

 **PEER**

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***A FRIEND IN
HIGH PLACES***

**Environmental Protection
for Sale in Connecticut**

February 1998

About PEER

Public Employees for Environmental Responsibility (PEER) is an association of resource managers, scientists, biologists, law enforcement officials and other government professionals committed to upholding the public trust through responsible management of the nation's environment and natural resources.

PEER advocates sustainable management of public resources, promotes enforcement of environmental protection laws, and seeks to be a catalyst for supporting professional integrity and promoting environmental ethics in government agencies.

PEER provides public employees committed to ecologically responsible management with a credible voice for expressing their concerns.

PEER's objectives are to:

1. **Organize** a strong base of support among employees with local, state and federal resource management agencies;
2. **Inform** policymakers and the public about substantive issues of concern to PEER members;
3. **Defend** and strengthen the legal rights of public employees who speak out about issues of environmental management; and
4. **Monitor** land management and environmental protection agencies.

PEER recognizes the invaluable role that government employees play as defenders of the environment and stewards of our natural resources. PEER supports resource professionals who advocate environmental protection in a responsible, professional manner.

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About This Report

This white paper is written by employees within the Connecticut Department of Environmental Protection (DEP). They describe how the top management of DEP is obstructing the department's own environmental enforcement efforts, principally by protecting politically-connected corporate polluters from appropriate legal consequences.

The purpose of this report is to let the public see how their environmental agency really operates. While many of the cases highlighted in this report have received media attention, this insider account explains precisely how and why these cases were handled without stiff fines or prosecutions. Only by examining particular enforcement files is it possible to penetrate the haze surrounding political rhetoric about making environmental regulation more "user-friendly."

The contention that a top-level Connecticut DEP official routinely solicits political contribu-

tions for the Governor's re-election in exchange for favorable environmental enforcement treatment is currently under federal criminal investigation. This investigation has been slowed by the failure to secure testimony from DEP's own legal staff.

The authors of this white paper remain anonymous not only to avoid retaliation but to allow the information presented to speak for itself. The employee authors have in many instances witnessed the events described. Moreover, any review of the case histories discussed will verify their account.

PEER is proud to serve conscientious public employees who dedicate their careers to the faithful execution of laws protecting this nation's air, soil and water.

Jeffrey Ruch
PEER Executive Director



I. Executive Summary

Under its current leadership, the Connecticut Department of Environmental Protection (DEP) has systematically dismantled its enforcement program to the direct detriment of public health, according to the department's own professional staff. As a consequence, serious violations go unpunished altogether or penalties are negotiated with violators to such a low level that it now pays to pollute in Connecticut. Many of these corporate negotiations have been conducted behind closed doors by a political operative from the governor's campaign who has been soliciting contributions in return for more lenient treatment.

The Administration of Governor John Rowland has implemented a new "user-friendly" regime of environmental regulation which is supposed to foster compliance with pollution laws through the carrot of assistance rather than the stick of enforcement. In reality, this "new approach" consists of orders to DEP staff that gut effective enforcement:

- No cases are referred to the Attorney General for prosecution because the current Attorney General is a Democrat, unless there is media or political pressure for action.
- Despite policies against giving mere warnings to repeat violators, DEP now routinely tolerates multiple offenses without taking enforcement action.
- Virtually all enforcement actions are now negotiated with the violator, with negotiations often dragging on for years without resolution. Resultant "consent orders" have produced penalties far lower than recommended by staff and far below the profits the polluter saved by violating the law.

As a consequence of these policies, environmental prosecutions have plummeted. In the Waste Bureau, for example, referral of cases to the Attorney General for prosecution have fallen 80 percent. Total enforcement actions have declined by nearly half. In the Water Bureau,

annual penalty totals have dropped from a high of \$3.6 million to a low of \$3,700.

To compound matters, the former head of a campaign group known as "Rowland's Raiders," was appointed special assistant to the DEP Commissioner with the mandate to solicit "gifts" from and to provide "constituent services" to corporate polluters with pending enforcement actions before the department. This special assistant has initiated closed door negotiations with violators often over the objections of, or without the knowledge of, enforcement staff and agency lawyers. The role played by this special assistant in soliciting campaign contributions in connection with case settlements is now the subject of a federal criminal investigation.

Regardless of the outcome of the criminal probe, the direct effects of this type of political intervention into DEP enforcement is clear from a review of case files:

- One company, whose executives contributed to the Rowland campaign, were cited for more than 200 instances of illegal dumping into the sewer system before any enforcement action was taken. After more than three years of negotiation with DEP, the company finally agreed to pay greatly reduced fines and has continued to receive contracts with the state for environmental clean-up work.
- A chemical manufacturer, whose executives were also Rowland campaign contributors, was responsible for a toxic spill which killed 12,000 fish yet paid no fine after DEP management overruled agency enforcement staff and made a back room deal with the company.
- A plastics manufacturer cited for 22 violations involving leaking hazardous waste above the water table relied upon by local residents for their drinking water has been allowed to stall negotiations since 1993 over a proposed consent order. Meanwhile, DEP has taken no enforcement action.

Connecticut DEP (Department of Environmental Protection)

When the same company had been cited a decade earlier for similar violations, DEP took swift action, issuing fines and securing a compliance order.

The stated objective of DEP's business-friendly de-emphasis on enforcement is better environmental compliance, yet the opposite appears to be occurring. In Connecticut, environmental non-compliance by industries is on the upswing. Connecticut has fallen to the 9th worst state in the country in terms of Clean Water Act violations.

The root of the problems in Connecticut is industrial pollution, with 35 percent of the state's largest industries dumping at rates which average more than 50 percent above legal limits.

These abstract numbers on violations translate into direct health effects for Connecticut's citizens:

- Thirty percent of Connecticut's waters are unsafe for fishing or swimming.
- In 1996, the state had 10 fish consumption advisories (a 40 percent jump from the year before) and 196 beach closures due to water pollution.
- EPA has found that the Long Island Sound contains some of the most contaminated sediments in the country with alarming concentrations of persistent toxics that pose serious health risks for surrounding communities.

Connecticut's environment is clearly not benefitting from the state DEP's soft approach to environmental law enforcement. Problems persist and are unlikely to improve as long as DEP continues to allow corporate polluters to flout environmental requirements with no threat of serious consequences.

II. Bending Over Backward: Making Environmental Enforcement “User Friendly”

“If anyone shows up at your place with guns and badges, give me a call and I’ll take care of it.”

— *DEP Commissioner Arthur Rocque, Jr., to Connecticut Construction Industries Association, December 3, 1997.*

Putting the Customer First

Since the election of Governor John G. Rowland in 1994, officials at the Connecticut Department of Environmental Protection (DEP) have set out to establish what they say is a “kinder and gentler” department, a “user friendly” agency that treats regulated industries like “customers.” As then-Commissioner Sidney Holbrook told the Connecticut Bar Association in 1995, “I don’t think people mean to violate the law, they are just ignorant. We are going to work with companies to help them.” From this vision, DEP has implemented a go-easy approach to environmental law enforcement that, according to its proponents, emphasizes “flexibility” and “compliance assistance.”

