our environment are concerned, I'd like you to think about those most serious cases where we must move beyond civil penalties, toward criminal enforcement -- both as a sanction, and as a deterrent.

In a few minutes, Bill Reilly will outline in detail our agenda on the environment. You will certainly find him -- today, and over the course of this Administration -- to be an outstanding ally and fellow soldier in the struggle.

But before I hand over the podium, I want to enlist your support on another pervasive problem: the war on drugs.

While I'm President, great cities will not be held hostage by crack dealers. And our schools will not be locked in a state of siege.

You know, drugs are like chemical weapons that a society turns on itself. They breed the most insidious forms of domestic terrorism. And they will be stopped.

The budget I presented to Congress last month is a realistic, fiscally responsible plan that identifies key priorities requiring our immediate attention. One of these priorities is combating the scourge of drugs. That's why I'm asking for \$1 billion in new outlays for our anti-drug program. That's a 47 percent increase over 1988 -- for a total of \$6 billion in budget authority for 1990.

Most of that money -- 70 percent of it -- will beef up federal enforcement; provide grants to state and local law enforcement agencies; and build up our prosecution, detention, and intelligence-gathering strength.

As chief legal officers, you understand enforcement. You know how vital it is -- and as my budget makes clear, I want to devote unprecedented resources to enforcement.

But we must do more. This war won't be won by police work alone. Where there is demand, supply will always rise to meet it. Where there is no demand, supply is useless.

That's why I was glad to see that your "blueprint" for drug control strategies broadens the goals of enforcement. You say that reducing demand must be "the ideological cornerstone of any coherent drug enforcement policy" -- and you're right. Enforcement strategies must look beyond effects, to causes.

Drug education, treatment, and prevention provide our best hope for a long-term solution -- especially with our kids. Yes, we need to tell them to "say no." But we must also give them the wisdom to know why -- and the skills to know how -- to say no.

I ask you to continue looking closely at your drug enforcement programs. How can they help reduce demand? Less demand means more success in the war on drugs. And to the extent you can cut demand, you can make your jobs -- my job -- and those of everyone involved in law enforcement -- a whole lot more rewarding.

Our financial resources may be limited, but our resolve is unlimited. With that limitless resolve, I know we can inspire every child, teacher, and parent; every community group, religious institution, and tenant association; and every business

and professional organization in this country. And then, united in common resolve, we will truly be invincible.

As I've said before, we have more will than wallet. But the only limits on our will are the limits we place on ourselves.

Together, we can build a culture of zero-tolerance.

We can send a message, loud and clear, to those who take drugs -- and take our leniency -- for granted: The party... is over.

Let me now introduce Bill Reilly, Administrator of the E.P.A. He is a great builder of bridges between people -- he's even been called "The Great Includer."

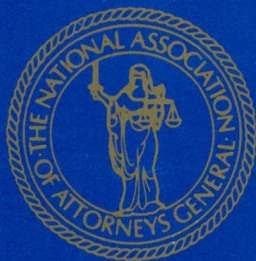
He has devoted his career to protecting our land, air, and water -- and he has my complete confidence.

Thank you all very much. And God bless you.

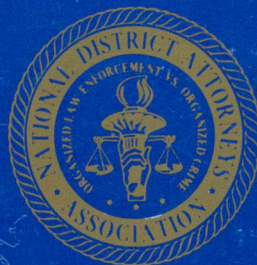
# Toward A Drug-Free America:

## A Nationwide Blueprint for State and Local Drug Control Strategies

The Executive Working Group  
For Federal-State-Local  
Prosecutorial Relations



National Association  
of Attorneys General



National District  
Attorneys Association

December 1988

# **TOWARD A DRUG-FREE AMERICA:**

## **A Nationwide Blueprint for State and Local Drug Control Strategies**

**THE EXECUTIVE WORKING GROUP FOR FEDERAL-STATE-LOCAL  
PROSECUTORIAL RELATIONS**

**NATIONAL ASSOCIATION OF ATTORNEYS GENERAL**

**NATIONAL DISTRICT ATTORNEYS ASSOCIATION**

*in association with*

- **International Association of Chiefs of Police**
- **International Narcotic Enforcement Officers Association**
- **National Criminal Justice Association**
- **National Sheriffs Association**

***December 1988***

# **TOWARD A DRUG-FREE AMERICA: A NATIONWIDE BLUEPRINT FOR STATE AND LOCAL DRUG CONTROL STRATEGIES**

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## **“A GENERATION FREE OF DRUGS— A GOAL WE MUST ACHIEVE”**

**Cary Edwards, New Jersey Attorney General  
and Chairman of the Drug Resource Subcommittee  
of the Executive Working Group**

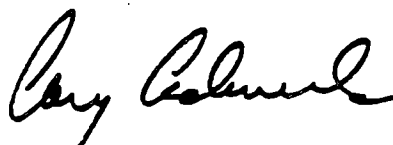
This state and local Blueprint represents a watershed in the law enforcement community's response to the nation's drug epidemic. For one thing, it is the result of the combined efforts of state and local prosecutors, police and sheriffs. This document, in other words, outlines a *unified* drug enforcement strategy—one which helps to define the contributions of all state and local law enforcement officers and prosecutors. It must be recognized that state and local law enforcement handles over 90 percent of all drug arrests and prosecutions, and it is essential that all law enforcement and prosecuting agencies, regardless of their jurisdiction, become full and co-equal partners with the federal government in the war on drugs.

Furthermore, this document recognizes that the role of the law enforcement community, while being tough and consistent, must not be limited to staving off the supply of drugs. It must also channel its efforts to change tolerant attitudes about drug abuse. So long as demand remains at current levels, and so long as enormous profits remain to be reaped, some drug traffickers will always be able to find a way to reach and exploit that market. Law enforcement cannot stand idly by while this happens. We in law enforcement must help to *prevent* drug abuse by holding users accountable through the vigorous enforcement of tough, realistic drug laws. We must also play a key role in *intervention* and *treatment* by identifying drug users and by bringing them to the attention of courts and community-based rehabilitation programs.

Most importantly, the law enforcement community must *support education* by making certain

that every school is drug free. Every child in America should have the opportunity to attend a school which is free of drugs, violence and intimidation. By creating a safe environment, one which is conducive to education, law enforcement can give teachers and substance abuse counsellors a fair chance to do their jobs and to teach a generation of students how and why to say no to drugs. This approach has the best chance ultimately to break the backs of international drug cartels and domestic drug trafficking networks.

This Blueprint is not a panacea. It does not purport to provide all of the answers, especially with respect to the acute drug enforcement problems faced in our urban centers. It nonetheless heralds a new era of interagency cooperation and commitment to achieving longterm strategic objectives. This will help to make certain that the nation's vast law enforcement community contributes in a meaningful way to solving every state's unique drug problems. The law enforcement community, working with community groups and professionals in other disciplines, can over the course of the next fifteen to twenty years help this nation raise a generation which is truly drug free. We should make no mistake. The goal of a drug-free generation is an attainable one . . . a goal we must achieve.



CARY EDWARDS  
Attorney General of New Jersey

## **ACKNOWLEDGMENTS**

This Blueprint was developed through the efforts of many people and many organizations. Their contributions to this project are gratefully acknowledged.

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# TOWARD A DRUG-FREE AMERICA: A NATIONWIDE BLUEPRINT FOR STATE AND LOCAL DRUG CONTROL STRATEGIES

## *Preface*

In March 1987, President Reagan signed an executive order creating the National Drug Policy Board, which was charged with overseeing all aspects of the federal anti-drug effort. Recently, the Policy Board issued a report entitled "Toward A Drug Free America: The National Drug Strategy and Implementation Plans." That report outlines nine major strategies, five of which define law enforcement's contribution.

The National Drug Policy Board's report was carefully developed over the course of many months by a number of federal agencies. These strategies provide an overarching framework of guidance for federal agencies as they develop and implement their own strategies to achieve subordinate goals or objectives that contribute to the larger anti-drug effort.

Members of the Executive Working Group for Federal-State-Local Prosecutorial Relations were asked to review the law enforcement strategies developed by the National Drug Policy Board. Many members of the Executive Working Group felt that this report could best be characterized as a "federal" plan of action. While laying the foundations for a truly national drug enforcement strategy, the report was not intended to provide direct guidance and policy direction to state and local law enforcement agencies, which in 1986 accounted for more than 90 percent of all drug arrests made in the United States. The Executive Working Group concluded that all law enforcement and prosecuting agencies at all levels of government should be enlisted as full partners in a coordinated effort.

The Executive Working Group agreed to develop a state and local strategy to complement and build upon the federal strategies of the National Drug Policy Board. New Jersey Attorney General Cary Edwards, a member of the Executive Working

Group, was asked to serve as chairman of a Drug Resource Subcommittee, comprised of representatives from several law enforcement agencies and professional associations, including the National Association of Attorneys General, the National District Attorneys Association, the International Association of Chiefs of Police, the National Criminal Justice Association, the National Sheriffs Association and the International Narcotic Enforcement Officers Association. This document was drafted by the Drug Resource Subcommittee and on November 29, 1988 was unanimously adopted by the Executive Working Group.

This Blueprint is not intended to serve as an operational manual. Its purpose, rather, is to identify overriding policies which should be adopted in every jurisdiction, and to establish a planning process which ensures that law enforcement and prosecuting agencies throughout the nation coordinate their efforts to have the greatest possible impact on the nation's drug problem.

This Blueprint is not an endorsement of any operational model. Many programs have been developed by state and local government agencies and by a number of professional associations. Given the complexity of the drug problem, no single model will be effective in every state. State and local law enforcement officials should carefully review all existing models in developing programs which are described in this document.

Although this Blueprint embraces some new approaches to law enforcement's contribution to the anti-drug effort, none is original. Ideas have been borrowed from the programs of state and local agencies which have already proven to be effective in dealing with local and regional problems. It is nonetheless hoped that these ideas will now for the first time be embraced by the nation's entire law

enforcement community, since there is no chance of achieving any meaningful impact unless all agree on common goals and objectives.

Finally, it must be noted that this Blueprint deals exclusively with programs which relate to controlled dangerous substances. This document does not recommend a strategy concerning the vexing problem of alcohol abuse. This is, admittedly, a major shortcoming. A comprehensive program designed to deal with the nation's substance abuse problem should not be limited to illicit drugs, since alcohol remains the most widely used and abused chemical substance, especially among our youth.

It must be remembered, however, that this document is intended to build upon the law enforcement strategies developed by the National Drug Policy

Board by incorporating a state and local law enforcement perspective. The laws and regulatory systems governing the manufacture and sale of alcohol, at least with respect to adults, are very different from the laws governing the use and distribution of controlled dangerous substances. Ultimately, a broader substance abuse strategy should be developed, but for now, that crucial task must remain the subject of future work.

Notwithstanding this limitation, it is hoped that this Blueprint will serve as a catalyst for action, and will help to encourage law enforcement and prosecuting agencies across the country to embrace the need to work together as full partners in waging an aggressive, realistic attack on both the supply of and demand for illicit drugs.

*Looking to you*

*A war that guns  
alone won't win  
win the mind of every  
school child, every  
factor, every*

*Not just  
use guns*

# TOWARD A DRUG-FREE AMERICA: A NATIONWIDE BLUEPRINT FOR STATE AND LOCAL DRUG CONTROL STRATEGIES

## Chapter 1

### *The Evolving Role of the Law Enforcement Community*

#### *Law Enforcement's Supporting Role*

According to recent public opinion polls, the drug problem has become the nation's number one concern. Despite some signs of recent progress and reasons to be genuinely hopeful, many Americans believe that this problem is becoming increasingly intractable. Many citizens look to law enforcement for the solution. The state and local law enforcement community has a vital part to play as shown by the fact that in 1986 this community accounted for more than 90 percent of all drug arrests throughout the nation. Law enforcement alone, however, cannot win the war on drugs. Solving the drug epidemic will require a sustained, coordinated effort involving many different professional disciplines.

A drug-free America will not be achieved until there are drug-free schools where children can be taught to resist drugs, drug-free workplaces where workers can safely reach the full potential of their productivity, and drug-free neighborhoods where residents can walk the streets without being touted to buy drugs and without fear of becoming the victims of drug-related crime.

These goals require the combined efforts of members of the judiciary, educators, health care professionals and treatment specialists, parents, civic organizations and community support groups, tenant associations, social and fraternal organizations, professional athletes, media, religious institutions and the business community. America must today

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*. . . A drug-free America will not be achieved until there are drug-free schools, drug-free workplaces and drug-free neighborhoods . . .*

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forge a true partnership dedicated to attacking the drug epidemic on all fronts. The law enforcement community is only one actor in this long-term struggle, whose job is not only to arrest drug offenders, but also to help galvanize public opinion against drug use and to support and complement the efforts of others. Every community in the nation must establish a comprehensive drug education, prevention and treatment program which is worth supporting. Unless this is done, the law enforcement programs and activities described in this Blueprint will be unavailing.

#### *Reducing the Demand for Drugs*

Law enforcement's contribution to achieving a drug-free America must not be limited to efforts to control the supply of illicit substances. Although domestic and international crop eradication programs, diplomatic initiatives with drug-producing nations and border interdiction efforts are of vital importance, so long as the demand for drugs remains at current levels, drug traffickers will always be able to find a way to reach and exploit this

market. Arresting drug dealers is only a means for achieving an end, not an end in itself, since drug traffickers who are apprehended will be quickly replaced by those who eagerly await the opportunity to share in the enormous profits in this criminal industry.

The only viable, long-term solution to the nation's drug epidemic is to reduce the demand for illicit substances. This important conclusion must not become just a well-worn cliché. The goal of demand reduction must constitute the basis for actual strategic and tactical law enforcement planning. It is imperative that policymakers at all levels of government recognize the inherent limitations of any supply-oriented strategy, and embrace a demand reduction philosophy as the **ideological cornerstone of any coherent drug enforcement policy.** Simply stated, every drug enforcement program and activity must be evaluated in terms of its contribution to the critical objective of reducing the public's demand for controlled dangerous substances. At a minimum, law enforcement activities should be designed to promote and complement demand reduction programs and initiatives.

This approach is perfectly consistent with the law enforcement community's time-honored obligation to protect citizens and their property from criminal attack. The relationship between drugs

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***. . . The long-term solution to the nation's drug epidemic is to reduce demand . . .***

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and crime has been clearly established. By reducing the level of illicit drug consumption, there will be fewer drug abusers to commit either violent crimes while under the influence of mind altering substances, or economic crimes committed in order to support their drug habits. By reducing the size and intensity of the drug demand market, moreover, illicit profit margins will be reduced and traditional law enforcement interdiction tactics will be more likely to impose "overhead" costs deemed by profit-minded drug dealers to be prohibitive. *The best and most direct way to take the profit out of drug crime is simply to deprive drug dealers of their customer base.*

## ***Law Enforcement's Role in Prevention and Deterrence***

The concept of deterrence, the keystone of our penal system, must be an integral part of "prevention" strategies designed to reduce the public's demand for drugs. In recent surveys of high school students in California and New Jersey, more than two-thirds indicated that the fear of getting into trouble with the law would prevent their use of illicit substances. Very few students who have used drugs, however, reported that they had ever been arrested. For deterrence to be effective, drug offenders must believe that they now face an enhanced risk of being caught and the certainty of swift and stern punishment. By vigorously enforcing tough yet realistic drug laws, the law enforcement community can effectively alter the "risk equation" and thereby deter the use and sale of illicit drugs.

Tough, aggressively enforced laws can also change attitudes and perceptions about drugs, and repudiate the notion that drug offenses are somehow "minor" or "victimless" crimes, or that drug users are "only hurting themselves." This approach has been used to address drunk driving. Throughout the country, state legislatures responded to the drunk driving problem by enacting tough laws, while at the same time, state and local police departments adopted innovative, aggressive and well-publicized enforcement tactics. As a result, drunk drivers now face not only a greater risk of being caught, but also the certainty of stern punishment.

Although the problem of drunk driving remains a critical concern, and has not been solved in any jurisdiction, it is clear that these law enforcement and legislative initiatives have had a significant impact. It is now clear to the public that drunk driving is a serious offense that will not be tolerated. New terms such as "designated driver" have become a part of America's vocabulary, and the majority of Americans now find it unacceptable to drink and drive.

The enforcement of drunk driving laws represents an effective model which should be used in designing the nation's drug enforcement strategies. Recent surveys show that public attitudes about drugs are already beginning to change and that society is becoming more aware of the magnitude of the problem and more intolerant of drug use. Increasingly, the decision to say "no" to drugs is

becoming the path of least resistance—one which citizens (and especially young people) can make without fear of being subjected to scorn and ridicule from their peers. These studies reveal harbingers of future progress and prove that comprehensive efforts to change people's attitudes and perceptions can be effective.

If the deterrent thrust of the criminal law is to have any meaningful impact on the demand for illicit drugs, every drug offender must face a realistic prospect of apprehension and punishment. Recreational or casual users must become the special focus of law enforcement attention. Casual users, who can quit at any time but choose not to, account for much of the profits now enjoyed by drug traffickers. These occasional users are morally responsible for much of the violence and tragedy associated with the nation's drug epidemic, since it is their money which sustains international and domestic drug trafficking networks.

It is now necessary on a nationwide basis to transform these users' moral culpability into legal accountability through the imposition of stern, realistically enforceable penalties and sanctions. The concept of "user accountability," a fundamental theme of the National Drug Policy Board's report, must also become the centerpiece of any state and local drug enforcement strategy.

Furthermore, the law enforcement community must eliminate "vice centers," where drugs are openly bought and sold. By working with community leaders, by developing neighborhood watch programs and citizen "tip" lines and by using aggressive street level enforcement tactics, police can discourage "casual" drug deals and make it more difficult for purchasers, especially young and inexperienced buyers, to procure illicit substances. The eradication of open drug marketplaces will not only discourage young people from seeking to buy drugs, but also will reduce the temptations to try drugs. By moving drug marketplaces out of sight, the law enforcement community can help to keep the drug culture out of mind as well.

*The law enforcement community must send a clear message: the era of leniency is over.* Besides deterring some users by increasing their fear of being caught and punished, this approach also provides young people who are inclined not to use drugs with an additional reason—an "excuse" as it were—to resist peer pressure and to say no. This is one of the more subtle benefits of an aggressive user-oriented strategy. The law enforcement community must do everything that it can to help young people resist drugs.

## ***Law Enforcement's Role in Intervention and Treatment***

Law enforcement professionals do not directly provide counselling or treatment to drug users. The law enforcement community, however, must help to identify drug dependent offenders and those offenders who are at risk of becoming drug dependent so that the courts and appropriate substance abuse professionals can provide the necessary evaluation, treatment and monitoring services. An arrest may be the beginning of a long process leading to rehabilitation. Very few drug users "volunteer" for treatment in the true sense of the word. More often, participation in a rehabilitation program is the result of coercion and pressure brought by family, friends, school officials, employers or by the criminal justice system. Many addicts vigorously deny that they have a problem, and resist efforts by others to help them. It is *after* treatment that recovering addicts often express their gratitude for having been forced initially to participate in rehabilitation.

## ***Law Enforcement's Role in Education—Helping to Make Schools Drug Free***

Nationwide efforts to reduce the public's demand for drugs will ultimately depend on new educational programs now being put into our schools. These programs will teach a generation of children *how* and *why* they should say no to drugs. *Schools will serve as the single most important component of a comprehensive, long-term prevention program designed to alter tolerant attitudes and behavior concerning drug abuse.*

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***. . . The law enforcement community must send a clear message: the era of leniency is over . . .***

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The recent national survey of high school students confirms that children continue to be exposed to drugs at a frighteningly young age, and that illicit drugs are too often used on school grounds and when school is in session. The law enforcement community, working with education officials, must make certain that schools and the areas around them are safe havens for law abiding children, not convenient marketplaces or sanctuaries for drug dealers or users. Children are entitled to an environment which is conducive to education, one which is free of drugs and violence and where drug trafficking activities will not be tolerated. Children should not be able to look out their classroom window and see a drug deal taking place. They should not be able to find used "crack" vials or syringes littered around school playgrounds, and they should not be propositioned to buy or use drugs while walking to school or while on school property.

As an absolute priority, the law enforcement community must do all it can to keep children as far away from the drug culture for as much of the day as possible. Law enforcement can play a vital role in helping to promote efforts to reduce the demand for drugs by giving teachers and school substance abuse counsellors a fair chance to provide children with the tools and skills they will need to resist drugs. *Protecting our schools and schoolyards is the greatest possible contribution which the law enforcement community can make to the long-term effort to deal with the drug problem.*

## ***Teamwork and the Allocation of Responsibilities***

The nature of the nation's drug problem dictates that every law enforcement and prosecuting agency at every government level contribute to the drug enforcement effort. The nature and extent of a law enforcement agency's contribution will depend on a number of factors. However, every law enforcement agency, regardless of its size, jurisdiction, or specialized mission must support the nationwide effort to curb the drug epidemic. This must become a nationwide priority within the law enforcement community.

It must be recognized that all states remain vulnerable if any state is unable to assume its enforcement responsibilities. This is a testament to our mutual interdependence, and for this reason, a na-

tional strategy must ensure that every component of the comprehensive program is aggressively pursued. *Law enforcement and prosecuting agencies must act in some sense as each other's keeper if they are to afford adequate protection to every community and to every citizen.*

The National Drug Policy Board's report specifies the roles and responsibilities of the federal agencies involved in the war on drugs. The National Drug Strategy is designed to enable these federal agencies to devote a specified portion of their resources to pursuing carefully targeted objectives, with the goal of producing the greatest and most lasting effect. This plan recognizes that federal law enforcement agencies must take advantage of their unique capabilities. Given the nature and

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extent of federal resources, statutory tools, scope of jurisdictional authority, levels of expertise and degree of specialization, no state or local law enforcement agencies could reasonably be expected to accomplish many of these particular tasks. Diplomatic initiatives to encourage drug producing nations to eradicate crops or curtail illicit drug exports, for example, represent a task of vital national concern which is uniquely within the federal government's bailiwick.

Most law enforcement objectives, however, entail some degree of shared responsibility; no one agency or level of government is uniquely suited to achieve the objective, and any number of law enforcement actors may be called upon to participate. The question is how best to divide responsibilities among participating law enforcement and prosecuting agencies to take advantage of each agency's particular resources and perspective. With this goal in mind, the National Drug Strategy embraces the concept of a "lead agency," and identifies certain tasks and activities for which a federal law enforcement agency must assume a leadership role. The National Drug Investigation and Prosecution Strategies, for example, identify upper echelon

members of international drug trafficking networks as *primary* targets, and a certain percentage of federal investigative and prosecutorial resources are to be directed to identifying, apprehending and successfully prosecuting such offenders.

The concept of prioritizing and targeting limited resources is fundamental to any carefully conceived law enforcement strategy, and requires that all participating law enforcement and prosecuting agencies agree as to what constitutes a "primary" target. A task or objective defined as "secondary" or "supplementary" to one agency or level of government may be the "primary" objective of another agency or level of government. *All law enforcement and prosecuting agencies must know what they are expected to do in relation to other law enforcement agencies.*

The National Drug Strategy relies heavily on the Law Enforcement Coordinating Committees (LECCs), which are currently chaired by the United States Attorneys in each federal district. The LECCs are an appropriate vehicle for state, local and federal law enforcement and prosecuting agencies to work together. They not only provide a forum to discuss common problems and to voice complaints, but provide a way for state and federal investigative and prosecutorial activities to complement each other. The LECCs can help to develop and enhance information sharing, make available non-English language support teams, provide technical and laboratory assistance, enhance forfeited asset and equitable sharing programs, coordinate training activities and encourage the use of special federal deputization powers.

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***. . . Every state's law enforcement community must develop its own plan of action . . .***

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LECCs can also make certain that enforcement strategies remain responsive to new threats as they arise, and ensure that all local and regional drug threats are dealt with. The LECCs, in other words, can make certain that no level or type of drug offender escapes attention, apprehension and prosecution by the appropriate law enforcement agency. As noted, the National Drug Policy Board's

strategy will direct federal resources to upper echelon drug offenders and away from cases which can be handled by state and local authorities. For this approach to be successful, it is essential that federal authorities, working with state and local officials, ensure that each state is able to assume these cases.

For all of these reasons, state and local law enforcement and prosecuting agencies should actively participate in LECCs. To encourage participation, the United States Department of Justice should use rotating chairpersons, and state and local law enforcement officials should chair many subcommittees. *A state law enforcement community's active participation in an LECC, however, does not absolve that state of its responsibility to develop its own complementary strategy and plan of action.*

## ***The Unique Contributions of State and Local Law Enforcement***

The National Drug Policy Board's strategy contemplates a "layered" approach to drug enforcement, in which law enforcement erects a series of barriers between the source of drugs and the marketplace. Some of these "barriers" must be the primary responsibility of state and local law enforcement agencies. In fact, the lion's share of drug enforcement will continue to rest on the shoulders of state and local agencies, which, as previously noted, accounted for more than 90 percent of all drug arrests in 1986.

Furthermore, some of the most important tasks facing the law enforcement community must be accomplished at the state and local level. The critical objective of holding drug users accountable, for example, depends upon enhanced state and local law enforcement efforts. It is not realistic to expect federal agencies to handle a significant percentage of all cases involving the use or simple possession of controlled dangerous substances; nor is it reasonable to expect federal courts to devote a substantial percentage of their time to such cases.

State and local governments must also be primarily responsible for juvenile matters. Young offenders should be at the focus of any drug enforcement policy designed to reduce society's demand for drugs. The federal criminal justice system, how-

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ever, does not have the institutional resources or statutory tools to deal effectively with this class of offender. Juvenile courts and juvenile justice procedures, rather, are a unique feature and resource of state and local government.

Finally, although the Congress has passed a law to provide enhanced punishment for schoolyard drug offenders, it is not realistic to expect federal agencies to patrol schools and surrounding areas. That responsibility falls upon the shoulders of local and, to a lesser extent, state law enforcement agencies.

For all of these reasons, the contributions of local patrol officers are as vital as the contributions of federal narcotics agents who specialize in handling complex, international investigations. Indeed, drug

enforcement programs which focus most directly on changing society's permissive attitudes about drug abuse tend to be those which depend principally on state and especially local law enforcement activities. While street level patrol enforcement efforts may not appear to be as glamorous as investigations into the activities of international kingpins or corrupt foreign officials, in fact, the officer on the beat and the marked police car on patrol are highly visible and far more immediate symbols of the law enforcement community's commitment to hold all offenders accountable for their actions.

It is often said that local police are the front line of defense against crime. In the context of drug enforcement, it is probably more correct to say that state and local police are the *last* line of defense—the last in a series of drug enforcement barriers which extends from drug producing nations to the marketplaces on street corners across the nation. That is why it is imperative that every law enforcement officer across the nation be on the lookout for drug offenses, and that is why the enforcement of state and local drug laws must be made the single highest priority of the nation's law enforcement community.

## Chapter 2

# *Establishing a Nationwide Process to Ensure Effective State and Local Action*

### *Full Participation in a Statewide Planning Process*

Very few states have an integrated law enforcement system in which all law enforcement and prosecuting agencies are directly accountable to a single executive authority. As a result, it is often difficult to develop a statewide law enforcement policy. Too often, a state's response is little more than a collection of disparate local policies, without uniform direction or guidance.

Lack of statewide law enforcement planning presents an inherent problem in responding to drug trafficking networks, which have become increasingly sophisticated and pay no heed to jurisdictional boundaries. No law enforcement agency at any level, operating in isolation, has the jurisdictional authority or resources to identify or disrupt the operations of an entire drug trafficking network. It is therefore necessary to coordinate all available law enforcement resources and promote communication between law enforcement and prosecuting agencies. Absent such coordination and communication, an operation undertaken by one department may unwittingly undermine tactical enforcement efforts undertaken by another.

This level of coordination must be achieved within the overarching framework of each state's constitutional system and structure. Given the importance of the problem, and the need for executive leadership at the highest levels of government, the Governor of each state should be actively involved in developing and promoting a statewide drug enforcement program. Furthermore, each state must establish a mechanism in which all law enforcement and prosecuting agencies participate in developing comprehensive drug enforcement strategies. These statewide strategies should complement and build upon the drug enforcement strategies

outlined by the National Drug Policy Board, but must be tailored to the specific resources and needs of each state. Without an ongoing strategic planning process, many of the programs, activities and tasks described in this Blueprint will not be feasible.

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***. . . Each state must develop a comprehensive drug enforcement strategy which encompasses every law enforcement program and activity . . .***

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The Bureau of Justice Assistance in the United States Department of Justice required each state to develop a statewide strategy for the enforcement of state and local drug laws as a condition of receiving federal grants under the Anti-Drug Abuse Act of 1986. The Bureau prescribed a process for developing these statewide drug strategies, and strongly encouraged each state to establish a drug policy board as a forum for communication and coordination. Such boards were created by more than 80 percent of the states which applied for federal funding. Most of the resulting state strategies, however, dealt principally, if not exclusively, with programs and activities supported by federal dollars. These programs represented only a fraction of the total state efforts in drug enforcement.

To be effective, and to ensure the optimum use of limited fiscal and human resources, each state must develop a comprehensive drug enforcement strategy which encompasses every law enforcement program or activity. These strategies must be designed not only as a means for justifying federal

funding, but must provide policy direction for all drug enforcement activities undertaken by law enforcement and prosecuting agencies at every level of government. Furthermore, this planning process must be ongoing instead of a one-time project. Law enforcement and prosecuting officials must periodically amend the statewide strategy to respond to new threats, developments and enforcement opportunities.

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Each state must assess its substance abuse problems and statewide enforcement needs and develop its own plan of action. Each plan should define and coordinate the roles of all state and local law enforcement and prosecuting agencies, and should establish tactical priorities to ensure that resources will be used in the most cost-effective way. These statewide plans should also be compatible with and complementary to the federal strategies implemented in each federal district. States must, therefore, work with resident federal agencies to develop plans and agreements concerning the identification of targets and the sharing of information and resources. Federal and state implementation plans cannot be developed in isolation if there are to be no "gaps" with respect to any class of offender. As noted, the LECCs are an appropriate forum in which to develop and institutionalize a joint federal-state planning mechanism. To further ensure close cooperation and to avoid duplication of efforts, federal and state law enforcement agencies should consider entering into memoranda of understanding which precisely set forth their specific roles and responsibilities.

The planning and coordination process must not be limited to federal-state activities and programs. Lack of coordination and communication among state and local law enforcement agencies is potentially far more damaging than a lack of communication with resident federal agencies. Each state should therefore establish a statewide drug enforcement policy board or committee patterned after the LECCs to serve the same functions *within*

the state as the LECCs serve for state and federal agencies. These statewide boards or committees can open lines of communication and resolve disputes between member agencies, and can help to derive the maximum benefit from the wide array of law enforcement talent within the state.

## ***Census of Resources and Needs***

Before a state can develop a statewide drug enforcement strategy, it must inventory its law enforcement resources. Each state should determine how many law enforcement officers and prosecutors are already engaged in the enforcement of state and local drug laws. Each state should identify existing specialized drug enforcement units, including intelligence gathering and analytical units, forfeiture and financial investigations units, clandestine laboratory response teams, drug detection canines and patrol drug response units which can be used throughout the state to assist local agencies. A state also should inventory all of its surveillance and other narcotics enforcement equipment, and should develop a means for the interdepartmental sharing of these resources.

After identifying existing resources, each state must identify those areas or regions within the state which share problems. Statewide planners must understand which drugs are available, which are most prevalent within each region of the state, where and under what circumstances drugs are typically bought, sold and consumed, and the age at which children are first exposed to and experiment with illicit substances.

