



For Immediate Release: June 24, 1994

JUSTICE DEPARTMENT ATTORNEYS SAY REFORMS STALLED CLINTON APPOINTEE IN LIMBO RETALIATION ALLEGED

U.S. Department of Justice (DOJ) attorneys responsible for prosecuting environmental crimes charged today that federal prosecution of polluters has been hampered by the failure of Clinton appointees to implement any needed reforms. These DOJ attorneys have joined with criminal enforcement attorneys at the Environmental Protection Agency to write the report called "Blueprint for Reform of Environmental Prosecutions at DOJ."

In order to protect the authors from further retaliation, the report was edited and issued by two non-profit public interest groups, Public Employees for Environmental Responsibility (PEER), an employee ethics group, and the Government Accountability Project (GAP), a whistleblower protection organization. The report contends that:

- * cases are hampered by the veto power exercised by DOJ attorneys in Washington, DC, over every federal environmental prosecution in the country.
- * absence of any guidelines or procedures allow corporate offenders to avoid personal liability for environmental crimes by paying fines through their company.
- * DOJ refuses to cooperate, and in many cases, even communicate with other environmental agencies such as EPA to the detriment of successful prosecutions.

Lois Schiffer was nominated by the Clinton Administration in February to be Assistant Attorney General for Environment and Natural Resources. Originally appointed as deputy assistant, Ms. Schiffer has been the de facto head of the division for seventeen months. She has yet to publically commit to or condemn the changes advocated by reformers on her own staff. Her confirmation hearings have yet to be scheduled by the Senate Judiciary Committee.

"During the campaign, Al Gore promised that the Clinton Administration would reverse the hands off policy on corporate environmental crimes at DOJ", said Jeff DeBonis, executive director of PEER. "A year and a half into this administration there is no sign that Gore's promise will ever be made good."

"The fact that Department of Justice attorneys have to remain anonymous when discussing problems with environmental case procedures ranging from charging through sentencing itself speaks volumes about the depth of the dysfunction there," stated Joanne Royce, the GAP attorney coordinating the report. "The level of fear over career consequences for speaking out is extremely high within the Environmental Crime Section."

For More Information Contact: Joanne Royce or Jeff Ruch at (202) 408-0034.

--end--



BLUEPRINT FOR REFORM OF ENVIRONMENTAL PROSECUTIONS AT DOJ

AGENDA FOR THE ASSISTANT ATTORNEY GENERAL OF ENVIRONMENT AND NATURAL RESOURCES

SUMMARY

Environmental enforcement professionals within the Department of Justice (DOJ) and the Environmental Protection Agency (EPA) are concerned about the lack of new direction within the Environment and Natural Resources Division (ENRD), particularly the Environmental Crimes Section (ECS). Law enforcement professionals who have attempted to voice these concerns **have faced threats and reprisals from top officials within their agencies**. Consequently, these professionals have decided to speak out collectively under the sponsorship of the Government Accountability Project, a non-profit whistleblower organization, and Public Employees for Environmental Responsibility, an association of resource professionals committed to responsible public stewardship.

Serious concerns about the operation of the environmental enforcement program of ENRD have plagued the division for years, but have yet to be addressed by the new Administration. For nearly a year, ECS has fallen under the supervisory responsibility of now Acting Assistant Attorney General, Lois J. Schiffer, who has been nominated to permanently fill that position. However, she has yet to meaningfully address the concerns raised about operation of ECS, or articulate her plan to improve ECS by implementing specific changes.

In the only response to date, DOJ recently released the results of its nine-month internal review of the ECS. The review, known as the "Hubbell Report," is very disappointing -- the report admitted problems but resisted proposing the obvious solutions. It is chaotic and defensive in tone -- in essence an "apologia" which does little to provide a sound basis for setting policy. Nevertheless, the report admits the need for reform and many of its specific recommendations are incorporated in this white paper.

In summary, the recommendations contained in the "Blueprint for Reform" are as follows:

- The mission of ECS needs to be revisited, if not redefined altogether. ECS should be structured like other major fraud and complex crime divisions at DOJ -- in essence, ECS should become a resource to prosecutors outside the beltway.

- Certain procedures for environmental crime prosecutions should be revamped. The recent amendments to the U.S. Attorney's Manual (the Bluesheet) authorizing broad veto power of the ENRD over prosecutorial decision-making should be repealed. Moreover, uniform standards for the exercise of prosecutorial discretion should be developed.