Helping small companies to comply with complex environmental rules makes sense and is an area that has received substantial attention from federal and state environmental agencies. However, DEP’s “new thinking” on environmental enforcement is not limited to helping the “little guy.” In recent years the department has bent over backward to “assist” multinational corporations, who already have armies of consultants and lawyers to help them comply with environmental regulations.

Nor do DEP’s “user friendly” policies appear to be achieving compliance with environmental laws. In the name of “flexibility” and “customer service,” the department has consciously failed to back up its compliance assistance efforts with a meaningful threat of consequences for would-be violators. As acting Commissioner Arthur

Rocque, Jr. told the Connecticut Construction Industries Association in December 1997, “if anyone shows up at your place with guns and badges, give me a call and I’ll take care of it.” Shunning traditional law enforcement tools such as using penalties as a deterrent, DEP’s customer-first strategy has relied on little more than the good intentions of polluting companies to ensure that environmental laws are obeyed in Connecticut.

Of course, the new approach at Connecticut DEP has been very well received in some quarters. The Environmental Policies Council (EPC) of the Connecticut Business and Industries Association (CBIA) reported in September of last year that its members believe “DEP’s efforts to help businesses comply with environmental requirements are succeeding – and getting better.” In fact, according to EPC’s 1997 membership poll, Connecticut businesses rating DEP’s “customer service” as “very good” or “excellent” have doubled (from 17% to 34%) in the past two years, while those rating “customer service performance” as “poor” have dropped from 25 percent to 9 percent.

Regardless of the “innovations” in enforcement policy favored by top DEP and administration officials and their business constituents, the agency is legally required to respond to violations of environmental laws in Connecticut according to its Enforcement Response Policy, a set of rules developed in accordance with United States Environmental Protection Agency (EPA) guidelines in 1992. Under that policy:

- When less serious environmental violations are discovered at a facility, DEP is authorized first to send the company a Notice of Violation (NOV). An NOV is nothing more than an informal warning letter: it contains no penalties and imposes no obligations. Although an NOV may ask the violator to take corrective actions, the violator has little incentive to follow DEP’s advice, because NOV’s are not “independently enforceable.” In other words, a violator’s

failure to correct infractions identified in an NOV cannot be punished. Because an NOV carries no consequences, the ERP prohibits DEP from issuing multiple NOV's to recalcitrant violators.

- If a violator fails to respond adequately to an NOV, or when more serious or chronic violations are found in the first instance, the enforcement policies *require* that DEP respond by initiating one of several more stringent enforcement actions against the violator. DEP can:
 - Negotiate an out-of-court settlement with the violator. The agreement, called a consent order, usually contains promises by the company to correct or improve pollution problems. A consent order also may, but does not always, include fines. Because they are negotiated with the violator, consent orders can take years to conclude and their terms are often more favorable to businesses. For example, fines recommended by enforcement staff are likely to be reduced substantially in a final negotiated consent order. A consent order is enforceable, meaning that failure to comply with its terms could subject a company to court action and additional penalties.
 - Issue an order for the company to stop violating the law called a unilateral Administrative Order (AO). An AO is like a consent order in many ways, except the conditions in an AO are often more stringent. This is because an AO, like a traffic ticket, is imposed unilaterally by DEP and its terms are non-negotiable. AO's issued by DEP contain no penalties, even though state law (Conn. Gen. Stat., Ch. 439, Sec. 22a-6b) *requires* the Commissioner to adopt regulations that would give DEP authority to impose administrative civil penalties without a consent order. An effort within DEP to craft administrative penalty regulations was halted when the Connecticut Business and Industries Association urged Holbrook to put the regulations on hold in 1995.
 - Refer the case to the state Attorney General (AG) in order to pursue a violator in court. The AG's Office has the power to prosecute

both civil and criminal violations, and can ask a jury to impose upon defendants monetary penalties, injunctions ordering clean-up or environmental improvements, and, in appropriate criminal cases, jail terms for culpable company officials.

In all circumstances, the Enforcement Response Policy requires DEP to maintain a proper deterrent against future violations by recovering penalties sufficient to outweigh the economic benefit a violator has gained by avoiding compliance. In other words, DEP must ensure that it costs more to violate the law than to comply with it; otherwise it pays to pollute.

New Rules of the Game

Under Commissioners Holbrook and Rocque, however, the new "user friendly" DEP has approached environmental enforcement in a manner purposely contrary to the Enforcement Response Policies. From the outset of the Rowland Administration, DEP managers passed on word from the Commissioner's office that the customer comes first. Specifically, the Enforcement Division staff was instructed in early 1995 that:

- Enforcement cases will not be referred to the Attorney General's Office for enforcement litigation (the strongest enforcement tool in DEP's toolbox), because the Attorney General, Richard Blumenthal, is a Democrat. Then-Commissioner Holbrook stated publicly in 1995, "I am going to keep referrals as a hammer in my pocket for really bad violators." But Holbrook, like Will Rogers, apparently never met a corporation he didn't like, and thus the word inside the department was that referrals simply would not be approved.
- Unilateral Administrative Orders (AOs) also will not be approved. Instead, the department will be emphasizing consent orders, which can take years of endless negotiation to conclude, and unenforceable Notices of Violation (NOVs) as methods for "working with" environmental violators.
- Enforcement staff will not be permitted to use even the threat of an AG referral as leverage with violators who are unwilling to sign consent orders.

- Enforcement cases will not be referred to U.S. EPA for enforcement action.
- Compliance numbers will be "improved" by (1) conducting repeated re-inspections of non-complying facilities, sometimes with advance notice to the company, (2) by "dumping" old enforcement cases, involving repeat violations dating back over years, from the case rolls with no action or under liberal consent orders, and (3) by weakening or deleting permit limits and "adjusting" water quality standards to eliminate the violations.



These on-the-ground reports by the department's own employees that DEP regularly and knowingly disregards its own enforcement policies are confirmed by a recent audit of DEP's enforcement performance conducted by the U.S. Environmental Protection Agency's (EPA's) New

England regional office (June 1997). In its review, EPA describes a stunning decline in AG referrals and formal AO's issued by DEP, as well as an accompanying explosion in the number of multiple NOVs issued in single cases, since 1995 (see chart below).

In addition, EPA's auditors found that chronic violations are

ignored, initiations of enforcement actions are delayed

and penalties are substantially reduced without justification in case after case, all in violation of DEP's enforcement response policies. Moreover, EPA found that when DEP does penalize violators, penalties routinely fail to recover the profits or savings gained by violators from avoiding compliance. As a result, under the management of Commissioners Holbrook and Rocque, it pays to pollute in Connecticut.