## ***Assessment of Legal Tools and Necessity for Statutory Reform***

Each state should carefully evaluate existing criminal drug laws and statutes which authorize investigations. Each state must make certain that it has laws which promote all of the recognized goals of a rational penal system. [See Chapter 3 for a checklist of recommended statutory features]. Where necessary, the law enforcement community should seek new state laws so that law enforcement and prosecuting agencies have the tools necessary to wage an aggressive and coordinated attack against both the supply of and demand for drugs.

## ***Setting Priorities***

A number of states report that drug enforcement is presently not a high priority and that law enforcement resources are used instead for the detection and prosecution of other "more serious" crimes. Furthermore, many law enforcement resources are scattered across the nation in small and medium-sized police departments. Some of these departments are not able to provide their communities with 24-hour police protection, much less to establish full-time drug enforcement units. Throughout the country, only a comparatively small number of state and local law enforcement officers and prosecutors are assigned full-time to narcotics enforcement.

In developing a pragmatic and realistic national drug enforcement strategy, we must recognize that state and especially local law enforcement departments serve many diverse public safety and public service functions. Only a small portion of the average police officer's time is devoted to enforcing any particular criminal law. Law enforcement efforts are also directed to the enforcement of motor vehicle laws, routine patrol functions, responding to service calls, and traffic and crowd control. These are all vital public safety functions.

Given the demonstrated relationship between drugs and crime, however, *every* law enforcement and prosecuting agency throughout the country must give highest priority to enforcement of state and local drug laws, and should devote as many resources as possible to enhance and support narcotics enforcement. At a minimum, all sworn law enforcement officers should be trained to be on the lookout for drug abuse and drug trafficking activities. Each law enforcement agency should develop and enforce standard operating procedures for responding to such criminal activities, either by making on-the-scene arrests, or by relaying the information to another law enforcement agency.

In setting law enforcement priorities, and in promoting statutory reform, each state must con-

sider the impact that such statutory and policy changes will have on the criminal and juvenile justice systems. Each state must consider, for example, how the deployment of new resources (or the redirection of existing resources) against drug offenders will affect jail and prison populations, as well as the effect an increase in arrests will have in delaying the processing of cases. Statewide planners must also take into account the capacity of existing forensic laboratory facilities and their ability to provide timely reports needed for drug prosecutions. The statewide plan, in other words, should include a criminal justice system "impact statement," and must also consider solutions to all of these system-wide resource problems. Each state must devise innovative case management programs to ensure that no part of the criminal justice system breaks down.

## ***Basic and In-Service Training***

The goals and objectives in this Blueprint cannot be achieved without enhancing the training and expertise of the entire law enforcement community. Enhanced basic and in-service training is needed to achieve the highest levels of law enforcement professionalism and to institutionalize drug enforcement policies and programs. Training, continuing education and professional development programs must be a key part of each state's drug enforcement strategy, no less important than the intelligence, interdiction, investigation and prosecution strategies developed by the National Drug Policy Board.

All law enforcement officers must keep abreast of new drug distribution, marketing and transportation techniques, as well as current interdiction, patrol, interrogation and investigation tactics. At present, some police officers receive significant specialized narcotics training, while others receive some preservice and little or no regular in-service training. Each state should assess its existing narcotics enforcement training programs, as well as its training needs and deficiencies. Each state should then develop a statewide training plan and delivery system and should establish minimum drug enforcement training standards designed to instill in new recruits as well as experienced officers the need to be vigilant and to treat drug enforcement as an absolute priority.

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Each state should develop a statewide and interstate training network to maximize resources, reduce duplication and reach the largest population of law enforcement officers. Each state should develop a clearinghouse for information concerning all training programs offered throughout the state and in neighboring states.

A number of federal agencies including the Federal Bureau of Investigation, the Drug Enforcement Administration, the Internal Revenue Service, the United States Coast Guard and the United States Customs Service offer excellent basic and specialized training programs which are available to state and local law enforcement officers. Each state, working with its LECCs, should take advantage of the assurances in the National Drug Strategy that the federal government will continue to provide and to enhance these training and support services. Each state also should explore all alternative funding, including public and private grants, to reimburse state and local agencies for training costs.

### ***Interagency Cooperation— A Theme for all Levels of Government***

Every state faces the prospect of waging a war on drugs with inadequate resources. While every reasonable effort must be made to increase federal drug enforcement funding, it is apparent that law enforcement and prosecuting agencies cannot depend on the prospects of expanding existing resources, and so must make certain that existing resources are most cost-effectively used. Each state must ensure that efforts are not duplicated and that operations undertaken by one agency do not undermine operations undertaken by another.

Each state must promote interagency cooperation. Cooperative law enforcement ventures must become more commonplace, and must be institutionalized. The positive relationships among two or more law enforcement agencies should not depend, as is now often the case, on personalities and personal relationships. Each state should therefore promote the use of formal agreements and memoranda of understanding, clearly setting forth the investigative and prosecutorial responsibilities of all law enforcement and prosecuting agencies which have potentially overlapping jurisdictions.

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***. . . Every state must make certain  
that existing resources are most cost-  
effectively used . . .***

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The goal of enhanced interagency cooperation is best achieved by encouraging *joint* investigations and prosecutions, as opposed to outright referrals from one agency to another. Each state should actively promote the cross-designation and special deputization of appropriate local, state and federal law enforcement officers to ensure that investigative leads can be pursued without concern for jurisdictional barriers. Each state also should establish uniform standards for state or local law enforcement agencies to use in referring cases to federal agencies, and cases should not be referred by police departments directly to the United States Attorney until the appropriate county prosecutor or district attorney has been consulted.

Interagency cooperation can also be enhanced by establishing a network of multi-jurisdictional task forces within each state. The concept of an interdepartmental task force is hardly an innovation. Such cooperative ventures have been used successfully on many occasions. The cost-effectiveness of this approach is evidenced, for example, by the operations of Fugitive Investigative Strike Teams, which are administered by the United States Marshals Service. By sharing resources and expertise, these strike teams have arrested a far greater number of targeted offenders than would have been possible had each agency been acting on its own. The impressive accomplishments of the nationwide Organized Crime Drug Enforcement Task Forces (OCDETF) show that interagency cooperation can and must be applied to narcotics enforcement.

Multi-jurisdictional task forces serve a number of functions. Certain types of investigations require a core of experienced, full-time narcotics investigators. Undercover operations may not be possible in some places, for example, because all of the local police officers are known to local drug traffickers. Without assistance from neighboring jurisdictions, these drug traffickers could operate with impunity because the local law enforcement department does not have the resources to infiltrate their operations.

Multi-jurisdictional task forces also allow small departments to participate in complex investiga-

tions and share in the distribution of any forfeited proceeds. Furthermore, task force members have the opportunity to gain on-the-job training which would otherwise be impossible. The establishment of task forces and internship and officer exchange programs will provide more law enforcement officers the opportunity to work with and learn from federal, state and local experienced professionals.

Multi-jurisdictional task forces can be structured to enhance and streamline sophisticated narcotics investigations and to ensure the free flow of information among all members of the task force. Similarly, task forces can facilitate the early involvement of prosecutors in investigations, so that cases are developed to take advantage of statutory tools, remedies and enhanced sentencing provisions. The early and consistent involvement of prosecutors makes it easier to induce targeted offenders to turn state's evidence and to cooperate with authorities so that upper echelon traffickers can be reached. Finally, and perhaps most significantly, multi-jurisdictional task forces can foster cooperation, understanding and mutual respect among federal, state and local law enforcement and prosecuting agencies.

Interagency cooperation should not be restricted to law enforcement agencies operating at different levels of government. Each state should also consider creating task forces or inter-municipal enforcement agreements among local police departments. In this way, each participating agency can share in the resources of its neighbors, and thereby provide greater protection for the citizens of all participating communities. In developing inter-municipal enforcement agreements, each state should provide guidance and model agreements which set forth the internal procedures and chain of command, and which deal with the legal, tort liability and workers' compensation issues which can arise in any such cooperative venture.

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***. . . Each state should coordinate grant applications to make certain that they are compatible with the statewide drug enforcement strategy . . .***

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## ***Coordination and Continuity of Funding—Restoring the Art of Grantsmanship***

It is critical that each state take advantage of federal funding opportunities outlined in the National Drug Strategy. States must develop familiarity with the intricacies of grant application, implementation and evaluation procedures. Each state should also coordinate all law enforcement grant applications to make certain that they are compatible with the statewide drug enforcement strategy. Each state should therefore establish a state board comprised of representatives from all law enforcement and prosecuting agencies including the Attorney General, district attorneys or county prosecutors, sheriffs and police chiefs, which can lead in coordinating and evaluating all drug enforcement funding priorities and grant applications. Each state's comprehensive drug enforcement strategy must determine how resources can best be expanded, enhanced or reprioritized to have the greatest impact on targeted problem areas.

Each state must also deal with the problem of the lack of continuity of funding. Often, grant programs provide funding for only one or two fiscal years, making long-range planning difficult. In order to promote long-range planning, all grant programs should entail multi-year, long-term commitments. Just as grantees are required to make various assurances as a condition of receiving funds, so too, grantors should provide assurances that the funds they offer will in fact be available in the future.

Finally, as noted, state and local law enforcement agencies need more funding in order to address the drug problem and states must make every effort to increase federal funding. States must recognize, however, that some federal funding may actually decrease rather than increase and each state must be prepared to assume the costs of federally funded programs. States should proceed on the theory that any worthwhile federal grant funded drug enforcement program should survive the initial grant period and, accordingly, states should plan on eventually assuming those program costs.

## Chapter 3

# *Legal Tools*

### *Legislative Policy*

Although the development of a statewide drug enforcement strategy is principally an executive function, each state legislature must assist through the appropriation process and by providing comprehensive and tough drug laws. These laws become the tools that state and local law enforcement agencies use to implement an effective drug control strategy. The law enforcement community cannot wage an effective war on drugs unless the state legislatures provide laws that are worth enforcing.

Missing or deficient statutes will result in drug enforcement gaps and will impose unfair burdens on law enforcement agencies within and outside the state. If, for example, a state legislature fails to authorize court-ordered electronic surveillance, it becomes impossible for state and local agencies to pursue a whole class of middle and upper echelon drug traffickers. Any such state will depend entirely on resident federal agencies to pursue this type of offender, and it is not certain that federal agencies will be able to provide the necessary assistance. Similarly, where a state legislature fails to provide a means for seizing and forfeiting drug-related assets, local agencies must rely entirely on federal law and federal prosecutorial efforts. Such prosecutions, however, may not represent the best use of federal resources and may not be consistent with the National Drug Strategy.

Each state must develop its *own* investigative and prosecutorial capabilities, and state legislatures must be willing to entrust their own law enforcement and prosecuting agencies with the necessary tools. By providing comprehensive and modern laws, state legislatures can facilitate the development of aggressive, cost-effective drug enforcement programs. For this to be accomplished, the legislatures and the law enforcement communi-

ty must agree on the problem areas and those offenders who should be targeted. By providing enhanced punishment for these targets, the legislatures can encourage law enforcement agencies to devote resources to the apprehension of such offenders.

Each state should firmly reject the call for the legalization of controlled dangerous substances. State legislatures must understand that criminal drug laws provide substantial incentives (or disincentives) for the law enforcement community. Law enforcement officers who believe that the criminal justice system is a “revolving door” for drug offenders are not likely to take drug enforcement seriously. If, on the other hand, rank and file law enforcement officers genuinely believe that the criminal justice system will deal with drug offenders with appropriate firmness, they will respond with the kind of fierce dedication, selflessness and personal sacrifice which has characterized the efforts of the nation’s law enforcement community over the years.

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***. . . Law enforcement cannot wage an effective war on drugs unless the state legislatures provide laws that are worth enforcing . . .***

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In setting policy, state legislatures, working closely with the state’s law enforcement community, must fully understand the impact of any reform on all parts of the criminal justice system. It makes little sense to toughen drug laws if state prison and correctional systems will become overburdened to the point that other serious offenders must be

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*. . . Drug laws must be realistically enforceable, and be measured in terms of their capacity to change tolerant attitudes about drug abuse . . .*

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granted early release. Similarly, policy planners must consider what will happen to speedy trial goals if drug laws are toughened so as to encourage all offenders to demand jury trials. Meaningful deterrence depends on *swift* and *certain* punishment, and the goals of swiftness and certainty are often in conflict. All drug laws must be realistically enforceable, and should provide meaningful alternatives to incarceration and traditional forms of punishment in appropriate cases. *Each state legislature must achieve a delicate balance: a sound drug law cannot be so "lenient" as to lead the law enforcement community to believe that it is not worth enforcing and it cannot be so "tough" that law enforcement agencies cannot afford to enforce it.*

Finally, a state's drug laws must provide for the stern punishment of *all* drug offenders. Drug laws should, of course, provide sternest punishment for the upper echelon drug distributors and profiteers who are the most culpable offenders. These laws must not, however, ignore the far more numerous low level dealers and users. A comprehensive drug law, like statewide drug enforcement strategies, must account for the fact that drug kingpins could not operate profitably absent a steady demand for controlled substances. State legislatures must embrace the notion that the impact of all law enforcement activities must ultimately be measured in terms of their capacity to change widely held tolerant attitudes about drug abuse and to reduce the demand for illicit drugs.

### **Statutory Check List**

Each state should consider amending its drug laws, if necessary, to include the following recommended features to enable state and local law enforcement and prosecuting agencies to respond effectively to the state's particular drug problem.

### **Provisions to Ensure Enhanced Punishment for Targeted Offenders**

- *Punishment based on drug type and amount.* The law should provide differentiated punishment based upon the type and amount of the drug involved, providing sternest punishment for offenses involving those drugs which pose special problems within the state.
- *Prolific dealers.* The law should mandate terms of imprisonment and periods of parole ineligibility for the most dangerous and prolific drug distributors.
- *Aggregation of amounts.* The law should permit prosecutors to aggregate the amount of drugs distributed on separate occasions or to separate individuals.
- *Repeat offenders.* The law should provide especially stern punishment and mandatory terms of parole ineligibility for repeat drug distributors.
- *Leaders of drug conspiracies.* The law should provide punishment based upon the defendant's role in a drug trafficking network, and should provide especially stern punishment and lengthy periods of parole ineligibility for kingpins or leaders of drug trafficking conspiracies.
- *Racketeering.* The law should provide for criminal charges and civil remedies modeled after the federal Racketeer Influenced and Corrupt Organizations (RICO) statutes to permit law enforcement to interrupt criminal enterprises, gain access to the financial assets of lucrative drug conspiracies and seize legitimate businesses and organizations which are subsidized by illicit drug proceeds. (See also recommended features concerning asset seizure and forfeiture).
- *Clandestine laboratories.* The law should provide enhanced punishment for persons who maintain or operate clandestine drug laboratories. The law should also provide for safely destroying clandestine laboratories and provide funding for cleaning up the environment contaminated by such il-

licit drug production operations. In addition, the law should authorize law enforcement agencies to apply for court orders permitting the pretrial destruction of bulk seizures of controlled substances or dangerous chemical precursors.

- *Drug distribution premises.* The law should provide enhanced punishment for persons who maintain or operate crack-houses or other narcotics resorts, or illicit drug warehouses or transfer stations.
- *Fortified premises.* The law should provide enhanced punishment where drug manufacturing or distribution resorts, clandestine laboratories or drug warehouses are fortified against police entry through the use of booby traps, attack dogs, steel doors, alarm systems or other similar means.
- *Firearms.* The law should provide for enhanced punishment and mandatory term of imprisonment for any person who commits a drug distribution offense while in possession of a firearm. Such a statutory provision would afford greater protection for police officers and would directly address the vexing relationship between drugs and weapons.
- *Drug terrorists.* The law should provide enhanced punishment for "drug terrorists," who use force or threaten to use force in the course of committing a drug crime or while promoting or facilitating a drug crime or conspiracy. The grading of the offense should depend on whether it involved the actual infliction of bodily injury or the use or threatened use of firearms, explosive substances or destructive devices.
- *Public Corruption.* The law should provide enhanced punishment for public officials involved in drug trafficking or any person who attempts to bribe or corrupt a public official in connection with drug trafficking.
- *Importing drugs into prisons.* The law should provide enhanced punishment for any person who unlawfully brings drugs into a state, county or local correctional facility or half-way house, or who aids and abets or conspires with someone who brings illicit drugs into a correctional facility or half-way house.

- *Drug-induced deaths.* The law should provide an offense akin to felony murder which would make drug distributors and manufacturers strictly liable for any drug-induced (*i.e., e.g., overdose*) deaths. All distributors and manufacturers should be put on clear notice that they operate at their peril with respect to the risk that a death may ensue.
- *Drug profiteers.* The law should provide mandatory fines or penalties for drug profiteers based on the street value of the drugs involved, the profits actually reaped or the business value of any criminal enterprise in which the defendant knowingly participates.
- *"Designer drugs."* The law should include controlled substance analogs in the definition of controlled dangerous substances so as to keep pace with new pharmacological techniques used to produce more potent and addictive substances.

## ***Provisions to Protect Children and Educational Environments***

Adolescents and young adults comprise a considerable portion of the existing drug demand market. Drug profiteers have shown a special fondness for young people, who are particularly vulnerable and impressionable, and who are a good long-term investment in illicit marketing dollars. An adolescent drug user can reach in a matter of months the same stage of dependency which it might take an adult years to reach. Drug dependent adolescents do not have a fair opportunity to mature, learn or become socially adjusted during the very time in their lives when they should be developing as individual human beings with positive self-images. One of the most frightening statistics revealed in the national survey of high school students, and one which demonstrates the success to date of this sordid marketing strategy, is that students continue to be exposed to a wide spectrum of drugs at a frighteningly young age.

Given the nature of this threat, and consistent with the notion that schools must be made drug-free if they are to emerge as the principal medium for providing a generation of young people with the information and skills they will need to resist drugs,

state legislatures must treat young people as a class needing special protection. State legislatures must provide especially stern punishment for drug dealers who infiltrate schools and sell to minors.

- *Schoolyard dealers and "drug-free school zones."* The law should provide for mandatory imprisonment for persons who distribute drugs or possess with intent to distribute while on school property, school buses or within designated "drug-free school zones." These safety zones should be established at some distance from the outer boundaries of every public, private and parochial elementary, junior high and high school across the country.
- *Employing juveniles.* The law should provide mandatory imprisonment for any adult who employs or uses a juvenile in furtherance of a drug distribution scheme.
- *Selling to juveniles.* The law should provide enhanced punishment for adults who distribute drugs to minors.

## ***Provisions to Ensure User Accountability***

Each state should adopt provisions to hold drug users accountable for their actions. Criminal prosecutions should be pursued where appropriate, however, non-criminal civil and administrative remedies should also be available to ensure the imposition of stern yet realistically enforceable penalties and sanctions.

- *Revocation or postponement of driving privileges.* The law should provide that all persons convicted of any drug-related offense, including use or simple possessory offenses, must forfeit their driving privileges for not less than six months. Any juvenile under the legal driving age who is adjudicated delinquent for a drug-related offense should be ineligible to apply for a driver's license for at least six months after he or she reaches the legal driving age. To maximize the deterrent effect, this mandatory revocation or postponement of driving privileges should apply without regard to whether an automobile was involved in the offense.

- *Demand reduction penalties.* The law should impose mandatory cash penalties for all drug offenders, based on the legislature's determination of the nature and severity of each offense. The proceeds could be used to provide a stable funding base for drug education, prevention, public awareness and rehabilitation initiatives. Each state should enforce the collection of mandatory penalties by withholding the return of driving privileges, holding contumacious defendants in contempt, or retaining private collection agents where an offender fails to make a good faith effort to comply with a court-ordered payment schedule.
- *Community service.* The law should provide for mandatory community or reformative service for any offender who is convicted of a drug use or simple possession offense while on school property or school buses, or within a designated drug-free school zone.
- *Drug intervention program.* The law should provide for a comprehensive drug intervention program in which drug-abusing defendants can be identified as soon as possible after an arrest, and where appropriate, carefully monitored treatment and rehabilitation opportunities made available.

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***. . . State legislatures must provide especially stern punishment for drug dealers who infiltrate schools and sell to minors . . .***

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- *Mandatory treatment.* The law should mandate drug education, evaluation and treatment for convicted drug users at their own expense, where feasible.
- *Violations.* The law should require that all persons admitted to bail or granted parole or probation abstain from illicit drug use, and the law should authorize or possibly mandate the revocation of bail, probation

or parole upon a finding of drug use. In addition, the law should authorize the warrantless search of persons released on parole who technically remain in the custody of state or local correction officials.

- *Electronic monitoring.* In cases where incarceration is not appropriate, the law should authorize the use of electronic tracking devices to enforce house arrest or restrictive curfews.
- *“Reverse sting” operations.* The law should authorize reverse sting or so-called “sell bust” operations, in which undercover officers pose as street level dealers and offer to sell imitation drugs to persons seeking to purchase illicit drugs. This will maximize deterrence and discourage casual “stranger-to-stranger” drug transactions.
- *Drug Testing.* This Blueprint does not endorse any particular drug testing plan involving persons who are not subject to the criminal jurisdiction of the courts, since such plans go beyond the scope of law enforcement activities. States might consider, however, drug testing of those seeking employment in law enforcement agencies. Drug testing among private sector employees might also be a valuable aspect of user accountability.

## ***Provisions to Ensure Juvenile Accountability***

A substantial percentage of all drug offenses are committed by minors. Each state should develop a comprehensive juvenile justice code which holds juvenile drug offenders accountable for their actions by imposing the innovative, noncustodial features discussed above, including the postponement of driving privileges, mandatory community service and cash penalties. State legislatures must recognize that general deterrence is consistent with the rehabilitative goals underlying the juvenile justice system.

- *Waiver to adult court.* The law should permit prosecutors to waive certain juveniles accused of especially serious drug trafficking offenses to adult court.

- *Notice to school officials.* The law should permit law enforcement officials to notify appropriate school officials where a student has been arrested for a drug offense. School officials should also be apprised of the final adjudication and disposition. Such information should be kept confidential and should be used by school officials to develop an appropriate educational program to deal with the student’s substance abuse problem.

## ***Provisions Concerning the Seizure and Forfeiture of Assets and Proceeds***

A comprehensive forfeiture law, when properly and aggressively enforced, can serve many important functions. The seizure and forfeiture of assets can take the profit out of drug crime. Furthermore, by redistributing seized property among all of the agencies which contributed to the arrest, investigation and prosecution, a modern forfeiture law can help to fund more aggressive and sophisticated law enforcement activities, leading to even more forfeiture revenues. It is entirely fitting that drug dealers pay for enhanced drug enforcement programs. By rewarding law enforcement agencies for their watchfulness and diligence, moreover, an equitable asset sharing program can provide substantial new incentives for police departments to aggressively enforce state and local drug laws.

Finally, a forfeiture law can encourage participation in multi-jurisdictional task forces. These task forces are better suited to trace assets, conduct financial investigations and develop sophisticated cases which are likely to lead to significant forfeiture actions. An intelligently crafted forfeiture law and asset sharing program can promote inter-agency cooperation and coordination by providing an immediate, tangible benefit to all participating local law enforcement agencies.

- *Property subject to forfeiture.* The law should authorize the seizure and forfeiture of any form of real or personal property used in furtherance of any criminal activity or derived from the proceeds of any criminal activity.

- *Asset sharing program.* The law should require that the proceeds of all forfeited property be distributed among all participating law enforcement and prosecuting agencies in proportion to their contribution to the case. These proceeds should be credited directly to the budgets of the contributing law enforcement or prosecuting agencies and be used solely for law enforcement purposes. Forfeited monies should not supplant appropriated funds; nor should anticipated future forfeiture revenues be considered in making appropriations.
- *Money Laundering.* The law should provide for the stern punishment of any person, corporation or financial institution knowingly involved in money laundering of drug proceeds. Such penalties should include the revocation or denial of professional licenses.
- *Investigative grand juries.* The law should provide for investigative grand juries with the authority to deal with criminal schemes which transcend local and county boundaries.
- *Leverage in plea negotiations.* So as to encourage drug offenders to turn state's evidence and to cooperate with government investigations, the law should permit prosecutors to engage in plea negotiations in appropriate cases. Courts should not be permitted to impose a lesser sentence than that agreed to by the prosecutor as part of a negotiated disposition.
- *Cooperative investigations.* The law should permit law enforcement agencies to enter into intermunicipal enforcement agreements or multi-jurisdictional task forces. The law should thus provide appropriate law enforcement officers with statewide arrest and peace officer powers and should facilitate the cross-designation or special deputization of law enforcement officers at all levels of government. The law should provide for the appropriate allocation of tort liabilities and workers' compensation responsibilities.

## ***Provisions to Enhance Information Gathering***

- *Electronic surveillance.* The law should authorize electronic surveillance, in appropriate cases, including the use of wiretaps, pen registers and access to telephone billing records, authorization for overhears or "consensuals" and authorization for other forms of audio and visual surveillance necessary to support sophisticated investigations and to monitor the activities of organized drug trafficking networks.
- *Immunity and compelled testimony.* The law should authorize "use and fruits" immunity to enable prosecutors to compel witnesses to testify before grand juries and provide information needed to apprehend and prosecute upper echelon drug traffickers. Where a convicted defendant refuses to testify and respond to questions after having been granted immunity, he or she should be subject to contempt and should not be entitled to receive credit for time served for his or her underlying conviction for as long as he or she continues to refuse to answer lawfully propounded questions.
- *Diversion of prescription drugs.* State and local agencies must assume primary responsibility for controlling the illegal diversion of prescription drugs, which remains a major problem and accounts for a substantial percentage of all substance abuse. State law should require the use of a triplicate prescription system, where one copy of the prescription stays with the prescribing physician, one is retained by the pharmacy and one copy is sent to a designated agency. Each state should also consider imposing criminal penalties to supplement civil and regulatory remedies to make certain that licit drugs are not routinely prescribed or dispensed by illegal means.
- *Precursor tracking system.* The law should require that all transactions involving the purchase or shipment of precursor chemicals be reported to a designated law enforcement agency.

## ***Provisions to Expedite Forensic Laboratory Analysis***

No drug offender can be convicted until a laboratory analysis has been performed. A number of states report that this is one of the leading reasons for pretrial delay. The problem of overburdened forensic laboratories may be exacerbated by the enhanced enforcement initiatives contemplated by this Blueprint, which will lead to more arrests and more drug samples submitted for forensic analysis. Moreover, any statutory reform which imposes sterner punishment may result in more cases being contested in court, thereby requiring that complete laboratory analyses be performed.

- *Laboratory analysis fee.* The law should provide that all persons convicted of drug offenses must pay a surcharge for the maintenance and modernization of forensic laboratory facilities.
- *Sworn laboratory certificates.* The law should authorize the admission at trial of sworn laboratory certificates in lieu of the live testimony of government chemists. This would enable chemists to devote their time to their laboratory work, rather than having to travel routinely to testify as to the results of tests which are accurately documented in official government records.

## ***Administrative Remedies and Local Ordinances***

- *Professional licenses.* Each state should revoke or deny the professional licenses of persons involved in drug distribution activities.
- *Tenants' rights.* State law or local ordinances should establish that tenants have a right to drug-free housing, should authorize the eviction of drug dealers who operate on leased premises and should require landlords to take reasonable security precautions against drug traffickers.

## ***Study of System-Wide Impact***

- *Continuous monitoring.* Each state should monitor the impact of new drug laws on:
  - the time required to process cases;
  - the workload of courts, prosecutors and public defenders;
  - local jail and state prison populations;
  - the workload of probation and parole officers;
  - the number of defendants referred to rehabilitation programs and the availability of substance abuse treatment.
- *Drug courts.* Each state should consider the need to establish specialized drug courts.

## Chapter 4

# ***Complementary State and Local Drug Enforcement Programs and Initiatives***

The National Drug Policy Board's report identifies five law enforcement strategies: the National Drug Intelligence Strategy, the International Narcotics Control Strategy, the National Drug Interdiction Strategy, the National Investigations Strategy and the National Narcotics Prosecution Strategy. These "supply reduction" enforcement strategies were designed to guide federal agencies in deploying their resources and legal tools.

Statewide strategies should complement these federal strategies. In many instances, state and local law enforcement agencies can support and participate in programs conducted by federal law enforcement agencies. *Each state strategy must also include initiatives for state and local law enforcement and prosecuting agencies acting on their own. Each state must translate the broad goals and objectives of the National Drug Strategy into activities and tasks which address state and local needs and which take advantage of the state's own resources, capabilities and viewpoints.* Just as state and local law enforcement and prosecuting agencies should contribute to the implementation of the strategies developed by the National Drug Policy Board or its successor, so too, resident federal agencies should work to complement and contribute to the goals set forth in each statewide drug enforcement strategy.

It is important to note that the five federal law enforcement strategies are *not* mutually exclusive. Although the strategies require a careful division of responsibilities among a number of federal agencies, no task is unique to any particular agency or to any level of government.<sup>1</sup> It should also be noted that many of the provisions of this Blueprint, especially those involving interagency cooperation and the modernization of data collection and information sharing, will not only improve drug enforcement, but will also enhance the entire criminal justice system and the enforcement of all criminal laws.

Furthermore, all of these strategies are interdependent. A routine police patrol, for example, may lead to an arrest and a source of information that eventually results in the successful prosecution of an upper echelon offender. In that event, the final prosecution and any related forfeiture actions would not have occurred but for the watchfulness of the road officer on patrol.

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***. . . Each state must address state and local needs and take advantage of its own resources, capabilities and viewpoints . . .***

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It is also hard to conceive of a prosecution strategy which does not depend upon the success of its investigation strategy counterpart. These two strategies are so intimately related that there is a danger in attempting to neatly compartmentalize the various aspects of the overall drug enforcement effort. Drug offenses are inherently conspiratorial in nature—all, with the possible exception of growing marijuana exclusively for one's own personal use—are part of a sophisticated, multi-layered dis-

1. The one possible exception concerns the International Narcotics Control Strategy. Diplomatic initiatives with foreign nations must remain within the sole province of the federal government. Nonetheless, there are analogous domestic activities which can be undertaken by state and local governments. The goal of reducing the amount of illicit narcotics cultivated and processed worldwide, for example, suggests that similar crop eradication programs must be undertaken within our nation's borders by state and local law enforcement agencies.

tribution network. The failure or ineffectiveness of law enforcement at *any* level impacts and restricts the effectiveness of investigations and prosecutions at *all* levels. For this reason, each state must

develop a truly *integrated* drug enforcement strategy—one in which all of the constituent strategies work in harmony.

## ***State and Local Contributions to the National Drug Intelligence Strategy***

No comprehensive drug enforcement program can succeed without access to accurate and timely information. A comprehensive intelligence and drug information management strategy supports all other drug enforcement strategies. Information is needed not only to support tactical operations and investigations, but also to assist law enforcement officials in developing plans of action and in allocating limited resources.

The nation's law enforcement community must take advantage of the wealth of information already available to state and local law enforcement departments. In 1986, state and local law enforcement officers were responsible for more than 600,000 arrests, each of which was a potential source of information. Furthermore, local police officers routinely come into direct contact with members of the community and have a tremendous opportunity to develop confidential sources of information—not only from criminal informants, but from concerned private citizens as well.

### ***First Objective: Expand the Sources of Drug Information***

- *Targeted patrols.* Each state should take full advantage of the information gathered by routine and targeted patrol officers. This is not limited to the patrol of highways, but should also encompass routine patrols of neighborhoods and high drug crime areas.