- ECS management personnel should be reevaluated.

The April 1, 1994 resignation of ECS Chief Neil Cartusciello is a positive first step. However, this step was long overdue and many concerns remain, not the least of which is that, despite his resignation, Mr. Cartusciello remains in his post. The creation of several internal review committees was also initially encouraging; however, so far the reports of these internal reviews have served only to exonerate DOJ. Finally, although commitments have been made to amend the U.S. Attorney's Manual (to return prosecutorial decision-making to the U.S. Attorney's Office), the draft amendments are not being made public -- so there is no way to tell if they are meaningful.

We, therefore, urge that "strict scrutiny" be applied to the nomination of Lois Schiffer to the position of Assistant Attorney General for the ENRD. It is critical that members of the Judiciary Committee have the independent information needed to evaluate Ms. Schiffer's nomination, including a final draft of the promised amendment to the U.S. Attorney's Manual. In addition, the following reports should be available to the Committee prior to Ms. Schiffer's nomination hearing:

- the DOJ internal review of whistleblower complaints (promised completion by end of February 1994)

- resolution of the April 1993 complaint filed with DOJ Office of Professional Responsibility against three current ECS attorneys alleging ethical violations.

- the final report on the ECS by the Environmental Crimes Project commissioned by Representative Charles Schumer, Chairman of the House Subcommittee on Crime and Criminal Justice

BLUEPRINT FOR REFORM OF THE ENVIRONMENTAL PROSECUTIONS AT DOJ

AGENDA FOR THE ASSISTANT ATTORNEY GENERAL OF ENVIRONMENT AND NATURAL RESOURCES

"The Bush Administration is letting criminals off the hook after they pollute our air and our water and our land."

- Al Gore, during the Presidential Campaign

The Environment and Natural Resources Division (ENRD), one of six litigating arms of the Department of Justice (DOJ), is vested with the responsibility of representing the United States in litigating environmental cases. ENRD is described in its annual statistical report as "the nation's environmental lawyer." The Environmental Crimes Section (ECS) is the section of ENRD responsible for criminally prosecuting individuals and industries charged with violating laws designed to protect the environment.

For several years now, the conduct of the environmental criminal enforcement program has been the subject of intense public and Congressional scrutiny. Most of the documented cases of ENRD interference with aggressive environmental prosecution occurred during the last Administration. However, the credibility of ECS and the morale of its staff have disintegrated in the wake of this controversy. Absent substantial reform of the section, the abolition of ECS should be considered.

FUNDAMENTAL REFORM OF ECS

A. False Distinction between Environmental Crime and Conventional Crime

"Environmental crimes are not like organized crime or drugs. There you have bad people doing bad things. With environmental crimes, you have decent people doing bad things."

- Barry Hartman, former Acting Assistant Attorney General ENRD

"... many environmental violators are not run-of-the-mill outlaws, but rather legitimate business enterprises that make important contributions to the

national welfare."

- Richard B. Stewart, Former Assistant Attorney General, ENRD

"... a person will spend more time in federal prison today for writing a single bad check than for severely damaging Prince William Sound."

- Jonathan Turley, Director Environmental Crime Project at
George Washington University Law Center

Four separate congressional investigations raised serious concerns about the handling of environmental criminal cases by high-level Justice Department officials in the Bush Administration. The documented ECS obstruction of aggressive environmental prosecution was fostered by the philosophy pervading ENRD management that environmental felons are not really criminals at all.

In the cases investigated by the congressional subcommittees, of which the Rocky Flats nuclear weapons plant is the most notorious, several disturbing trends were documented including:

- a tendency to substitute monetary fines for individual accountability, undermining deterrence and fostering the attitude that environmental crime is, "just another cost of doing business;"
- cases dropped or plea bargained to very light penalties after months of intensive research, extensive travel, and costly laboratory tests; and,
- the disenfranchisement of the Environmental Protection Agency from environmental enforcement.

The Internal Review of the Department of Justice Environmental Crimes Program [hereinafter the "Hubbell Report"], is less critical of the Division than congressional findings. Nevertheless, the Hubbell Report highlighted major problems in the handling of environmental cases by ENRD management.

