

Fact or Fiction?



Jack W. Dini
1537 Desoto Way
Livermore, CA 94550
E-mail: jdini@attbi.com

Regulatory Abuse

Regulatory abuse happens for many different reasons. Rep. Helen Chenoweth-Hage (R-Idaho) notes that some occurs because of poorly written laws; others because of a web of confusing and often contradictory regulations; and others because of abusive government officials.¹ I would also add that in some cases advocacy group actions heavily influence outcomes.

Each year from 1998 to 2000 The National Center for Public Policy Research has published a directory that documents 100 of the most egregious examples of government regulatory abuse. Here are some examples from their most recent document.

- The Sierra Club, Defenders of Wildlife, and the Audubon Society plan to file a lawsuit to put a halt to the U.S. Border Patrol's use of high-powered lights at border crossings on the Rio Grande River. The groups claim these lights pose a threat to endangered species by disrupting the habits of the ocelot and jaguarundi, two nocturnal-oriented wildcats on the endangered species list. Use of the lights has cut the number of illegal aliens attempting to cross the border from 216,000 in 1996 to less than 160,000 in 1999 along a 200-mile stretch of the Rio Grande River.² Jim Chapman of the Sierra Club says, "We feel the Immigration and Naturalization Service can accomplish its job without the floodlight and fences and with far less-intrusive technologies that have no impact on wildlife." In response, Border Patrol Assistant Chief Rey Garza notes that, "Taking away the lights will negate everything." The Rio Grande River is pitch black, making it an obvious haven for illegal aliens and drug criminals. Garza adds that Border Patrol officers have been stabbed and

shot trying to do their job on its murky banks.² Have you ever tried to walk in a big city where the lighting was poor? Can you imagine how dark it must be on the Rio Grande without lights in the middle of nowhere?

- In 1998 in Denver, Diane Reiter and her husband were served a cease-and-desist order citing a municipal ordinance which prohibits more than one 'prayer meeting' a month in a private home. The couple initially thought that the parking of cars of the nine to 15 people who attended the Bible study meeting was the problem, because the meetings "were hardly disruptive as there was no loud music, speeches or other noise."³ However, when the Reiters appealed the case, it was made clear the problem wasn't the cars, it was the fact that they were holding a prayer meeting. They were told that if they had been holding a book club meeting, then there probably would have been no problem. Can you blame them for filing a lawsuit in federal court charging the city of Denver with violating their constitutional rights to religious freedom?
- The Whitin Community Center in Northbridge, Massachusetts provides families access to a gym, a swimming pool, tennis courts and meeting rooms for various events. "In addition, it offers a special outreach program that makes it possible for children from families on limited incomes to use the facility for free. But when local citizens decided to expand and renovate this popular institution, OSHA inspectors filed numerous complaints, mostly against contractors, that needlessly cost the Center time and money. In one case, OSHA inspectors cited the Center with a violation because

an IBM typewriter was not equipped with a grounded three-prong plug. But IBM typewriters do not require a three-prong plug because they are double-insulated. Nevertheless, the Center ended up paying OSHA a \$750 fine."⁴

- "Charlie Sutherland owns Charlie's Soap, a small family-run business in North Carolina that manufactures an environmentally-friendly soap that is non-toxic, biodegradable and contains no bleaches or dyes. Nevertheless, the EPA is threatening to fine Sutherland for more than \$100,000 because the product's label says that, among other things, Charlie's Soap kills cockroaches. Sutherland claims his soap can clean everything from false teeth to diesel engines. But what got him in trouble with the EPA was the claim that the soap's bubbles choke cockroaches and 'drops them dead in their tracks.' According to the EPA, that makes Sutherland's soap into a pesticide, which requires EPA approval that Sutherland never obtained."⁵ EPA acknowledges that most any kind of soap will kill cockroaches, but one can't make that claim on a label without getting the soap registered as a pesticide.

More Examples

Here are some more "believe-it-or-not" examples from other sources.

- Sometimes, even with scientific proof, perception wins out over reality. This was discovered by Jay Shelton and 15 of his 9th through 12th grade students at the Santa Fe Preparatory School. The city was concerned about radiation contamination from a laundry that

washes clothes from workers at Los Alamos National Laboratory. Shelton and his students spent two-and-a-half years obtaining radiation measurements. Their results revealed that there was no problem. "No contamination above detection limits was found in any areas accessible to the public."⁶ They wanted to present this information to the City Council, but members of this group refused to meet with the students and their advisor. One council member did say he would meet with them after the meeting to decide on resolutions. An advocacy group had convinced the Council that there was a problem and the Council was not about to be swayed by data showing otherwise. As *The Energy Advocate* noted: "Suffice it to say that the ordinance passed by the town's fathers would not allow anybody to urinate within the city limits."⁷ What a great way for budding scientists to get a feel for the way our political folks bend to the misinformation and scare tactics used by advocacy groups.