- *Patrol drug response teams.* Each state should develop patrol drug response teams whereby experienced narcotics detectives can be summoned to begin an immediate, on-the-scene investigation where a patrol officer discovers a cache of drugs.
- *Data collection protocols and training programs.* Each state should develop standard reporting procedures and training programs to make certain that all police officers know how to collect information which may be useful in supporting drug investigations.
- *Forensic laboratory reports.* Each state should develop standard forensic laboratory reports and a procedure to collect and analyze this information to help assess the nature and scope of the drug problem.
- *Prescription drug tracking system.* Each state should take advantage of information provided by the Drug Enforcement Administration concerning prescription drugs. Each state should monitor the dispensing of prescription drugs.
- *Precursor tracking system.* Each state should track the purchase and transport of precursor chemicals used in the manufacture of controlled dangerous substances.
- *Cooperative informants.* Each state should build a core of reliable informants and should encourage, in appropriate cases, participants in illegal trafficking activities to cooperate with law enforcement. Each state should establish an information sharing system to enable prosecutors to determine the need for and value of information which might be supplied by a given defendant.

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***. . . Intelligence and historical information must be used to support investigations and prosecutions . . .***

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- *Immunity program.* Each state should allow a prosecutor to obtain “use and fruits” immunity to compel a defendant to provide information about his or her superiors in the drug trafficking network. [See also Prosecution Strategy.]
- *Citizen “tip” lines and watch groups.* Each state should develop a program to encourage private citizens to provide information about suspected drug trafficking. [See also Community Involvement and Interaction Strategy.]

## ***Second Objective: Improve the Flow, Management and Dissemination of Drug Information***

- *Inventory of existing systems.* Each state should inventory all existing information management and sharing systems.
- *Standardized and upgraded data collection.* Each state should standardize procedures for collecting and collating historical information from arrest and incident reports and judgments of conviction. Each state should also consider updating the Uniform Crime Reporting system and establishing an incident-based reporting system.
- *Information management officers.* Every law enforcement and prosecuting agency should have an information management officer who knows how to gain access to existing information systems.
- *Information management units.* Each state should create information management units in appropriate law enforcement and prosecuting agencies to provide tactical, operational and statistical information to all other units within the agency.

The nation’s law enforcement community must keep pace with the increasingly sophisticated practices and technologies used by organized criminal enterprises. A computer-aided information system can enable law enforcement professionals to assess the scope and nature of the drug problem, develop

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***. . . Law enforcement must keep pace with organized criminal enterprises . . .***

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local and statewide strategies to target the most dangerous offenders, and make the best use of investigative and prosecutorial resources. A computer system not only allows investigators to pursue leads more quickly, but can also provide ready access to sources of information which would otherwise be unavailable. A computer system, for example, can detect linkages and common modes of operation which might otherwise go unnoticed.

The use of sophisticated technology is not new to the nation’s law enforcement community. States must recognize, however, that the most sophisticated and expensive computer systems are not always needed. Given budgetary restraints, states should be cautious when developing new computer systems. Any electronic information storage and retrieval system will be meaningless unless a state also enhances the core of trained professionals at all levels of government who actively develop information sources and follow up on investigative leads.

*The key to a cost-effective information sharing system is communication among agencies at all levels of government.* No agency has a vested “proprietary” right in any category of information. Information must travel in all directions within the law enforcement community. Federal and state-level agencies must provide information to local law enforcement agencies, just as local agencies must provide information to their federal and state counterparts.

- *Enhanced computerization and networking.* Each state should develop a computerized capacity to store, collate and retrieve intelligence and historical information concerning drug offenders. Before initiating new computer projects, each state should take advantage of existing computerized information exchange and pointer systems, such as the Regional Information Sharing System (RISS) and Operation Pipeline. Each state should actively participate in multi-state, regional and national information networking projects.

### ***Third Objective: Enhance Analytical Capabilities***

Information on narcotics trafficking abounds, but few state and local resources are devoted to collating and analyzing this information. Intelligence and historical information must not be collected for its own sake, but must be used to support investigations and prosecutions. Each state must develop an analytical capacity to identify common linkages and patterns of criminal activity, and must also devote investigative resources to confirm the reliability of potentially useful information and to follow up on investigative leads.

- *Enhanced analytical capacity.* Each state's Intelligence and Information strategy should provide for the development or enhancement of the capacity to

analyze data and feed it to the appropriate law enforcement units. Each strategy should provide a mechanism by which information can be corroborated through alternative investigative means and each state should develop a system to pursue investigative leads based on computer-assisted analysis.

- *Trend analysis.* Each state, taking advantage of existing multi-state or regional information sharing projects, should create or enhance the capacity to analyze drug use and distribution trends and offender and vehicle characteristics. Each state should use computer-assisted analyses to pinpoint specific areas, roadways or types of locations which require enhanced patrol and interdiction activities.

## ***State and Local Contributions to the National Drug Interdiction Strategy***

Interdiction encompasses any law enforcement activity which restricts or interrupts the stream of illicit drug commerce. Such programs need not be limited to eradicating the cultivation, production or processing of illicit drugs at their source; nor should interdiction be restricted to law enforcement operations at borders or major points of entry. In fact, a large volume of controlled dangerous substances are produced domestically, and in some states, marijuana has become a major cash crop. Interdiction must also include highway and neighborhood patrols and surveillance activities conducted by uniformed and plainclothes officers in motor vehicles, as well as on foot.

Enhanced and targeted patrol is the logical state and local counterpart to federal interdiction programs. This does not mean that state and local agencies should not also assist federal efforts to monitor activities at major points of entry. It does suggest, however, that state and local law enforcement agencies must assume the role of *lead* agency for routine highway and neighborhood patrols. Such patrols can serve a number of public safety functions. Highway interdiction often results in the seizure of drugs in transport, removing these drugs

from the stream of illicit commerce. Patrol activities can also provide invaluable intelligence information concerning new drug use trends and courier characteristics. Enhanced patrols will also provide an expanded core of informants and valuable sources of confidential information needed to apprehend drug kingpins.

Most importantly, aggressive patrol programs directly promote the general deterrence of drug offenders by maintaining a highly visible police "presence." Such patrols can be especially effective in deterring and displacing open and notorious drug transactions and use, and this, in turn, directly promotes the goal of convincing citizens, and especially young people, that drug offenses will not be tolerated. For these reasons, local interdiction efforts may have a greater impact than efforts designed exclusively to eradicate drug cultivation and drug production or to stop the flow of drugs at national borders. The latter type of interdiction tactics are not as "visible" to the public, and unless such supply-oriented programs succeed in disrupting a significant portion of the flow of drugs, their impact will not be felt by the average citizen, or even the average drug user.

The aggressive use of uniformed patrol officers not only evidences law enforcement's commitment to enforce the nation's drug laws—the local counterpart to the federal government's "zero tolerance" policy—but also addresses the public's outcry for an immediate and significant police response to the drug epidemic. In many places throughout the country, city streets and whole neighborhoods have become combat zones, caught in the cross-fire between rival gangs bent on using force and violence to protect their turf. Many citizens, especially the elderly, have become prisoners in their own homes, and even police tread with caution through these neighborhoods. Violence has become endemic to the drug trade, and local police departments have a responsibility to use aggressive measures to protect those who are the *constant* innocent victims of this national epidemic.

Finally, aggressive and visible patrol tactics will lead to the enhanced detection and deterrence of all forms of street crime and motor vehicle offenses. The dedication of state and local patrol resources to this form of drug enforcement need not detract from the law enforcement community's duty to enforce other criminal laws, or to provide other services required for the public welfare.

- *Constant vigilance.* All police officers should be trained to recognize drug use and illicit cultivation, production and distribution activities. All sworn law enforcement officers, regardless of their agency affiliation, rank or duty assignment, should constantly be on the lookout for drug offenses and should treat the vigorous enforcement of state and local drug laws as a top priority.
- *"Zero tolerance" arrest policy.* Each state should adopt a policy which firmly rejects the notion that any drug offense is too minor to warrant an arrest. It should be the responsibility of all sworn law enforcement officers to arrest any adult or juvenile who commits a controlled dangerous substance offense, including use and simple possession offenses, unless an immediate arrest would jeopardize an ongoing narcotics enforcement operation, or unless there are other compelling reasons not to make the arrest.

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***. . . Police have a responsibility to protect those who are the constant innocent victims of this national epidemic . . .***

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- *Targeted patrols.* Each local police department should dedicate sufficient personnel to routinely patrol areas and roadways designated in accordance with standards specified in a statewide strategy. These standards should be developed to make the most effective use of limited patrol resources. Proactive and targeted patrols should, at appropriate times, provide special attention to the following areas:
  - Public, private and parochial schools, schoolyards and statutorily established drug-free school zones;
  - Designated high drug crime areas or "vice centers" where open and notorious drug transactions and use offenses are rampant;
  - High crime neighborhoods and housing projects and other areas where enhanced police presence is necessary to assuage public concerns;
  - Roadways known as major conduits for drug traffickers;
  - Airfields, landing strips, train stations and marinas which are believed to be local points of entry for drugs.
- *Local patrol plans.* Each state should require all police departments to develop a local patrol strategy and resource allocation plan consistent with the statewide strategy but tailored to local needs.
- *Model patrol plans.* Each state should develop a model patrol strategy to assist local law enforcement agencies. Much of a patrol officer's time is discretionary and is often occupied by "routine patrol." This block of discretionary time should be directed to targeted areas deemed to have the greatest impact on the local drug problem.

- *Offender characteristics and training.* Each state should develop a system to provide police departments specific information concerning current methods of illicit drug transportation, including up-to-date offender and vehicle characteristics and information concerning the areas and compartments within vehicles in which illicit drugs are commonly concealed. Each state should also provide training programs on the most efficient, constitutionally permissible techniques for identifying drug couriers and for seizing drugs in transport.
- *Periodic clean sweeps.* Each state should consider conducting carefully coordinated “clean sweep” or “saturation patrol” operations involving either multiple arrests following an undercover operation, or sending a large number of uniformed officers into a particular area for the purpose of uncovering or displacing drug trafficking activities.
- *Patrol drug response units.* Each state should establish or enhance a patrol drug response capacity, combining two traditionally distinct law enforcement functions: uniformed patrol and criminal investigation. Each statewide strategy should specify when and under what circumstances patrol officers should summon a patrol drug response team.
- *Canine drug detection units.* To facilitate the search of motor vehicles and premises for concealed drugs, each statewide strategy should provide for the creation of canine units and response teams. The statewide strategy should also specify training standards for drug detection canines and handlers.
- *Mass events.* Each state should develop a program and enforcement plan to eradicate open drug use at concerts, sporting events and social gatherings.

## ***State and Local Contributions to the National Drug Investigations Strategy***

Investigations must be the cornerstone of any policy designed to disrupt major drug trafficking operations. Apprehended drug offenders are often quickly replaced, even at the highest levels within drug trafficking networks. A key law enforcement goal must therefore be to eradicate *entire* criminal organizations. Patrol activities are an indispensable component of any comprehensive drug enforcement plan of action, and provide invaluable sources of information that support sophisticated investigations. The most culpable drug offenders, however, are rarely found in close proximity to large caches of drugs. These offenders must be pursued using very difficult tactics.

Drug profiteers are usually well-insulated within complex networks, and will not hesitate to use violence, terroristic threats and bribery to evade detection and prosecution. Furthermore, the proceeds of illicit drug trafficking will often be concealed or “laundered” through a complex series of legitimate and illegitimate commercial transactions. These organized criminal operations pay no heed to mu-

nicipal, county, state or even national borders. The multi-jurisdictional nature of these operations complicates the process of reaching the most culpable offenders, and highlights the need for cooperation among all investigative and prosecuting agencies at all levels of government.

### ***First Objective: Identify and Immobilize Drug Trafficking Networks***

#### **Target Major Traffickers**

- *Cooperation and case referrals.* Each state should pursue all investigations to the fullest extent possible, even if this means referring a case to another agency with greater resources or larger jurisdiction. When this occurs, all law enforcement agencies and officers should be given appropriate credit, in the form of professional

and public recognition and the sharing of any forfeited assets, for their contribution to the overall investigation.

- *Priority case classification system.* Each state must identify and target priority cases to be investigated by state and local law enforcement agencies. In assessing local and statewide needs and investigative priorities, each state should encourage the active participation of law enforcement and prosecuting agencies at all levels of government. Each state should target the following offenses and offenders for priority investigation:
  - Upper echelon wholesalers and leading participants (*i.e., e.g.,* managers, supervisors or financiers) in drug conspiracies;
  - Persons involved in the illicit cultivation, production or refinement of illicit drugs;
  - Prolific street level dealers;
  - Distributors who operate on school grounds or within statutorily established drug-free school zones;
  - Members of organized criminal street or motorcycle gangs or groups which resort to violence and terrorism;
  - Distributors who employ children or who sell drugs to children;
  - Drug distributors who operate in places of special concern to local communities, such as housing projects;
  - Persons who commit corruption or bribery offenses in support of drug trafficking activities;
  - Fugitives from justice.
- *Periodic evaluation.* Each state should provide a mechanism to periodically re-evaluate and update its investigation strategy and priority case classifications.
- *Integration of prosecution efforts.* Each state's investigation strategy and priority case classification system should be linked to its statewide prosecution strategy and goals, and prosecutors should help to define priority targets.

- *Coordination with federal investigations.* Each statewide investigation strategy should be compatible with the case classification scheme used by resident federal law enforcement agencies. Federal law enforcement agencies should be included in the strategic investigative planning process and should be consulted in defining state and local priority targets. Each state, working with the appropriate LECCs, should develop a case tracking system to ensure that every potential investigation is fully pursued by some designated law enforcement agency.
- *Coordinated Cultivation Strategy.* Each state should work with federal law enforcement agencies, as well as law enforcement officials in neighboring states, in identifying and eradicating the cultivation of marijuana. State and federal cooperation is vital in this area because frequently, such cultivation occurs on federal lands. States where cultivation is a problem must make every effort to get more federal funding.
- *Tracking of priority cases.* Each state should establish standard procedures for tracking priority cases to make certain that all investigative leads are pursued to the highest possible level within drug trafficking networks. These procedures should facilitate the orderly and consistent transfer of cases and information between law enforcement agencies at all levels of government, and should encourage these agencies to enter into memoranda of understanding clearly setting out each agency's investigative responsibilities.
- *Integration of intelligence gathering and analytical efforts.* Each statewide investigation strategy should take full advantage of the state's intelligence gathering and analytical capacity. The investigation strategy should be designed to support and promote the collection of additional information and intelligence. State and local narcotics investigators should work with analytical personnel in following leads and in verifying drug information identified with enhanced analytical capabilities.

## Enhance Investigative Capabilities

- *Drug enforcement specialists.* Each state should enhance its core of experienced, full-time narcotics investigators. Each state should also develop a recruitment and in-service narcotics enforcement training program.
- *Interagency sharing of personnel and equipment.* Each state should provide for pooling personnel and should encourage the development of internship or officer exchange programs among law enforcement agencies at all levels of government. Each statewide strategy should also provide procedures for sharing audio and visual surveillance equipment, drug detection canines, and other specialized resources.
- *Full range of investigative tactics.* Each statewide drug investigation strategy should take advantage of all investigative tactics, including undercover and infiltration operations, "buy bust" transactions, "sell bust" or "reverse sting" operations, visual surveillance and electronic surveillance.

## Second Objective: Increase Drug Seizures

Many illicit drugs are grown or produced within our nation's borders. These growing fields and clandestine laboratories must become a focal point of enhanced law enforcement efforts, and each state must accept primary responsibility for identifying and eradicating these sites. Given the number of illicit laboratories and fields which have proliferated across the country, it is unrealistic to expect that federal law enforcement agencies alone can deal with these drug sources.

- *Tracking precursors and laboratory ware.* Each state should work in cooperation with the Drug Enforcement Administration to analyze and disseminate all available information about the purchase of precursors, essential chemicals, glassware and laboratory equipment.

- *Citizen alert program.* Each state should develop a public awareness campaign to alert citizens about illicit drug production facilities. [See also Community Involvement and Interaction Strategy.]
- *Clandestine laboratory response teams.* Each state should establish trained clandestine laboratory response teams and criteria for when state and local law enforcement agencies should be required to summon response teams to assume responsibility for the investigation, raid and cleanup activities.
- *Hazardous substance disposal and clean-up.* Each state should develop procedures with state and federal environmental agencies for the safe handling and disposal of toxic or hazardous substances seized in connection with a clandestine drug laboratory. Each state should establish procedures for the cleanup of contaminated sites, and the federal government should be encouraged to make available Environmental Protection Agency Superfund monies to help defray the costs of cleanup.
- *Marijuana cultivation detection program.* Each state in which marijuana is grown should, working in cooperation with the Drug Enforcement Administration, continue to train all law enforcement officers to detect illicit growing fields and to be familiar with the steps taken by illegal growers to camouflage and protect crops, including the use of booby traps, springs guns, armed guards and attack dogs.
- *Aerial surveillance and crop eradication response teams.* Each statewide strategy should provide for proactive investigations and for the use of aerial surveillance. Where appropriate, each state should establish crop eradication response teams.

Narcotics enforcement patrol and investigation functions both involve searches and seizures. Since only a small fraction of the total quantity of drugs

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transported into and through the nation can realistically be confiscated, the strategic objective of choking off the supply of illicit drugs cannot be achieved solely by interdiction. Even large-scale seizures appear to have only a temporary and localized impact on the price and availability of illicit substances. For this reason, drug seizures must ultimately lead to successful prosecutions and the imposition of stern punishment. This requires that all evidence seized by law enforcement be admissible in court.

- *Standardized search procedures and training.* Each state should develop standard search warrant application procedures and forms and should develop and periodically update an arrest, search and seizure manual and bulletins for dissemination to all state and local officers who conduct searches and seizures. Each state should provide regular search and seizure training to all narcotics investigators and patrol officers.
- *Notice to searching officers.* Whenever evidence is suppressed by a court because of the manner in which it was seized, or whenever a prosecutor elects not to offer evidence in anticipation that it would be suppressed, the officer who conducted the search should be told the reasons for the decision, and should be told what he or she should have done in the circumstances to comply with state and federal constitutional requirements.
- *Elimination of recurring problems.* In order to monitor the development of search and seizure law, each state should develop a system to identify, isolate and eliminate recurring search and seizure problems.

### ***Third Objective: Seize Proceeds and Assets of Drug Traffickers***

Traditionally, law enforcement agencies have been successful in seizing drugs, weapons, cash and automobiles used to transport illicit drugs. These actions are extremely important. Drug pushers often flaunt their wealth and can become local folk heroes or role models, especially among inner city youth. It has become increasingly difficult for our legal institutions, schools, community activists and

legitimate businesses to compete with these symbols. The law enforcement community must do all that it can publicly to strip drug dealers of their visible forms of wealth and prestige.

The forfeiture of vehicles and cash are straightforward cases which usually do not require the expenditure of additional investigation and analytical resources. Often, the information and proofs needed for civil forfeiture are at hand at the moment of arrest. Henceforth, *all* forms of property, profits and proceeds derived from any illegal narcotics enterprise must be subject to seizure and forfeiture. Law enforcement agencies must identify and confiscate houses, buildings, warehouses, bank accounts, stock portfolios and even businesses which are linked to illegal drug distribution.

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- *Vehicle seizure policy.* Law enforcement agencies should seize all motor vehicles operated by drug offenders, including purchasers, provided these vehicles were actually used in furtherance of unlawful conduct.
- *Standardized arrest reports and follow-up investigations.* Each state should require that all police arrest or incident reports in drug cases indicate whether the offense involved the use of an automobile or occurred in privately-owned premises. Each state should require that some investigative agency determine in every drug case whether there are any assets subject to forfeiture.
- *Forfeiture assistance teams.* Each state should consider the need to create forfeiture assistance teams to assist local law enforcement agencies in conducting investigations to take advantage of state forfeiture laws.
- *Net worth investigations.* Each state should establish or enhance the capacity to conduct sophisticated financial and net worth investigations and to trace laundered assets.

# ***State and Local Contributions to the National Narcotics Prosecution Strategy***

One of the primary objectives of the National Drug Policy Board's report is to make the best use of limited federal resources. State and local prosecutorial resources must also be used in the most cost-effective way. Targeted offender programs developed in many jurisdictions have proven the effectiveness and efficiency of concentrating prosecution resources on select defendants so as to make certain that they are swiftly brought to justice. All drug offenders, however, must face the certainty of appropriate punishment.

- *Prioritization and distribution of forensic workload.* Each state should establish uniform criteria for determining the priority to be accorded all submissions of evidence for forensic laboratory analysis. These criteria should be compatible with prosecution priority case classifications. Each state should develop and implement a program to provide for the cost-effective distribution of the forensic laboratory analysis workload.

## ***First Objective: Establish Priority Targets and Coordinate the Use of Limited Prosecutorial Resources***

- *Targeted offender prosecution program.* Each statewide prosecution strategy should include criteria for targeting select drug offenders or offenses that reflect local crime problems and law enforcement priorities and which take advantage of special offender statutes and enhanced punishment provisions.
- *Linkage to investigation priority classifications.* A targeted offender prosecution program should be closely linked to the state's priority investigation criteria. These priorities should also be compatible with and complementary to federal prosecution criteria developed in each federal district in accordance with the National Narcotics Prosecution Strategy.
- *Standardized forensic laboratory procedures.* Each state strategy should include standard forensic laboratory operating procedures designed to reduce the time required to perform a forensic laboratory analysis. Each state should assess and project current and future laboratory resource (personnel and equipment) requirements.

## ***Second Objective: Enhance Integration of Prosecutorial and Investigative Functions to Take Advantage of Available Legal Tools and Remedies***

- *Full-time narcotics prosecutors.* Each state strategy should create or enhance a core of prosecutors dedicated full-time to narcotics enforcement. Where feasible, each prosecuting office should designate a full-time narcotics prosecutor or unit.
- *Recruitment and professional development.* Each statewide strategy should include a program to recruit prosecutors and to retain career prosecutors.
- *Prosecutorial assistance to police.* Each prosecuting agency should assist local police departments, and, where feasible, experienced prosecutors should be made available on a 24-hour basis to provide legal advice to police concerning narcotics investigations or issues concerning arrests, searches and seizures.
- *Integration with investigative activities.* The role of a prosecutor should not be restricted to presenting cases before courts and grand juries. Each state strategy should involve prosecutors in all phases of

narcotics investigations, and especially complex investigations or cases designated as priority prosecution cases (*i.e.*, *e.g.*, cases involving forfeitable assets, conspiracies, school zone prosecutions, etc.).

- *Participation in task forces.* Each state strategy should encourage prosecutors to assign personnel to work with multi-jurisdictional narcotics task forces.
- *Witness protection program.* Each state strategy should provide for the protection of cooperating witnesses, and each state should develop procedures for admitting state and local prosecution witnesses into the federal witness protection program.
- *Post-conviction immunity program.* The role of the prosecutor does not necessarily end upon gaining a conviction. Each state strategy should encourage prosecutors in appropriate cases to compel convicted defendants to testify as to the identity and activities of their superiors in the drug trafficking network.
- *Aggressive forfeiture policy.* Each state should aggressively pursue civil forfeiture actions, as authorized by law, against assets, including realty and tangible and intangible personal property, which are the fruits of or which were used in illicit drug trafficking, production or cultivation. No criminal case should be disposed of by a negotiated guilty plea without considering the state's forfeiture policy.
- *Forfeiture prosecution units.* Each prosecutor should designate an assistant or unit responsible for supervising all forfeiture actions within the jurisdiction.
- *Standardized forfeiture practice.* Each state should develop a manual which discusses the legal and tactical issues arising in civil forfeiture actions. This manual should include standardized forms to facilitate the uniform and efficient application of state forfeiture laws.
- *Forfeiture training for prosecutors.* Each state should instruct prosecutors on the logistics of asset forfeiture proceedings, methods of tracing assets, conducting title searches, dealing with secured creditors and providing notice to interested parties.

- *Uniform implementation of forfeiture policy.* Each state should monitor the implementation of its forfeiture laws and ensure their uniform and aggressive application.

### ***Third Objective: Ensure That All Drug Offenders are Held Accountable***

- *Uniform application of criminal drug laws.* Each statewide prosecution strategy should ensure consistency in the enforcement of state drug laws. Prosecutors should be actively involved in making certain that state drug laws are aggressively and uniformly implemented.
- *Prosecution of all drug offenders.* Each state should make certain that all drug offenders, especially drug users, are held accountable for their actions. Each statewide strategy should encourage prosecutors in appropriate cases to explore innovative alternatives to custodial sentences.
- *Referral of non-priority federal cases.* Where federal law enforcement agencies are for any reason unable or unwilling to pursue any particular prosecution, procedures should be developed in conjunction with the LECC to make certain that such cases are referred to appropriate state and local officials for prosecution. Each state should provide for cross-designation or special deputization of state and federal law enforcement officers and prosecutors to facilitate the prosecution of referred cases.
- *Prosecution of other agencies' informants.* Each state, working with the appropriate LECCs, should develop protocols concerning the prosecution of any defendant who is an informant or cooperative witness for more than one law enforcement agency.
- *Strict compliance with mandatory sentencing provisions.* Each state should make certain that courts impose appropriate sentences, and prosecutors should ensure that all mandatory sanctions are imposed. Prosecutors should make certain

that cash penalties and fines are actually collected, that revoked driver's licenses are surrendered, that appropriate restrictions are imposed as conditions of probation and that probation is revoked where those conditions are violated.

- *Sentencing memoranda.* Each prosecuting agency should prepare a comprehensive sentencing memorandum to educate the judiciary to the societal impact of drug offenses within the jurisdiction.
- *Treatment accountability.* Prosecutors should make certain that offenders afforded rehabilitation are held accountable to the courts. Where the seriousness of the offense warrants imprisonment, pros-

ecutors should take steps to ensure that rehabilitation occurs during, not in lieu of incarceration.

- *Pretrial release conditions.* Prosecutors should recommend appropriate and adequate conditions of pretrial release and, where appropriate, prosecutors should urge courts to impose urine monitoring and pretrial drug abuse evaluation and treatment.
- *Probation and parole conditions.* Prosecutors should make certain that persons on probation or released on parole comply with all probation or parole conditions, including periodic drug testing.

## Chapter 5

# ***Building Upon the National Drug Strategy and Implementation Plans: Taking Full Advantage of the State and Local Law Enforcement Perspective***

The five law enforcement strategies developed by the National Drug Policy Board are designed to coordinate the activities of federal law enforcement agencies and to take advantage of their unique resources and capabilities. State and local law enforcement and prosecuting agencies also possess unique resources and opportunities for interacting with members of the public which must be fully developed to have the greatest possible impact in

curbing the flow of illicit drugs, in creating drug-free schools, workplaces and neighborhoods and in modifying public attitudes about drug abuse. It is therefore necessary to expand the National Drug Policy Board's five law enforcement strategies to encompass programs and activities which are uniquely within the bailiwick of state and local law enforcement and prosecuting agencies.

## ***National Juvenile Justice Strategy***

The federal government provides leadership and funding to enhance the nation's juvenile justice system. Federal agencies, however, do not have the tools or the institutional resources to prosecute juvenile delinquents. State and local officials must therefore assume primary responsibility for these offenders. The law enforcement community, and especially local police departments, must take decisive steps to prevent juvenile delinquency. State level agencies must support local efforts and help improve all aspects of the juvenile justice system. States must see that adequate resources and legal tools are available to deal with juvenile delinquents who abuse drugs or who are involved in drug trafficking. Prosecutors must also play a key role in ensuring that juveniles who commit drug offenses are properly adjudicated.

The law enforcement community must become more actively involved in intervention and rehabilitation efforts by bringing drug abusing juveniles to the attention of the courts and treatment professionals. The juvenile justice system must be used in a positive way to help these children to become drug free and to lead law abiding lives. For this approach to be effective, intervention must occur at the earliest possible moment, before a pattern of delinquent conduct has already become in-

grained, and before the child is in the later stages of an addiction cycle.

Furthermore, juvenile drug offenders must be held accountable for their actions. To make no response, or to make an empty threat sends the wrong message to children, and can only serve to undermine the national drug enforcement effort by inviting further unlawful conduct. As noted, recent surveys in two states reveal that more than two out of three students report that the fear of getting into trouble with the law would prevent their use of illicit drugs. Each state's drug enforcement strategy must be designed to take advantage of this key "preventive factor." We must recognize that the concept of criminal law deterrence and the im-

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position of strict discipline is not incompatible with the rehabilitative goals of the juvenile justice system. In fact, it is inhumane to tolerate drug abuse by juveniles, or to fail to take aggressive steps to discourage young people from first experimenting with illicit substances. *State strategies should be designed to reduce youth involvement in substance abuse through persistent and meaningful deterrence.*

- *Comprehensive juvenile drug offender program.* Each state should develop a unified strategy to respond to juvenile drug offenders. Each statewide strategy should provide for enhanced local planning, coordination and integration of services designed to prevent delinquency and improve juvenile justice. Law enforcement and prosecuting agencies should work with courts and professionals in substance abuse treatment to make certain that substance abuse evaluation and rehabilitation programs are available for and used by juvenile offenders.
- *Professional development of juvenile officers.* Each statewide drug enforcement strategy should promote increased professionalism and public recognition of juvenile officers. Each statewide plan should provide for the recruitment and retention of the most skilled and competent personnel, and should provide specialized training for all juvenile officers.

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***. . . Strict discipline is not incompatible with the rehabilitative goals of the juvenile justice system. It is inhumane to tolerate drug abuse by juveniles . . .***

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- *Juvenile prosecution units.* Every prosecuting agency should allocate sufficient resources to aggressively prosecute juvenile offenders. At least one assistant prosecutor in each office should be responsible for coordinating and handling all juvenile matters. When the volume or seriousness of juvenile cases so warrant, a separate juvenile unit should be established within each prosecuting agency.

- *Juvenile arrest policy.* Each state should require all sworn law enforcement officers to take into custody any juvenile where there is probable cause to believe that the juvenile has violated any state or local drug law.
- *Uniform response to juvenile delinquency.* Each statewide drug enforcement strategy should include guidelines concerning the proper exercise of law enforcement discretion to ensure an appropriate, proportionate and uniform law enforcement response to juvenile delinquency. Each statewide strategy should specify when and under what circumstances juvenile matters may be diverted, and each strategy should make certain that the terms imposed as a condition of diversion or adjustment are fully satisfied.
- *Prosecutors' role in dispositions.* Prosecutors should take an active role in the disposition of juvenile offenders. Where a juvenile is adjudicated delinquent for any drug offense, the prosecutor should make certain that applicable mandatory penalties are imposed. Prosecutors should be encouraged to recommend to the court an appropriate disposition based upon the offense committed, the juvenile's prior delinquency record and the juvenile's social and educational background.
- *Evaluation and treatment as part of the disposition.* Where a juvenile is adjudicated for an offense committed while under the influence of a controlled dangerous substance, or where substance abuse is otherwise indicated, prosecutors should seek, as a condition of disposition, appropriate substance abuse evaluation and treatment.
- *Parental responsibility and treatment.* Where the conduct or neglect of a parent has contributed to delinquency, and where parental substance abuse is indicated, prosecutors should take steps authorized by law to require parents to submit to appropriate substance abuse evaluation and treatment.
- *Targeted juvenile offender program.* Each statewide strategy should provide a comprehensive and coordinated response to

serious repetitive juvenile offenders, who account for a disproportionate percentage of all crimes committed by young people. This program should address the prevention, apprehension, investigation and prosecution of juveniles identified as targeted offenders. The program should address:

- Criteria for defining targeted juvenile offenders;
- Procedures for early identification and intervention;
- Charging and screening determinations;
- Priority case processing;

- Pre-adjudication detention policy;
- Adjudication goals;
- Disposition considerations and recommendations; and
- Criteria for seeking waiver to adult court.

- *Tracking repetitive juvenile offenders.* Targeted juvenile offender programs should address the identification and aggressive prosecution of repeat offenders who continue criminal activities as adults. Each state should develop a system to track these habitual offenders.