During the tenure of Assistant Attorney General Stewart and Deputy Assistant Attorney General Hartman, the Division departed further from the ideal. As we have explained, those officials favored a more cautious approach to environmental crime prosecutions than the ECS and U.S. Attorney Office (USAO) attorneys. But rather than announcing that policy through written statements, which would have provided express guidance to prosecutors and would have provided a basis for principled discussion, Messrs. Stewart and Hartman became personally involved in individual indictment decisions, and they examined those decisions on a case-by-case basis for overall prosecutive merit. Their sometimes abrupt challenges to case decisions precipitated accusations of improper motives and led to the formulation of the 1993 Bluesheet. [See Hubbell Report at p. 65]

B. Inflated ECS Records Mask Reality

The Justice Department routinely responds to criticism of its environmental enforcement program by citing its allegedly excellent overall statistical record of environmental prosecutions. GAO testimony has cast considerable doubt over the accuracy of these assertions. [See, GAO, Environmental Crime: Issues Related to Justice's Criminal Prosecution of Environmental Offenses, Testimony of L. Nye Stevens before the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, November 3, 1993, hereinafter "Subcommittee Hearing"]

First, the GAO reports that the total number of defendants disposed each year since 1987 has varied between 82 and 120. This amounts to about one or two cases per U.S. Attorney district per year. This figure is very low given the number of civil environmental violations annually, not to mention the sheer magnitude of industrial production in this country. [See Subcommittee Hearing at p. 2., 87]. Second, approximately ninety percent of Federal environmental crimes cases were handled in whole or in large part by U.S. Attorneys Offices. And although the total staff of the ECS nearly doubled from twenty-seven members in 1988 to forty-seven in 1993, the environmental criminal matters opened by ECS alone averaged around ten, and fell to a mere three in 1992.

Finally, the GAO reports that even these unimpressive numbers may be inflated or inaccurate given the poor quality of ENRD reporting and record-keeping. In addition to obscuring the true performance of the program, lack of accurate data complicates efforts of both senior Justice managers and congressional committees to make staffing and budgeting decisions and exercise oversight.

C. ECS Lacks a Coherent Mission

Even if there were not questions about the data, the effectiveness of ECS is hampered because it lacks a clear mission. In oral testimony before the House Subcommittee on Oversight and Investigations, Deputy Assistant Comptroller General, L. Nye Stevens stated:

According to the chief of the section, our interview with him, and actually confirmed by the Acting Assistant Attorney General for Environment and Natural Resources Division, Justice still hasn't articulated a clear mission as to what this unit is meant to do, and without a clear set of goals that are recognized by the U.S. attorneys offices around the country, we believe that controversy is likely to persist about the activities of the Environmental Crimes Section. [See Subcommittee Hearing at p. 65]

Formed in 1982, ECS is a young organization. Nevertheless, as the Hubbell Report points out, the "program has matured considerably since that time, and the Environment Division now needs to articulate with greater precision the roles the ECS is to serve in [the criminal enforcement] effort. . . . The ECS has been handicapped from the outset by the Environment Division's failure to define precisely what mission the ECS should serve." [See Hubbell Report at p. 128, pp. 162-63]

D. Recommendations

The first step toward addressing ECS's management and morale problems should be precise articulation of its mission and goals. The Hubbell Report found "a basic consensus among all of the participants in the environmental crimes program that the ECS should fulfill three basic functions: (1) policy formulation; (2) legal advice and training; (3) litigation. " [Hubbell Report at p. 128]

The fundamental role of ECS should be formulation and dissemination of policy. As is the case in many other areas of complex criminal enforcement, policy is promulgated at the Department of Justice, but the discretion on how to implement that policy rests in the hands of the U.S. Attorneys.

What the U.S. attorneys wanted was the same treatment for environmental enforcement that the department gave to other enforcement efforts. In areas such as public corruption, organized crime, bank fraud, defense contractor fraud and asset forfeiture, to name but a few, the U.S. attorneys are provided with resources, training and policy guidance by Main Justice, but prosecutorial discretion rests with the U.S. attorney. It was and continues to be my belief that environmental enforcement should not be treated differently. - Dennis C. Vacco, Former U.S. Attorney for the Western District of New York; Former Chairman of the Environmental Subcommittee of the Attorney General's Advisory Committee [See Subcommittee Hearing at p. 149]

Although the Environment Division has formal authority to supervise the conduct of environmental crime prosecutions, neither the Division nor the ECS should "micro-manage" USAO-initiated cases. As the Hubbell Report advised: "Rather the Division should respect the traditional role of the USAOs, which typically exercise commendable professional skill in determining whether a case has prosecutive merit and how the case should be tried." [See Hubbell Report at p. 143]

In any area of criminal enforcement, environmental or otherwise, there are really only two ways for DOJ headquarters to control the field: (1) through policy guidance, and (2) through the review of specific decisions, case-by-case. The proper role of ECS is (1) to establish policies to guide the field, and (2) only to review or troubleshoot

those few, particular cases where policies appear not to have been followed. Until now ECS has done this precisely backward -- ECS has relied upon (2) the review of cases without (1) clear policy guidance and the results have been unprincipled.