Holbrook, Rocque and other top DEP officials have attempted to deflect criticism arising out of the EPA audit by complaining that the department only has limited resources for enforcement. Yet, according to both DEP staff and EPA auditors, in the early 1990's DEP redirected substantial staff resources from enforcement to permitting in the Water Bureau to address a permit backlog. By 1994 the backlog had been resolved, but DEP has failed to shift staff back to enforcement.

"Our Man" at DEP: Political Contributors Buy Kid-Glove Treatment

In the spring of 1995 the Governor installed Vito Santarsiero, a former leader of a group of campaign aides known as "Rowland's Raiders," as a "constituent service" officer at DEP charged with soliciting "gifts" for the department from Connecticut businesses. This former private investigator and pawn shop owner who was allegedly involved in the Waterbury "Crackgate" scandal of two years ago, is referred to within the department as "our man at DEP."

Santarsiero has earned the "our man" appellation because he is widely known throughout the department as a political operative, placed within DEP by Governor Rowland, to ensure that the administration's campaign contributors get a break when they run afoul of the state's environmental laws. In other words, if you're a Rowland supporter and you've got a little pollution problem, "our man at DEP" will take care of it.

This scheme to let environmental lawbreakers who fill the Governor's campaign coffers off the hook has been pursued and implemented systematically by Commissioners Holbrook and Rocque and other top DEP officials. At the same time Holbrook, Rocque, and others have been boasting of their efforts to "work with" regulated companies, "our man" Santarsiero has been

Enforcement by state DEP lax, EPA says

By DANIEL P. JONES
Courant Environment Writer

Connecticut's enforcement of environmental laws has declined in recent years, especially against water polluters, says a federal report critical of the state Department of Environmental Protection. The report, a draft review by the U.S. Environmental Protection Agency, says the DEP has too few inspectors, has delayed pursuing polluters, has reduced the dollar amounts of fines that had been pro-

Connecticut DEP (Department of Environmental Protection)

directly injected into the regulatory and enforcement processes at DEP to guard the interests of the Governor's patrons. "Our man" is consistently on hand as an active participant at high-level enforcement meetings, permit hearings, and even DEP inspections, and is known to meet secretly with violators under pending investigation by the department.

One illustrative example of both the level of "our man's" involvement in DEP's enforcement activities and the results he is able to achieve for the Governor's "customers" is a case involving a state-approved clean-up contractor from Santarsiero's hometown of Waterbury. The contractor, whose parent company's president contributed \$1,250 to Rowland's 1994 campaign, is a chronic violator of environmental protection laws. DEP records show that the company's Waterbury facility had numerous hazardous waste violations and more than 100 Clean Water Act violations in recent years, including improper storage of hazardous wastes in corroded drums

and dumping toxic chemicals and heavy metals into Waterbury's sewer system. The company also owed DEP more than \$100,000 in unpaid water permit fees. Yet, the company remained on the state's list of approved clean-up contractors and made money from state agencies as well as private firms as a result of the state's endorsement.

In November 1996, Santarsiero received two memos regarding this company — one from an enforcement supervisor informing him of the company's multiple repeat violations, and the other from waste enforcement director David Nash alerting "our man" that Nash was instructing his staff to review the company's status as a spill contractor. Why memos on an important enforcement matter were sent to Santarsiero is unclear. But in January 1997, a little more than one month later, this chronic polluter was hired again by DEP's Waste Bureau, while the violations and unpaid fees remained unresolved.

As a result of press coverage criticizing DEP's handling of the case, the company is now,

Enforcement Trends — Connecticut DEP Waste Bureau

Year	Notices of Violation	Consent Orders	Administrative Orders	AG Referrals
FY 1991	n/a	n/a	32	40
FY 1992	83	7	17	36
FY 1993	88	4	7	20
FY 1994	90	6	4	16
FY 1995	55	13	2	6
FY 1996	67	8	0	4

Source: CT DEP, 1997

Enforcement Trends — Connecticut DEP Water Management Bureau

Year	Inspections	Administrative Orders	Court Referrals	Judicial Penalties	Administrative Penalties
FY 1992	740	31	6	\$1,393,000	\$55,650
FY 1993	831	7	7	\$3,600,000	\$1,209,875
FY 1994	439	6	8	\$103,416	\$1,539,000
FY 1995	387	6	7	\$4,700	\$419,000
FY 1996	430	1	6	\$837,547	\$200,000

Source: U.S. EPA, June 1997

Source: CT DEP, July 1997

State patronage positions survive Loyalists get 'durational' posts

By JON LENDER
and MAXINE BERNSTEIN
Connecticut Staff Writers

"Durational project manager" was a little-noticed job category in the state bureaucracy until John G. Rowland became governor two years ago. Since then, dozens of Republican loyalists have gotten special "durational" jobs without taking a civil-service test. And now people are noticing:

- Senate president pro tempore Kevin B. Sullivan, D-West Hartford, has introduced a bill to "assure responsible oversight" of agencies' hiring of such managers, who can perform special projects for up to three years. Sullivan's bill would establish "clear personnel standards" for the jobs and limit how many durationals can be hired.
- The bipartisan State Auditors' office recently criticized the handling of durational positions at the Department of Economic and Community Development.

finally, facing a million dollar lawsuit from the state Attorney General and has been removed from the state-approved contractor list. But the conclusion cannot be avoided: "Our Man" and other top DEP officials have implemented a high-stakes, high-pressure scheme where enforcement of environmental protection laws against well-connected Rowland contributors who have committed egregious and chronic violations is delayed, soft-pedaled, and in some cases completely avoided. Connecticut polluters, it seems, indeed have a friend in high places.

Because the efforts of DEP management to implement this scheme have been often carried out against the recommendations of staff committed to following the law, the highest levels of DEP management have sought to maintain ironclad control over enforcement cases. For example, in a December 1995 meeting, DEP enforcement staff was told that *all* enforcement actions were to "go through" then-Assistant Commissioner Rocque to ensure that the toes of DEP's "customers" are not stepped upon by zealous enforcement staff. In addition, enforcement employees have reported further unethical conduct by managers ranging from conscious ignorance on the part of top DEP officials regarding the egre-

gious compliance histories of certain violators to outright dishonesty and accountability avoidance. Resistant employees who have attempted to follow the department's official enforcement policies and conduct the department's business according to regulation have met with intimidation and retaliation from their managers.

In fact, some DEP employees who refuse to "play the game" have faced direct intimidation and even threats from "our man" Santarsiero himself. Last year, when staff resisted speeding through a permit for another Rowland contributor from Waterbury, "our man" was overheard by several employees loudly threatening a DEP professional involved with the permit. "You're lucky you're not dead. If you play the game you'll be a rich man by the time you're 30, otherwise you'll be counting tadpoles for the rest of your life," Santarsiero said. Meanwhile, only the select permit and enforcement staff and managers who do "play the game" were invited to an elaborate holiday party, paid for by "our man at DEP."