## ***National Community Involvement and Interaction Strategy***

All law enforcement and prosecution activities must be part of a comprehensive *community-oriented* program involving other criminal justice actors, education and health professionals and members of the general public. Every community must develop its *own* plan of action which is consistent with the framework established by a statewide drug abuse strategy, but which is tailored to meet specific local needs. The law enforcement community must play a key leadership role. Law enforcement and prosecuting agencies must be a catalyst and help to bring together representatives from various disciplines to develop local drug enforcement strategies which raise public awareness of the problem and which focus on reducing the community's demand for illicit drugs.

### ***First Objective: Establish Close Working Relations With Education Professionals***

- *Drug-free schools policy.* Each statewide drug enforcement strategy should make drug-free schools the single highest priority of law enforcement.
- *Non-interference with education programs.* Law enforcement activities should not interfere with school substance abuse

counselling or education programs, and operations on school property should not be undertaken without considering the impact on the educational environment, existing substance abuse counselling programs and the relationships between school authorities, the law enforcement community and the student population.

- *Cooperation and model agreements.* Each state should develop model agreements between law enforcement and school officials which specify their mutual rights and responsibilities with respect to drug offenses committed on school property. Law enforcement and school officials should be encouraged to meet and enter into these agreements.
- *Periodic conferences.* Each state should encourage the chief executive officers of local law enforcement and prosecuting agencies to meet periodically with education officials to discuss matters of mutual concern and to revise and adapt their written agreements or memoranda of understanding.
- *Liaisons.* Each local law enforcement agency should designate a liaison to work directly on a day to day basis with local school officials. The role and function of a liaison would be to:

- Facilitate communication and cooperation between the two professional communities;
  - Identify issues or problems of mutual concern and facilitate the resolution of these problems;
  - Act as the primary contact person between the schools and the law enforcement community;
  - Develop joint training and other cooperative efforts, including information exchanges and joint speaking engagements;
  - Coordinate intervention and prevention efforts.
- *School zone patrol plans.* Every local law enforcement agency should develop a plan on how best to patrol schools, schoolyards and the areas surrounding schools, including any “drug-free school zones” which may be created by statute. Each state should develop a model patrol plan to assist local police departments in making the best use of limited patrol resources.
  - *Consultation with school officials.* Appropriate school officials should be consulted and allowed to participate in planning law enforcement operations conducted in school buildings or on school grounds.
  - *Referrals to law enforcement.* Each state should develop a policy which specifies when and under what circumstances school officials are required to turn over evidence or otherwise refer a suspected violation of state or local drug laws to law enforcement officials.
  - *Arrest protocols.* Each state should develop standard procedures concerning the manner in which law enforcement officers may enter onto school grounds to execute planned or spontaneous arrests. These protocols should be designed to minimize the disruption of the educational environment and should be developed in consultation with appropriate school officials.
  - *Notice of arrests.* Each state should determine when law enforcement officers should notify appropriate school officials when a student has been arrested for a drug offense.
  - *School search guidelines.* Each state should develop guidelines and training programs to explain when school officials may lawfully conduct searches and seizures. Each state should authorize school officials to request legal advice concerning school searches.
  - *Law enforcement programs in schools.* Each state should encourage school officials to arrange lectures, seminars and workshops explaining the drug abuse problem from a law enforcement perspective. Each state should also develop standardized curricula and a methods of instruction course for use by law enforcement officers who lecture at elementary and secondary schools.
  - *School dropouts and outreach programs.* Each state should encourage law enforcement and prosecuting agencies to work with school officials and community groups to develop programs to encourage students, including those who enter the juvenile justice system, to remain in school, and to encourage dropouts to return to school.

## ***Second Objective: Respond to Community Needs and Establish Positive Relations with Citizens***

One of the most valuable resources for any law enforcement agency is the community which it serves. Citizens must become more actively involved in supporting law enforcement efforts to deal with the nation’s drug problem. To accomplish this, local law enforcement prosecuting agencies must remain responsive to community needs. Throughout the country, there is a growing desire to take back streetcorners and whole neighborhoods from the influence of violent drug predators. Law enforcement and prosecuting officials must explain to citizens how they can help themselves by working cooperatively with the law enforcement community.

- *Participation of citizen groups.* Local law enforcement and prosecuting officials should work with representatives of civic and community groups, tenant associations, social and fraternal organizations, religious institutions and the business community to explain the state and local drug enforcement program and statewide strategy. Citizens should be invited to participate in the development and implementation of these programs and strategies.
- *Neighborhood meetings.* Local law enforcement and prosecuting agencies should sponsor town hall and neighborhood meetings to discuss enforcement problems and drug abuse "hot spots" so as to fully understand and remain responsive to community expectations.

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**. . . Citizens must become more actively involved in supporting law enforcement . . .**

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- *Visible police presence.* Each local law enforcement agency should maintain a visible presence in high drug crime areas and at times and places necessary to meet the community's security expectations.
- *Citizen assistance and support groups.* Each state should develop a victim assistance, counseling and support program to address the needs of residents of high drug crime areas or "vice centers" who are constantly victimized by drug-related crime and the threat of drug-related violence.
- *Community crime watch programs.* Every local law enforcement agency should design

nate a crime prevention officer to work with citizen groups and to implement a community awareness program. Law enforcement agencies should support and coordinate citizen volunteer watch groups and neighborhood watch programs.

- *Confidential drug "tip" lines.* Each state should develop a comprehensive program to create and publicize local drug "tip" lines and post office boxes to encourage citizens to report suspicious activities. All information provided by citizens should be carefully evaluated, and investigative leads should be pursued as appropriate. Where confidential information provided by a concerned citizen leads to an arrest or successful prosecution, that fact should be publicized to convince citizens that their cooperation is vital.
- *Drug-free housing.* Each state should develop a comprehensive program to guarantee that tenants have a right to reasonable security. These programs should provide for the eviction of resident drug dealers and should actively involve tenant associations in the creation and enforcement of curfews, visitor control procedures, resident watch groups, off-duty police patrol programs and other means to achieve drug-free public and private housing.
- *Drug-free workplaces.* Local law enforcement and prosecuting agencies should work with the business community and employee groups to develop drug-free workplace programs.
- *Athletic and recreational programs.* Each state should develop a comprehensive program to promote positive relations between the law enforcement community and law abiding citizens. Law enforcement and prosecuting agencies should sponsor recreational, social and athletic events designed to foster self-respect and respect for authority among young people.

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***Third Objective: Promote Public Awareness of the Nature and Scope of the Drug Problem and Law Enforcement's Contribution to the Overall Effort to Combat Drugs***

The deterrent thrust of the criminal law, especially for drug users, is lost if state and local efforts to enforce tough drug laws are kept secret. The law enforcement community must convince the public that the era of leniency is over, and that law enforcement's single highest priority will be to apprehend and punish all drug offenders, especially those who operate on or near schools.

- *Anti-drug campaigns.* Each state should encourage all law enforcement and prosecuting agencies to publicize the nature and scope of the state's drug problem and enforcement efforts designed to deal aggressively with that problem. These campaigns should alert citizens to the penal-

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***. . . Law enforcement's single highest priority will be to apprehend and punish drug offenders, especially those who operate on or near schools . . .***

---

ties for all drug offenses, including the use or simple possession of illicit drugs.

- *Events to raise public awareness.* Every local law enforcement and prosecuting agency should develop and publicize a speaker's bureau, and should promote public events to raise public consciousness and demonstrate the community's intolerance of illicit drugs. These activities can help to prove to concerned citizens that they are not alone, but rather are part of a large and growing national movement to protect children and to take back streets and neighborhoods.

## ***Conclusion: Developing a Nationwide Drug Enforcement Planning and Evaluation Process***

It is clear that solving the nation's drug problem will be an arduous task requiring a long-term commitment of resources. There are no quick fixes or easy answers. Tolerant attitudes about drug use can be changed, but this will not happen overnight. Our goal is to raise a generation that is drug free, and this can only be achieved through a fifteen to twenty year effort of intensive education, treatment and prevention programs—all supported, directly or indirectly, by law enforcement efforts as outlined in this Blueprint.

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***. . . Tolerant attitudes about drug use can be changed. Our goal is to raise a generation that is drug free . . .***

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Because of the complexity of both the problem and law enforcement responses, it will be necessary periodically to review and revise the provisions of this Blueprint. Similarly, each state must amend its own strategy to account for new technologies, substances of choice and illicit marketing techniques. Each statewide plan must remain flexible and responsive to the evolving drug problem and to new threats.

The law enforcement community must focus less on the traditional yardsticks of success, such as the

number of arrests made or the quantity or value of drugs seized. These statistics do not necessarily reveal whether law enforcement efforts are making a difference. The law enforcement community must instead depend more on qualitative measures and public opinion to determine whether efforts are viewed as having a genuine impact. The public's perception is crucial, since deterrence will only be achieved where citizens believe that selling, buying and using drugs is a dirty, secretive and risky business.

Finally, every law enforcement and prosecuting agency at every level of government must become co-equal partners in the anti-drug effort. For this reason, a truly national drug enforcement planning and evaluation mechanism is needed. State and local drug enforcement efforts should not conform to federal criteria; rather, federal, state and local drug enforcement goals and standards should all be part of an integrated planning process which defines the roles and contributions of each constituent member of the nation's vast law enforcement community. It is therefore respectfully submitted that the National Drug Policy Board, or its successor, include standing representation of state and local law enforcement and prosecution agencies. The input and participation of parents, educators and the clergy should also be sought. This will ensure that the nation's comprehensive drug enforcement strategy is one in which every law enforcement officer and prosecutor can share a sense of pride and a sense of participation.

NEW JERSEY RALLY  
Belmar Beach, New Jersey  
September 2, 1988

New Jersey is a proud state; and with very good reason. What you have achieved here has been the envy of the nation: a half a million new jobs, a growing economy, a new recognition as a national economic power.

New Jersey has attracted national attention for its economic success; and this fall, the eyes of the nation will be upon you for another reason. This state -- the Garden State -- will be a key battleground in determining the future direction of America.

I came here this weekend to let you know how important you are. I came here because I intend to run hard in New Jersey. I intend to fight hard. And, with your help, I intend to win.

Labor Day weekend is upon us -- from here on in, the campaign gets serious.

Labor Day also recalls something else. The end of summer. Time to look back on the season just passed; time to get ready for the challenges ahead.

This summer, America's rising spirit has been tried by one issue above all others: and that is the condition of our environment. In the blur of headlines about dirty air and closed beaches, there may be one silver lining: an increased awareness that the time for action to clean up the environment is now.

The fact is that this summer, like last, was not kind to the shore. This very beach was closed twice due to medical waste washing up. And medical waste was found again just yesterday not far from here.

I'm an environmentalist; always have been and always will be. So at the outset of this campaign, I believe it's important to state clearly how I would lead this country to a cleaner environment.

That's what I've been doing in these last few days. I've traveled from the Michigan shores of Lake Erie -- once pronounced dead and now coming back as a thriving fishery -- to a boat in Boston Harbor -- now called "the dirtiest harbor in America."

One thing is clear: we cannot ignore the problems of our environment. They call for action. They call for leadership. Because nobody fools nature over the long run.

So let me tell you, briefly, what I'm for:

I'm for taking action to curb the damage done by acid rain. The time for study alone is over -- so I favor a program of specific emissions reductions on a specific time table.

I'm for an aggressive, no-nonsense approach to cleaning up toxic waste dumps. I'm for strengthening enforcement against dumpers, quickening the pace of our cleanups, and streamlining the bureaucracy that sometimes slows them down.

You're looking at a President who would make the enforcement of Superfund, the prosecution of polluters, and the cleanup of toxic waste a top priority.

I would make the United States the world leader in tackling environmental problems. Problems like acid rain and global warming know no boundaries. So I'm for convening a global conference on the environment, at the White House, to bring all nations together to work for solution.

I'm for working to preserve the capacity of our wetlands, because they are too valuable to let disappear.

I'm for an America in which all of us treat our air, water, and soil with greater care -- in which a "conservative ethic" is broadly felt and widely taught.

Most of all, I want today to tell you what actions I'm for to curb the tragedy of ocean pollution -- because this problem is too vital to demand anything less than a specific action plan.

America hasn't fought for freedom on beaches around the world, only to have our own beaches conquered by waste.

So, first, I'm for a complete ban on the ocean dumping of sewage sludge after 1991. Congressman Jim Saxton has been one of the leaders in pushing for this and I congratulate him for his efforts.

Second, the Federal government should help establish an effective system for tracking the disposal of medical waste. We can start with a pilot program right here in the New York-New Jersey area, in cooperation with the state plan that the Governors recently announced. But the point is that if Federal action must be taken to track waste effectively -- Federal action should be taken.

One idea that has been suggested by several legislators, and by candidates like Joe Azzolina, is to require manufacturers of certain medical products to batch code their products to help in this tracking. I think this idea is most interesting, and deserves a close look.

Third, I favor bringing in the Federal Bureau of Investigation to track down those who dump medical waste illegally. We should use every tool at our disposal to find and prosecute those who would foul our oceans outside the law. The F.B.I. has the experts; it can help.

(Lange/Blessey)  
March 10, 1989  
6:30 p.m.

PRESIDENTIAL REMARKS: BRIEFING FOR NATIONAL ASSOCIATION  
OF ATTORNEYS GENERAL  
MARCH 13, 1989

"News" -- President Enlists Attorneys General  
in Fight for Environment, War on Drugs

Thank you... I'm very happy to be here.

Judging from the kind of work this association has been doing lately, I know we're fighting the same battles.

The two comprehensive reports you adopted this winter -- on environmental protection, and on drug control strategies -- put you out front on two issues that are central to my agenda for the future, to build a better America.

The approaches you've taken reinforce my conviction that, together -- on every front where we have shared concerns -- we're going to find solutions. We're going to define state and federal roles that work. And we're going to apply limited resources in a coordinated manner.

At the federal level, on many environmental issues, I think the time for study has passed. So I'm proposing legislation to reauthorize the Clean Air Act. I want to work with Congress on a

comprehensive acid rain program. And I intend to throw the book at those who engage in illegal ocean dumping.

Over the last decade, the states have taken on a leadership role in protecting our environment -- and that's good news.

I will work closely with you on those environmental questions where we share responsibility. We need to step up the Superfund clean-up process, and improve enforcement. Together, we must assure compliance with hazardous waste laws.

And where enforcement of all of the laws that protect our environment are concerned, I'd like you to think about those cases where we must move beyond civil penalties, toward criminal enforcement -- both as a sanction, and as a deterrent.

All of us are concerned about ocean dumping of medical waste. The needle on the beach is a national shame.

So I'm pleased to announce today that EPA has just established a medical waste tracking system, to ensure that waste goes to proper disposal facilities. This pilot program will apply to medical facilities of all sizes, including Federal facilities.

Nine states have already indicated some interest. Those of you who haven't, yet -- let me encourage you to contact E.P.A. this month, and get on board in this effort. This action alone won't entirely eliminate the problem; but it's an important first step.

In a few minutes, Bill Reilly will outline in detail our agenda on the environment. You will certainly find him -- today, and over the course of this Administration -- to be an outstanding ally and fellow soldier in the struggle.

The needle on the beach is part of the medical waste problem we're working to contain. But those needles are also the symptom, cause, and effect of those who abuse -- and are abused by -- drugs.

So before I hand over the podium, I want to enlist your support in the war on drugs.

While I'm President, great cities will not be held hostage by crack dealers. And our schools will not be locked in a state of siege.

You know, drugs are like chemical weapons that a society turns on itself. They breed the most insidious forms of domestic terrorism. And they will be stopped.

The budget I presented to Congress last month is a realistic, fiscally responsible plan that identifies key priorities requiring our immediate attention. One of these priorities is combating the scourge of drugs. That's why I'm asking for \$1 billion in new outlays for our anti-drug program. That's a 47 percent increase over 1988 -- for a total of \$6 billion in budget authority for 1990.

Most of that money -- 70 percent of it -- will beef up federal enforcement; provide grants to state and local law enforcement agencies; and build up our prosecution, detention, and intelligence-gathering strength.

As chief legal officers, you understand enforcement. You know how vital it is -- and as my budget makes clear, I want to devote unprecedented resources to enforcement.

But we must do more. This war won't be won by police work alone. Where there is demand, supply will always rise to meet it. Where there is no demand, supply is useless.

That's why I was glad to see that your "blueprint" for drug control strategies broadens the goals of enforcement. You say

that reducing demand must be "the ideological cornerstone of any coherent drug enforcement policy" -- and you're right. Enforcement strategies must look beyond effects, to causes.

Drug education, treatment, and prevention provide our best hope for a long-term solution -- especially with our kids. Yes, we need to tell them to "say no." But we must also give them the wisdom to know why -- and the skills to know how -- to say no.

I ask you to continue looking closely at your drug enforcement programs. How can they help reduce demand? Less demand means more success in the war on drugs. And to the extent you can cut demand, you can make your jobs -- my job -- and those of everyone involved in law enforcement -- a whole lot more rewarding.

Our financial resources may be limited, but our resolve is unlimited. With that limitless resolve, I know we can inspire every child, teacher, and parent; every community group, religious institution, and tenant association; and every business and professional organization in this country. And then, united in common resolve, we will truly be invincible.

As I've said before, we have more will than wallet. But the only limits on our will are the limits we place on ourselves.

Together, we can build a culture of zero-tolerance.

We can send a message, loud and clear, to those who take drugs -- and take our leniency -- for granted: The party... is over.

Let me now introduce Bill Reilly, Administrator of the E.P.A. He is a great builder of bridges between people -- he's even been called "The Great Includer."

He has devoted his career to protecting our land, air, and water -- and he has my complete confidence.

Thank you all very much. And God bless you.

STATEMENT OF PRESIDENT BUSH REGARDING  
MEDICAL WASTE

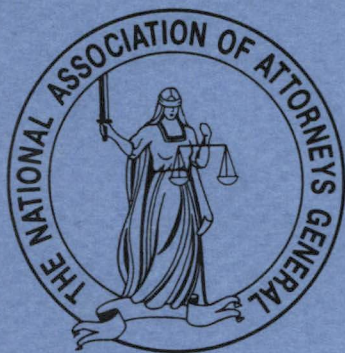
I am also pleased to announce today that we are moving ahead to establish an effective system for tracking the disposal of medical waste. We all remember too vividly the washing up of medical waste on our beaches last summer. At that time, I encouraged Federal action to track waste effectively.

Today, the EPA will announce regulations, which go into effect immediately, to track medical waste which is not handled on site, by establishing uniform standards for packaging it, labeling it, and reporting it, and to ensure it is sent to proper disposal facilities. Violators will be fined either civil or criminal penalties, depending on the nature of the violation.

I applaud Congress in their efforts to initiate these regulations; and I commend the EPA for promptly issuing them. And although this action alone will not entirely eliminate our waste problems, I strongly support this significant first step.

I also note that it is a limited program, with only about ten states participating. I encourage (challenge) other states to get involved, to rid our shores of waste and work towards a cleaner environment.

**ENVIRONMENTAL PROTECTION IN THE 1990s:  
Recommendations of the Attorneys General  
to the New Administration**



**NATIONAL ASSOCIATION  
OF ATTORNEYS GENERAL**

**JANUARY 1989**

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to the New Administration***

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- I. **ENVIRONMENTAL PROTECTION IN THE 1990s: Recommendations of the National Association of Attorneys General for the New Federal Administration**
- II. **BLUEPRINT TO END OCEAN POLLUTION: Report of the Ocean Pollution Subcommittee for the Environment Committee, National Association of Attorneys General**

# NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

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## INTRODUCTION

VICE PRESIDENT  
MARY SUE TERRY  
*Attorney General of Virginia*

IMMEDIATE PAST PRESIDENT  
DAVE FROHNMAYER  
*Attorney General of Oregon*

Among the most essential rights guaranteed to us by law is the right to a clean, safe and healthful environment, including the preservation of precious natural resources and invaluable open space for future generations. In recent decades, Congress and the states have enacted an impressive array of complex laws designed to safeguard this right. The enforcement and defense of environmental laws is a vital responsibility shared by the states and federal government. With this in mind, the Attorneys General have recommended to the new federal administration a set of principles to foster a new partnership and identified several key environmental initiatives which deserve especially high priority. This book embodies those Recommendations For the New Federal Administration and a detailed Blueprint to End Ocean Pollution, each adopted by the National Association of Attorneys General (NAAG) in December 1988.

The Recommendations which were developed through the NAAG Environmental Control Committee (Environment Committee) chaired by Vermont Attorney General Jeff Amestoy, cover several high priority matters. These include the Superfund area, in which Attorneys General urge that EPA's practices and policies reflect an attitude that the states are full partners in the Superfund effort, as Congress intended. We recommend a higher priority for enforcement actions so Superfund dollars will go farther in addressing sites where no responsible parties can be found. We also seek greater deference by the federal government to stricter state standards in carrying out remediation.

Other recommendations concern the need for strengthened enforcement efforts on pesticides and air pollution; better compliance with environmental laws by federal facilities; the need for federal action to protect against toxic chemical accidents; a federal policy encouraging enhanced groundwater protection while preserving the states' role; reversal of a federal policy on regulation of land uses that could harm state and local efforts to protect critical natural

resources; heightened criminal enforcement coordination; and increased federal efforts to help state and local governments solve the solid waste crisis through national promotion of waste reduction and recycling.

The theme of this collection of issue papers is best characterized in the initial section on "The State-Federal Relationship," which recognizes that a major challenge in the 1990s will be to define the appropriate roles of the state and federal government in a way that promotes effective and efficient environmental programs. This Report recommends a more coordinated partnership approach to environmental protection. The environmental problems that we face as a nation are awesome and require immediate attention from federal, state, and local governments to find long-term solutions. The strengthened state role in environmental protection that has developed over the past few years must be maintained, along with strong federal leadership in this area.

In response to the beach closings caused by wash-ups of sewage garbage of medical wastes and the worsening crisis of our vital ocean environment, NAAG formed a special subcommittee chaired by New Jersey Attorney General Cary Edwards with Rhode Island Attorney General James O'Neil as vice-chair to take an in-depth look at this multi-faceted pollution problem. The Blueprint to End Ocean Pollution calls upon the federal government to exercise a leadership role, but it highlights several specific actions that must be undertaken soon by not only the federal government, but state and local governments as well. We must all work together to solve problems like non-point source pollution, inadequate sewage treatment, ocean dumping, and control of coastal development.

The past decade has seen the states -- and their Attorneys General -- emerge in the vanguard of the fight to save our environment. As Attorneys General, we will continue to battle polluters, force clean-ups, and criminally prosecute environmental criminals. We are also looking toward initiating innovative strategies that strongly influence national policies, as this document demonstrates. The new, strong role of the states is here to stay. Yet, as this document recognizes, there is an urgent need to forge a new, state-federal partnership in order to use most effectively our limited resources to meet the great environmental challenges of our time. These recommendations point the way.

Robert Abrams  
Attorney General of New York  
President, National Association of Attorneys General  
1988-1989

**I. ENVIRONMENTAL PROTECTION IN THE 1990s: Recommendations of the  
National Association of Attorneys General for the New Federal Administration**

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## THE FEDERAL/STATE RELATIONSHIP

### SUMMARY

Over the past decade, states have taken a leadership role in developing new environmental initiatives. Strong federal programs are, however, still necessary to support state efforts. The challenge for the 1990s will be to ensure effective and efficient environmental programs by developing a more coordinated partnership between the federal and state governments that utilizes the strengths of both levels of government.

### BACKGROUND

Prior to 1970, environmental protection was primarily a state responsibility. By 1980, much of the responsibility for programs had shifted to the federal government. The shift to a federal-based system occurred for several reasons, including the interstate impact of some pollutants, the lack of resources at the state level, and lax programs in some states.

In the 1980s, however, states have taken a much more aggressive enforcement role on national issues affecting the environment. There has been a quiet revolution in which, with little fanfare, the states have reemerged as major players. Innovative groundwater legislation has been adopted in Arizona, Wisconsin, and Iowa; initiatives to address pesticide problems have been pursued in New York; extensive labeling requirements for toxic substances have been adopted in California; a highly successful clean-up program for hazardous waste has been developed in Minnesota; the use of criminal enforcement in environmental cases has been pioneered by Maryland, New Jersey, and Pennsylvania; and, recently, several East Coast states have taken the lead in addressing ocean pollution problems. This list is far from exhaustive.

The new state leadership role has been prompted by a reduced emphasis on some federal environmental programs, lower levels of federal staffing and funding, growing public interest in environmental protection, and increased coordination among state enforcement offices. This new role is here to stay. Regardless of the results of the Presidential election, the federal/state relationship in matters of national policy and enforcement will not revert to the federally dominated model of the 1970s.

The challenge in the 1990s will be to define the appropriate roles of the state and federal governments in a way that promotes effective and efficient environmental programs. Should the states pursue an essentially independent role? Should the federal government reassert the lead on issues of nationwide significance? Or can the strengths of both models be combined in a genuine partnership?

Both a federal-dominated and a state-dominated approach have strengths and weaknesses. Many issues demand the national uniformity that only federal solutions can provide. Federal leadership can set priorities on a consistent nationwide basis without leaving any citizen unprotected. For example, minimum national standards can prevent state environmental programs from being held hostage in bidding wars among the states to attract new industries. Moreover, federal leadership can also provide the resources to tackle the most complex problems.

At the same time, the states have strengths that are difficult for federal agencies to match. States can often move more quickly, more boldly, and more imaginatively than can the federal government. As the testing laboratories of democracy, they offer our best hope for solutions to the unprecedented environmental problems that states are facing on a daily basis. Perhaps most important, states are much more accountable and responsive to the public than are the federal agencies in Washington, D.C.

A partnership approach to protecting the environment is consistent with Executive Order 12612, signed by President Reagan on October 26, 1987, which addresses principles of federalism. (See Appendix.) The Order notes, with respect to national policies administered by the states, that "the national government should grant the states the maximum administrative discretion possible. Intrusive federal oversight of state administration is neither necessary nor desirable." Building on the new role of the states, it is possible to develop and institutionalize a federal/state partnership that enhances the relative strengths of the federal and state governments. The potential benefits of a partnership approach include the following:

1. better coordination of state and federal environmental programs;
2. more efficient use of state and federal funds;
3. more effective enforcement;
4. increased state influence in federal policy-making; and
5. improved service to the public.

## **RECOMMENDATIONS**

The Association urges that the following steps be taken to develop a more coordinated partnership approach to environmental protection:

### **1. *Coordinating Bodies***

- a. The National Environmental Enforcement Council was formed in 1985 by the U.S. Department of Justice to provide a forum for interagency discussions of enforcement problems. Its membership includes attorneys general, state environmental directors, district attorneys, United States attorneys, and officials from the U.S. Environmental Protection Agency (U.S. EPA) and the U.S. Department of Justice. The National Environmental Enforcement Council should be used as a mechanism for identifying problems with environmental enforcement programs (including problems related to training, funding, technical assistance, federal/state relationships, and legislative authority) and identifying potential solutions to these problems.
- b. U.S. EPA should expand the use of federal/state workgroups to develop national implementation and enforcement policies for all environmental programs.
- c. U.S. EPA should consider establishing a federal/state environmental enforcement coordinating body in each of its ten regions to help set enforcement priorities and foster improved federal/state relationships.

2. *Reexamination of Oversight and Overfiling Policies*

U.S. EPA has the responsibility under several federal laws for overseeing state performance under those laws. In addition, U.S. EPA is authorized under several federal laws to take enforcement action even if a state has brought an enforcement action. This practice is referred to as "overfiling." In a time of tight budgets and increasing responsibilities, these oversight and overfiling programs may not be the best use of agency resources. Therefore, U.S. EPA should, together with representatives of several states, examine its oversight programs to determine whether changes in federal legislation should be proposed to Congress. In addition, a federal/state team should reexamine the overfiling policy to determine in which instances it contributes to or hinders the efficient and effective enforcement of the nation's environmental laws.

3. *Technical Assistance*

The federal government should expand the availability of technical assistance programs available to states through the National Association of Attorneys General (NAAG); the regional environmental enforcement organizations, including the Northeast Hazardous Waste Project, the Midwestern Environmental Enforcement Association, the Western States Hazardous Waste Project, and the Southern Environmental Enforcement Network; and other sources to help smaller or less experienced states handle more complex enforcement cases.

4. *Information Exchange*

The federal government should continue to support the information exchange programs at NAAG and the regional environmental enforcement organizations listed above.

5. *Training*

The number of joint federal/state training programs should be increased to enhance both the capability of state personnel to pursue complex enforcement cases and the working relationships among federal and state enforcement personnel.

## **SUPERFUND PROGRAM**

### **SUMMARY**

The 1986 amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) recognize a much larger role for the states in the clean-up process at hazardous waste sites. U.S. EPA should implement this legislative directive by continuing to enhance the state role in the Superfund program created by CERCLA. In addition, U.S. EPA should place increased emphasis on enforcement actions against responsible parties in order to preserve the Superfund for sites where there are no viable responsible parties.

### **BACKGROUND**

CERCLA was passed in 1980 to provide a mechanism for responding to old hazardous waste disposal sites. The Superfund Amendments and Reauthorization Act (SARA), signed into law in October 1986, made two important changes from the states' perspective. First, federal assistance to clean up uncontrolled hazardous releases and abandoned hazardous waste sites was increased to an approximate annual level of more than \$1.1 billion. These funds can be used to help rectify the approximately 1,000 abandoned hazardous waste sites that are included on the National Priorities List (NPL). Second, the 1986 amendments altered the way the federal government interacts with the state governments. States are given a greater voice in choosing, implementing, and enforcing cleanups under SARA.

A fundamental principle of SARA--one that distinguishes it from the original law--is its emphasis on state involvement in virtually every phase of the clean-up process. Section 121(f)(1) mandates that the President provide "substantial and meaningful involvement by each state in initiation, development, and selection of remedial actions to be undertaken in that state." Remedial actions involve the full range of activities undertaken at a hazardous waste site to abate or permanently clean up the environmental threat.

Cleaning up hazardous waste sites continues to be one of the most important environmental concerns in this country. Unfortunately, despite the availability of the large federal fund, progress has been slow. To assist in speeding up the Superfund clean-up process, U.S. EPA will need to encourage states to assume a lead role at more NPL sites.

In addition, U.S. EPA should place more emphasis on enforcement against responsible parties, thereby bringing more private funds and personnel into the clean-up process. Until very recently, Superfund money was used for nearly two-thirds of the sites addressed by U.S. EPA. This figure contrasts sharply with enforcement-oriented programs in states such as Minnesota where most of the site cleanups are conducted by responsible parties.

### **RECOMMENDATIONS**

The Association urges that the following steps be taken to help ensure an effective and efficient Superfund program over the next few years:

1. U.S. EPA should increase the emphasis on enforcement actions against responsible parties in the Superfund program.

2. U.S. EPA should provide stronger incentives for state involvement in Superfund cases by:
  - a. allowing states to assume the lead role at Superfund sites to the maximum extent permitted under the law;
  - b. helping states build more effective Superfund programs through core program funding, training, technical assistance, and other means so that these states will be able to assume the lead role at Superfund sites if they choose to do so;
  - c. expanding the availability of funds for state-lead enforcement cases; and
  - d. funding states to assist in cost recovery actions.
3. U.S. EPA should retain the very successful state/federal workgroup process not only to develop new policy but also to assist in evaluating the progress of policies developed by these workgroups. The continued availability of travel funding for these workgroups is necessary to assure strong state participation.
4. U.S. EPA should invite state representatives to participate when it begins its discussions on the reauthorization of CERCLA.
5. U.S. EPA should earmark funds for enforcement and notify state legal offices of the availability of these funds.
6. When U.S. EPA is deciding on a remedy for a site, it should apply narrative state environmental standards as well as numerical state environmental standards; carefully consider state interpretations of its narrative and numerical standards; and defer, whenever possible, to a state's determination of what constitutes an "acceptable" health risk.
7. Decisions on whether to treat a site primarily under RCRA or CERCLA should be made jointly by EPA and the states.
8. U.S. EPA should change its policies to insure that the costs of source control remediation intended to restore ground or surface waters to drinking water quality are eligible for cost sharing as remedial costs, rather than considering such remediation to be state operation and maintenance funded items.
9. Rather than relying on non-engineered controls such as site access restrictions and deed covenants, cleanup should return a site to its highest use, whenever possible.