REVAMP PROCEDURES

"On a political level, the Environment Division's approach to this is extremely dangerous. This approach to environmental law enforcement, the micro-managing of each case within the Department, creates an appearance that the Division is carrying water for the industry. This could prove to be extremely embarrassing to the Department and to the Administration."

- April 8, 1991 letter from U.S. Attorney Mike McKay to U.S. Attorney Dennis C. Vacco

"Unfortunately, most environmental criminals today escape investigation, let alone prosecution. With fewer than 100 convictions or plea bargains a year, environmental crime not only pays but pays well for most felons."

- Jonathan Turley, Director Environmental Crimes Project at George Washington University National Law Center

A. Amend the U.S. Attorney's Manual to Circumscribe ENRD Veto Power

Title 5 of the U.S. Attorneys' Manual defines the respective roles of the U.S. Attorneys and the ENRD at Main Justice in the prosecution of environmental crimes.

These provisions state that U.S. Attorneys may not commence most environmental prosecutions absent authorization from the Assistant Attorney General of the ENRD. The Assistant Attorney General is effectively vested with veto power over the prosecutorial discretion historically exercised by U.S. attorneys. This veto authority was codified early in 1993 as an amendment to the U.S. Attorneys' Manual (known as the Bluesheet). However, interference by Main Justice in the exercise of the prosecutorial discretion of U.S. Attorneys in environmental crimes began several years earlier and has plagued relationships between main Justice and the various U.S. Attorneys' offices.

The Bluesheet has been the subject of criticism by numerous U.S. Attorneys, as well as some of the most experienced Assistant U.S. Attorneys involved in environmental prosecutions:

"Suffice it to say that giving the Assistant Attorney General of the Environment Division veto power over federal criminal environmental cases that arise in the field makes no administrative sense, it flies in the face of the consistent decentralization of power practiced by all recent attorneys general (including the current one), and is an open invitation to subvert the process of instituting criminal charges based solely upon the merits."

- Breckinridge L. Wilcox, Arent Fox Kintner Plotkin & Kahn, Former U.S. Attorney for the District of Maryland.

"As experienced prosecutors, we believe these amendments will significantly impede, rather than enhance, environmental enforcement. If literally followed, the bluesheet will centralize prosecutorial and investigatory decisions to such an extent that it will cause the waste of substantial resources, hamper important investigations and create unnecessary paperwork for an experienced national group of environmental Assistant U.S. Attorneys."

- 4/9/93 letter to Attorney General Reno from four AUSAs

In light of the problems of interference associated with ECS in the past, as well as GAO statistics suggesting ECS lack of leadership, the veto power codified in the Bluesheet is inappropriate at best. The Hubbell Report likewise suggests reevaluation of the 1993 Bluesheet case review process:

Although the Environment Division has authority to supervise the USAO's conduct of environmental crime prosecutions, that does not mean that the Division or the ECS should "micro-manage" USAO-initiated cases. Rather the Division should respect the traditional role of the USAOs, which typically exercise commendable professional skill in determining whether a case has prosecutive merit and how the case should be tried. The Environment Division should review USAO initiatives to ensure that they are consistent with the Division's strategic and policy concerns. But as a general rule, the Environment Division should defer to the judgment of the USAOs with respect to the local interest in going forward with the prosecution. . . [See Hubbell Report at pp. 143-44]

B. Discourage Corporate Plea Bargaining

The USAOs should have more autonomy. However, it is not enough just to change procedures merely to empower the USAOs. U.S. Attorneys are also subject to pressures of politics and other realities of enforcement. DOJ has a responsibility to address the correct limits of prosecutorial discretion by developing principles to guide ECS and the USAOS in the charging and disposition of environmental cases.

Above all, these prosecution principles should address a central problem identified in the ECS investigations -- the principles should prevent the government from allowing a corporation from shielding its officers from individual culpability. These principles should assure that high-level, white-collar individuals in large corporations receive equal justice with blue collar workers and principals of small businesses.