When it comes to the mandate from above to "play the game" at DEP, employees seem to be getting the message. A recent employee survey by PEER documented strong fear of retaliation

Connecticut DEP (Department of Environmental Protection)

among both staff and managers for reporting wrong-doing. Indeed, according to preliminary survey results, based upon responses from approximately 35 percent of all DEP employees, more than one in every five DEP employees (20.5%) said that, during the past three years, he or she has been directed to ignore an environmental statute or regulation. In addition, 52 percent of DEP employees, including 61 per-

cent of supervisors and managers surveyed, said that they fear job retaliation for publicly disclosing improper activity within DEP.

The survey also registered widespread concern among both staff and managers about the overall direction of new departmental policies. Below is a sampling of some additional preliminary responses:

PEER'S 1998 EMPLOYEE SURVEY OF CONNECTICUT DEP		
	Agree	Disagree
DEP's "Business Friendly" attitude has resulted in serious environmental damage.	41.1%	24.8%
Permit applicants and violators sometimes get preferential review or treatment after visiting with DEP management.	50.2%	14.2%
The regulated community excessively influences DEP permitting, policy and enforcement decisions.	44.1%	26%
I fear job retaliation for publicly disclosing improper activity within DEP.	52%	23.6%

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Feds probing DEP's pollution enforcement

By Steve Douthett
Associated Press

HARTFORD — Like a janky odometer from a chemical plant, the Rowland administration's dealings with a West Hartford waste collection company have proven hard for federal regulators to ignore.

The Environmental Protection Agency's office of inspector general is investigating agency reportedly is focusing on the DEP's oversight of Safety-Kleen Corp., as well as how federal pollution enforcement funds are being spent by the state.

DEP Commissioner Sidney Holbrook, who was appointed by Gov. John G. Rowland, confirmed Thursday that federal investigators have been visiting his office for about two months, interviewing certain employees. He said the investigators have not

Holbrook surmised that the investigation is "related to accountability" and said he is "not concerned."

Noting that the EPA provides about one-third of the DEP's annual \$30 million budget, Holbrook said the agency has every right to see how its money is being spent.

As far as the Safety-Kleen issue, Holbrook said he is satisfied with how his agency is overseeing the firm.

office were referred to company headquarters. A spokesman there did not immediately return a message left by the Associated Press.

The current investigation comes on the heels of an EPA report that focused on enforcement cases across Connecticut. The federal agency found that the state was soft on polluters and criticized the DEP for failing to document why some fines were

III. Where The Rubber Meets The Road

“The state Department of Environmental Protection does not allow any company to pollute without holding it legally and financially responsible. An objective review of our record supports this conclusion.”

— *DEP Commissioner Art Rocque, letter to the Hartford Courant, January 17, 1998.*

“The fact that a state agency responsible for protecting Connecticut’s environment could stand by and allow a company to continually violate state and federal environmental protection laws is incomprehensible. But when one hears that such an agency would not only delay enforcing state law but would go to such great lengths to assist a negligent company, [it] is simply beyond belief.”

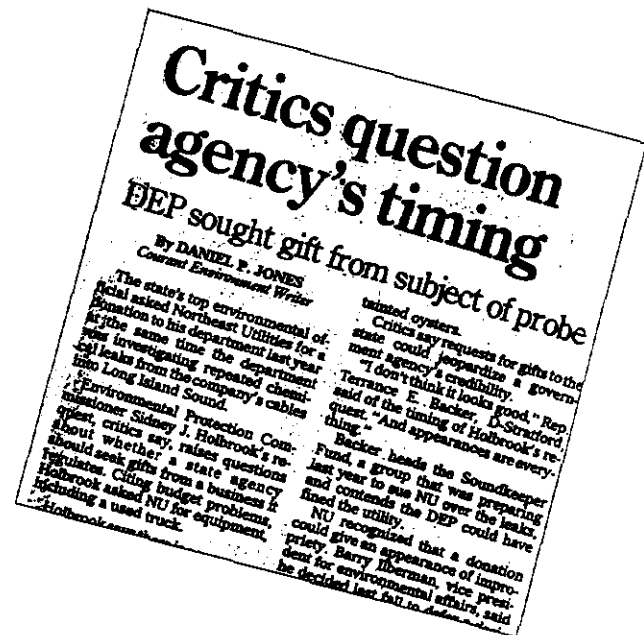
— *John Ritter, State Representative, D-West Hartford, in the Hartford Courant, October 1, 1997.*

The following case studies from DEP’s enforcement files provide compelling examples of the improper and illegal role political influence has played in DEP environmental law enforcement decisions under the direction of Art Rocque and Sid Holbrook. While many of the cases highlighted below have received extensive media attention, this insider account explains precisely how and why these politically connected corporate polluters were protected from the appropriate legal consequences. Only by examining particular en-

forcement files is a true “objective review” of the political rhetoric about “user friendly” environmental regulation possible.

Taking It In Trade

In April 1995, “our man” Vito Santarsiero solicited a contribution of equipment, including wood chippers, radios and a boom bucket vehicle, from a Connecticut public utility company whose executives and attorneys contributed more than \$9,000 to the 1994 Rowland campaign. Santarsiero was advised at the time by the department’s legal counsel as well as a top DEP official (who was later fired) not to solicit gifts for DEP from entities with pending permit or enforcement matters before the department.



Meanwhile, at approximately the same time, DEP officials were involved in negotiating a consent order with the same public utility company for its illegal release into Long Island Sound of 35,000 gallons of insulating liquid from leaking cables since 1969. In 1994 alone the ongoing leaks resulted in the discharge of more than 9,000 gallons of insulating fluid containing the suspected carcinogen alkyl benzene, causing the closing of

shellfish beds off Norwalk Harbor in 1994 and harming the state's vital oyster industry.

The company's equipment donation was ultimately not received by DEP. Nonetheless, in October 1995 the company signed a consent order with DEP which included a promise by the company to investigate the leaks and fix the problem, but which contained *no penalties*. Although the cables have continued to leak since, at the time then-Assistant Commissioner Rocque defended the decision, calling the company's discharges mere "technical violations." Although no law or regulation defines the term "technical violation," the DEP Enforcement Response Policy clearly indicates that a high priority response including a penalty is appropriate when a direct release into the environment occurs, as it did in this case.

Federal authorities have since stepped in and convened a grand jury to investigate whether the company was criminally negligent regarding the cable leaks.

What's 200 Violations Among Friends?

In July 1996, workers at a Bridgeport sewage treatment plant on Long Island Sound were evacuated when they detected chemical odors in waste water the plant was receiving for treatment. Suspecting illegal discharges by an industrial user of the sewer system, employees contacted DEP to complain. DEP inspections revealed that a state-approved clean up contractor who also recycles hazardous oil wastes had dumped gasoline components into the sewer, including methyl tertiary butyl ether (MTBE), a toxic chemical the company was not permitted to discharge. MTBE, which vaporizes, is known to cause headaches, blurred vision and dizziness, and at high enough levels, can do serious harm to the lungs and breathing passages. Exposed workers at the plant complained of headaches, fatigue and breathing problems. DEP also found zinc, lead, copper and chromium discharges over the legal limits.