10. U.S. EPA should place priority on increasing the cooperation among the various state and federal natural resource trustees and the remediation program personnel.
11. U.S. EPA should insure that, at every level, its practices as well as policies reflect an attitude that the states are full partners in the Superfund effort.
12. The federal Executive Branch should ensure that federal agencies comply fully with state hazardous waste management laws.
13. The Department of Interior should reassess its regulation on natural resource damages to ensure that the regulations accurately and fully value state natural resources.

## RESOURCE CONSERVATION AND RECOVERY ACT

### SUMMARY

The availability of solid waste landfill capacity is rapidly dwindling in many areas of the country. As a result, there has been a significant increase in the out-of-state movement of solid waste to states that are often reluctant to accept it. Innovative national policies are necessary to address the severe problem of solid waste. In the area of hazardous waste enforcement, states are witnessing a vast increase in the number of facilities subject to regulation. U.S. EPA's enforcement policies must be reexamined to provide the states with more flexibility in designing their enforcement programs.

### BACKGROUND

The Resource Conservation and Recovery Act (RCRA) establishes the basic structure for regulating solid waste. Solid waste under the Act includes ordinary refuse and hazardous waste. Regulatory issues related to both ordinary solid waste and hazardous waste have expanded dramatically in the past few years. In the area of solid waste, one of the most serious concerns is the closing of many landfills resulting in an exponential growth in interstate shipments of waste. In the area of hazardous waste, three of the most important problems are dealing with the tens of thousands of small quantity generators, incorporating criminal enforcement into the regulatory process to deal with intentional violations, and addressing the cleanup of old releases associated with RCRA facilities.

Many solid waste landfills across the country have closed or are closing. The reasons for these closings range from landfills reaching their capacity to serious hazardous waste leachate problems. At the same time, the siting of new landfills in many areas of the country has become very difficult. Although many states have begun to turn to the incineration of solid waste, siting incinerators is often problematic due to concerns about air emissions. The result has been more and more interstate shipments of solid waste to existing facilities. The growing concern about dwindling capacity and about the environmental impact of the increased disposal activities in the receiving states has created a significant problem.

The hazardous waste regulatory system is also facing a series of difficult problems. In most states, there are thousands, often tens of thousands of, regulated facilities. To maintain an effective enforcement presence, states must use a mix of all of the enforcement tools available to them including administrative orders, administrative penalties, civil judicial actions and penalties, and criminal enforcement. The appropriate mix of remedies will necessarily vary from state to state.

U.S. EPA developed its "Enforcement Response Policy," to direct how U.S. EPA and the states should respond to RCRA violations. Unfortunately, the policy was developed primarily in the context of violations by larger facilities and, therefore, does not adequately address enforcement problems associated with violations by small quantity generators, even though the environmental consequences of violations by a small quantity generator often can be very serious. Further, the policy has not fully integrated the different considerations and procedures involved in criminal enforcement cases.

For the Enforcement Response Policy to produce good environmental results, more flexibility must be built into the policy to allow states to tailor their enforcement responses to the profile of their regulated communities. In addition, any time frames set out in the policy must recognize that there are procedural differences in criminal cases.

Finally, U.S. EPA must move more quickly to authorize states to exercise "corrective action" authority for RCRA facilities. The 1984 Hazardous and Solid Waste Amendments to RCRA required a RCRA facility to clean up (take corrective actions for) releases of hazardous substances that occurred anywhere on the RCRA facility. U.S. EPA was authorized to delegate corrective action authority to the states. Only one state has been delegated corrective action authority since 1984.

### **RECOMMENDATIONS**

The Association urges that the following measures be taken to improve the regulation of solid and hazardous waste under the Resource Conservation and Recovery Act:

1. U.S. EPA should, as part of the RCRA reauthorization process, work with the states in developing legislative proposals that would address the problems associated with the increasing interstate transportation and disposal of solid waste.
2. The Administration should expand its efforts in promoting reduction in the generation of solid and hazardous waste.
3. The Administration should expand its efforts in promoting recycling and in developing additional markets for recyclable materials.
4. U.S. EPA should, in consultation with the states, revise its Enforcement Response Policy to provide the states with more flexibility in designing their enforcement programs, to address more effectively enforcement involving small quantity generators, and to intergrate more fully criminal enforcement considerations.
5. U.S. EPA should greatly accelerate the delegation of corrective action authority to the states.

## **AIR POLLUTION CONTROL AND ENFORCEMENT**

### **SUMMARY**

**Air pollution is one of the most difficult issues to address at the state level because air pollutants do not respect state boundaries and few national standards have been set. U.S. EPA should move immediately to increase the pace of regulation of hazardous air pollutants under section 112 of the Clean Air Act, set minimum national standards for operations such as solid waste incinerators, and creatively address the persistent multi-state problems of non-compliance with national air quality standards.**

### **BACKGROUND**

Air pollution is the principal means by which humans are exposed to toxic substances. In the past forty years, production of synthetic organic chemicals in the United States has increased thirty-fold. A 1985 EPA study estimated that 2,000 excess cancers per year in the United States are caused by just a couple dozen of the hundreds of toxic air pollutants.

Even this is just the tip of the iceberg. It does not account for the hundreds of other toxic pollutants that have been linked with cancer, birth defects, sterility, central nervous system disorders, and a variety of respiratory diseases. EPA's estimate also does not account for the potential that simultaneous exposure to multiple toxics may have an additive or synergistic effect on death and disease rates. In addition, for several pollutants insufficient ambient air monitoring and analysis has been performed to allow the problem to be characterized fully.

In eighteen years of responsibility for implementation of the hazardous air pollutant section of the Clean Air Act, EPA has established standards for only eight substances, and these regulations do not cover all sources of even those few pollutants. All but one of these standards was issued only after a court ordered EPA to do so. Many other toxic air pollutants remain unregulated.

A related problem pertains to conventional air pollutants. There has been a persistent failure to meet national air quality standards such as the ozone standard. Violations of the ozone standard are associated with lung disease in urban areas. Violations are, in large part, caused by complex hydrocarbons that form ozone in the atmosphere. In addition to contributing to ozone problems, many of these hydrocarbons, such as benzene, cause cancer or other serious illnesses. Last summer, widespread areas of the country were out of compliance with the ozone standard.

Recent studies have shown that air pollution has several adverse consequences in addition to its direct effects on human health. Air pollutants have contaminated the Great Lakes, coastal bays and estuaries, and inland water bodies, accumulating in sediment and contaminating aquatic life. Substances such as chlorofluorocarbons are depleting the earth's protective ozone layer in the upper atmosphere, increasing the risk of skin cancer and raising concerns over global warming. Air pollutants, and the compounds they form, damage lakes, streams, soil, and man-made items such as monuments and painted surfaces.

## **RECOMMENDATIONS**

The Association urges that the following steps be taken to strengthen air pollution control and enforcement:

1. U.S. EPA should sharply increase the pace of regulation of hazardous air pollutants pursuant to section 112 of the Clean Air Act.
2. U.S. EPA should set firm but fair minimum national standards for emissions from waste burning incinerators such as resource recovery plants, hazardous waste incinerators, and medical waste incinerators.
3. U.S. EPA should set and, in cooperation with the states, enforce standards for the minimization of "fugitive" emissions (emissions from sources other than stacks and other regulated points) of air pollutants.
4. U.S. EPA should address the interstate transport of conventional pollutants so that all states can meet national standards for pollutants. U.S. EPA should implement more effective national strategies to control pollutants that contribute to the formation of ozone.
5. U.S. EPA should also consider all of the effects of air pollutants, rather than concentrating on the direct health effects of air pollutants when developing regulatory and enforcement programs so that all of the adverse effects from air pollution are considered and addressed.
6. U.S. EPA should take prompt action to halt the manufacture of ozone-damaging forms of chlorofluorocarbons and to prevent existing chlorofluorocarbons from reaching the atmosphere through recycling and other methods.

## PESTICIDES

### SUMMARY

Pesticides problems include groundwater contamination, drift, indoor air pollution, and direct human exposure through both urban and non-urban uses of pesticides. U.S. EPA should accelerate the pace of the pesticide registration process to meet the schedule set by Congress in the September 1988 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); expand the scope of the testing required to register a pesticide; and coordinate a multi-agency approach to pesticide regulation that does justice to both the prevalence and potential risks of pesticide use.

### BACKGROUND

Pesticides are ubiquitous. Between 1964 and 1984, production of synthetic organic pesticides tripled; in 1985 domestic production totalled 1,235,000,000 pounds. While an estimated sixty-eight percent of all pesticides--this term includes insecticides, herbicides, and fungicides--are used to produce or protect crops, over thirty percent are used for non-agricultural purposes such as lawn and shrub care, structural pest control, cockroach extermination, and mosquito eradication programs.

A 1987 EPA study found that pesticide problems posed greater risks to health and the environment than had been previously believed. At the same time, U.S. EPA conceded it had devoted few resources to regulating pesticides.

Pesticides present a unique environmental issue in that they cut across media, affecting air quality, surface and ground water, soil, and human health. Likewise they are unique because they are regulated by several federal agencies, including EPA, which registers pesticide products for use on a particular crop or against a specific pest. Many other federal agencies, including the U.S. Department of Agriculture, Federal Trade Commission, Food and Drug Administration, Forest Service, National Park Service, Bureau of Land Management, Fish and Wildlife Service, Occupational Safety and Health Administration, and National Oceanic and Atmospheric Administration, have distinct and quite often conflicting approaches to pesticides in their capacities as users and/or regulators of pesticides within their respective jurisdictions.

In the sixteen years since the 1972 FIFRA Amendments ordered U.S. EPA to test pesticides more completely for harmful effects, the agency has registered fewer than three dozen of 600 active ingredients. With the 1988 FIFRA Amendments, Congress has ordered U.S. EPA to complete the task within nine years.

Even when it has completed the re-registration of a product, U.S. EPA still lacks significant data because manufacturers are not required to submit it. Included in the data not routinely required are data regarding the environmental fate of a pesticide--that is, what happens to the pesticide chemical once it is applied--including how fast it evaporates; whether it adheres to soil; and, perhaps most importantly, under what conditions it will leach into groundwater.

Finally, the non-agricultural pesticides business has grown geometrically since 1980 in a climate virtually devoid of national regulation. In 1986, chemical application on lawns and shrubs alone created \$1.3 billion in revenues for applicators. In the same year, the Federal Trade Commission admitted it had brought only "about three" pesticide actions within the prior ten years to check false advertising in this growing consumer market.

### **RECOMMENDATIONS**

The Association recommends that the following steps be taken to address pesticide problems:

1. U.S. EPA should expand the scope of pre-registration testing to include testing for, among other things, the environmental fate of each product, as well as its neurotoxic and neurobehavioral effects.
2. The Food and Drug Administration should expand and improve the staff, resources, and techniques of its Food Inspection Branch to inspect and embargo imported fruits and vegetables containing pesticide residues that violate standards of the United States government.
3. The Federal Trade Commission should investigate and prosecute deceptive pesticide safety and efficacy claims made by pesticide distributors and professional applicators of non-agricultural pesticides in that fast-growing and significant national market.
4. U.S. EPA should begin to pass through to the states a larger percentage of its pesticide budget to enhance state enforcement programs.
5. U.S. EPA should create a multi-agency taskforce to analyze all federal use and regulation of pesticides. It should employ this analysis to conform the conduct of each agency to the stated goals of the national pesticide policy articulated in FIFRA and supported by toxicological, hydrogeological, and other data that U.S. EPA, as lead agency in pesticides regulation, collects and analyzes. Among other roles, the task force should target federal funds on a broad range of pesticide-related research topics including, for example, groundwater protection measures and techniques for reducing the level of pesticide use in both urban and rural settings.

## **GROUNDWATER PROTECTION**

### **SUMMARY**

**Groundwater is an important resource that is being increasingly threatened by a variety of contaminants. The states traditionally have regulated groundwater and that role should be preserved. However, the federal government can play a very important supporting role in groundwater protection.**

### **BACKGROUND**

Federal groundwater policy and legislation should be based on a federal/state relationship that differs from the relationship under traditional delegated programs such as the Clean Water Act or the Resource Conservation and Recovery Act. Instead, the federal government's role should be to provide the support needed by the states to implement the unique groundwater protection measures that may be useful in all or part of a state.

Groundwater supplies nearly fifty percent of the drinking water throughout the country. In some rural areas, that figure may rise to ninety percent or more. Groundwater also serves important commercial and industrial purposes. Unfortunately, in many areas of the country groundwater has been polluted by a variety of activities, and in many other areas groundwater is threatened. Remedying groundwater contamination often is expensive and, in some cases, impractical or impossible. Prevention of contamination is, therefore, critical. As a result of the increasing instances of groundwater contamination, many states and Congress have been considering new laws to protect groundwater.

Regulating the use of groundwater has been a long-standing state function. In part, this state role is due to local geological conditions that affect the vulnerability of groundwater resources. New federal policies, therefore, should recognize this traditional state role, as well as the need for differing responses due to variations in hydrogeology from one area to another.

### **RECOMMENDATIONS**

The Association recommends that the following steps be taken through agency policy or legislation to prevent groundwater contamination:

- 1. Establish a national policy of preventing groundwater contamination to the extent possible.**
- 2. Preserve the states' role in developing groundwater regulatory programs to meet the national prevention goal and in enforcing their regulatory programs.**
- 3. Provide U.S. EPA with the resources necessary to develop criteria for a significantly expanded number of groundwater contaminants while allowing states to set stricter regulations or guidelines.**
- 4. Coordinate groundwater activities among federal agencies.**

5. **Increase funding for research including research on the environmental fate of common contaminants.**
6. **Provide for increased technical assistance and training to the states.**
7. **Require federal facilities to comply with state groundwater protection laws.**
8. **Establish a federal-state groundwater workgroup or workgroups that would meet regularly to help coordinate federal and state programs.**
9. **Permit state classification of aquifers to be different from federal classification so long as the classification system provides an equivalent or more stringent level of protection for aquifers.**
10. **Emphasize cleanup of aquifers rather than simply the treatment of contaminated water at the wellhead.**
11. **Use existing federal laws such as the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act to control more effectively the use of chemicals that contaminate groundwater.**

## FEDERAL FACILITIES

### SUMMARY

The failure of federal facilities to comply with state and federal environmental laws is a serious problem. Resolving compliance problems involving federal facilities has proven to be very difficult. Federal policies must be changed to allow U.S. EPA and the states to assume a much stronger regulatory and enforcement role over federal facilities.

### BACKGROUND

The U.S. Department of Defense, Department of Energy, Department of Interior, and many other federal agencies operate hundreds of facilities throughout the country. Many of these facilities have serious environmental compliance problems. Under the Superfund program alone, the Department of Defense had identified 5,167 sites at 739 installations that required investigation as of September 30, 1987. These sites affect almost every state. Further, some of the worst sites in the country, such as the Rocky Mountain Arsenal in Colorado, the Hanford Reservation in Washington, the Fernald facility in Ohio, and the Twin Cities Army Ammunition Plant in Minnesota, present serious threats to public health and the environment.

Obtaining an adequate resolution to environmental problems at federal facilities has proven to be very difficult. In fact, resolving these problems often has been more difficult than resolving hazardous waste problems involving private parties. One of the most important reasons for this difficulty is that federal agencies have asserted that they are not accountable to the states for environmental problems in the same manner as private parties. For example, although states have consistently asserted that the Resource Conservation and Recovery Act (RCRA) allows states to take enforcement actions against and collect penalties from federal facilities, the U.S. Department of Justice still claims otherwise. The Department of Justice has argued that the requirements of many state regulations, which are often almost identical to U.S. EPA's regulations, are not precise enough to allow states to enforce regulations against federal agencies.

In addition, states have experienced difficulty in getting federal agencies to comply with RCRA at sites also covered by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In these cases, the federal argument is that RCRA requirements are superseded by CERCLA except as the RCRA requirements establish clean-up standards that may apply to the site. Rather than acknowledging an ongoing duty to comply with RCRA, federal agencies have chosen to spend millions of dollars litigating RCRA issues with many states including Colorado, Ohio, and Maine.

The states have also encountered difficulty convincing U.S. EPA to take enforcement action against federal facilities. This difficulty results, at least in part, from the Department of Justice's conclusion that U.S. EPA lacks the authority to issue unilateral enforcement orders against federal facilities.

This erosion of accountability at federal facilities has greatly weakened the ability of state and federal regulatory agencies to assure that federal facilities will comply with hazardous wastes laws. Rather than attempting to limit their obligation to comply with environmental statutes by engaging in expensive legal battles with the states, federal agencies should be working with the states to find ways to correct their environmental problems rapidly. Federal facilities should be models of compliance with environmental laws.

### **RECOMMENDATIONS**

The Association recommends that the following steps be taken to improve compliance with and enforcement of environmental laws at federal facilities:

1. All federal facilities should conduct standard compliance and management audits of their operations to ensure that the facilities are complying with all federal *and* state environmental laws. The audits should include hazard analysis and plans to reduce risks of accidental releases of hazardous substances. Audit documents should be available to the state and to the public.
2. Because of the important role states play in enforcing environmental laws at federal facilities, states must be able to exercise their full range of enforcement authority, including the use of orders, injunctions, civil penalties, and criminal sanctions. Federal agencies should adopt policies and support legislation that ensures that the states retain all enforcement tools that could be used against private parties.
3. The U.S. Department of Justice should reconsider its current position that U.S. EPA is precluded from issuing enforceable orders against federal facilities.
4. Federal agencies should recognize the importance of a strong regulatory role for the states at federal facilities and should support the states in this effort.
5. The Administration should take steps to encourage states to assume, where they have not done so, a principal role in enforcing environmental laws at federal facilities.
6. U.S. EPA should embrace the policy that CERCLA does not diminish the independent applicability of state hazardous waste management laws to federal facilities, with the sole exception of the permit provision of CERCLA section 121(e).
7. State and federal agencies should continue their attempt to develop model clean-up agreements for federal facilities sites.
8. Federal agencies should seek adequate funding from Congress to ensure that they are able to comply fully with all state and federal environmental laws.

## TAKINGS POLICY

### SUMMARY

Executive Order 12630, concerning the impact of "takings" law on governmental regulation of private property, is fundamentally flawed and should be revised to recognize the essential role of government in protecting the public health and safety and to reflect accurately the rulings of the United States Supreme Court.

### BACKGROUND

The regulation of private activities by the federal government has dramatic effects on the state, both symbolically and practically. The policy enunciated in Executive Order 12630, signed by President Reagan on March 15, 1988 (See Appendix), is fundamentally flawed in two significant respects.

Although the Supreme Court has used various formulations to describe what constitutes a taking, it has consistently held that a taking is more than a mere restriction on use or a diminution in value. At a minimum, a finding of a regulatory taking requires a showing that the government action did not promote a legitimate police power interest or that the action deprived the landowner of all economically viable use of his land. See *Penn Central Transportation Company v. City of New York*, 438 U.S. 104 (1978); *Agins v. City of Tiburon*, 447 U.S. 255 (1980); *Nolan v. California Coastal Commission*, \_\_\_ U.S. \_\_\_, 107 S.Ct. 3141, 3146 (1987). Executive Order 12630 breaks with this formulation, stating that government actions that "substantially affect" the "value or use" of public property may constitute takings. Such a test is not only inconsistent with precedent, it raises doubts about most existing governmental regulation of private property. Even the most traditional land use controls, such as use district zoning and limitations on building height, may diminish the value of some individual parcels while increasing the quality of the community as a whole. Such actions almost always have been upheld by courts at all levels.

Perhaps even more troublesome, the Executive Order adopts an unduly timid view of the government's right to protect public health and safety. It says that the government should act only in response to "real and substantial" threats to public health and safety and then should do no more than "necessary," implying that such actions may be closely scrutinized by the courts and may be found to be takings if the protection of the public health and safety has somehow been "excessive." In fact, the Supreme Court has long held that government action to protect the public's health, safety, and welfare is presumed to be a valid exercise of the police power and that all private property "is held under the implied obligation that the owner's use of it shall not be injurious to the community." See *Mugler v. Kansas*, 123 U.S. 623 (1887). The courts also have consistently interpreted the police power of the state to extend to prophylactic measures to prohibit individuals from using their property in such a manner "as will be prejudicial to the health, the morals, or the safety of the public..." *Mugler, supra* 668-69. *Hodel v. Virginia Surface Mining and Reclamation Association*, 452 U.S. 264 (1980). Government officials need not be concerned that exercising their judgment so as to provide an extra margin of public safety will result in damage awards. *Keystone Bituminous Coal Assoc. v. DeBenedictus*, 480 U.S. \_\_\_, 107 S.Ct. 1232 (1987).

Thus, while the Executive Order's stated purpose of preventing unnecessary takings is appropriate, its analysis of constitutional law is flawed and will lead federal officials to underestimate their authority, and, indeed, their obligations, to act to preserve the nation's natural resources and public health and safety. The Executive Order has a chilling effect on regulations necessary to protect the public health and safety. It has direct effects on the activities of federal agencies and an indirect impact on state regulatory entities, which must to the extent possible attempt to fill the void being left by the federal government.

#### **RECOMMENDATIONS**

The Association urges that the federal government revise Executive Order 12630 to recognize the essential role of government in protecting the health, safety, and welfare of its citizens and to reflect accurately the holdings of the United States Supreme Court in this area.

## CRIMINAL ENFORCEMENT

### SUMMARY

Criminal sanctions have become an important weapon in the environmental enforcement arsenal. Unfortunately, U.S. EPA too often views its programs solely as civil regulatory efforts and, thus, fails to take advantage of the potential benefits of effective criminal enforcement. The federal government must give more recognition to the value of criminal enforcement programs and increase its support for such programs.

### BACKGROUND

Prior to 1980, criminal enforcement was rarely used in environmental cases. However, beginning with the efforts of the Northeast Hazardous Waste Project and several of its member states, states have increasingly utilized criminal laws to protect the environment.

Criminal enforcement is a useful tool in many instances, including the following:

1. where civil penalties are simply viewed as a cost of doing business and do not change the violator's conduct;
2. in cases involving intentional or other egregious behavior; and
3. as a deterrent to similar conduct by other persons, especially in those programs involving a large number of regulated entities.

Criminal enforcement historically has been a state and local function. However, because of the interstate aspects of many environmental crimes, there is a need for a federal investigative and prosecutorial role in some cases and a need for regional coordination, training, and information exchange.

On the federal level, U.S. EPA's Office of Enforcement and Compliance Monitoring (OECM) and its National Enforcement Investigations Center (NEIC) have developed a strong criminal investigative presence throughout the country. OECM and NEIC also have provided the funding necessary to develop regional environmental enforcement organizations that assist in the development and support of state criminal enforcement programs. These organizations are the Northeast Hazardous Waste Project, the Western States Hazardous Waste Project, the Midwestern Environmental Enforcement Association, and the Southern Environmental Enforcement Network.

Unfortunately, the use of criminal enforcement has not been fully integrated throughout the program offices of U.S. EPA. The failure to recognize the importance of criminal enforcement is best demonstrated by U.S. EPA's Enforcement Response Policy under the Resource Conservation and Recovery Act (RCRA). In that document, U.S. EPA focuses on a civil enforcement program that leaves the states with little flexibility to use criminal enforcement programs to enforce RCRA.

## **RECOMMENDATIONS**

The Association recommends that the following measures be implemented to increase the use of and support for criminal enforcement:

1. U.S. EPA's enforcement response policies set out recommended enforcement responses for violations of environmental laws. These enforcement response policies should be revised to recognize criminal enforcement as an appropriate and important enforcement technique. Revisions should take into account the differences between the civil and criminal enforcement processes.
2. U.S. EPA should consult with persons familiar with criminal prosecutions when a regulation is being drafted to minimize the problems that the regulation may pose in subsequent criminal prosecutions for violation of that regulation.
3. U.S. EPA should authorize states to use a portion of their grant funds to hire criminal investigators, support criminal enforcement training, and provide legal assistance in criminal cases.
4. U.S. EPA should expand training opportunities for environmental crimes prosecutors, investigators, and state agency inspectors available through the Federal Law Enforcement Training Center, the regional environmental enforcement organizations, and other organizations.
5. U.S. EPA should continue its financial support for the regional environmental enforcement organizations.
6. U.S. EPA should hire additional criminal investigators to assist in interstate investigations and in cases where the states do not have adequate investigative capability.
7. U.S. EPA should expand the availability of federal assistance for costly laboratory analyses that are essential to successful criminal prosecutions.

## **COMMUNITY RIGHT-TO-KNOW, EMERGENCY RESPONSE, AND PREVENTION OF TOXIC CHEMICAL ACCIDENTS**

### **SUMMARY**

In Title III of the 1986 Superfund Amendments and Reauthorization Act (SARA), Congress established community right-to-know and emergency response laws as a first step in addressing the serious threat posed by accidental releases of hazardous substances to the environment. U.S. EPA and Congress should increase financial and technical assistance to aid state and local governments in carrying out their planning functions, preparing to respond to accidental releases of hazardous substances, and enforcing Title III. In addition, U.S. EPA and Congress should require facilities that use or store significant quantities of hazardous substances to take the next step, which is to perform hazard analyses and then to reduce the risks of hazardous substance releases identified in those analyses.

### **BACKGROUND**

The terrible tragedy in Bhopal, India, in which over 2,000 people were killed and 150,000 were injured by an accidental release of hazardous substances, awakened the world to the awesome dangers posed by facilities using or storing toxic chemicals. Thousands of accidental releases of hazardous substances occur every year in the United States, causing deaths, evacuations, injuries to health and the environment, and unknown long-term impacts.

In 1987 in New York State alone, for example, over 1,002 accidental releases of hazardous substances were reported. These releases caused injury to hundreds of people and resulted in over 2,000 people being evacuated. Other states are experiencing similar problems.

Title III of the Superfund Amendments and Reauthorization Act (SARA) was intended to respond to these releases by informing individuals and communities of the presence of hazardous substances and by enhancing local emergency planning for responding to accidental releases. Title III directly places the right-to-know and planning responsibilities on state and local governments. However, only extremely limited federal funds were made available to assist the states in implementing Title III.

Title III will enhance the ability of state and local governments to respond to releases of hazardous substances. However, the act does little to prevent releases from occurring. Because of the high number of releases that do occur, it is important to take the next step of requiring accident prevention planning and hazard reduction.

Some states (*e.g.*, New Jersey, Georgia, and California) have passed "toxic catastrophe prevention acts" and other states (*e.g.*, New York) are considering similar legislation. Even the World Bank will not loan money to facilities in Third World nations unless they perform hazard analyses and risk reduction measures. Many companies voluntarily perform "environmental audits" or hazard analyses designed to identify and evaluate the dangers associated with the use or storage of dangerous materials. Based on the information developed in these studies, companies can reduce risks of accidental releases of hazardous substances. Experience in Europe and the United States has shown that practical measures to reduce the risks of accidents are

available at reasonable costs. However, new laws and regulations are required to assure that these safeguards are uniformly employed.

### **RECOMMENDATIONS**

The Association recommends that the following steps be taken to increase the effectiveness of SARA Title III and to reduce the risks of toxic chemical accidents:

1. U.S. EPA should work with Congress and the states to increase sharply the availability of federal funds and technical assistance to state and local governments to carry out the requirements of and to enforce SARA Title III.
2. It is better to prevent accidents in the first place than to have to institute even the best planned emergency response. U.S. EPA should work with Congress and the states to develop minimum national requirements for hazard analyses and require reasonable steps to reduce the risk of accidental releases at facilities that use or store significant quantities of hazardous substances.
3. U.S. EPA and the U.S. Department of Justice should, in cooperation with the states, expand the use of management and compliance audits in the context of administrative and judicial enforcement actions to insure that companies that have violated environmental laws are not only complying with those laws but also taking steps to reduce the risks of accidental releases.
4. Federal agencies should voluntarily comply with the requirements of SARA Title III.

**APPENDIX**

**A. Executive Order No. 12612**

**B. Executive Order No. 12630**

## Federalism

*Executive Order 12612. October 26, 1987*

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to restore the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution and to ensure that the principles of federalism established by the Framers guide the Executive departments and agencies in the formulation and implementation of policies, it is hereby ordered as follows:

**Section 1. Definitions.** For purposes of this Order:

(a) "Policies that have federalism implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

(b) "State" or "States" refer to the States of the United States of America, individual-

ly or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

**Sec. 2. Fundamental Federalism Principles.** In formulating and implementing policies that have federalism implications, Executive departments and agencies shall be guided by the following fundamental federalism principles:

(a) Federalism is rooted in the knowledge that our political liberties are best assured by limiting the size and scope of the national government.

(b) The people of the States created the national government when they delegated to it those enumerated governmental powers relating to matters beyond the competence of the individual States. All other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or to the people.

(c) The constitutional relationship among sovereign governments, State and national, is formalized in and protected by the Tenth Amendment to the Constitution.

(d) The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.

(e) In most areas of governmental concern, the States uniquely possess the constitutional authority, the resources, and the competence to discern the sentiments of the people and to govern accordingly. In Thomas Jefferson's words, the States are "the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies."

(f) The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. In the search for enlightened public policy, individual States and communities are free to experiment with a variety of approaches to public issues.

(g) Acts of the national government—whether legislative, executive, or judicial in nature—that exceed the enumerated powers of that government under the Constitution violate the principle of federalism established by the Framers.

(h) Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort.

(i) In the absence of clear constitutional or statutory authority, the presumption of sovereignty should rest with the individual States. Uncertainties regarding the legitimate authority of the national government should be resolved against regulation at the national level.

**Sec. 3. Federalism Policymaking Criteria.** In addition to the fundamental federalism principles set forth in section 2, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There should be strict adherence to constitutional principles. Executive departments and agencies should closely examine the constitutional and statutory authority supporting any Federal action that would limit the policymaking discretion of the States, and should carefully assess the necessity for such action. To the extent practicable, the States should be consulted before any such action is implemented. Executive Order No. 12372 ("Intergovernmental Review of Federal Programs") remains in effect for the programs and activities to which it is applicable.

(b) Federal action limiting the policymaking discretion of the States should be taken only where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope. For the purposes of this Order:

(1) It is important to recognize the distinction between problems of national scope (which may justify Federal action) and problems that are merely common to the States (which will not justify Federal action because individual States, acting individually or together, can effectively deal with them).

(2) Constitutional authority for Federal action is clear and certain only when authority for the action may be found in a

specific provision of the Constitution, there is no provision in the Constitution prohibiting Federal action, and the action does not encroach upon authority reserved to the States.

(c) With respect to national policies administered by the States, the national government should grant the States the maximum administrative discretion possible. Invasive, Federal oversight of State administration is neither necessary nor desirable.

(d) When undertaking to formulate and implement policies that have federalism implications, Executive departments and agencies shall:

(1) Encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States.

(2) Refrain, to the maximum extent possible, from establishing uniform, national standards for programs and, when possible, refer to the States to establish standards.

(3) When national standards are required, consult with appropriate officials and organizations representing the States in developing those standards.

