

Charlie Cray, Center for Corporate Policy
Workshop Presentation Summary
Corporate Crime & Punishment: Canada's Westray Law

Clearly one of the best ideas put forth in the past 20 years by the environmental community—one that has already been incorporated into international treaties and one that communities are trying to figure out how to implement—is the Precautionary Principle.

But I would suggest that we may be putting the cart before the horse here. It may be impossible to put the PP into effect so long as decisions on technology are largely in the hands of corporate decision-makers for whom cultural conditions, market incentives and even legally-determined norms of behavior tip the balance in exactly the opposite direction.

I touch on this point in my testimony, which is posted here:

<http://www.corporatepolicy.org/topics/defectiveproductshearingtestimonyMarch06.htm>

(scroll down to the section that begins "Getting at the Source of the Problem")

I might add, parenthetically, that by supporting criminal sanctions we are not suggesting that criminal sanctions are the only—or even the most important—measure that might address this dilemma. Yet I do believe it is one of a portfolio of measures that we might reasonably be expected to have a chance of enactment, were it the thrust of our organizing efforts. For instance, Republican Senator Arlen Specter's interest in holding a hearing on this topic suggests that "law and order" Republicans may be just as interested in this kind of legislation as any liberal Democrat. (As a former DA, Specter must understand how difficult it is to nail corporate criminals when there are gaps in the criminal laws that frustrate the prosecution of many kinds of corporate crime.)

Recognizing one such gap, Congress passed strong criminal penalties for financial fraud in Sarbanes-Oxley after Enron. And while Sarbanes-Oxley was, in the end, a modest measure compared to what happened, that and the whistleblower rights provision were a solid step. Surely the victims of toxic exposure or defective toys or cars that roll-over, or the marketing of pills proven to have life-threatening side-effects are deserving of equal consideration?

A similar sanction might also reduce the number of workplace deaths that occur each year. Right now they are in the thousands. (See "Death on the Job," an annual report by the AFL-CIO).

Nor would the U.S. be the first to pass such a law. **A few years ago Canada passed the "Westray law" in 2004, which established criminal sanctions for occupational manslaughter.**

The law came into effect as a result of a joint campaign between labor unions and the families of the victims of a mining disaster in Westray in 1992—a disaster that, as we have seen in Sago, WV, can and HAS happened here.

The law was supported by the Canadian Department of Justice, which held a series of consultations before supporting the bill. They put together some interesting discussion papers that are worth a read. (e.g. http://canada.justice.gc.ca/en/dept/pub/ccl_rpm/discussion/index.html)

And now others, including Physicians for a Smoke-Free Canada, see the law as a key public health tool—e.g. in reducing damage from second-hand smoke in the workplace: http://www.smoke-free.ca/pdf_1/westraylawandsmoke.pdf

In addition to not having cutting-edge laws, the U.S. may also be lagging in the willingness of prosecutors to seek criminal prosecution when corporations market harmful products. (See <http://www.corporatepolicy.org/topics/foreignprosecutionsdefectiveproducts.htm>)

Clearly this is not a pie-in-the-sky reform and it could have significant consequences for environmental and public health policy. Certainly the chemical industry and others believe so, which is why former Michigan Governor John Engler, representing the National Association of Manufacturers, testified adamantly against the idea at Spector's hearing.

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