

Joseph Ellin's Commentary on "Exceeding Pollution Limits"

Commentary On
Exceeding Pollution Limits

I

This case involves a violation of environmental regulations which may be more 'technical' than real. Wolfog Co is faced with \$200,000 unnecessary expenses to prevent small excess omissions which are not believed to be harmful to anyone but a few fish. The obvious course here is for Wolfog to apply to the DNR for a variance. Their lawyers can try to convince the DNR that the slight excess poses little danger. If they don't get the variance, they'll have to conform, or go to court; though all this will probably cost Wolfog more than the cost of compliance.

However there's nothing to be done on an individual basis. Manager Edgar Owens should not expect engineer marvin to 'adjust' the data and Marvin shouldn't do it. Edgar's reasoning is self-serving: if he's worried about image and tourism he should comply with the regulations. It may well be true that if Wolfog has to spend the \$200,000 which they can't afford, they're in trouble, but the answer, if there is an answer, is not to fake data.

II

This might be one of those cases in which most people are better off if the law is violated rather than obeyed. Such situations are probably more common than realized. It's not the discharge itself which does any harm, but the fact that it's not in conformity to the regulations, since this creates the image problem and scares away the tourists. This obviously makes an excellent case for loosening the regulations: regulations should not be more onerous than necessary to achieve their purpose.

The more people who have a stake in economic development, the more likely is this case to be heard by the authorities.

III

Whether Deborah, the DNR water quality official, would agree that the violation is a 'mere technicality,' depends on Deborah. We don't know enough about her; if she's a radical environmentalist, she thinks zero dead fish is the only tolerable condition, and no cost is too great to achieve it. She also may think there is no such thing as a technical violation: a violation is a violation, may be her enforcement motto. One might take the view that if she thinks this, she shouldn't be in her position, but perhaps her boss thinks so too. Perhaps this is the motto of the entire DNR, which if it is shows something about the irrationality we've gotten ourselves into.

IV

Would the parents agree that the violation is merely technical? Probably not; the local parents have been whipped up by the environmentalists and the media to think that any drop of anything is dangerous. They want jobs, economic progress, low taxes, low prices, and a pristine environment as well, (who doesn't?) and they are not willing or able to understand the issues involved. And they vote.

V

So given this hypothetical gloomy situation, is the over-all best solution that Marvin should just fake the data? One might make such an argument from a narrow act utilitarian point of view, but for all sorts of reasons including long-range utility it isn't right for anyone to submit a fake report, so the question whether everyone might do so is purely hypothetical. Another question would be, if it's right to grant a variance to Wolfog, is it right to grant a variance to every plant? And the answer would be yes, which is not an argument not to grant the variance to Wolfog, unless there is a comparable compelling reason at the other industries (for example, it might not cost everybody \$200,000 to clean up). If there is, then the DNR is within its rights in denying the variance. If all the factories together produce a total discharge that is

dangerous, the situation changes by that fact. But if there are no other plants in Wolfog's situation, then the so-called principle of universalizability should not be used as an excuse to impose hardships on one firm without any compensating gain for anyone except the few fish.

VI

Marvin shouldn't fake the data. The rest is up to the people at Wolfog.