**Sec. 4. Special Requirements for Preemption.** (a) To the extent permitted by law, Executive departments and agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only when the statute contains an express preemption provision or there is some other firm and palpable evidence compelling the conclusion that the Congress intended preemption of State law, or when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.

(b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), Executive departments and agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rule-making only when the statute expressly authorizes issuance of preemptive regulations or there is some other firm and palpable evidence compelling the conclusion that the Congress intended to delegate to the department or agency the authority to issue regulations preempting State law.

(c) Any regulatory preemption of State law shall be restricted to the minimum

level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.

(d) As soon as an Executive department or agency foresees the possibility of a conflict between State law and Federally protected interests within its area of regulatory responsibility, the department or agency shall consult, to the extent practicable, with appropriate officials and organizations representing the States in an effort to avoid such a conflict.

(e) When an Executive department or agency proposes to act through adjudication or rule-making to preempt State law, the department or agency shall provide all affected States notice and an opportunity for appropriate participation in the proceedings.

**Sec. 5. Special Requirements for Legislative Proposals.** Executive departments and agencies shall not submit to the Congress legislation that would:

(a) Directly regulate the States in ways that would interfere with functions essential to the States' separate and independent existence or operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions;

(b) Attach to Federal grants conditions that are not directly related to the purpose of the grant; or

(c) Preempt State law, unless preemption is consistent with the fundamental federalism principles set forth in section 2, and unless a clearly legitimate national purpose, consistent with the federalism policymaking criteria set forth in section 3, cannot otherwise be met.

**Sec. 6. Agency Implementation.** (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring the implementation of this Order.

(b) In addition to whatever other actions the designated official may take to ensure implementation of this Order, the designated official shall determine which proposed policies have sufficient federalism implications to warrant the preparation of a Federalism Assessment. With respect to each such policy for which an affirmative determination is made, a Federalism Assessment, as

described in subsection (c) of this section, shall be prepared. The department or agency head shall consider any such Assessment in all decisions involved in promulgating and implementing the policy.

(c) Each Federalism Assessment shall accompany any submission concerning the policy that is made to the Office of Management and Budget pursuant to Executive Order No. 12291 or OMB Circular No. A-19, and shall:

(1) Contain the designated official's certification that the policy has been assessed in light of the principles, criteria, and requirements stated in sections 2 through 5 of this Order;

(2) Identify any provision or element of the policy that is inconsistent with the principles, criteria, and requirements stated in sections 2 through 5 of this Order;

(3) Identify the extent to which the policy imposes additional costs or burdens on the States, including the likely source of funding for the States and the ability of the States to fulfill the purposes of the policy; and

(4) Identify the extent to which the policy would affect the States' ability to discharge traditional State governmental functions, or other aspects of State-sovereignty.

**Sec. 7. Government-wide Federalism Coordination and Review.** (a) In implementing Executive Order Nos. 12291 and 12498 and OMB Circular No. A-19, the Office of Management and Budget, to the extent permitted by law and consistent with the provisions of those authorities, shall take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in sections 2 through 5 of this Order.

(b) In submissions to the Office of Management and Budget pursuant to Executive Order No. 12291 and OMB Circular No. A-19, Executive departments and agencies shall identify proposed regulatory and statutory provisions that have significant federalism implications and shall address any substantial federalism concerns. Where the departments or agencies deem it appropriate, substantial federalism concerns should also be addressed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress.

**Sec. 8. Judicial Review.** This Order is intended only to improve the internal management of the Executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Ronald Reagan

The White House,  
October 26, 1987.

[Filed with the Office of the Federal Register, 4:33 p.m., October 28, 1987]

Note: The proclamation was released by the Office of the Press Secretary on October 28.

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**Presidential Documents**

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Title 3—

Executive Order 12630 of March 15, 1988

The President

**Governmental Actions and Interference With Constitutionally Protected Property Rights**

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government by the Just Compensation Clause of the Fifth Amendment, and for the Constitution, it is hereby ordered as follows:

**Section 1. Purpose.** (a) The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation, to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

(b) Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights. Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should account in decision-making for those takings that are necessitated by statutory mandate.

(c) The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections provided by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action. In furtherance of the purpose of this Order, the Attorney General shall, consistent with the principles stated herein and in consultation with the Executive departments and agencies, promulgate Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings to which each Executive department or agency shall refer in making the evaluations required by this Order or in otherwise taking any action that is the subject of this Order. The Guidelines shall be promulgated no later than May 1, 1988, and shall be disseminated to all units of each Executive department and agency no later than July 1, 1988. The Attorney General shall, as necessary, update these guidelines to reflect fundamental changes in takings law occurring as a result of Supreme Court decisions.

**Sec. 2. Definitions.** For the purpose of this Order: (a) "Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. "Policies that have takings implications" does not include:

(1) Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of private property;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.

(b) Private property refers to all property protected by the Just Compensation Clause of the Fifth Amendment.

(c) "Actions" refers to proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, applications of Federal regulations to specific property, or Federal governmental actions physically invading or occupying private property, or other policy statements or actions related to Federal regulation or direct physical invasion or occupancy, but does not include:

(1) Actions in which the power of eminent domain is formally exercised;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder), but not including the U.S. Army Corps of Engineers civil works program.

**Sec. 3. General Principles.** In formulating or implementing policies that have takings implications, each Executive department and agency shall be guided by the following general principles:

(a) Governmental officials should be sensitive to, anticipate, and account for, the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions so that they do not result in the imposition of unanticipated or undue additional burdens on the public fisc.

(b) Actions undertaken by governmental officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of

property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.

(c) Government officials whose actions are taken specifically for purposes of protecting public health and safety are ordinarily given broader latitude by courts before their actions are considered to be takings. However, the mere assertion of a public health and safety purpose is insufficient to avoid a taking. Actions to which this Order applies asserted to be for the protection of public health and safety, therefore, should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose.

(d) While normal governmental processes do not ordinarily effect takings, undue delays in decision-making during which private property use is interfered with carry a risk of being held to be takings. Additionally, a delay in processing may increase significantly the size of compensation due if a taking is later found to have occurred.

(e) The Just Compensation Clause is self-actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have a significant impact on the use or value of private property should be scrutinized to avoid undue or unplanned burdens on the public fisc.

**Sec. 4. Department and Agency Action.** In addition to the fundamental principles set forth in Section 3, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when implementing policies that have takings implications:

(a) When an Executive department or agency requires a private party to obtain a permit in order to undertake a specific use of, or action with respect to, private property, any conditions imposed on the granting of a permit shall:

(1) Serve the same purpose that would have been served by a prohibition of the use or action; and

(2) Substantially advance that purpose.

(b) When a proposed action would place a restriction on a use of private property, the restriction imposed on the use shall not be disproportionate to the extent to which the use contributes to the overall problem that the restriction is imposed to redress.

(c) When a proposed action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.

(d) Before undertaking any proposed action regulating private property use for the protection of public health or safety, the Executive department or agency involved shall, in internal deliberative documents and any submissions to the Director of the Office of Management and Budget that are required:

(1) Identify clearly, with as much specificity as possible, the public health or safety risk created by the private property use that is the subject of the proposed action;

(2) Establish that such proposed action substantially advances the purpose of protecting public health and safety against the specifically identified risk;

(3) Establish to the extent possible that the restrictions imposed on the private property are not disproportionate to the extent to which the use contributes to the overall risk; and

(4) Estimate, to the extent possible, the potential cost to the government in the event that a court later determines that the action constituted a taking.

In instances in which there is an immediate threat to health and safety that constitutes an emergency requiring immediate response, this analysis may be done upon completion of the emergency action.

**Sec. 5. Executive Department and Agency Implementation.** (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring compliance with this Order with respect to the actions of that department or agency.

(b) Executive departments and agencies shall, to the extent permitted by law, identify the takings implications of proposed regulatory actions and address the merits of those actions in light of the identified takings implications, if any, in all required submissions made to the Office of Management and Budget. Significant takings implications should also be identified and discussed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress, stating the departments' and agencies' conclusions on the takings issues.

(c) Executive departments and agencies shall identify each existing Federal rule and regulation against which a takings award has been made or against which a takings claim is pending including the amount of each claim or award. A "takings" award has been made or a "takings" claim pending if the award was made, or the pending claim brought, pursuant to the Just Compensation Clause of the Fifth Amendment. An itemized compilation of all such awards made in Fiscal Years 1985, 1986, and 1987 and all such pending claims shall be submitted to the Director, Office of Management and Budget, on or before May 16, 1988.

(d) Each Executive department and agency shall submit annually to the Director, Office of Management and Budget, and to the Attorney General an itemized compilation of all awards of just compensation entered against the United States for takings, including awards of interest as well as monies paid pursuant to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601.

(e)(1) The Director, Office of Management and Budget, and the Attorney General shall each, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in Sections 1 through 5 of this Order, and the Office of Management and Budget shall take action to ensure that all takings awards levied against agencies are properly accounted for in agency budget submissions.

(2) In addition to the guidelines required by Section 1 of this Order, the Attorney General shall, in consultation with each Executive department and agency to which this Order applies, promulgate such supplemental guidelines as may be appropriate to the specific obligations of that department or agency.

**Sec. 6. Judicial Review.** This Order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

*Ronald Reagan*

THE WHITE HOUSE,  
March 15, 1988.

**II. BLUEPRINT TO END OCEAN POLLUTION: Report of the Ocean Pollution Subcommittee for the Environment Committee, National Association of Attorneys General**



STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
RICHARD J. HUGHES JUSTICE COMPLEX

CN 080

TRENTON, N.J. 08625

609/252-4919

November 18, 1988

CARY EDWARDS  
ATTORNEY GENERAL

**MEMORANDUM**

**TO:** All Attorneys General  
**FROM:** Cary Edwards  
Attorney General of New Jersey  
**RE:** Blueprint to End Ocean Pollution

For the state of New Jersey, the time bomb of ocean pollution exploded during the summer of 1987 when medical waste and other trash washed up on its shores. As syringes, plastic pop containers, and charred timbers began littering the beaches and bobbing in the surf, fear, alarm, and anger spread among bathers, fishermen, shore businesspeople, and environmentalists. By summer's end, the entire New Jersey public was expressing outrage at the ravaging of our coastline. Last summer, the horrors spread up and down the Atlantic coastline and to the shores of the Great Lakes. As a result, the entire nation began to focus on the problems of ocean pollution.

When we in New Jersey began reacting to the ocean-borne debris in 1987, we immediately resolved to "get the dumper." Now, over a year later, and after substantial investigative work, we in New Jersey have come to a sobering conclusion: The fouling of our beaches and the polluting of our coastal waters is the product not of "a dumper" but rather of an American lifestyle. We as a society have created this mammoth pollution problem, and we are now paying the price. Thus, we as a society must come up with solutions.

The National Association of Attorneys General has recognized the need to address coastal pollution problems. The creation of an Ocean Pollution Subcommittee, that I chair, has provided the vehicle to identify issues that impact on coastal pollution. The Subcommittee's work has begun the process of formulating the appropriate governmental response on each of these issues.

I have been particularly pleased to chair the Ocean Pollution Subcommittee because the work of that group has complemented the coastal litigation and the marine pollution investigative work of my own environmental staff in New Jersey. Within the last year and a half, New Jersey has entered litigation to halt the fouling of the Atlantic Ocean and New Jersey beaches caused by sloppy transportation of solid waste in coastal waters. In addition, problems with medical waste disposal became so severe that a State Grand Jury issued a presentment last December calling for establishment of a cradle-to-grave manifest system to track medical waste generation and disposal.

Because the problems we have experienced in New Jersey are similar to those of other jurisdictions, I have welcomed the opportunity to work with other Attorneys General through the Ocean Pollution Subcommittee.

Before you is a proposed Blueprint to End Ocean Pollution, a draft plan that was developed by a working group of Assistant Attorneys General from 10 states that met under my direction at an East Coast Ocean Pollution Conference in Point Judith, Rhode Island, in October. At the meeting, which was jointly sponsored by NAAG and the U.S. Environmental Protection Agency, representatives from the participating states recommended governmental actions concerning 21 issues, 12 involving federal action and 9 involving state and local action. Following the Point Judith conference, I directed that the Subcommittee working group draft background position papers on each of the 21 issues. The product of its efforts can be found in the background papers included in this report.

I have also sought and received input from Attorneys General staff representatives from a number of other states through a meeting of the Ocean Pollution Subcommittee that was held in mid-November in Newark, New Jersey.

I believe that the issues that the Subcommittee has identified and the position on those issues articulated in the background papers represent an ambitious blueprint for Attorneys General to engage the federal, state, and local governments in a creative partnership to meet the challenge of preserving environmental and economic resources in the face of a rising combination of threats and problems.

Despite the unpleasantness of the beach foulings of 1987 and 1988, those experiences did serve to galvanize governmental commitment to address the wide range of ocean pollution issues. The more visible manifestations of the problem, such as medical waste and trash wash-ups, have opened our eyes to the less visible but even more insidious aspects of ocean pollution. These include nonpoint source pollution, insufficiencies in industrial pretreatment, the need to upgrade sewage treatment plant capabilities, stormwater control, coastal land use management, and more. We now recognize ocean pollution for the hydra-headed monster it is. Our response must be adequate to the magnitude of the problem.

By adopting the Blueprint to End Ocean Pollution recommended by the Ocean Pollution Subcommittee, NAAG will express its commitment to a clean ocean. Through the proposed action plan, the Association can exercise leadership by undertaking a dialogue among the Attorneys General and other governmental and private groups in order to coordinate activities to address the issues outlined in the Blueprint.

In summary, the Blueprint to End Ocean Pollution is a starting point in an on-going process to develop the commitment, resources, and pressure needed to preserve valuable but threatened coastal resources.

**APPENDIX**

**A. Executive Order No. 12612**

**B. Executive Order No. 12630**

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## BLUEPRINT TO END OCEAN POLLUTION

The Ocean Pollution Subcommittee of the National Association of Attorneys General, recognizing that -

- A. The nation's estuaries and coastal waters are in crisis;
- B. The federal government, empowered by a wide range of federal environmental statutes, is uniquely situated to take a leadership role in the prevention and mitigation of coastal pollution;
- C. ~~The federal government, in addition to exercising vigorously the enforcement authorities it has under existing environmental laws, must manifest its leadership by setting an example of compliance with all applicable environmental laws at federal facilities and on federal marine vessels;~~
- D. State and local governments have significant environmental authorities delegated under federal laws and also have independent authority under various State laws and local ordinances;
- E. The appropriate definition of the extent of a State's environmental authority vis-a-vis that of a municipality within that State is best spelled out by them, applying applicable principles of State and local law;
- F. If the problems of coastal pollution are to be comprehensively addressed, an enforcement partnership is needed between the federal government, State/local governments and (where appropriate) private industry, so as to resolve competing interests and to coordinate between programs at all levels;
- G. There is need for a central clearinghouse to promote data collection and information sharing among appropriate federal, State and local agencies on these issues;
- H. NAAG, in developing an agenda of priority environmental issues for the new federal administration, recognizes that virtually all land-based pollution has the potential to impact adversely on ocean or coastal waters and that, therefore, ~~the coastal effects of such pollution problems must be addressed; and~~
- I. Prevention of the causes of coastal pollution should be emphasized as national environmental policy, rather than governments limiting themselves to reaction to instances of actual environmental degradation,

has identified the following potential actions by the federal government and by State/local governments as being among those best suited to address the problems of pollution of United States coastal waters. These issues, to be shared with EPA and State officers, collectively represent a blueprint for action on ocean pollution.

## FEDERAL ACTIONS

1. The United States Environmental Protection Agency (EPA) should aggressively address non-point source pollution. In enforcing existing federal environmental statutes, such as the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Toxic Substances Control Act (TSCA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Federal Water Pollution Control Act (FWPCA), and the Clean Air Act (CAA), EPA should take action to prevent activities which result in the discharge of pollutants to coastal waters from non-point sources such as airborne pollutants, runoff of pesticides and fertilizers, stormwater runoff, and contaminated sediments.
2. EPA should accelerate the development of categorical pre-treatment standards for industrial wastewater quality, to reduce the level of contaminants (particularly toxics) discharged to sewage treatment plants which may ultimately pass through to receiving waters and may also accumulate in the sludges generated by the sewage treatment plants. EPA must further intensify its enforcement role in the industrial pre-treatment program.
3. It is imperative that Congress appropriate funding for EPA, the National Oceanic and Atmospheric Administration, and other federal and regional agencies and organizations with water quality research responsibilities. Such funding must be adequate to allow compilation of additional scientific monitoring data, such as water quality data and information on the long-term effects of pollutants on the marine ecosystem and on the effects of contaminated fish and shellfish on human health.
4. The federal government must provide renewed funding for sewage treatment plant upgrading and construction projects and funding for the remediation of combined sewer overflows.
5. The federal government must act to ensure an end to ocean dumping of sewage sludge as soon as possible.
6. It is imperative that Congress appropriate funding adequate to ensure a Coast Guard presence in the New York Bight and in other coastal waters to perform needed surveillances, to conduct dockside inspections, to prevent illegal dumping actions, particularly short-dumping of sludge, and to develop and implement clean-up procedures for garbage slicks and other floating debris.
7. While the federal government has the primary enforcement responsibility within the contiguous zone (3 to 12 miles offshore), it should address the issue of concurrent enforcement jurisdiction by the States.

8. "Mud dump sites" for the disposal of contaminated dredged spoil material must be closed. The potential for contamination of the aquatic environment by the heavy metals, petroleum hydrocarbons and PCBs present in dredged spoils requires immediate action. Further, EPA must develop methods for the testing of dredgings and for treating the most contaminated dredged materials and should encourage that clean dredged materials be utilized for beach replenishment.
- ~~9. The federal government must promptly act through the appropriate United States agencies to implement Annex V of the MARPOL Protocol (International Convention for the Prevention of Pollution from Ships) to prohibit the overboard disposal of plastics from ships (including vessels of the United States Navy and other agencies of the United States government), and to strictly regulate other disposal practices to minimize ocean pollution and beach wash-ups.~~
10. Ocean wood burning should be strictly limited, should be allowed only on a permit-by-permit basis, and should be permitted only for wood that is threatening the marine environment. Any applicant for an ocean wood-burning permit must be required to demonstrate the absence of suitable land alternatives. EPA should deny approval of any commercial wood-burning site; commercial burning cannot be justified in light of the escape of timbers, hazards to fishing boats and recreational craft and dangers to beach bathers that inevitably would result.
11. The federal government must establish necessary systems, with appropriate civil and criminal penalties, for the tracking of hospital and medical facility wastes so as to assure proper disposal and to minimize the possibility of such wastes becoming floatables in inland and ocean waters. The federal government must additionally, with input from the States, develop a uniform definition of the "medical waste" subject to regulation.
12. EPA should establish stringent permit standards for ~~the transportation of solid waste in coastal waters in order to address the problem of discharge of garbage and floatables into those waters.~~

#### STATE/LOCAL ACTIONS

1. Measures should be implemented to control nonpoint sources of pollution such as agricultural run-off, air pollution, marinas, street litter, individual sewage disposal systems, beach litter and refuse from boaters and bathers. States and municipalities should assess the extent and the sources of such non-point pollution, the impact of such pollution, and should devise and implement appropriate remedial measures.

2. The implementation and vigorous enforcement of a stringent industrial pre-treatment program by States and municipalities should be accelerated to control the level of toxics and other pollutants entering sewage treatment plants and ultimately either passing through to coastal waters or becoming concentrated in the sludges generated by the sewage treatment plants. States and municipalities should similarly control, through existing enforcement authorities, the direct discharge of toxics to surface waters.
3. States and municipalities should act to minimize the presence in waste streams of potentially recyclable refuse items, by encouraging recycling programs for glass, cans, plastic, newsprint, yard wastes, and paper products, by working with the packaging industry to reduce the volume of disposable or toxic packing materials, and by conducting appropriate public education programs. Conservation and waste minimization efforts must be part and parcel of all environmental and public health protection programs.
4. Sewage treatment plants should be upgraded to provide the treatment capability required by law, and the operation, maintenance, monitoring and enforcement of sewage treatment plants should be given the highest priority, with significant action taken for non-compliance with discharge limits.
5. States should ensure that their wetlands protection programs provide a comprehensive mechanism for regulating the use of, and development near or in, inland and coastal wetlands. Wetlands protection laws should be vigorously enforced to prevent further destruction of these diminishing, valuable resources. States should develop a detailed inventory of their wetlands and specifically identify significant wetlands, such as those that serve as habitats for endangered species, so as to facilitate their protection. Where development unavoidably impacts on a wetlands area, efforts to mitigate the damage through enhancement or restoration should be required.
6. State and local governments should develop short-term and long-term plans to manage and control coastal development. States and municipalities should work together to maintain an appropriate balance between population growth and development, and protection of coastal ecosystems.

7. Actions should be implemented to minimize and control stormwater pollution, which contributes greatly to the biological and chemical degradation of coastal waters. All connected sanitary and storm sewers should be eliminated (to prevent the discharge of raw sewage during storm events), and stringent stormwater management regulations should be promulgated and strictly enforced. Substantial fines should be mandated for non-compliance.
8. Capital improvement programs should be undertaken (perhaps as structured, long-term State/local projects) to eliminate combined sewer overflows, which presently result in vast quantities of diluted raw sewage being discharged into coastal waters during storm events. In the interim, screening and disinfection at overflow points should be carried out to reduce the transport of bulk pollutants, flow equalization plans should be considered, and sewage overflows during dry weather conditions must be totally eliminated.
9. States in the East Coast, West Coast, Gulf Coast and Great Lakes regions should, following the model of the Northeast Hazardous Waste Project, the Coastal States Organization, the Great Lakes Commission, and similar regional and coastal environmental enforcement networks, establish information exchange and multi-jurisdictional response actions regarding coastal pollution issues and incidents. Such networks should also promote development of regional strategies and public policies appropriate for the affected areas.

#### CONCLUSION

The foregoing blueprint of action items makes clear that the problems of ocean pollution transcend its most visible and recent manifestations of medical waste washups and sewage sludge dumping. The problems of ocean pollution demand a wide-ranging and comprehensive strategy to effectuate solutions that adequately protect public health and the fragile marine environment.

## NAAG Ocean Pollution Subcommittee

### Federal Item #1

The United States Environmental Protection Agency (EPA) should aggressively address non-point source pollution. In enforcing existing federal environmental statutes, such as the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Toxic Substances Control Act (TSCA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Federal Water Pollution Control Act (FWPCA), and the Clean Air Act (CAA), EPA should take action to prevent activities which result in the addition of pollutants to coastal waters from non-point sources such as airborne pollutants, runoff of pesticides and fertilizers, storm water runoff, and contaminated sediments.

### Background

Water quality programs have traditionally concentrated on controlling point sources of pollution. As major point sources of water pollution are brought under control, the water quality impact of "non-point" sources becomes more apparent. If progress toward cleaning up our coastal waters is to continue, existing non-point source pollution must be identified and addressed. Controlling non-point source pollution in its many manifestations is, however, an enormous and difficult undertaking.

There are many sources of non-point pollution and they include: contaminants such as pesticides, heavy metals, fertilizers and toxic chemicals, which are transported over land by runoff following a storm event or by the movement of groundwater; existing accumulations of toxic chemicals in landfills and sediments; and air deposition of contaminants directly on water surfaces, as well as through atmospheric interaction with moisture (acid rain).

Such non-point pollution sources contribute to numerous problems. For example, agricultural run-off carries excess nutrients into water bodies. These excess nutrients deplete available oxygen and threaten the existence of aquatic organisms. One-third of the country's shellfish beds are closed to harvesting due to pollution from runoff and sewage treatment overflows. Contaminants, such as PCBs, bioaccumulate in fish, and these levels are sometimes above levels recommended by the Federal Food and Drug Administration for human consumption. Elevated levels of metals have also been found in fin and shellfish in Long Island Sound and other areas. All of this pollution, to some extent, is caused by non-point source pollution.

The federal government must assert leadership in vigorously attacking the sources of non-point pollution. Existing federal statutes, particularly those discussed below, provide authority to help control some of these non-point sources of pollution. In using its various legal authorities, however, the federal government must ensure that the many federal programs that impact on the non-point problem are consistent with each other and are also consistent with state and local non-point source initiatives.

The federal government's role in controlling non-point pollution should be more than merely encouraging or facilitating state and local controls. Particularly regarding funding, the federal government should do more than simply allow states and localities to divert existing monies, heretofore used for point source controls and construction grants, into non-point source programs. The environment does not benefit from making point and non-point funding an either/or proposition. There should be real federal monies made available for non-point source controls. Otherwise, the federal government sends the wrong signal regarding the importance of controlling non-point source pollution.

#### Clean Air Act

Air pollution is a major source of pollution to water bodies. For example, deposition of chemicals, including PCBs, DDT, lead, mercury, calcium, dioxins and dibenzofurans, is a major source of toxins in the Great Lakes. According to one study, in the Chesapeake Bay one-fourth of all nitrogen attributed to human activity comes from acid deposition. Scientists with the Environmental Defense Fund reported in April 1988 that nitrogen pollutants (a major component of acid rain) from the air amount to 20 percent of all nitrogen entering Long Island Sound. Nitrogen promotes abnormal growth of algae which results in oxygen depletion in water that is toxic to fish and marine plant life.

Toxic substances in air can be regulated under the Clean Air Act. EPA should set ambient air standards and heighten regulation of air toxics, particularly for those chemicals which harm aquatic organisms and bioaccumulate in fish. The pervasive problem of acid rain should be given significant regulatory attention. Methods that can be used to reduce acid rain include: energy conservation; the use of low-sulphur coal; coal washing; preferential reliance on use of the least polluting plants; advanced combustion technologies; and post-combustion emission controls (scrubbing).

#### Comprehensive Environmental Response, Compensation and Liability Act

The uncontrolled release of toxic chemicals from inactive hazardous waste sites is a major source of non-point pollution to coastal waters. Toxic chemicals migrate into groundwater and flow into water bodies. Many of the toxic chemicals entering the

waterways settle in the sediment. Normal sedimentation processes carry these toxins from upstream sites to the mainstems of rivers and into the ocean. Contamination from these sediments enters the food chain with many of the contaminants bioaccumulating in fish. Consequently, human consumption of certain fish is banned because of high levels of contaminants.

Under CERCLA, additional sites must be identified, contained and cleaned up. Further, contaminated sediments should be specifically addressed.

#### Federal Insecticide, Fungicide and Rodenticide Act

Pesticides enter estuaries and, eventually, oceans, depending on a combination of factors which include land use activities and agricultural practices. Seven of the eight estuaries that ranked highest for pesticide toxicity to fish are Albemarle Sound, Chesapeake Bay, Pamlico Sound, Winyah Bay, Delaware Bay, Cape Fear Bay and the Hudson River/Raritan Bay -- all along the Atlantic coast.

Limiting the amount of runoff entering streams is a task for State and local governments. However, the federal government can restrict pesticide use based upon an evaluation of pesticide toxicity to aquatic organisms and fish.

#### Toxic Substances Control Act

Many toxic substances that cause pollution to waterways are contained in products that are in general use. Under TSCA, the government has the authority to identify these toxic chemicals and restrict their manufacture and sale. However, since TSCA's enactment in 1976, only PCB's, fully halogenated chlorofluoroalkanes, dibenzo-para-dioxins/dibenzofurans, and asbestos have been so regulated by the federal government. The federal government must increase its pace of review and better control substances causing unacceptable impacts on coastal areas.

In summary, the pervasiveness of coastal pollution is best exemplified by the multifarious forms of non-point pollution. The federal government must provide real assistance to states and localities in addressing non-point pollution, including the creation of a national clearinghouse through which information and technical resources are readily accessible. Controlling such types of pollution will be expensive and, in many cases, highly controversial. Only by making the difficult choices, however, can government and society as a whole come to grips with the problem.

(State and local responsibilities regarding non-point source pollution are discussed in State/Local Items #1 & #7 and in the accompanying background papers.)

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### Federal Item #2

EPA should accelerate the development of categorical pretreatment standards for industrial wastewater quality, to reduce the level of contaminants (particularly toxics) discharged to sewage treatment plants which may ultimately pass through to receiving waters and may also accumulate in the sludges generated by the sewage treatment plants. EPA should further intensify its enforcement role in the industrial pretreatment program.

### Background

Many of the most pressing pollution problems in coastal waters originate from the introduction of industrial wastes into publicly-owned sewer systems. While the federal government has broad authority to address such pollution through direct and indirect enforcement, the Federal pretreatment program lags in implementation far behind other water pollution programs.

The United States Environmental Protection Agency has the authority to control the discharge of pollution from sewage treatment works under the federal Clean Water Act. Among the requirements that the EPA can impose on publicly-owned treatment works (POTWs) through its regulations and permit conditions is the obligation to institute a pretreatment program, which in turn imposes requirements on sewer system users. EPA also has the power to regulate sewer users through the promulgation of pretreatment standards.

Adequate pretreatment of wastes by industrial dischargers using a sewage system is essential to the overall functioning of the system. Some pollutants, such as heavy metals or toxic chemicals, pass through the sewage treatment works into the receiving surface waters, causing a violation of pollution discharge limitations or water quality standards. Such pollutants may also disrupt or destroy the biological treatment capacity at the treatment works. Other pollutants directly harm or cause malfunctions in the treatment plant's equipment. Finally, some pollutants that the plant can remove from the wastewater before discharge are nevertheless harmful as components of the resulting sludge. Excessive concentrations of industrial wastes in the treatment plant's sludge may make the sludge useless for beneficial application and subject to special controls governing disposal.

EPA has been slow to promulgate pretreatment standards governing categories of industrial discharges to sewer systems. The lack of federal pretreatment standards is an important reason why federal, state and local control of sewer system use is much less effective than it should be. Without specific, numerical federal standards to enforce against sewer users, EPA must fall back on its more indirect authority to require POTWs themselves to

develop and enforce adequate controls. Local authorities, however, are often ill-equipped to determine (either on a case-by-case or industry-wide basis) what pollution controls are necessary. Local ordinances tend to impose general, non-quantitative requirements on industrial users that are difficult to enforce. Federal leadership to develop more specific and more readily enforceable limitations is sorely needed.

Federal enforcement of existing categorical pretreatment standards, as well as development of new standards, should also receive high priority. The EPA has made substantial progress in recent years in inducing POTWs to develop their own pretreatment programs, but the EPA has yet to begin any major federal enforcement program directly against sewer users. Given the magnitude and national significance of the pollution problems stemming from discharges into sewers, EPA needs to address the sources of this pollution directly through its own enforcement efforts.

(State and local responsibilities regarding the industrial pretreatment program are addressed in State/Local Item #2 and the accompanying background paper.)

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### Federal Item #3

It is imperative that Congress appropriate funding for EPA, the National Oceanic and Atmospheric Administration, and other federal and regional agencies and organizations with water quality research responsibilities. Such funding must be adequate to allow compilation of additional scientific monitoring data, such as water quality data and information on the long-term effects of pollutants on the marine ecosystem and on the effects of contaminated fish and shellfish on human health.

### Background

The signals that the ocean is currently under stress from pollution are clear: decreasing or disappearing fish stocks, the pollution of and necessary closure of clam flats due to high fecal coliform counts, the presence of toxins in harbor sediment, and, the most obvious, floating garbage slicks.

Closures of shellfish growing areas in the United States are rapidly increasing both in numbers and in duration. One third of the shellfish growing areas in the United States are presently temporarily or permanently closed. Development is resulting in increasing run-off of both nutrients and other forms of pollution such as litter. In addition, development is removing important wetlands and other types of environments which function as critical cleansing areas for water as well as habitat for marine life. Commercial fishermen are finding that it takes more effort and greater technology to catch fewer fish, and in some areas certain species of fish have disappeared completely. At the same time, the increasing density of the coastal population will result in greater demand for uses of the ocean such as swimming, boating and commercial and recreational fishing.