- Standards at the Nevada nuclear test site require that radiation levels inside the test area actually be less than the natural background levels on the other side of the fence. In other words, because of our ability to detect pollutants, we are sometimes required to make a site 'cleaner' than nature itself!⁸
- Race car driver Bobby Unser was sued by the U.S. Forest Service for entering a federally designated wilderness area with a snowmobile, even though he was on a desperate attempt to save his life and that of a friend during a sudden ground blizzard.⁹
- Todd Seavey reports, "Camden, New Jersey residents who must have a great deal of spare time on their hands, have pressed for an investigation into the source of the round, black splotches you see on sidewalks, usually dirt-encrusted chewing gum or paraffin from packing materials. Naturally, the activist calling for the investigation notes that many people in the area have headaches or asthma (and, naturally, there is no evidence that the townfolk are more likely to have headaches or asthma if they've been near the black splotches)."¹⁰ Seavey goes on to note that science writer Michael Fumento says people used to blame black cats for their misfortune, and now they often blame things like chemicals, breast implants, or magnetic fields.

- Montgomery County, Maryland passed and then retracted a law penalizing people for smoking in their own homes. The law was approved on November 20, 2001, but was retracted just seven days later after the county became the object of national and global ridicule. "Under the law, a person could be fined up to \$750 for each time a neighbor complained about smelling tobacco smoke coming from a person's home. The law was originally drafted to protect persons from exposure to indoor pollutants such as asbestos, radon, molds, and pesticides. However, the Montgomery County Council voted to add tobacco smoke to the list of alleged pollutants."¹¹ "What about barbecue grilling?" mused syndicated columnist Cal Thomas. "If smoke from someone's grilling steak offends his Montgomery County neighbor, can the neighbor call the cops? What about perfume? Some people are allergic to such scents. Could the wearer be a potential criminal?"¹¹
- In November 2002 Berkeley, California residents defeated a proposal that would have sentenced people to jail for selling non-organic coffee beans. Todd Seavey observes: "Even in Berkeley, apparently, the idea of hauling people off to jail for coffee crime was too much to swallow—though some 30 percent of the voters were in favor of the measure, which is still disturbing."¹² While on the subject of non-organic foods, Vedic City, Iowa, under the influence of the Maharishi Mahesh Yogi, contemplates a ban on all non-organic food.¹²
- I'll close with one of my favorites from Peter Huber: "The Endangered Species Act was written loosely, and enforced in a manner that pays no respect at all to the notion that public interests must somehow be kept separate from private ones. As amended and interpreted, it proscribes 'habitat modification' anywhere, for any reason, once a protected tenant appears on the scene. If an endangered tapeworm happened to find refuge in your intestine, it would be a federal crime for you to consume the medicine that rendered your guts uninhabitable to your guest. The same goes for endangered cockroaches under your floorboards, or an endangered strain of typhoid in your water well. There is no *private* left, not body, floorboard, land, home, or farm, not once an officially endangered species has designated it as its habitat."¹³

Summing Up

James DeLong reports, "Today in the United States, the ordinary law-abiding citizen runs the risk of violating one of thousands of complicated (and even conflicting) regulatory requirements, with federal prison as the consequence. When an individual faces the same federal prison time for improperly filling out a required form that a rapist or drug dealer receives, he is justified in questioning the legal system that criminalizes his relatively benign actions."¹⁴ Representative Chenoweth-Hage hopes that "by publicizing these personal tragedies we can begin to mobilize the American people to support the broad-based reforms in our regulatory policies that we so desperately need."¹⁵ *P&SF*

References

1. "2000 National Directory of Environmental and Regulatory Victims," John Carlisle, Editor, National Center for Public Policy Research, Washington DC, p. 4.
2. Reference 1, page 16.
3. Reference 1, page 38.
4. Reference 1, page 40.
5. Reference 1, page 53.
6. Robin Beck, Kevin Schwanfelder, Thaddeus Sze, and Jay Shelton, "What happened on the way to the laundry?," *Nuclear News*, 4, 41, (July 1999).
7. "New York Times Readers Dying Like Flies," *The Energy Advocate*, 4, 1 (August 1999).
8. James Trefil, *The Edge of the Unknown*, (Boston, Houghton Mifflin Company, 1996), 139.
9. Jerry Schwimmer, "Just how crazy can environmental regulations be?," *Environmental & Climate News*, 1, 10 (October 1998).
10. Todd Seavey, "Science vs. Superstition," http://healthfactsandfears.com/editors_rants/superstition/2002/scares082702.html, August 27, 2002.
11. James M. Taylor, "Maryland county ridiculed for attempted smoking ban," *Environment & Climate News*, 5, 13, (February 2002).
12. Todd Seavey, "Berkeley Bean Facists and (100% Organic) Black Widow Spiders in Your Fruit," Health Facts and Fears.com, December 12, 2002, accessed December 23, 2002.
13. Peter Huber, *Hard Green*, (New York, Basic Books, 1999), 94.
14. James V. DeLong, *Out of Bounds Out of Control*, (Washington DC, The Cato Institute, 2002), 24.
15. Reference 1, page 6.