There is no need to reinvent the wheel. Some of the other DOJ Criminal Divisions (e.g., the Tax Division) with longer histories have made good progress toward defining the proper limits of prosecutorial discretion. ECS should adopt these principles and refine them for environmental prosecutions. [See attachment for ECS principles as they presently read and recommended improvements shown underscored]

C. Encourage Alternative Sentencing

Additionally, routine application of environmental sentencing guidelines should be instituted. Pollution prevention, a top priority of environmental law, is not achieved when a corporate fine, or even a prison sentence, is the only criminal sanction. Compliance-related sentencing provisions (such as restitution, remediation, community service, and the prevention and detection of future violations) are authorized by the Guidelines of the U.S. Sentencing Commission (as well as EPA policy) and should be routine in every case. DOJ should work with EPA to develop a model plea agreement covering restitution/remediation, compliance plans (auditing) and global pleas.

D. Interagency Cooperation Should Be Routine -- Not Exceptional

As the Hubbell Report recommended, "The ECS and USAOs should inform federal investigative agencies of declination decisions in writing." In order to promote cooperation and consistency in determinations of what constitutes a case having prosecutive merit, all declinations should be based upon specific reasons set forth in writing.

Key decisions, including plea agreements, should be made in joint consultation with the ECS, EPA and U.S. Attorney's offices. Prosecutors and EPA staff have complained that they are often left out of critical meetings and consulted only after the ECS has made a decision on a particular case. Private meetings with defense counsel should be discouraged. However, if such meetings are necessary, they should be noted in the case record and all cooperating parties should be invited, including line prosecutors and EPA representatives.

E. Citizen Participation in Enforcement Should Be Encouraged

DOJ and EPA should develop and implement programs to facilitate citizen and employee involvement in environmental crime detection and prosecution. For example, regulations should be promulgated whereby all facilities regulated, permitted or licensed by the EPA be required to post notices encouraging reporting and describing employee rights under the environmental statutes to report environmental violations and crimes to state and/or federal enforcement officials. In order to encourage citizen participation in enforcement, DOJ should consider a bounty or reward program for any person who provides information leading to imposition of civil fines or criminal penalties for environmental crime.

REVITALIZE PERSONNEL

A. Hire Personnel with Environmental Enforcement Experience

"Well, we have heard it said that the senior officials at the Environment and Natural Resources Division have been fond of asserting that the centralized review of so-called priority cases is essential to ensuring consistency in the allegedly complex and ever evolving area of environmental criminal law. Now, I note, though, that the Chief of the Environmental Crimes Section admits that he has never tried an environmental case. We have been told that the section's Unit Chiefs also have almost no experience in terms of litigating environmental cases."

- Congressman John D. Dingell, Chairman, House Committee on Energy and Commerce [See Subcommittee Hearing at p. 208]

"The Subcommittee has charged that the Environment Division's and ECS's management has suffered from 'a serious lack of environmental law expertise.' . . . The Subcommittee's criticism is valid, however, with respect to Deputy Assistant Attorneys General Richard Leon, Barry Hartman, and Roger Clegg, who were not known as experienced environmental lawyers at the time they were selected for their positions. . . . The Subcommittee's criticism is also valid with respect to the ECS Section Chief, Neil Cartusciello, at the time he was hired for that position." [See Hubbell Report at p. 107]

Henceforth, ENRD and ECS leadership should be drawn largely from persons who have substantial knowledge of environmental law. The ECS history of hiring ECS managers with little environmental background is doubtless linked to management and morale problems long associated with ECS. As the Hubbell Report reasoned:

"Leaders with acknowledged environmental expertise are more likely to be effective managers, both because they are familiar with the subject matter and because their judgments are more likely to earn the respect of others, including subordinates who possess such expertise." [See Hubbell Report at p. 106]

B. Replace Management at ECS

"I think it is clear that the public has lost confidence in the Environmental Crimes Section and that action has to be taken."

- 1993 remark of James Moorman, Assistant Attorney General for Environment and Natural Resource Division from 1977 to 1980

Neil Cartusciello has been the center of controversy at ECS for some time. He was hired as ECS Chief in 1991 with no environmental enforcement experience. Not long after, he became one of the subjects of congressional investigations into improper interference in environmental crime prosecutions. Last year, the Justice Department's Office of Professional Responsibility began an investigation into Mr. Cartusciello based upon allegations of ethical breaches. During the three years of Mr. Cartusciello's tenure, ECS has been plagued by profound morale problems. Any of these reasons alone should have precipitated serious consideration of his replacement.