It is clear that our oceans are being affected by pollutants and environmental alterations, but very little is known about the long or short-term impact of these changes on marine life. As pressures on these important resources increase, the need for knowledge about the effects of pollution becomes more critical. Compared to the scientific data we have amassed concerning the effects of other kinds of pollution on the environment and human health, the lack of information available concerning the pollution of the marine environment and the effect of that on human health is startling.

Despite the clear distress signals, federal funding of marine pollution research and monitoring activities by federal agencies has decreased dramatically since 1984. The National Oceanic and Atmospheric Administration analysis of federal funding in this area reveals that, using figures in constant 1984 dollars to take inflation into account, the federal budget for marine pollution

research and monitoring activities has decreased by 19% or almost \$23 million from fiscal year (FY) 1984 to FY 1988 (\$121.1 million to \$98.1 million in 1984 dollars). The Administration's budget submission for FY 1989 proposed an additional decrease of funding in this area to \$80.5 million in 1984 dollars, a further reduction of 18% from FY 1988 levels.

This trend must be reversed. We need to know more about the effects of hundreds of tons of sewage sludge, wastewater from municipal and private sewage treatment systems, and general and agricultural run-off on our marine environment and ultimately on human health. This problem transcends local and state boundaries; research and monitoring must be done on a national or regional scale. Only when armed with such knowledge can our legislators and policymakers craft appropriate policies and legislation to protect the marine environment and human health.

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### Federal Item #4

The federal Government must provide renewed funding for sewage treatment plant upgrading and construction projects and funding for the remediation of combined sewer overflows.

### Background

Funding for sewage treatment plants requires striking an appropriate balance between federal and state responsibilities. While the welfare of national waterways is at stake, it is local wastes which are being generated. The funding issue is a complex problem.

Since the enactment of the Clean Water Act (CWA) amendments to the Federal Water Pollution Control Act (FWPCA), Congress has recognized the need for national financial support to the states in meeting water quality standards. The discharge of untreated sewage, or sewage receiving only primary treatment, was recognized as simply too great a problem to leave to the funding choices of individual states. Initially, and through 1987, federal financial assistance to the States for sewage treatment plant construction and upgrading took the form of grants, coupled with the imposition of stricter federal standards. The stated purpose of these grant-in-aid programs was for the "construction of necessary treatment works to prevent the discharge of untreated or inadequately treated sewage or other wastes into any waters."

In the 1980's, with a changed philosophy of the federal government's role along with federal budgetary problems, came a restructuring of the funding mechanisms for sewage treatment plants. The Water Quality Act of 1987 (WQA) significantly amended the FWPCA as to funding. The 1987 amendments tied the receipt of grants to a showing by the states, in addition to demonstrating a need for construction of sewage treatment plants, that they had adopted a plan which would apply the best practicable waste treatment technology in treating their waste. This plan was to include an application of recycling and reclamation options. In addition to the new requirements in applying for grants, the WQA amendments created a loan program whereby the EPA Administrator can enter into capitalization grant agreements with the states. The states are to set up revolving loan funds for the construction of waste water treatment works. The states must also guarantee the purchase of insurance and provide for sources of revenue or security for repayment of principal or interest on revenue or general obligation bonds.

The states are now in a transition period, distributing approximately half their allocation through the grant program and half as loans to be repaid by communities. The new loan system is more restrictive and complicated to administer. In addition, Congress has stated its intention to back away from federal

appropriations to the states for many programs presently covered under the grant program. In short, the States now have a much harder time getting federal money for sewage treatment plants than under the former program.

It is essential that during the period of transition from the construction grants program to the new revolving loan fund program, the federal government must provide sufficient funding to honor previous commitments and to keep the overall program on course. The federal government should accommodate, through reasonable funding mechanisms, the expectations of states and localities that were premised upon detrimental reliance on the former grants program.

A number of communities are grappling with the problem of combined sewer and storm drain systems built at a time when dilution of sewage was considered an acceptable treatment alternative. Infiltration of sewer systems by groundwater and by illegal connections has also created an overflow problem which is allowing raw or only partially treated sewage to pass into the Nation's waterways. The costs of identifying, prioritizing and ultimately eliminating these antiquated systems must be shared by the Federal Government.

There are still a number of sewage treatment plants failing to meet the mandated CWA requirements of secondary treatment levels. These plants must be upgraded. The stated federal commitment in the CWA to "restore and maintain the chemical, physical and biological integrity of the Nation's waters" should be backed up with a continued high level of financial support.

The participation of the Federal Government in improving the quality of the Nation's waters is appropriate because of the many interstate issues that often arise in this context. Many sensitive bodies of water, such as the Chesapeake Bay, are impacted by several states, and the life of these waters can ultimately affect every part of the Nation. The need for sustained funding in this area was noted by one court in 1973, pointing to a history of municipalities' inability to plan in the absence of secure commitment of funds. The Federal Government must continue its support of the states' efforts to improve their handling and treatment of sewage.

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### Federal Item #5

The federal government must act to ensure an end to ocean dumping of sewage sludge as soon as possible.

### Background

Each year approximately 8,000,000 wet tons of sewage sludge from New York City and other communities in the States of New York and New Jersey are disposed of in the ocean at a site 106 miles from the New Jersey coast. This location, known as the "106 Dump Site," has been designated as the exclusive site for disposal of such waste since December of 1987. Previously the sewage sludge was deposited at a site located 12 miles from the New York Coast. That site was utilized for ocean disposal of sewage sludge for close to 60 years and during that time, became a virtual environmental wasteland. The sludge in question contains toxic metals, including cadmium, mercury and lead, as well as petroleum components, some of which have carcinogenic potential.

Disposal of sewage sludge at the 106 Dump Site is being carried out pursuant to a consent order entered into between ocean sludge dumpers and the Environmental Protection Agency. The consent order is a by-product of a 1983 federal court decision. In that case, a District Court ruled that the EPA was required to develop criteria for ocean dumping and to consider the generators' permit application for such dumping with respect to whether the particular dumping would unreasonably degrade the marine environment, in light of certain enumerated factors.

The waters of the Atlantic Ocean provide a source of economic livelihood and nutritional sustenance to citizens throughout the United States, but particularly in the coastal states which serve as a base for numerous fishing fleets. In addition, citizens from throughout the United States derive aesthetic and recreational enjoyment from the waters of the Atlantic. Consequently, the people of the United States, through their Attorneys General, have a deep and abiding interest in ensuring that those laws which prohibit the illegal and improper dumping of sewage sludge into the Atlantic Ocean are strictly enforced.

Ocean dumping degrades the environment, endangers human health and welfare, and threatens the marine environment, ecological system and the economic potential of the ocean. This dumping also presents a general hazard to the health and welfare of citizens throughout the United States, as well as a source of harm to certain marine mammals and endangered species. Further, sewage sludge dumping in ocean waters adversely affects commercial fishing interests and, in general, has a detrimental impact on development of marine resources. Therefore, the federal government must act immediately to end ocean dumping of sewage sludge.

The recent legislation passed by Congress which prohibits sludge dumping in the ocean after December 31, 1991 is an important first step. The legislation requires ocean dumpers to pay sizable fees until the deadline unless the ocean dumper has entered into an agreement with the EPA that sets a schedule for compliance with the deadline. Failure to comply with the deadline carries with it the potential imposition of significant penalties. The fines and penalties will be placed into a fund, a large portion of which will be available to the ocean dumpers to assist in developing land-based alternatives.

EPA must vigorously enforce the federal deadline. In order to do this, compliance agreements must be reached which end ocean dumping as soon as possible, but in no event later than December 31, 1991. Where permanent long-range, land-based alternatives to ocean dumping realistically cannot be constructed and implemented by the generator before the deadline, the EPA must require interim management alternatives. The interim alternative should be used from January 1, 1992 until the permanent alternative is operating. Any penalty imposed for violating the deadline or a compliance schedule must be truly punitive and not viewed merely as a cost of doing business.

Methods of disposal must be developed and substituted in place of ocean dumping. Land-based alternatives to ocean disposal may include incineration, composting, co-composting, landfilling and land application as fertilizer. Landfilling is the least environmentally sound alternative. It requires an extensive and long-term commitment of land and should be allowed, if at all, only when the landfill has a liner and leachate collection system; otherwise, the potential for surface and groundwater contamination is very high. Composting, co-composting (composting municipal solid waste with sludge) and land application are excellent alternatives because they enable the sludge to be used as fertilizer. For the most part, however, the sludge currently being ocean-disposed contains high levels of heavy metals and is thus inappropriate for these alternatives. Incineration is the most likely candidate to replace ocean disposal, but great care must be taken to ensure that air pollution limits are met due to the high heavy metal content in the sludge. Since building incinerators may not be possible before December 31, 1991, one interim solution that should be investigated involves the construction of a lined landfill with a leachate collection system to hold the sludge until an incinerator is operational for burning the stored sludge.

The precise method of alternate disposal to be utilized in each case will be governed by particular circumstances, including the chemical composition of the sewage sludge. Vigorous programs of sewage pre-treatment must be implemented in order to remove the heavy metals from the sludge. This will preclude the presence in the sludge of environmentally harmful elements. (See Federal Item #2 and State/Local Item #2 for a fuller discussion of the industrial pretreatment program). Care must be taken to ensure that the cessation of ocean dumping does not merely transfer an environmental hazard from the sea to another medium.

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### Federal Item #6

It is imperative that Congress appropriate funding adequate to ensure a Coast Guard presence in the New York Bight and in other coastal waters to perform needed surveillances, to conduct dockside inspections, to prevent illegal dumping actions, particularly short-dumping of sludge, and to develop and implement clean-up procedures for garbage slicks and other floating debris.

### Background

In order to meet the challenge of combating ocean pollution, it is essential that society employ all the weapons which the enforcement capabilities of government provide. Through its independent inspection of vessels and its work in conjunction with the United States Environmental Protection Agency and other enforcement agencies, the United States Coast Guard represents a formidable weapon in this enforcement arsenal. Indeed, many other agencies (both state and federal) rely upon the technical expertise and the resources which the Coast Guard has available to it. In recent years, however, the Coast Guard, like other government agencies, has been forced to compete for budgetary allocations. In some cases, the needed allocations have not been forthcoming. The unfortunate result is that some essential enforcement services have been curtailed.

It can be presumed that requests for Coast Guard assistance will further increase in the future. Given the increased cost for the disposal of waste on land, the oceans will be seen as a profitable means of avoiding this additional expense. The states, in partnership with the Coast Guard, will need to give greater attention to surveillance and other investigative activities to combat illegal ocean dumping activities. Yet, the Coast Guard is uniquely situated to carry out such investigative initiatives in the open seas, and it must be regarded as the key element in any cooperative federal/state effort to combat illegal marine dumping. Thus, the Coast Guard's funding must be adequate to enable it to carry out this role.

In addition, the Coast Guard will soon be required to implement Annex V of the MARPOL Protocol, which will prohibit the disposal of plastic wastes from ships. These added responsibilities, coupled with the demands which are already being placed on its resources, make it essential that the Coast Guard be accorded its rightful priority and that it be funded at a level commensurate with the duties which it is called upon to perform.

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### Federal Item #7

While the federal government has the primary enforcement responsibility within the contiguous zone (3 to 12 miles offshore), it should address the issue of concurrent enforcement jurisdiction by the States.

### Background

The limit of the States' territorial seas jurisdiction is generally three nautical miles. The contiguous zone (currently between 3 and 12 nautical miles) constitutes the area within which the United States generally exercises law enforcement and customs authority. Since none of the applicable federal statutes so authorize, States (other than Florida and Texas) have no enforcement authority beyond three miles. The events of the past two summers, during which beaches have been degraded and even closed due to wash-up of marine debris, have galvanized public awareness of the problems and intensified States' concerns that the 3-mile limit of state jurisdiction is too restrictive.

Specific enabling legislation should address the States' concerns and allow for concurrent jurisdiction at least out to twelve miles. For example, the Ocean Dumping Act, which regulates materials which are transported from land to sea for disposal, currently prohibits States from regulating activities governed thereunder, but allows the Administrator of EPA to implement criteria suggested by a State for waters which are within its jurisdiction or which may affect such waters. It would be more effective to authorize those States which exhibit the desire and the resources concurrently to administer and enforce a dumping program for such waters. The ability to recover the costs of clean-up necessitated by ocean disposal in violation of State law would be a significant additional State authority available to combat forms of ocean pollution. An example of such legislation extending State authority is found in the Magnuson Fishery Conservation and Management Act. 18 U.S.C. §1856(a).

Should the federal government, whether by Executive Order or Act of Congress, extend the limits of the territorial sea or otherwise expand state jurisdiction beyond three miles, such legislation or executive action must explicitly empower states to exercise enforcement authority within the area of expanded jurisdiction.

Lastly, individual State laws prohibiting the littering of its ocean waters and its beaches could be much more effectively enforced under a system of concurrent jurisdiction out to twelve miles. Problems of proof when the discharge activity occurs outside three miles but the garbage ends up on shore would be eliminated.

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### Federal Item #8.

"Mud dump sites" for the disposal of contaminated dredged spoil material must be closed. The potential for contamination of the aquatic environment by the heavy metals, petroleum hydrocarbons and PCBs present in dredged spoils requires immediate action. Further, EPA must develop methods for the testing of dredgings and for treating the most contaminated dredged materials and should encourage that clean dredged materials be utilized for beach replenishment.

### Background

Dredged material is the material excavated from below navigable waters and is generally comprised of sand, silt and mud. Natural water depths in many harbors and navigable channels are too shallow to permit passage by ocean going vessels. Channels must be dredged and then maintained at up to 40 feet in water depth in order to accommodate fully loaded ocean going vessels. However, disposal of the dredged material in the ocean creates the potential for environmental problems.

The Marine Protection, Research and Sanctuaries Act ("MPRSA") regulates the transportation and dumping of dredged materials in the ocean. The Army Corps of Engineers, along with the United States Environmental Protection Agency, administers the permit program for these materials. Under the MPRSA, before a permit may be issued the Army must among other things: (1) determine that the dumping will not unreasonably degrade or endanger the environment; (2) consider other methods of disposal and locations for the dumping; and (3) evaluate the potential effect of a permit denial on navigation and industrial development.

The Army requires that the dredged material be thoroughly tested before it may be disposed in the ocean. These and other tests have revealed that dredged materials can consist of anything from clean sand, which has naturally accumulated in navigable channels, to highly contaminated muds and silts, which have accumulated adjacent to industrial areas or sewer outfall pipelines. The contaminants contained in this material can include PCBs, heavy metals such as lead, mercury and chromium, and oil and grease. The substances can be toxic to marine life and have the potential to get into the food chain (i.e., to fish and ultimately to man). In fact, it has been clearly demonstrated that the pollution stress or load from dredged material can be significant.

Despite the existing controls on ocean dumping, it is clear that these controls have not prevented the deleterious

effects which have resulted from ocean disposal of dredged spoils. The dredged material covers over the ocean floor and virtually eliminates marine life at the dumpsite. Although the dredged material sinks straight to the bottom and does not become dispersed throughout the area, as sludge does, the environmental problems are significant and the practice must be phased out as soon as possible before more and more of the ocean floor becomes contaminated.

One example of a dredged material dump site is the "Mud Dump Site" located approximately six miles east of Sea Bright, New Jersey. Seven to eight million cubic yards of material dredged from New York Harbor is deposited at this site annually. In 1986 Congress enacted the Water Resources Development Act which, among other things, requires that the Harbor's contaminated dredged material be dumped at a new dump site to be designated by EPA 20 miles from shore rather than at the 6 mile site, beginning no later than December 17, 1989. EPA has recently been allocated \$500,000 for the necessary studies.

It is imperative that EPA and the Army, as an interim measure, accelerate the phasing out of all ocean dump sites used for the disposal of contaminated dredged material that are closer than 20 miles from any shoreline. The EPA must designate new disposal sites beyond 20 miles to handle the contaminated material. More comprehensive and accurate methods of testing should be developed to better analyze the dredged material. As a long term solution, the contaminated material should be treated rather than ocean disposed. The EPA must establish by November 1989 criteria for alternatives to ocean disposal of contaminated dredged material, including containment islands, filling in existing holes on harbor floors (known as subaqueous burrow pits) and treatment facilities. Funding mechanisms for development of these alternatives must also be established. Clean dredged material and material that has undergone treatment and is contaminant free should be used for reestablishing eroded beaches and other resource recovery projects, rather than dumped in the ocean.

Finally, The U.S. Army Corps of Engineers promulgated regulations, effective April 26, 1988, which update the procedures required to be followed by the Corp for compliance of its dredging program with state water quality certifications (issued by the state indicating that activity is consistent with state water quality standards) and coastal zone consistency programs (determination by the state that activity is consistent with its federally approved coastal zone plan). Since these new regulations do not provide the states with an adequate say in how those dredging activities which affect their coast will be conducted, they need to be modified. For example, dredging operations should be consistent with a state's coastal zone management plan. Under the new regulations referenced above, they need not be.

## NAAG Ocean Pollution Subcommittee

### Federal Item #9

The federal government must promptly act through the appropriate United States agencies to implement Annex V of the MARPOL Protocol (International Convention for the Prevention of Pollution from Ships) to prohibit the overboard disposal of plastics from ships (including vessels of the United States Navy and other agencies of the United States government), and to strictly regulate other disposal practices to minimize ocean pollution and beach wash-ups.

### Background

Annex V of the Protocol of 1978 (MARPOL 73/78) regulates on a global scale the introduction of ship-generated garbage, including plastics, into the ocean environment. The Marine Plastic Pollution, Research and Control Act of 1987, which amended the Act to Prevent Pollution from Ships (APPS), implements this international treaty and requires the United States Coast Guard to develop the necessary program. Ratification by the United States triggered the effectiveness of MARPOL Annex V, and its requirements will go into effect on December 31, 1988. On June 24, 1988, the Coast Guard issued advance notice of proposed rulemaking setting forth the requirements envisioned for garbage disposal at sea, and on October 27, 1988, the proposed rules were published (with comments due by November 28, 1988).

The proposed regulations prohibit disposal of plastics from marine craft into the ocean and restrict the discharge of other ship-generated garbage within 25 nautical miles of land. These prohibitions and restrictions apply to vessels of any size or type, including commercial ships, fishing craft, recreational boats, oil rigs and platforms. Marine craft on navigable waters and within the 200 mile Exclusive Economic Zone, regardless of country, and all U.S. ships wherever located, are covered by the proposed regulations. The proposed regulations also require the ports and terminals where ships call to provide adequate facilities approved by the Coast Guard to receive the ships' plastic and garbage.

The disposal restrictions are aimed at the increasing problem of marine debris that has fouled our waters and our beaches. While the littering of our beaches can cause immediate public reaction and concern from both health and aesthetic standpoints, the indiscriminate disposal of refuse items can also cause injury to marine life and birds.

The United States needs prompt and effective implementation of the MARPOL Annex V regulations. APPS currently allows government vessels in non-commercial service a five-year time period for compliance, although the federal agencies may seek an alternative three-year schedule. It is critical that the U.S. Navy and other agencies of the federal government lead by example and act promptly to assure their vessels maintain strict compliance with the disposal requirements on a much faster time schedule. The pervasiveness of the problem and the present focus of public attention mandate that the federal agencies set the tone for this new ocean protection ethic.

The Coast Guard must also extend its regulatory considerations beyond the mere minimums of MARPOL Annex V, and seriously study requirements for shipboard equipment and manifest systems for the management of garbage, and for increased protection in environmentally-sensitive ocean areas. In areas such as the Gulf of Mexico and the South Atlantic coast where there are strong ocean currents capable of carrying debris to shore, the Coast Guard should require that disposal be limited to comminuted materials regardless of the distance from shore. Materials which cannot meet that standard should not be disposed of at sea in areas with strong currents. MARPOL Annex V clearly allows more restrictive standards than its minimums, and the Coast Guard should consider such standards in appropriate areas.

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### Federal Item #10.

Ocean wood burning should be strictly limited, should be allowed only on a permit-by-permit basis, and should be permitted only for wood that is threatening the marine environment. Any applicant for an ocean wood-burning permit must be required to demonstrate the absence of suitable land alternatives. EPA should deny approval of any commercial wood-burning site; commercial burning cannot be justified in light of the escape of timbers, hazards to fishing boats and recreational craft and dangers to beach bathers that inevitably would result.

### Background

The United States Environmental Protection Agency (EPA) regulates the incineration of wooden waste materials in ocean waters under the authority of the Marine Protection, Research and Sanctuaries Act (the "Ocean Dumping Act"). The burned wooden debris comes from harbor drift removal programs of the U.S. Army Corps of Engineers (the removal of floating hazards to navigation) and from harbor clean-up programs designed to remove potential sources of drift (e.g., rotting piers) from blighted shoreline areas.

Problems have arisen, however, regarding the management of ocean wood-burning operations. Burn barges have had a general record of sloppy operations. Timbers have fallen overboard in transit or during the burn. The result has been logs washing up onto bathing beaches and floating timbers causing hazards to fishing boats and recreational craft. Bathers have been injured and marine navigation has been impeded.

EPA has been considering the establishment of a commercial wood-burning site at sea. The creation of any such site, however, threatens to further weaken the control that the federal government should be exercising over such activities in order to prevent the escape of floatable timbers.

It is therefore essential that EPA regulate ocean wood-burning activities solely on a permit-by-permit basis, rather than through any broad authorization procedure. No commercial wood-burning site should be authorized, or if so, it should be strictly regulated, frequently inspected, and used only for limited purposes. Strict permit conditions must be imposed by EPA on the operation of burn barges, including specification of safe burn locations and inclusion of measures to prevent the escape of unburned wood into the sea, and the activities of burn barges must be closely monitored by federal enforcement personnel. Additionally, ocean wood-burning should be allowed only to the extent that the permit applicant can demonstrate the absence of suitable land alternatives for disposal of the wood. Air emissions from ocean

wood-burning should be minimized and ocean wood-burning utilized only where other disposal options are not feasible. As a further measure to minimize ocean wood-burning, such activities should be permitted only for waste materials that are, in fact, impacting on the marine environment and not for wooden wastes generated at inland locations.

## NAAG Ocean Pollution Subcommittee

### Federal Item #11

The federal government must establish necessary systems, with appropriate civil and criminal penalties, for the tracking of hospital and medical facility wastes so as to assure proper disposal and to minimize the possibility of such wastes becoming floatables in inland and ocean waters. The federal government must additionally, with input from the states, develop a uniform definition of the "medical waste" subject to regulation.

### Background

The recent publicity surrounding the littering of beaches in the Northeast with syringes, blood bags and other medical debris focused attention on the handling, transportation and ultimate disposal of medical waste. Although beach wash-ups are the most notable examples of improper or illegal disposal of medical wastes, land dumping and improper operation of medical incinerators also create potential health and environmental problems. The potential sources of medical waste include not only hospitals but physicians, dentists, veterinarians, nursing homes, clinics, outpatient/ambulatory care facilities, funeral homes, and research laboratories, as well as households.

While individual states have recently acted or are in the process of acting to control medical waste within their own territory, there is a need to establish minimum federal standards for management so as to ensure a basic level of protection against the hazards of such waste. Such federal provisions should be adopted in a fashion which will promote a reasonable level of interstate consistency but also will not preclude the individual states from enacting more rigorous management policies should they desire to do so.

The recently enacted Federal Medical Waste Tracking Act, establishing a demonstration project for tracking medical wastes in a limited number of states, provides an example of the type of regulatory program needed. The implementation of any such program, to be successful, should include the following:

#### Manifest/Tracking System

A modified RCRA-type national manifest system is needed to identify and control the sources, amounts, transporters and disposal facilities of medical waste, at least in some parts of the country. The system should effectively track medical waste from its point of origin to its point of disposal. Because of differences in the nature of medical waste problems across the country, the option of regional tracking systems rather than a uniform national system should be explored. In addition, EPA should examine the effectiveness of tracking mechanisms other than manifests.

## Definition of Medical Waste

A standard definition of medical waste should at a minimum include: infectious waste, chemotherapy waste and pathological waste. Infectious waste should include: discarded cultures and other biological and medical laboratory wastes, blood and certain other body fluids, pathological wastes, and sharps (such as hypodermic needles and syringes).

## Generator Definitions

EPA should identify the sources of medical waste and at minimum should subject to regulation those generators who create medical waste in the course of their business. The problem of small quantity and household generators should be evaluated.

## Handling

Regulations requiring the identification, labelling and proper packaging and handling of medical waste should be promulgated.

## Disposal

Regulations controlling the final disposal of medical waste should be adopted. Criteria for air emissions for incinerators must be established. The ash which remains from the incineration of medical waste must be regulated and proper disposal required. Additionally, EPA should examine and test new technology for the treatment and disposal of medical waste.

## Penalties

Regulations concerning the handling, transportation and disposal of medical waste must provide for both civil and criminal penalties in order to promote effective enforcement of the rules. Penalties should be at least as severe as for hazardous waste violations under RCRA.

## Enforcement Tools

To aid in the investigation and tracing of the origin of illegally dumped medical waste, consideration should be given to adopting a federal identification system for syringes and other disposable medical products.

## NAAG Ocean Pollution Subcommittee

### Federal Item #12.

EPA should establish stringent permit standards for the transportation of solid waste in coastal waters in order to address the problem of discharge of garbage and floatables into those waters.

### Background

The use of coastal waters to transport solid waste is becoming more frequent, and the distances the solid waste must travel are also increasing. This trend will continue as solid waste disposal capacity diminishes and public awareness of the risks posed by solid waste disposal facilities heightens. A highly publicized example of this problem is the odyssey of the "garbage barge" which was in the headlines for weeks at the end of last year.

Barges are used to transport hazardous waste, ash, etc. from points of generation to the dwindling number of disposal sites all over the world. Barges are also used to transport household garbage from various points on coastal waters to landfills. During the loading and unloading of barges, the potential exists for large amounts of waste to fall into the water. The debris may also be blown off barges into the water while they are in transit. Once in the water, floatables, which may include paper, plastic, medical debris, etc., can create severe economic and potential health consequences to the marine environment and even to the recreational users of the ocean and beaches. If the floatables wash up on beaches, significant resources must be expended by localities in clean-up activities. If the debris is not cleaned up, high tides and rains can cause it to be transported to yet another beach where contamination and pollution can occur. Debris that sinks to the ocean floor rather than remaining as floatables, also creates a less visible but no less serious environmental problem and provides an additional reason to address the issue.

An example of the potential problems posed by barge transportation of solid waste can be seen by examining the massive Fresh Kills Landfill operation in New York City, where 14,000 tons of garbage is transported daily from City marine transfer stations to the landfill on Staten Island. New Jersey, among others, filed suit against New York City alleging that the City's solid waste marine transport operation is discharging significant amounts of solid waste into the water in violation of Federal laws. A Judicial Consent Order entered into by the parties sets forth strict technical requirements for the loading, unloading and transportation of solid waste in coastal waters. The Fresh Kills

situation is illustrative of the problems that can occur anywhere that solid waste is transported in coastal waters.

Although Federal laws have been in place for some time which apply to the transportation of solid waste over coastal waters, e.g., the Clean Water Act, the Marine Protection, Research and Sanctuaries Act, and the Resource Conservation and Recovery Act, adequate regulations addressing the details of this activity have not been promulgated.

Recently, Congress passed the Shore Protection Act of 1988 which requires marine vessels that transport solid waste in coastal waters to obtain a permit from EPA. The facilities where the waste is loaded onto and off of the vessels are required to take all reasonable steps to minimize the amount of debris which escapes into coastal waters. These facilities must also clean up any waste which has gotten into the water. Vessel operators are required to secure the waste with netting or some other means during transport, according to the Act. Penalties of up to \$25,000 can be assessed for violations of the Act.

Due to the threat posed by the waste and the new legislation's mandates, it is imperative that the United States Environmental Protection Agency and the Secretary of Transportation develop and enforce strict permit standards for implementing the Act. The Act should be viewed as imposing minimum requirements. The regulations should impose stricter standards. Barge covers should consist of netting only if the netting, due to the nature of the waste being transported, can virtually eliminate the possibility that waste may escape. Procedures at the loading and unloading facilities must prevent any waste from escaping and not merely minimize the amount of waste that gets into the water. Finally, strict enforcement of the Act is critical to ending the adverse effects of waterborne solid waste on the coastal environment and economy.

## NAAG Ocean Pollution Subcommittee

### State/Local Item # 1

Measures should be implemented to control nonpoint sources of pollution such as agricultural runoff, air pollution, marinas, street litter, individual sewage disposal systems, beach litter and refuse from boaters and bathers. States and municipalities should assess the extent and the sources of such nonpoint pollution, the impact of such pollution, and should devise and implement appropriate remedial measures.

### Background

Nonpoint source pollution can be generally divided into several categories: substances which enter the environment through the manufacture and use of various products; existing accumulations of toxins in dump sites or sediments; nonpoint source pollution associated with excess runoff caused by man's widespread modification of vegetative surfaces and drainage patterns; septic leachate and similar forms of groundwater contamination; and air pollution.

State and local governments can reduce the amount of runoff which carries pollutants into the ocean by requiring runoff controls for various types of land uses. The public also needs to be educated that litter and wastes from boaters contribute to localized ocean pollution. Although local and state governments may be most concerned with local environmental problems associated with nonpoint source pollution, what happens miles upstream can impact ocean pollution miles away. For example, pesticides may initially harm aquatic life in the first stream they enter, but they will continue to impact the environment when they reach the ocean through natural sediment transport.

### Land Use Planning

Uncontrolled runoff is a major cause of erosion and sediment deposits in water bodies, and it adversely affects marine life, fish and recreational use. State and local governments should implement land use programs to reduce and control runoff which eventually carries sediments and other pollutants to the ocean.

States can require that all major grading, sediment and erosion control plans be reviewed and approved by the state environmental agency prior to implementation. Further, states can require that before grading and building permits are issued, comprehensive storm management, grading and sediment control plans be submitted and approved by the environmental agency. To enhance the effectiveness of such land use programs, states must maintain oversight, including periodic inspections, and have enforcement powers, including civil and criminal penalties and injunctive relief.

On a local level, before any proposed earth changes occur, local officials should be required to comply with prudent practices to insure conservation.

Finally, state and local governments must work together to insure proper implementation and enforcement of control measures.

### Litter and Waste Disposal

Public awareness and local cleanup days should have a positive impact on litter control. Local governments and private companies that deal in transportation and disposal of solid waste must be required to take special care to insure that waste is properly contained en route to transfer or disposal facilities. Special care must be taken to control litter and debris at such facilities, especially when they are near coastal areas.

Another source of nonpoint pollution is the runoff from individual septic tank systems. The improper installation and the failure to properly maintain septic systems is a cause of increased nutrients leaching into waterways. Rigorous and consistent regulatory programs for the installation and maintenance of individual septic systems are necessary. Further, as population density increases, government needs to review the appropriateness of existing systems.

Further, although boats may seem like an insignificant source of pollution when compared to sewage treatment plants, marinas are located in the most environmentally sensitive ocean areas -- bays and shallows. For this reason, large numbers of boats can be significant contributors to localized ocean pollution problems. States should require that boats contain holding tanks and that pump-out stations be constructed at marinas.

### Air Pollution

The federal government should take the lead role in controlling air pollution, such as by setting strict ambient air standards, since it is an interstate problem. However, the states should heighten regulation and enforcement of air toxics, particularly for those chemicals which harm aquatic organisms and bioaccumulate in fish.

(Other aspects of state and local responsibilities for nonpoint source pollution are contained in State/Local Item #7 and the accompanying background paper. The federal responsibilities are addressed in Federal Item #1.)

