



Robert I. Fassbender, Esq.
Director of Environmental Policy

The Environmental Shakedown Must Stop

Litigation serves many purposes. Sometimes the goals are laudable, sometimes they are questionable, but everyone could agree that litigation should never become an end in and of itself. It appears, however, that an East Coast environmental group, along with their Wisconsin supporters, have found a way to use the threat of litigation to finance its lawyers and pet projects in a self-perpetuating scheme that runs counter to the intent behind our environmental laws.

Over 30 Wisconsin companies have been the targets of a "Notice of Intent" to sue under federal environmental law citizen suit provisions. Drawing a bead on these companies is the Atlantic States Legal

Foundation out of Syracuse, New York. Their conditions for settlement are always the same — legal fees and funding for environmental groups.

Enrichment of environmental groups and their attorneys is not the intent behind citizen suits.

The intent by Congress in providing such a legal vehicle for citizen litigation was to assure that federal environmental laws were being complied with when state and federal agencies fail, for one reason or another, to enforce them. Financial rewards for plaintiffs in such suits were never intended except for attorney's fees. Nevertheless, environmental protection appears to be taking a back seat in Atlantic States' efforts to coerce monies from Wisconsin companies.

The Atlantic States Legal Foundation brings a checkered past into Wisconsin. An investigative report filed by an East Coast television station on Atlantic States was recently viewed by WMC. In this report, as is typical, it was explained how Atlantic States tactics included demanding and obtaining legal fees and sizeable "contributions" for environmental projects. Funds for one such project went to a local environmental group that was going to use the money for a nature trail for handicapped persons. To the surprise of this group, Atlantic States suggested that Atlantic States' executive director be used as a consultant for the project, and that it and Atlantic States fold into a partnership on projects using settlement money from pending or future cases.

These and other appearances of improprieties caused a federal judge who handled the cases to express concern

over both the use of the monies and the fact that the Clean Water Act was never intended for the personal enrichment of any organization, but rather for the public good. A U.S. attorney was quoted as saying that the alleged Atlantic States conduct on these matters was outrageous and that, if true, the federal law was being abused. The current situation in Wisconsin appears to have even less to do with any laudable intent of environmental protection.

In the past, these types of citizen suits often focused on discharge violations under the Clean Water Act. But the more recent Wisconsin filings allege violations of paperwork requirements rather than violations of pollution discharge limits.

Generally, the federal community right-to-know law, known as SARA Title III, requires owners or operators of facilities that manufacture or use any of more than 300 listed toxic substances to report annually on the release of these substances into the environment. This reporting requirement is important because it provides valuable information to communities and the government. In addition, the knowledge gained by manufacturers while compiling these reports has led

The claims relate to paperwork, not environmental protection.

to the voluntary reduction of significant amounts of chemical releases. Nevertheless, the mandate has nothing to do with limitations on the amount of these releases. The use and discharge of these substances are regulated under other environmental programs meant to protect the public health and the environment.

Therefore, the recent threats of litigation under SARA III do not charge that pollution limits are not being met. Instead, they allege that federally mandated paperwork has not been properly attended to. In one Wisconsin case, suit was threatened and settlement monies obtained even when the target company's only "crime" was failing to provide a duplicate copy of federal forms to state agencies.

Suing companies for not filing necessary paperwork has become an increasingly convenient vehicle for environmental groups and their attorneys to reap financial rewards. Atlantic States obtains government documents showing companies' use or release of hazardous substances. Such reports include hazardous waste generator reports or air emissions inventory reports which must be filed with the Wisconsin Department of Natural Resources. Upon determination by Atlantic States that a company uses or disposes of hazardous substances, it becomes an easy matter to assess compliance status with other reporting requirements. The group merely crosschecks the information on chemical use found in one reporting file with information filed under other reporting laws. If the paperwork isn't done to their liking, Atlantic States files its notice of intent to sue. One smaller Wisconsin company under attack by Atlantic States was understandably dismayed that a good faith effort to meet burdensome filings under one law led to Atlantic States' assault.