For all these reasons, his resignation several months ago is noted with approval. However, this positive step was long overdue and there are no overt indications that any lessons have been learned. Mr. Cartusciello's embattled tenure has been defended for over a year by Ms. Schiffer, the de facto Assistant Attorney General for ENRD. Moreover, Myles Flint, Deputy Assistant Attorney General, under whose watch the ECS turmoil came to a head, remains in place. Finally, Mr. Cartusciello's hand-picked unit chiefs continue to manage the division and Mr. Cartusciello remains at his post with no definite departure date.

Since President Clinton's Inauguration, there have been a number of disturbing reports of retaliation against experienced career prosecutors who have acknowledged problems or suggested improvements in the environmental program. At the November 3, 1993 hearing before the Dingell subcommittee, then Assistant Attorney General Hubbell testified that he personally assured each attorney in ECS, as well as ECS management, that he would tolerate no retaliation as a result of any statements made to the subcommittee investigators. Nevertheless, the Hubbell Report not only fails to address reports of retaliation, but effectively endorses it by recommending the transfer of the "minority" of attorneys within ECS that were critical of the Section's management. This is an intolerable example of "shooting the messenger."

Nothing short of a complete change in management is necessary to effectively address the morale problems, the credibility gap and the reported retaliation at ENRD. Only a clean sweep will send the requisite clear signal of commitment to real reform of the environmental crimes program.

CONCLUSION

The concerns raised herein about the operation of DOJ's environmental enforcement program have plagued the division for years. However, these concerns have yet to be meaningfully addressed by the new Administration. Swift action to address these issues is necessary to restore credibility to ECS and to demonstrate that the Administration's professions of environmental responsibility are more than just rhetoric.

ATTACHMENT

Model Language for Defining Limits of Prosecutorial Discretion

[amendments to existing ECS principles are underscored]
5-11.310 Conduct of Prosecution

[reserved (blank at present)]

When the major count of an indictment charges a felony offense, DOJ attorneys will not accept a plea to a lesser-included offense nor substitute misdemeanor offenses for the felony offense charged. DOJ attorneys will not, absent special or unusual circumstances, consent to reduce a charge from a felony to a misdemeanor merely to secure a plea.

A defendant sometimes indicates in advance of the indictment or information that he intends to enter a guilty plea to the major count(s). If this occurs, the full extent of the defendant's offenses must be included in the court records by charging the defendant with all of the authorized offenses even though, after plea and sentence, the residual counts may be dismissed. In presenting the factual basis for the prosecution in compliance with Rule 11, Fed. R. of Cr. P., the government prosecutor should include the full extent of the violations on residual counts in order to demonstrate the actual criminal intent on the part of the defendant. A plea of guilty by a corporation will not result in the dismissal of charges against an individual unless special or unusual circumstances exist for justifying such dismissal.

A charge against a corporation subject to "contractor listing" (placement on the List of Violating Facilities) should not be dismissed on the basis of a guilty plea by the corporation to a charge not carrying such a consequence unless special or unusual circumstances exist for justifying such a dismissal. The decision will require both a statement of the special or unusual circumstances and specific reasons, and the signature of a U.S. Attorney or the Assistant Attorney General.

5-11.311 Individual and Corporate Defendants

A. Congress has demonstrated its intent that individuals, as well as corporations, should be criminally prosecuted for violations of federal environmental laws, see, e.g., 33 U.S.C. §§1319(c)(5) and 1362(5), thereby

recognizing the fact the unlawful acts or omissions of corporations actually can be traced to individual officers or employees. That Congressional intent should be given serious consideration in the development of prosecutions for violations of the statutes identified under [DOJ Manual 5-11.101], *supra*. Absent special or unusual circumstances, a case will not be charged against a corporation without also charging its most culpable individual employee(s). If only a corporation is charged, the decision will require both a statement of the special or unusual circumstances and specific reasons, and the signature of a U.S. Attorney or the Assistant Attorney General.

B. In any case against both a corporation and any of its individual employees the willingness of the offending corporation to enter a guilty plea is not a basis for dismissal as against the individual. Absent special or unusual circumstances, a corporation may not enter a guilty plea without also obtaining a plea from its most culpable individual employee(s) or proceeding to trial against the individual(s). If only a corporation plea is obtained and there is no trial against the most culpable individual employee(s), the decision will require both a statement of the special or unusual circumstances and specific reasons, and the signature of a U.S. Attorney or the Assistant Attorney General.