## NAAG Ocean Pollution Subcommittee

### State/Local Item #2

The implementation and vigorous enforcement of a stringent industrial pre-treatment program by States and municipalities should be accelerated to control the level of toxics and other pollutants entering sewage treatment plants and ultimately either passing through to coastal waters or becoming concentrated in the sludges generated by the sewage treatment plants. States and municipalities should similarly control, through existing enforcement authorities, the direct discharge of toxics to surface waters.

### Background

While the federal government has broad authority to control pollution created by the discharge of industrial wastes into sewage treatment systems, States and municipalities also have crucial roles to play in pursuing strict pretreatment programs.

The State governments, like the federal government, have traditionally looked to municipalities to develop adequate pretreatment requirements, in the form of local ordinances, permits and sewer use agreements. State water pollution permits issued to publicly-owned treatment works (usually pursuant to a federally-delegated program under the Clean Water Act) typically require the POTW to develop a pretreatment program, but many states do not exercise direct control over sewer users. Most States tend to leave implementation and enforcement of pretreatment requirements largely to the municipality or local authority, even when State law authorizes State agencies to intervene more directly by promulgating regulations and initiating enforcement actions. Meanwhile, local authorities typically lack the authority and the resources to carry out truly effective regulatory and enforcement programs.

Both State and local agencies need to do a better job of enforcing pretreatment requirements directly against sewer users. Local requirements should be revised to include clear, readily enforceable provisions that do not hinge on proof of causation of harm at the sewage treatment plant. State regulations should be revised as necessary to incorporate or parallel the local and federal pretreatment requirements. Civil and criminal penalties for violations of State and local requirements should be increased, through amendments in State laws if necessary, so that they will be as meaningful and stringent as the penalties imposed on companies that discharge directly to surface waters. Finally, State and local authorities need to enhance and coordinate their enforcement efforts to ensure that pretreatment requirements are fully complied with.

(Federal responsibilities regarding industrial pretreatment are addressed in Federal Item #2 and the accompanying background paper.)

## NAAG Ocean Pollution Subcommittee

### State/Local Item #3

States and municipalities should act to minimize the presence in waste streams of potentially recyclable refuse items, by encouraging recycling programs for glass, cans, plastic, newsprint, yard wastes, and paper products, by working with the packaging industry to reduce the volume of disposable or toxic packing materials, and by conducting appropriate public education programs. Conservation and waste minimization efforts must be part and parcel of all environmental and public health protection programs.

### Background

The solid waste disposal problem in the United States is enormous. All types of disposal practices -- from incineration to landfilling -- are adversely impacted by the sheer volumes of waste with which agencies have to deal. A 1988 EPA report estimates that municipal solid waste generation in the United States exceeds 1300 pounds per person per year. Volumes of waste are becoming greater per person each year, because lightweight plastic packaging and a wide array of disposable products are the fastest growing segments of waste streams.

Conservation is not only a viable but a necessary component of any pollution-control effort. Any law, regulation, or program aimed at the environmentally safe disposal of wastes of any sort will ultimately fail if it does not include as its fundamental basis a vigorous and sustained conservation effort, including education, technical assistance and technology transfer, incentives, market development, and source reduction techniques (individual, institutional and societal) such as recycling, recovery, and reuse.

First and foremost in any long-term solution to the waste problem is an emphasis on waste stream reduction, including industrial wastewater reduction. The serious trash disposal problems at the state and local level require that economic disincentives be created for trash generation; the costs of the problem should ultimately be borne by those who benefit from its creation. States and municipalities should give serious consideration to legislation mandating source reduction for various types of items (e.g., plastic containers).

Serious consideration must also be given to legislation mandating recycling of solid waste and establishing economic incentives/disincentives to promote recycling. State governments can influence markets for recycled products through state procurement programs. States should also lead recycling efforts by establishing programs requiring all state agencies and facilities to collect and manage waste materials for recycling. Participation of state schools and universities, hospitals, prisons and government offices in recycling programs would dramatically reduce waste streams.

States and municipalities should also integrate into their solid waste programs an educational component aimed at re-educating the citizenry to abandon the throw-away mentality. Such an educational program should be practical and should emphasize that the only alternatives to the unwanted presence of landfills and incineration lie in waste stream reduction and recycling.

What is needed is a change in philosophy - a change which discards as anachronistic the notion that the safe disposal of wastes is the sole purpose of environmental protection programs, in favor of the more enlightened and prudent object of waste management. Conservation, in other words, must be more than an afterthought; conservation must be the first thought and continuing premise of all environmental and public health protection programs.

## NAAG Ocean Pollution Subcommittee

### State/Local Item #4

Sewage treatment plants should be upgraded to provide the treatment capability required by law, and the operation, maintenance, monitoring and enforcement of sewage treatment plants should be given the highest priority, with significant action taken for non-compliance with discharge limits.

### Background

The 1972 Clean Water Act (CWA) amendments to the Federal Water Pollution Control Act (FWPCA) created a general requirement that all publicly owned treatment works in existence on July 1, 1977 must meet effluent limitations based on secondary treatment levels. Amendments to the Act in 1977 allowed for a postponement date of July 1, 1983 in the event of delayed funding. The 1977 amendments also allowed for exceptions to secondary treatment effluent limitation requirements for certain discharges into marine waters. For example, discharges through deep ocean outfalls might be allowed if it could be shown that the discharge would not interfere with public water supplies, shellfish, fish and wildlife or the pursuit of recreational activities.

Despite these effluent limitation requirements, a number of sewage treatment plants (approximately 10% of the total) still operate at a primary treatment level. Primary treatment uses a system of sedimentation whereby sewage is held for a period of time allowing heavier items to settle out. The liquid is then discharged. Secondary treatment is biological. Advanced waste water treatment plants also exist, which often use multiple biologic systems allowing for even more stringent criteria. All waste water treatment plants should be upgraded to at least the secondary level, as required by law.

Just as important as the initial construction of the plants is the need to operate these plants with adequately trained staff. The support of the plants' bio-mass especially in advanced systems is critical. States and localities need to emphasize personnel training and should commit themselves to proper maintenance of the plants. The operators should institute routine maintenance schedules as well as plan financially for future restoration and replacement. An example of preventative maintenance which other states can emulate is Wisconsin's "compliance maintenance program," where sewage treatment plants are required to conduct an annual review of their wastewater treatment capabilities. In this way, future growth can be anticipated as part of an overall needs assessment, and advance planning can prevent subsequent non-compliance based on inadequate treatment capacity or equipment breakdown.

Although most environmental regulations are based on a theory of self-enforcement, there is always some oversight monitoring involved. The submission of periodic reports and effluent tests can expose treatment problems, but independent monitoring is still needed. Sewage treatment plant operators should consider testing the waste at various points through the treatment process rather than focusing only on the final effluent.

In addition to educating and assisting communities in improving their sewage treatment systems, a need exists for strong enforcement action when significant non-compliance occurs. Both civil and criminal sanctions should be considered as enforcement tools, even against municipalities or other political subdivisions.

## NAAG Ocean Pollution Subcommittee

### State/Local Item #5

States should ensure that their wetlands protection programs provide a comprehensive mechanism for regulating the use of, and development near or in, inland and coastal wetlands. Wetlands protection laws should be vigorously enforced to prevent further destruction of these diminishing, valuable resources. States should develop a detailed inventory of their wetlands and specifically identify significant wetlands, such as those that serve as habitats for endangered species, so as to facilitate their protection. Where development unavoidably impacts on a wetlands area, efforts to mitigate the damage through enhancement or restoration should be required.

### Background

Our inland and coastal wetlands constitute a significant natural resource. Wetlands perform many vital functions. They serve as shellfish beds and as the spawning and breeding grounds for numerous species of fish. They provide nutrient-rich habitats for varied populations of animal, bird and plant life. Wetlands absorb flood waters and silt, acting as natural sinks which control and filter run-off, removing pollutants and recharging groundwater aquifers.

During the early history of this country, millions of acres of wetlands were dredged or filled because of a lack of understanding of the important roles wetlands play. As a result of mismanagement and development, over fifty percent of our natural wetlands have been destroyed. The United States continue to lose an estimated 500,000 acres of wetlands each year. Since the complex natural functioning of a wetland is difficult if not impossible to replicate, it is especially critical to protect and preserve the wetlands that remain.

Extensive regulatory programs to preserve wetlands are already in place at the national, State and local level. State governments should take prompt action to more effectively enforce existing laws.

States should adequately staff their wetlands programs and should provide civil and criminal penalty authority substantial enough to ensure that the wetlands laws are not disregarded with impunity. Administrative penalties and multi-day penalties should be made available to State enforcement bodies, as they are effective deterrents. Local authorities should be given the power to issue cease and desist orders to developers or individuals detected in violation of wetlands restrictions.

The jurisdiction conferred on State wetland boards or agencies should be broad enough to allow regulation of development near or adjacent to wetlands. Wetlands jurisdiction should extend to a "buffer zone" of 100 to 200 feet around significant wetlands - those that are larger than a minimum threshold size or those that have been identified as critical because of certain characteristics.

States should encourage communication and coordination among the governmental bodies responsible for implementing wetlands protection laws. The designation of a Statewide coordinator to keep the U.S. Army Corps of Engineers, the State Wetlands Board or Commission and local governments informed of each other's activities could serve this purpose.

States should promote public awareness of wetland functions and value through public outreach programs, workshops and conferences. Developers and realtors should be targeted for such educational programs. Communities can be directly involved in wetlands preservation through the initiation of programs like "Wetlands Watch" where local groups or schools "adopt" one or several wetlands in their neighborhood. In this way, the local group can serve as a front line investigator. It can keep an eye on encroaching development and monitor water quality with the assistance of the State agency.

Each State should develop a detailed inventory of its wetlands. Wetlands locations, boundaries and type should be determined. Significant wetlands, such as unusually large or unspoiled wetlands, or wetlands that harbour endangered species, should be identified and targeted for State acquisition or other conservation programs. States should encourage local governments to take an active role in mapping and classifying the wetlands within their boundaries. A comprehensive wetlands inventory will assist the State in long-term planning.

States should educate local authorities of existing enforcement opportunities through statewide workshops. States should assist local authorities in identifying and coordinating existing ordinances that can be used to protect wetlands (such as grading, erosion, flood damage protection or sedimentation control ordinances) and/or should encourage them to implement their own wetlands protection programs. Local governments should also be encouraged to implement zoning ordinances or development plans designed to prevent wetlands from the adverse cumulative impact of continued nearby development.

## NAAG Ocean Pollution Subcommittee

### State/Local Item #6

State and local governments should develop short-term and long-term plans to manage and control coastal development. States and municipalities should work together to maintain an appropriate balance between population growth and development, and protection of coastal ecosystems.

### Background

United States coastal areas have been and continue to be very heavily used. Over fifty percent of the United States population lives a short distance from the coast. By the end of this century, an estimated 75% of the United States population will live within an hour's drive of the coast. The increasing population density and development is damaging the nation's estuarine and coastal areas.

Each coastal state should have a comprehensive coastal zone management program. The state-level management program should establish guidelines for and coordinate coastal zone planning at the local level. It should serve as a conduit for information and funding between federal agencies and local communities. It should sponsor workshops and prepare periodic bulletins for local authorities and planning groups to keep them up to date on legal and technical developments.

Local governments should establish zoning or master growth plans designed to control development along the shoreline and in coastal communities. New growth should be limited to that which reasonably can be supported by existing services and utilities. Long-term growth should be limited by the necessity of preserving open spaces and tidal ecosystems in their natural state. Local zoning authorities should act to diminish the adverse effect of development by imposing substantial setbacks from tidal wetlands and requiring large lot sizes for development adjacent to tidal wetlands. States should assist local governments to coordinate their development and preservation plans with adjacent towns.

States and communities should avoid funding extensions of sewer and water lines and/or treatment facilities into rural areas adjacent to the coast (except as needed for abatement of an existing pollution problem).

States should provide encouragement and monetary incentives to owners of large tracts of coastal land to donate conservation easements on part or all of their land.

Harbour management plans should be coordinated with local land use regulations to prevent overuse of coastal resources.

States and local governments should initiate public education programs directed at coastal communities to develop their understanding of the problems created by misuse of coastal areas and to inform them of practical ways in which the communities and individual members can help preserve coastal resources.

States and local governments should identify prime salt marshes and other critical coastal areas. State should also develop acquisition programs to purchase such areas for recreation and wildlife protection. The funding of these acquisitions can be provided through a combination of local, state, federal and private programs, grants or fund drives.

States should vigorously protect all coastal wetlands by aggressively and consistently enforcing state wetland laws.

## NAAG Ocean Pollution Subcommittee

### State/Local Item #7

Actions should be implemented to minimize and control stormwater pollution, which contributes greatly to the biological and chemical degradation of coastal waters. All stormwater outfalls should be mapped and inventoried, cross-connected sanitary and storm sewers should be eliminated (to prevent the discharge of raw sewage during storm events), and stringent stormwater management regulations should be promulgated and strictly enforced. Substantial fines should be mandated for non-compliance.

### Background

Urban development disturbs natural stormwater runoff patterns by replacing forest and fields with roads, buildings, and pavement. Urban runoff also may play a significant role in contributing to water quality problems. Runoff from commercial and industrial sites and combined sewer overflows may yield heavy metals, microorganisms, sediment nutrients and organic materials.

Stormwater management was traditionally looked at as a means of drainage and flood control. In the seventies, stormwater management was, for the first time, considered a way to protect water quality. The trend to treat stormwater as a contamination source will have several effects, including the need for more expensive and elaborate ordinances, a shift of responsibilities from a public works to an environmental control orientation, increased attention to facility maintenance, and the need for increased resources for technology transfer and cost sharing regarding control techniques. Counties and municipalities may require stormwater management plans to prevent downstream flooding.

The key to careful targeting of control activities to maximize water quality benefits is a watershed-based analysis. A thorough watershed analysis will: (1) identify those problems that are caused specifically by nonpoint sources, (2) rank priority water bodies for concentrated attention, (3) pinpoint the specific land management practices causing the problems, and (4) design a system of cost-effective management practices that can reduce the nonpoint source pollutant load to the watershed and can be implemented in a timely fashion.

The objectives of the watershed programs would be to reduce water volumes and runoff velocities into waterways following storms and to reduce the amount of pollutants and contaminants associated with such flows. These objectives would be achieved by combining engineering methods with ecological concepts, creating environmentally sound stormwater controls for all areas.

State programs to manage certain nonpoint sources currently rely heavily on voluntary education and training programs to encourage adoption of controls. While these voluntary programs have been around for a long time, the results appear spotty because there has not been a uniform, focused approach that targets resources to meet water quality objectives. Because of the diversity of options and the high public costs associated with implementing and enforcing nonpoint source control programs, supplements to voluntary programs are needed. Implementation of stormwater management programs may best be accomplished by personnel at the county or local level with state and federal agencies providing statutory and regulatory authority, technology transfer, monetary assistance, and enforcement.

(Other aspects of state and local responsibilities for nonpoint source pollution are contained in State/Local Item #1 and the accompanying background paper. The federal responsibilities are addressed in Federal Item #1.)

## NAAG Ocean Pollution Subcommittee

### State/Local Item #8

Capital improvement programs should be undertaken (perhaps as structured, long-term state/local projects) to eliminate combined sewer overflows, which presently result in vast quantities of diluted raw sewage being discharged into coastal waters during storm events. In the interim screening and disinfection at overflow points should be carried out to reduce the transport of bulk pollutants, flow equalization plans should be considered, and sewage overflows during dry weather conditions must be totally eliminated.

### Background

Combined Sewer Overflows, or CSOs, are in part a result of antiquated construction principles. In many communities storm drain systems and sewer systems were intentionally commingled. This reflected the theory that dilution of sewage was an acceptable treatment option. This intentional mixing now only serves to increase the volume of sewage needed to be treated. Another source of CSOs is infiltration, which allows groundwater to seep into cracks and leaks in the sewer line. It is also common to find downspouts illegally connected to sewer systems, again increasing the volume in the lines.

When a system is overloaded, it can overflow at various points along the transmission line, causing flooding at pumping stations, for example, or there may be surges at the treatment plants. Most sewage treatment plants are built based on calculations of expected sewage. If the volume is increased significantly because of heavy rains, the plant cannot adequately handle the flow, thereby allowing untreated sewage to pass through the system. In the worst cases, a heavy surge can wipe out the biological organisms at a plant, destroying the treatment capabilities of the facility.

The identification of sewer and storm lines that intersect is a costly and time consuming job, involving smoke testing, document searches and physical tracking of the lines. Once the problem is identified, the costs of resolving the situation can also be enormous. A permanent solution can involve installing entirely separate systems. This would entail tearing up streets and major construction costs. Even the repair of individual leaks along a sewer line to stop infiltration is expensive.

An interim solution can be employed which focuses on treating the overflow. A flow equalization plan for the purpose of holding the overflow until the treatment plant is capable of handling it, for example at non-peak hours, can be instituted. These plans can include the use of tanks, floating dams, and oversize pumping stations. Another way to handle the overflow is

to apply primary treatment methods such as screening, swirl concentrators and disinfectant. Caution must be taken when the disinfection method is applied, however, since the product used in an attempt to kill disease-carrying organisms, such as chlorine, may itself be considered a pollutant.

## NAAG Ocean Pollution Subcommittee

### State/Local Item #9.

States in the East Coast, West Coast, Gulf Coast and Great Lakes regions should, following the model of the Northeast Hazardous Waste Project, the Coastal States Organization, the Great Lakes Commission, and similar regional and coastal environmental enforcement networks, establish information exchange and multi-jurisdictional response actions regarding coastal pollution issues and incidents. Such networks should also promote development of regional strategies and public policies appropriate for the affected areas.

### Background

It is abundantly clear that many ocean pollution issues transcend state boundaries. In fact, it is apparent that they are predominantly regional in nature. For example, adverse effects of floatable debris in the ocean were felt by New Jersey beaches in the summer of 1987 causing New Jersey to mobilize its resources to identify the causes and formulate solutions. In 1988, however, due to changes in wind patterns floatables became New York State's problem, and now New York is formulating its responses to the floatables problem as well.

Similar scenarios have occurred along numerous coastlines. However, states have not coordinated efforts to combat ocean pollution problems. While regional environmental enforcement organizations, such as the Northeast Hazardous Waste Project, do exist, they are not yet well established in all East Coast, Gulf Coast, West Coast, and Great Lakes States. Further, such interstate organizations, where they do exist, have not typically addressed ocean pollution problems. These regional organizations, or similar groups, must be used to coordinate multi-jurisdictional responses to common coastal pollution issues and incidents. The networks must be established along regional lines with states in all coastal regions organizing together.

Each regional organization should consist of members from the various concerned agencies within each of the states. Input from other interested groups should also be encouraged. The appropriate EPA Region should be in direct communication with the regional organization on a regular basis in order to share general information, and enforcement data, exchange the results of research projects and discuss alternative strategies to address specific ocean pollution problems. Along with the EPA, the Coast Guard, the Army Corps of Engineers and the National Oceanic and Atmospheric Administration should be in direct communication with the regional organization. Additionally, the regional organization should receive input from environmental advocacy groups, the commercial



**MEETING WITH PRESIDENT BUSH  
AND EPA ADMINISTRATOR REILLY**

March 13, 1989

**Selected Issues, Projects, and Activities of Importance  
to the Attorneys General**

**STATE-FEDERAL RELATIONSHIP IN ENVIRONMENT**

The trend over the past decade has clearly established the Attorneys General and the states as key players in environment enforcement. In a recent report, EPA stated that the states took on a "significant share of the nation's environmental enforcement workload" in fiscal year 1988. In that year, state agencies referred 904 matters to Attorneys General for enforcement action and took 9,363 administrative actions against violating facilities; both figures represent an increase over the previous fiscal year.

This newly emerging leadership by the states has altered what was the traditional federal-state role, thus making the administration and enforcement of environmental laws an extremely intricate web of relationships among the Attorneys General, the state regulatory agencies, and the federal and local governments.

The source of this evolving relationship is the environmental legislation enacted beginning in the 1970s, which delegated new enforcement authorities to the states in several areas, including the Resource Conservation and Recovery Act, Clean Water Act, Safe Drinking Water Act, Federal Insecticide, Fungicide, and Rodenticide Act, and the Clean Air Act. Other factors that have affected state-federal relations include increasing public concern and interest in environmental protection; budgetary limits which had the effect of reducing staffing and scaling back on enforcement efforts at the federal level; and enhanced coordination and cooperation among the states as they became more involved in environmental issues.

The challenge in the 1990s is to continue defining the appropriate roles for the state and federal governments in a way that provides effective solutions to urgent environmental concerns. Federal leadership and priority setting are the keys to tackling the most complex national problems. At the same time, state officials, who can often move more quickly than the federal government, are being held directly responsible and accountable to the public for developing solutions to the environmental problems faced by the states' citizens on a daily basis. Continued expanded federal support for this growing state role is a critical ingredient of our state-federal environmental relationship for the next decade.

Following is a list of issues, projects, and activities which comprise elements of NAAG's relationship with EPA and which are important to the Attorneys General.

**NAAG ENVIRONMENT PROJECT**

Recognizing the critical need for up-to-date information and technical assistance concerning federal environmental statutes, regulations, and EPA and Department of Justice policy and guidance documents, the Attorneys General established the Environment Project at NAAG in 1984. Today, this project is funded by three EPA grants through the RCRA and Superfund programs and the Office of Enforcement and Compliance Monitoring. The NAAG Project consists of three environment professionals and support staff, including Herb Johnson, Project Director, an attorney who came to NAAG from EPA's Office of Criminal Enforcement Counsel, and Cindy Evans, an attorney who writes and edits the monthly *National Environmental Enforcement Journal*. (See copy attached.)

The Environment Project has the following purposes:

- **Information Sharing**

The Project provides a clearinghouse through which information on significant federal, state, and local legal developments is exchanged among the Attorneys General, EPA, the Department of Justice, U.S. Attorneys, district attorneys, and state regulatory agencies;

- **Training**

The Project coordinates with EPA, providing training to state environmental attorneys on topics such as RCRA corrective action, conduct of complex environmental litigation, waste oil enforcement, and basic and advanced RCRA/Superfund enforcement issues;

- **Research and Surveys**

We undertake special reports and surveys. These have included surveys of state authorities parallel to the federal Superfund statute; underground storage tank programs; state RCRA enforcement authorities; state hazardous waste enforcement information sources and mechanisms for exchange of information, performed for the regional state environmental enforcement organizations. We are currently doing a compilation of state environmental criminal enforcement statutes and preparation of model statutes;

- **Technical Assistance**

We consult regularly with Attorneys General about environmental issues and cases;

- **EPA Work groups**

NAAG provides state enforcement perspective on EPA developed guidances and other management documents (see the following detailed description of work groups);

- **Liaison to EPA**

The Project provides a direct communication link between Attorneys General and EPA and assists in ensuring that concerns of Attorneys General are made known to the Administrator and his staff;

- ***National Environment Enforcement Journal***

NAAG publishes a *Journal* eleven times per year on legal developments in environmental enforcement at the federal, state, and local levels. The *Journal* covers a range of topics including air, hazardous and solid waste, water, toxic substances, nuclear waste, and criminal enforcement. More than 850 offices including federal, state, and local government officials, associations, law firms, and law libraries receive the *Journal*.

#### **NATIONAL ENVIRONMENTAL ENFORCEMENT COUNCIL (NEEC)**

With the strong encouragement of EPA and the U.S. Department of Justice, the National Environmental Enforcement Council (NEEC) was established in 1985. The Council, which meets three times per year, serves to resolve enforcement problems that are

caused by inter-jurisdictional disputes; focuses attention by top policy-makers at all levels of government upon difficult environmental enforcement issues; and encourages coordination of environmental policy among federal, state, and local officials. The 24-member Council is comprised of four members each from U.S. Attorneys, state Attorneys General, directors of state environmental regulatory agencies, and district attorneys, as well as the EPA Assistant Administrator for Enforcement and Compliance Monitoring and the Assistant Attorney General for Land and Natural Resources. We hope that Administrator Reilly and his staff will participate, as Lee Thomas, Tom Adams, and other EPA staff have done in the past.

## **REGIONAL STATE ENVIRONMENTAL ENFORCEMENT ORGANIZATIONS**

Each region of the country now has a regional state group focused on environmental enforcement, all funded through EPA's National Enforcement Investigations Center. They are the Northeast Hazardous Waste Project, the Midwest Environmental Enforcement Association, the Southern Environmental Enforcement Network, and the Western States Hazardous Waste Project. Their members are from the offices of Attorneys General, state environmental program agencies, and in some cases, state law enforcement agencies and offices of district attorneys. Regional cooperation has been encouraged through NEEC and through the NAAG Environment Project.

## **PARTICIPATION IN EPA WORK GROUPS AND TASK FORCES**

NAAG, with the National Governors' Association (NGA) and other state environmental associations, participates in the following Work Groups and Task Forces and assists in providing EPA with a state perspective in many areas, including the following:

- **Federal Facilities**

We are working cooperatively with NGA and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and have been negotiating with both the Department of Defense and the Department of Energy, with the goal of developing model three-party interagency agreements covering environmental violations at federal facilities and addressing other difficult issues such as reimbursement of oversight costs and creation of a prioritization model;

- **DOD National Priority Model**

We are working with NGA and ASTSWMO on developing and revising state comments on the National Priority Model, which will decide the order in which sites will be cleaned up.

- **National Contingency Plan**

NAAG participated in drafting the revisions to this operations strategy for Superfund; the revised NCP has been published by EPA for comment and several states have prepared responses;

- **NCP Subpart K**

We are working with NGA and EPA to develop language for Subpart K (federal facilities) of the NCP. We are addressing EPA's view that the NCP applies to both sites listed on the NPL and sites not on the NPL; our concern is that if the NCP applies at non-NPL federal facility sites, then state law could be superseded and the state role diminished. EPA also contends that joint federal/state inspections should be eliminated for federal

facilities, since such inspections are not explicitly authorized by statute;

- SARA Title III

NAAG is cooperating with EPA to strengthen the SARA enforcement program;

- Hazard Ranking System

NAAG also participated in this subgroup to the NCP work group drafting the revisions to the method for ranking sites in the NCP;

- Municipal Settlements

We are participating in a work group that is developing policies and procedures for dealing with sites operated by or under contract to municipalities;

- SARA Capacity Assurance

Working with NGA and EPA, NAAG representatives participated in developing recommendations and criteria on how capacity assurances should work; EPA recently released a draft guidance on the subject based upon the work group effort;

- SARA Advisory Group

This group is advising and assisting EPA in SARA implementation and policy guidance;

- State/EPA Meetings

Four meetings annually are hosted by EPA (contacts: Paul Guthrie and Peggy Knight) to conduct briefings in environmental enforcement for NAAG, NGA, and ASTSWMO and other state environment organizations;

- Underground Storage Tanks

NAAG has cooperated with EPA in developing policy guidance for state inspection of underground storage tanks.

## ISSUES

For a detailed explanation of many issues on the Association's agenda, I call your attention to our attached Report, *Recommendations to the New Administration*. Following is a description of a few areas of particular interest.

### CERCLA

One of the major challenges confronting the new federal administration is to ensure effective management of the Superfund program in order to meet Congressionally-mandated targets and environmental cleanup goals. EPA is currently conducting a 90-day review of the program. The states have a strong interest in a successful Superfund cleanup effort and have provided critical input to EPA through work groups and task forces.

A number of very difficult Superfund management issues remain to be resolved. One major concern is the need for an effective and efficient model for intergovernmental decision-making and methods of concurrence on remedies and other critical determinations. Another issue is development of clearly stated enforcement policies at sites at which

either or both RCRA and CERCLA may apply and which provide for a meaningful state role. Currently, the general federal position is that in such circumstances CERCLA should apply and RCRA is superceded, except as RCRA requirements may establish applicable cleanup standards. Since CERCLA is a federally managed program while the RCRA program has been delegated to the states, the effect of this policy has been to shut the states out of important decision-making and remedy selection responsibilities. The policy is particularly objectionable to states when it is applied to federal facilities. The states feel strongly that this policy should be reexamined and that decisions on whether to treat a site primarily under RCRA and CERCLA should be made jointly by EPA and the states. In addition, the states take the position that CERCLA does not diminish the independent applicability of state hazardous waste management laws at any site except for the explicit permit exception found in Section 121(e)(1) of CERCLA.

Finally, EPA should re-examine the draft guidance policy recently promulgated regarding compliance with requirements under Section 104(c)(9) for assuring adequate waste treatment and disposal capacity. While EPA policy accepts most of the recommendations made by the EPA/state work group that examined the issue, the failure to adopt a proposed EPA - led process for resolving disputes when one state refuses to accept waste from another state leaves a serious gap that will lead to conflict between states over this issue.

#### **RCRA**

There are several issues that will require attention during the coming year, both within EPA and in the Congress, under the coming reauthorization process. EPA should work with the states to ensure that roles and responsibilities under this delegated program are exercised in an integrated manner. Hopefully, EPA and the states also can arrive at consistent positions on provisions affecting the states. In particular, state enforcement experience should be drawn upon in addressing a number of problems that have arisen regarding interpretation of complex federal regulations in the enforcement context. Also, better means must be found within EPA for incorporating enforcement considerations into the process of regulatory development.

One area of programmatic concern is the lagging pace of EPA authorization of states to exercise corrective action authority as directed in the 1984 RCRA amendments. Action is needed, either administratively or through legislation, to speed up the process; many states are more than adequately equipped at this time to assume this important task that is basically a matter of first concern to the states.

A second need is for EPA to revisit its enforcement response policy. EPA's view of its oversight role should be refocused to take into account the evolving new federal/state relationship. Emphasis should shift from close, often case-by-case, review to an overall programmatic examination and support function, reflecting the substantial growth and maturity that has occurred in most state programs. Federal resource allocations should further follow this development.

In particular, the response policy should integrate the different considerations and procedures involved in criminal enforcement cases in order to allow and encourage the states to expand their use of that option in enforcement situations.

#### **CRIMINAL ENFORCEMENT**

The increasing emphasis and interest in criminal enforcement has been measurably assisted by the strong leadership of the National Enforcement Investigations Center and by the Department of Justice's Environmental Crimes Unit. These programs need not only EPA's continued strong support, but also some expansion as the regional organizations

complete the process of bringing the remaining states into their circles. Federal leadership is essential to ensure that the rapid growth of state and local programs will be integrated into a coordinated overall enforcement effort.

#### **ADDITIONAL ENFORCEMENT PRIORITIES**

In order to most effectively prevent future environmental violations, accidental releases of toxic chemicals and fugitive air emissions, EPA should expand the use of innovative remedies like management and compliance audits in enforcement actions. EPA should also re-examine its enforcement priorities with respect to pesticides, and work with the Department of Justice, FDA and FTC to accord a higher priority to enforcement in this area. Likewise, NAAG's *Recommendations to the New Administration* recognize that air pollution is the principal means by which humans are exposed to toxic substances, yet air pollution enforcement does not enjoy a commensurately high priority. EPA and the Department of Justice should work together with the states to heighten air enforcement, especially since air pollution does not respect state borders and is a problem of national and regional scope.

We are pleased that the Administration has indicated that it will propose legislation on acid rain - an issue of substantial concern to state Attorneys General. We would be delighted to be of assistance in the development of specifics on this pressing issue.

#### **ENVIRONMENTAL LEGISLATION**

Federal facilities, RCRA reauthorization, groundwater protection, and amendments to the Clean Air Act are included in the legislative priorities of the Association and will likely be the subjects of Congressional action in the next few years. We stand ready to assist both the Agency and Congress in developing such legislation.