After the filing of the notice, Atlantic States, through local counsel, informs the recipient of its willingness to settle the matter prior to litigation. This environmental shakedown has become all too routine. That is, they demand that the companies pay for the local and Atlantic States attorneys' fees and make a contribution to an environmental group or face litigation and potential penalties of \$25,000 for each day of violation. Wisconsin environmental groups, unfortunately, play an important role in this misuse of our environmental laws.

Citizens for a Better Environment, Wisconsin Chapter (CBE), is one of the most active environmental groups in the state of Wisconsin. In a Spring 1991 article entitled *Citizen Suits Aimed to Boot Polluters*, Susan Mudd, attorney and state director of Wisconsin CBE, advocates the use of citizen suits. The article described how Wisconsin CBE teamed up with the Atlantic States Legal Foundation and brought four Clean Water Act cases against Milwaukee companies in 1987. It goes on to state that CBE and other environmental groups prefer settlement because this allows money that would otherwise go to the federal government to be used for environmental projects endorsed by these groups. (In other words, it allows them to circumvent the congressional intent that private groups not reap financial rewards.) For example, settlement monies from the CBE/Atlantic States Legal Foundation cases noted above were used to fund the American Clean Water Project, Sierra Club-Kettle Moraine Group and to establish the

Lake Michigan Federation in Milwaukee. (American Clean Water Project has been called a "close affiliate" of Atlantic States.)

It was also noted in the article that Milwaukee Metropolitan Sewerage District (MMSD) is the first publicly-owned treatment works in the nation to successfully use citizen suits as a primary enforcement tool. The article says that these suits are initiated by MMSD staff attorney, Tom Crawford. MMSD believes the suits are both expedient and useful, and have several benefits, including using the money for pollution abatement projects. Some \$75,000 of a recent penalty will pay part of the cost of a feasibility study on removing the North Avenue dam on the Milwaukee River, a project expressly supported by CBE.

MMSD's Crawford, when bringing citizen suits in the name of MMSD that resulted in funding of projects endorsed by CBE, was a CBE board member. The Atlantic States Legal Foundation's attorney of record in current filings under SARA III is Dennis M. Grzezinski. Attorney Grzezinski is Chairman of the Milwaukee Metropolitan Sewerage Commission, the policy-setting body for MMSD. The *Milwaukee Journal* recently reported that Grzezinski continues to be attorney of record for Atlantic States on citizen suits alleging violation of MMSD rules.

While the issue of impropriety is seldom clear, the relationship between CBE, MMSD and Atlantic States has been certainly convenient. It is also disconcerting that the symbiotic relationship often found between environmental groups when transferring the wealth reaped by citizen suits has been extended to an agency that sets the rules sometimes used in these suits. The most significant concern, however, is not the damage inflicted on any individual company, but rather the fact that these actions have created an atmosphere of mistrust and disillusionment within the environmental policy arena in Milwaukee and in the state. State environmental groups such as CBE have unquestionably undertaken many laudable activities that have made real improvements to Wisconsin's environmental quality. But their endorsement of Atlantic States' actions in Wisconsin will undermine their credibility as an effective state environmental organization.

Ironically, the *Milwaukee Journal's* Don Behm reported on April 6, 1992, that the Milwaukee Metropolitan Sewerage District is violating the same reporting requirements that its Chairman Grzezinski is using as a vehicle for the Atlantic States Legal Foundation. Some felt it would be poetic justice if a notice of intent to sue were filed against MMSD for their disregard of these "important paperwork requirements." But in the final analysis, businesses in Wisconsin must continue to believe that environmental laws are intended to protect the environment.

If you are a recent recipient of a notice of intent by the Atlantic States Legal Foundation, or would otherwise like to support efforts to halt this abuse of our environmental laws, please contact WMC's Government Relations Department.

FAREWELL. On a personal note, I will be leaving WMC on May 1. It has been a tremendous honor and pleasure to represent Wisconsin business through WMC for almost three years. It is a great organization that gains its strength from the leadership its members provide. Thank you for all your support.