This company had been cited for nearly 200 violations of illegal dumping into the sewage treatment system over the past three years. Throughout that period, however, DEP issued repeated NOV's (October 1994, February 1995, August 1995, May 1996) but took no further enforcement action against the company. Issu-

State repeatedly gave cleanup work to known polluters

By DANIEL F. MINES and CAROLYN MINERAL
Connecticut Business Journal

The contractors were hired by the Department of Environmental Protection to clean up chemical spills in 1991/1992 — at the same time the company made money from state agencies and private clients because they had the state's endorsement.

The companies are Environmental Waste Resources, or EWR, of Waterbury and United Oil Recovery, which has operations in Meriden and Bridgeport.

The chemicals and heavy metals the DEP letter to the company in September 1996 cited corrected violations more than 100 times over 1995. DEP records show EWR, the contractor, was hired to install wave water equipment mandated in a 1991 court ruling.

The DEP had EWR even after the DEP commissioner's executive action.

ing multiple notice of violation in the absence of a firmer enforcement response is explicitly proscribed by DEP's Enforcement Response Policy. Nonetheless, in March 1997 when then-Assistant Commissioner Art Rocque was asked about the department's over-reliance on NOV's as way of avoiding enforcement before the Connecticut General Assembly's Joint Environment Committee, Rocque said "I know of no cases, to be honest with you, in which such multiple notices were given."

Finally, despite DEP's go-easy treatment, the company, whose environmental manager contributed \$500 to the Rowland campaign, wrote to both the commissioner and "our man" Santarsiero in the fall of 1996 to complain about the "poor treatment" it was receiving from DEP. Former Commissioner Holbrook officially denied receiving the letter. Nonetheless, the company and DEP management agreed to a consent order in which staff-proposed penalties were reduced significantly without justification. The company also remains on the list of state-approved clean up contractors, and has received \$700,000 worth of state jobs.

Constituent Service

In May 1995, a DEP inspection of a Waterbury manufacturer found numerous environmental violations, including improper handling of a concentrated acid spill which had endangered the lives of employees, unpermitted discharges into the wastewater treatment system and improper handling of hazardous waste. Simultaneous to the May inspection, the company at issue was in the process of negotiating settlement of a lawsuit brought by the state Attorney General in 1992 for a long history of hazardous waste violations.

The department's internal policy had always required that when new violations are discovered at a facility that is already the subject of an ongoing enforcement case brought by the Attorney General, the new violations are to be re-

A Friend in High Places

ferred immediately to the AG and no negotiations with the company are to take place without involvement of the AG's office. However, in an effort to "work with the company" in a manner consistent with the department's new "user friendly" approach, DEP's Waste Bureau, over the objections of enforcement staff and the department's Chief Counsel, offered the company an opportunity to settle the violations through a consent order. DEP's proposal included penalties of \$100,000.

Despite the fact that the irregular offer of a consent order represented a break for the violator, the company, whose CEO had contributed the maximum allowable \$2,500 to the Governor's 1994 campaign and whose Vice President had given \$400, complained to the Governor's office that it was receiving unfair treatment from DEP. To one DEP employee involved in the case, the company's CEO warned: "You have a new commissioner now; things are going to be different."

Not long after the company contacted the Governor's office, DEP's "constituent service" officer Vito Santarsiero — "our man at DEP" — began secretly meeting with company officials to discuss settlement of the consent order. The company told Santarsiero that it would settle for \$17,000.

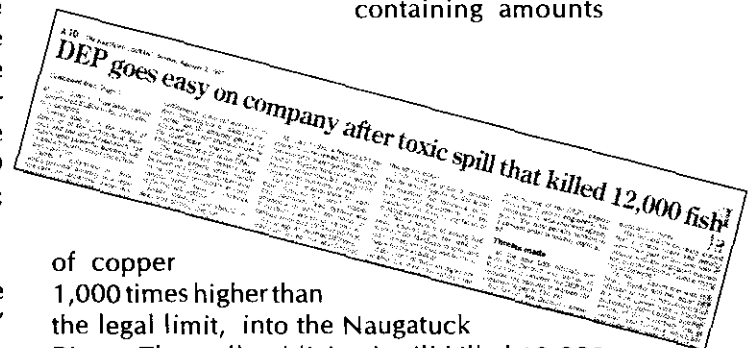
After heated internal debate, in August DEP Chief Counsel's office prevailed in convincing management to refer the case to the Attorney General's office for court action — the first AG referral by DEP since Rowland was elected. Even the apparent firmness of this decision was tempered by the fact that DEP dropped the water violations from the complaint despite several toxic spills that had reached nearby Steel Brook.

Because "our man" failed in this case to resolve the matter favorably for the "customer," and because the company registered another complaint directly to the Governor, the Governor's Office maintained a keen interest in the case and kept a close watch on the DEP management that let this one slip through. As a result, DEP enforcement staff was required several times after referral of the case to the AG's Office to brief department management about the case for the Governor's Office. And, more importantly, enforcement staff in the Waste Bureau

were forbidden from consulting directly with the Chief Counsel's office on any enforcement cases. As odd as it may seem to prohibit consultation with the department's attorneys by officials whose jobs continually require clarification of DEP's legal authority and obligations, staff members were ordered not to discuss enforcement cases with their own lawyers.

The Fatal Fish Fund

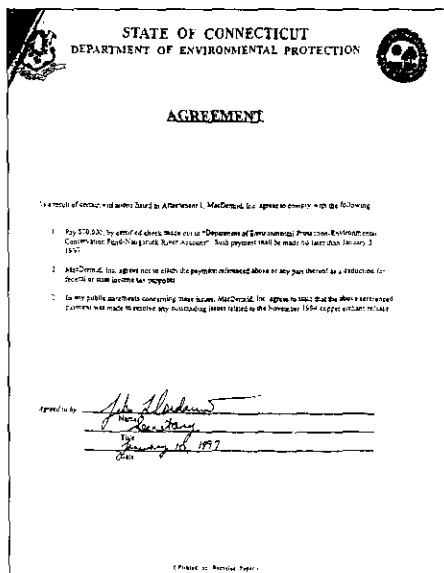
The day after Governor Rowland's election in November 1994, a multibillion dollar chemical manufacturer located in the Governor's hometown of Waterbury, spilled 1,500 gallons of a highly toxic and corrosive chemical, containing amounts



of copper 1,000 times higher than the legal limit, into the Naugatuck River. The well-publicized spill killed 12,000 fish over a 6-mile area. The company, a serious and chronic violator that had paid out approximately \$350,000 in the prior five years for hazardous waste violations, failed to notify DEP of the spill in a timely fashion. In light of the seriousness of the spill and the company's poor record, DEP enforcement staff, in accordance with the department's Enforcement Response Policy (ERP), recommended that the case be referred to the Attorney General's office for enforcement action. Despite the commissioner's public statements that AG referrals would be used in "really bad" cases, DEP management rejected its staff's recommendation.

Staff handling the case then proposed a more "business friendly" consent order with penalties calculated at close to \$270,000. DEP management then met behind closed doors with the company's president, who had contributed the maximum allowable \$2,500 to Rowland's gubernatorial campaign, and his attorney, who had handled legal matters for the Governor in the past. In January 1997, 26 months after the devastating Naugatuck fish kill and with the company president threatening to move his

Connecticut DEP (Department of Environmental Protection)



facility out of Connecticut, DEP proposed an informal agreement, unprecedented even in cases of far less magnitude, under which the company would entirely escape enforcement action and pay *no fine* by contributing a mere \$70,000 to a fish conservation fund, and nothing more. The document spelling out the agreement contains no promises by the company to take action to prevent future spills and was not even signed by a DEP official.

Not surprisingly, violations at this facility continue to this day without enforcement. Also not surprisingly, the company's general counsel and outside counsel reported contributions to the Rowland re-election campaign in November 1997.

A "New Approach"

In April 1995, DEP enforcement staff initiated swift and appropriately harsh enforcement action against a Windsor company with more than 30 environmental violations for poor hazardous waste handling practices and leaking underground tanks that resulted in significant soil and groundwater contamination with toxic solvents. Groundwater samples at the site showed perchloroethylene, a suspected carcinogen, and 1,1,1 trichloroethane, known to cause liver damage, in concentrations thousands of times above legal limits. As a result, proposals have been submitted to reclassify the groundwater beneath the site as too polluted for use as drinking water.

Staff handling the case had drafted and negotiated a consent order with the violator that included clean up requirements and a \$150,000 penalty. The company had pushed hard to substitute the penalty with a "supplemental environmental project" (SEP). Under official DEP policies, violators can, in appropriate cases, finance community environmental improve-

ment, restoration or education projects or undertake pollution prevention efforts at the facility in place of a portion of a cash penalty. The company in this case, however, proposed devoting its entire penalty amount toward implementing environmental improvements at its facility already required by law, in violation of the department's SEP criteria policy.

Commissioner Holbrook initially signed the staff-recommended consent order that included the heavy fine. However, at the eleventh hour, the signed order was suddenly and literally yanked out of the mail. As staff learned after the fact, DEP management had held closed door negotiations with the company. The result: Holbrook announced a "new approach" under which DEP had agreed to let the company off the hook for 75 percent of the original penalty.

Instead, contrary to DEP's SEP guidelines which generally require there be "a direct and appropriate relationship between the nature of the violations and the environmental benefits to be derived from the SEP," the company was allowed to bolster its public image by purchasing fire equipment and some parkland for the local community at a value equal to the waived penalty amount. As a result, the "customer" came out looking good, while paying minimal penalties in connection with the specific pollution problems it had caused to the aquifer.

No Harm, No Fowl

In October 1995, a concrete manufacturer illegally released approximately 5,500 gallons of heating oil into the Quinnipiac River. The resulting oil slick stretched for nearly 4 miles, killed dozens of birds including wood ducks, cormorants and grebes and fouled numerous other wildlife that rely on Quinnipiac marshland for habitat. As a result, the area around the spill was closed to hunting, fishing, birdwatching and boating for several weeks.

Unfortunately, this wildlife catastrophe could and should have been prevented. Early in 1995, the company had been issued a Notice of Violation (NOV) when DEP inspectors discovered a faulty drain pipe at the North Haven facility. The NOV, although little more than a warning letter, advised the company to redesign the drain. The company's response was inadequate, but DEP chose to drag its heels. The same faulty

A Friend in High Places

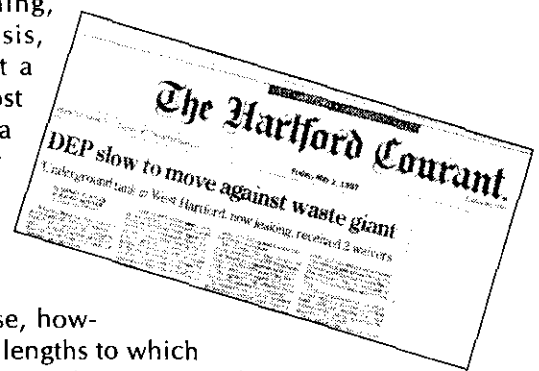
drain, still unremedied, caused the October spill into the Quinnipiac.

DEP not only failed to take the kind of timely and appropriate enforcement action that would have prevented the spill, but continued to coddle the polluter after the fact. DEP immediately hired a private contractor to clean up the spill, costing the state more than \$600,000, instead of requiring the violator, a viable corporation, to foot the bill. The company, whose president is a Rowland campaign contributor and has also received hundreds of thousands of dollars worth of state contracts, was later forced to pay only \$48,000 in natural resource damages and reimbursement for clean up costs. Meanwhile, instead of demanding reimbursement from the company, DEP promised the company that it would seek to repay itself from a federally administered oil spill fund. As a result, the polluter is off the hook for the clean-up costs unless the federal government chooses to pursue the company for reimbursement.

The company has, fortunately, not avoided justice. Stepping into the void of DEP's inaction, federal authorities brought criminal charges under the Clean Water Act and Migratory Bird Act against company officers, who were indicted in July 1997 and convicted just weeks ago.

hazardous waste recycling company with operations in West Hartford, Branford and Plainfield. This Illinois-based company, which picks up hazardous wastes, solvents and used oil from factories, auto repair shops and dry cleaners for disposal or recycling, has an environmental rap sheet "a mile long": more than 100 violations of hazardous waste laws in Connecticut alone, and 600 notices of violations, 700 enforcement actions and 13 civil suits nationwide. The company has paid \$450,000 in environmental fines in Connecticut, and millions of dollars in penalties in other states, including \$1.9 million in a 1994 case where the company was charged with willfully burning carcinogenic PCBs in New York.

Despite the big fines, this company still profits by its pollution in Connecticut. In fact, the company has operated its West Hartford facility under a temporary permit for more than seven years, avoiding the more costly, stricter controls of a new permit by dragging on negotiations with DEP, most recently because of the company's proposal to expand its operations at the facility. Meanwhile, as DEP documents acknowledge, the company has operated for the entire period with "substandard facilities, personnel training, waste analysis, etc., giving it a significant cost savings and a big edge over its Connecticut competitors."



The Leak That Wasn't?

One of the most egregious cases of favorable treatment by Connecticut DEP, and the significant threats to human health and the environment that result from the department's failure to get tough with well-connected corporate polluters, is that of a billion-dollar, multinational

What is worse, however, are the lengths to which DEP management has gone, violating its own policies and putting the company's neighbors and surrounding environment at risk, in order to protect the interests of this political supporter of the Rowland Administration. According to documents provided by Waste Bureau enforcement staff, numerous serious violations of hazardous waste laws have been discovered at all three of the company's Connecticut facilities since 1992, when the company paid the state its last major environmental penalty. Since that time until quite recently, DEP has failed to take action against this polluter, all the while keeping its application for an ex-

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panded West Hartford operation alive. Meanwhile, in 1994, the company's officers contributed a total of \$1000 to Rowland.

Consider the evidence:

- In late 1993, with a growing list of violations and potential violations at all three facilities, DEP officials warned the company that the department was prepared to take enforcement action against it and that failure to comply would result in further enforcement action and a recommended denial of the company's outstanding permit application. DEP regulations require that compliance history be considered before issuing a permit. However, in early 1994, the company began meeting in closed-door sessions with top DEP management.
- Throughout 1994, enforcement staff continued to find violations and recommend immediate enforcement action but were told by management that, contrary to official policy, no enforcement action would be taken against this company until the permit was issued. Indeed, enforcement staff members were explicitly discouraged from making a formal written enforcement recommendation. Top DEP officials, including former Commissioner Holbrook, now claim they did not act against the company because staff never made an enforcement recommendation and deny that they delayed enforcement because the company was seeking a permit. Yet, when the lead enforcement official on the case made public comments about the delay in enforcement, the employee was taken off the case.
- In 1995, the company stepped up its efforts to gain favorable treatment from DEP by hiring a Rowland campaign contributor who was also a long time friend of Holbrook's as its environmental lobbyist. In June 1995, less than two months after Holbrook was treated to dinner by the company's lobbyist, the commissioner signed an unprecedented variance allowing the company to postpone replacing an underground waste storage tank at the West Hartford facility. The variance was granted again in December 1996. Despite the company's notorious

compliance history, when questioned by a reporter Assistant Commissioner Rocque claimed he had received no warning regarding the company's poor record in connection with the approval of the tank variance.

- In February 1997, holes were discovered in the old tank, which had been used to store toxic solvent. Both the company and Rocque publicly played the incident down, claiming the tanks were empty and provoking headlines like "The Leak That Wasn't." Yet, soon after the company removed 700 cubic yards (30 truckloads) of contaminated soil. The company now claims the soil is "relatively clean" and that, although there was some groundwater contamination from the leaks, public health is not at risk because the polluted aquifer it is not a drinking water source.
- Following the February tank leak debacle, and soon after the *Hartford Courant* newspaper submitted a request under the Freedom of Information Act for information relating to this case, DEP employees charged that key documents had been taken from their files on this company. When the state police began investigating, the documents reappeared and the investigation was abandoned. The police investigators, it turns out, were from Holbrook's hometown of Westbrook, and were personal friends of the commissioner's.



The Hole That Wasn't? A waiver from DEP allowed this polluter to put off replacing old waste storage tanks. When leaks were later found, the company carted away 30 truckloads of contaminated soil, leaving deep craters and polluted groundwater.

Meanwhile, instead of referring this serious hazardous waste violation to the AG for enforcement, DEP chose to "work with" the company through negotiated consent orders — one for the tank leak and one for a series of outstanding violations. At approximately the same time DEP that settled on this milder enforcement option, the company's attorney wrote a check to the Rowland reelection campaign. The consent orders remain unresolved.

Most recently, the company was again in the news at the center of an environmental disaster when one of its employees caused 250 gallons of oil and solvent waste to spill from a holding tank. The spill ended up in the Branford River. Although the company was required by law to report the spill immediately, they waited 19 hours until the next morning to do so, after DEP was already on-site because a neighboring business had reported the spill. The company claims the spill was nontoxic, but DEP analysis of samples taken from the site of the spill show otherwise. As a result of mounting public scrutiny regarding the pollution practices of this scofflaw company, DEP was forced to ask the Attorney General to file suit against the company in November 1997, seeking \$175,000 in fines for the spill and failure to report.

Meanwhile, DEP continues to negotiate with the company for a permit that would allow expanded operations in West Hartford, despite local community opposition and the company's demonstrated disregard for Connecticut's environment.

Justice Delayed

DEP officials had known since 1984 that a publicly owned sewage treatment plant in Naugatuck, operated by a large private chemical company, had been accepting, diluting and dumping truckloads of industrial wastes into the Naugatuck River for profit without a permit. The company's illegal dumping has continued to degrade the Naugatuck River and has frustrated DEP's otherwise significant progress in the past decade cleaning up the river. After spending millions of dollars, DEP just recently restocked the river with trout.

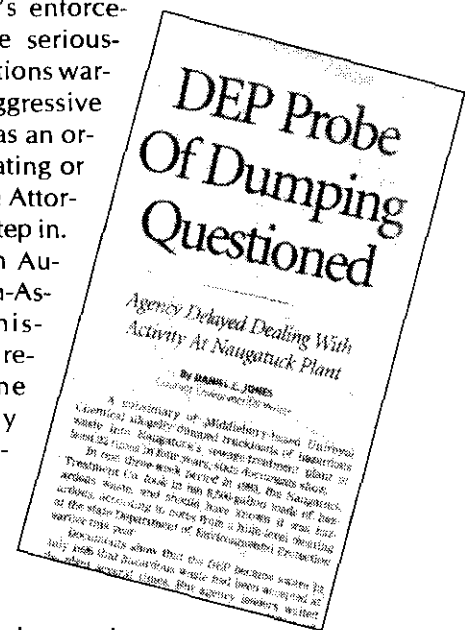
For years the company has fought DEP's efforts to force the company to obtain a permit. In response to stepped-up pressure from DEP on the permitting issue, company officials com-

plained in July 1996 in writing to DEP management about poor treatment by the department and requested a meeting with top DEP officials. Because the company's executives had contributed to the Rowland campaign in 1994, they also sent a copy of the letter to the Governor.

That same month, DEP inspected the treatment plant and discovered evidence that the company had again illegally accepted, diluted and discharged hazardous waste into the river. Because the company is not permitted to discharge hazardous wastes and, as a result, monitors its effluent only for pH (acidity), DEP was only able to determine that the company was dumping both highly acidic and highly alkaline effluent. Other hazardous substances, however, were very likely involved and exposure was likely, DEP officials determined, posing serious environmental and public health risks.

Under the DEP's enforcement policy the seriousness of the violations warranted a swift aggressive response, such as an order to stop violating or a request for the Attorney General to step in. Nevertheless, in August 1996, then-Assistant Commissioner Rocque responded to the company's July letter by notifying the company that the department had discovered serious violations at the Naugatuck plant and setting a September 30, 1996 deadline for the company to apply for a state permit. However, DEP took no further action until December, when the company agreed to negotiate a consent order regarding the July violations.

Then, citing the need for more information, DEP asked U.S. EPA to use its authority to obtain additional documents on the company's operations, even though DEP had knowledge of the company's illegal dumping operation dating back more than 12 years. In February 1997, EPA notified DEP that the company had accepted



and discharged hazardous wastes on 22 occasions between 1992 and 1996. Despite mounting evidence that DEP was dealing with a major scofflaw who was wilfully endangering an important natural resource, still DEP did nothing.

Then, in August 1997, immediately following the well-publicized press conference on the front steps of DEP's Hartford headquarters at which former gubernatorial candidate Bill Curry demanded the resignation of Commissioner Holbrook, DEP referred the case to the Attorney General's Office for prosecution. With the political clamor over the administration's coddling of corporate law-breakers at its loudest, DEP finally took action against this violator, more than a year after substantial violations had been discovered.

The Age of Consent

In December 1993, DEP conducted an inspection of a West Haven plastics manufacturer that regularly generates dangerous hazardous wastes, such as non-chlorinated solvents and "ignitables." During the inspection, DEP enforcement officials discovered a substantial stock pile of approximately 600 hazardous and non-hazardous waste containers. Many of the drums were in poor condition, and the inspectors found evidence of spills and leaks.

Moreover, many of the drums were unmarked, and no inventory of the drums existed. All in all, the company was cited for 22 violations, 9 of which were classified as high priority violations. These violations put local residents at risk because the facility is located above groundwater that DEP classifies as suitable for human consumption. What's more, the inspection report noted that a solvent odor was evident throughout the warehouse, indicating that worker exposure was probable.

In September 1983, ten years earlier, the same facility was cited for a litany of similar violations involving improper storage and labeling of hazardous waste containers. Notably, the 1983 violations did not indicate leakage or exposure. Nevertheless, within a few months of the 1983 inspection, DEP promptly issued a unilateral Administrative Order pe-

nalizing the company and requiring improvements. By May 1985, the company was found to be in full compliance.

The 1993 violations, however, have been handled quite differently. Instead of swiftly imposing consequences on the company, in January 1994 DEP merely issued a Notice of Violation, tantamount to a warning letter, even though the 1993 violations were arguably far more serious than those of 10 years before. By late 1994, DEP had taken no further action against this repeat violator. Yet, in hearings before the state legislature in December 1994, DEP officials used this case as an example of the continued need for state enforcement of federal hazardous waste laws. More than three years after that testimony, and four years since the discovery of the violations, the new "kinder and gentler" DEP has done nothing but draft a still-pending consent order.

Damage Control

DEP has not failed to enforce environmental laws in Connecticut in every instance. Indeed, in a relatively recent development which underscores the corrupt and politically-driven nature of enforcement decisions at DEP during the Rowland Administration, the department has periodically gotten tough on small-time violators. In response to mounting criticism from the media, legislators, EPA, and the public regarding the department's enforcement record, DEP management began asking staff to provide lists of "good" cases for referral to the Attorney General's Office.

Rather than go after the major violators that had drawn so much public attention, DEP more often has referred cases against smaller companies lacking in statewide political influence. Among the very few cases DEP has referred to the AG during this administration are, for example, a case in late 1995 involving a "mom and pop" machine shop in Thomaston with fewer than 50 employees and another more recently against a small Hartford airplane machining shop company. Neither case involved violations as serious as those presented in the case studies in this paper, but then again...neither of the hapless defendants are big-time contributors to the Rowland campaign.

IV. Are Your Children Better Off?

Three hundred miles of river in Connecticut (34 percent) remain unsafe for fishing and swimming.

— *Water Quality Inventory report pursuant to Sec. 305(b) of the Clean Water Act, Connecticut DEP, 1996.*

“One would have to look very hard at the agency to find environmental protection. It is no longer our mission. It has moved underground. It is whispered in corners, in the hallways, and outside.”

— *Anonymous DEP employee, technical staff, responding to 1998 PEER Survey of DEP employees.*

The same business groups that view enforcement of environmental rules as unnecessary governmental harassment and applaud the course Connecticut DEP has taken, also promise that the “customer-oriented” and “compliance-based” policies will yield improved compliance and superior environmental performance. The argument goes: “If the government would just get off our backs, we could do better and the environment would be cleaner.”

According to available data, however, that promise is not being met. As inspections, enforcement actions and penalties have plummeted under Holbrook’s and Rocque’s “business friendly” policies, rates of compliance with environmental laws in Connecticut have remained unacceptably low and in some areas have worsened. According to a Connecticut Public Interest Research Group report that examined EPA data (March 1997), the percentage of Clean Water Act violators in Connecticut classified in “Significant Non-Compliance” according to EPA criteria has slipped from 14th-worst in 1995 (21

percent) to 9th-worst in the country last year (25 percent). Apparently, EPA’s “SNC” data just scratch the surface of the non-compliance problem in Connecticut: the report also found that in the first quarter of 1996 alone, 35 percent of the state’s largest industrial facilities dumped pollutants into Connecticut’s waterways at 50 percent or more above the legal limits.

Moreover, rather than producing marked environmental improvements, DEP’s failure to enforce the law has posed a direct threat to public health and the environment. The environmental and human harm catalogued in just the few case examples described in this paper read like the ten plagues: massive fish kills, oil-fouled migratory birds, the spilling of carcinogens into a long-polluted waterbody on its way to recovery, tainted oysters and closed shellfish beds, degraded groundwater classifications, sick treatment plant workers exposed to toxic chemicals, the carting away of truckloads of contaminated soil from nearby a residential neighborhood, and more.

Data compiled by DEP, EPA and private conservation groups show that Connecticut’s environmental ills remain serious and widespread:

- According to DEP’s 1996 Water Quality Inventory report under the Clean Water Act, 300 miles of river in Connecticut (34 percent) remain unsafe for fishing and swimming. That represents a 3 percent increase since 1994 – or 27 additional miles of polluted water. Plus, an additional 19 percent of state rivers, or 166 river miles, are considered safe, but threatened by pollution in the watershed, which leaves fewer than half of Connecticut’s rivers in clean condition.
- In 1995 alone, Connecticut industries released 1,489,456 pounds of toxic chemicals into the state’s waters, and an additional 1,315,127 pounds were flushed into sewer systems designed to treat sewage, not industrial toxics (Toxic Release Inventory, U.S. EPA, 1995).
- A recent EPA report found that the Long

Island Sound contains some of the most contaminated sediments in the nation, containing high concentrations of persistent toxics, like polychlorinated biphenyls (PCB's) and mercury, that pose serious human health risks, especially for urban communities that consume fish from polluted waterbodies (EPA, 1998). In addition, the report found that the Quinnipiac, Thames and Housatonic Rivers in Connecticut receive *active discharges* that are likely to cause sediment contamination with adverse effects for human health and aquatic life.

- In 1996, the state had in effect 10 fish

consumption advisories, a more than 40 percent increase over the year before, and closed beaches on 196 occasions because of water pollution (Clean Water Network, 1997).

Connecticut's environment is clearly not benefiting from the state DEP's soft approach to environmental law enforcement. Problems persist and are unlikely to improve as long as DEP continues to allow corporate polluters to flout environmental requirements with no threat of serious consequences.