International Association of Judges  
Third Study Commission  
Response of the United States Delegation to Questionnaire  
By Judge Charles R. Simpson, III  
Yalta, Ukraine, October 5-10, 2013

Question 1

Does your country have special legislation for:

1.1 The violation of environmental laws?

Yes, the Environment and Natural Resources Division (“ENRD”) of the U.S. Department of Justice, and the Environmental Protection Agency (“EPA”) ensure clean air, water, and land under approximately 150 federal criminal and civil statutes.

1.2 Criminal investigation of environmental law violations?

Yes, the ENRD investigates violations of federal environmental laws when a federal agency, like the EPA, notifies the ENRD of a violation. Then the ENRD or EPA investigates the alleged violation.

1.3 Is legislation regarding environmental laws under consideration?

Not applicable.

Question 2

2.1 Do your environmental laws include specific punitive punishment?

Yes, environmental laws include specific punitive measures. Even if an environmental statute does not authorize criminal punishment, the activity may be prosecuted under other federal criminal statutes—such as statutes regarding making false claims, aiding and abetting, conspiracy, smuggling, obstruction of justice, or perjury.

2.2 What are the possible sentences? Please give examples.

Possible sentences for the violation of the following acts include:

(a) **Clean Water Act**
For a first offense, the fine is $2,500 with a maximum fine of $25,000 per day of the continuing violation and up to 1 year imprisonment. For subsequent offenses, the maximum fine is $50,000 per day. For a violation that is a known endangerment—such as placing another person in imminent danger of death—for an individual, the maximum fine is $250,000 and up to 15 years imprisonment; for an organization, the maximum fine is $1 million.

(b) **Clean Air Act**
For a first offense, the maximum penalty is 5 years imprisonment and fines. For subsequent offenses, the penalties are doubled. Criminal penalties are imposed for violations such as constructing or modifying an unauthorized air source, emitting a hazardous pollutant, or failing to comply with the National Emission Standards for Hazardous Air Pollutants.

(c) **Federal Insecticide, Fungicide, and Rodenticide Act**
For a first offense, the violation is a misdemeanor. An individual is subject to a maximum fine of $1,000 and up to 30 days imprisonment. A commercial organization is subject to a maximum
fine of $25,000 and up to 1 year imprisonment. A manufacturer or producer is subject to a maximum fine of $50,000 and up to 1 year imprisonment.

(d) **Toxic Substances Control Act**
Violations are punishable by a maximum of 1 year imprisonment and up to a $25,000 fine per day for failure to comply with the act.

(e) **Ocean Dumping Act**
For a first offense, the maximum fine is $65,000. For subsequent offenses, the fine is $157,500. Violations include, dumping without a permit and dumping materials inconsistent with a permit. However, a violator who knowingly violates the act is subject to up to 5 years imprisonment and forfeiture of any property derived from the violation or used in the violation.

(f) **Safe Drinking Water Act**
For a first offense, violators are subject to up to 20 years imprisonment for tampering, attempting to tamper, or making threats to tamper with public water supplies. The maximum fine that may be imposed is $1 million for tampering, and $100,000 for attempting or threatening to tamper.

(g) **Emergency Planning Community Right to Know Act**
For a first offense, the maximum fine is $10,000 or $25,000 per day of noncompliance. For subsequent offenses, the maximum fine is $75,000 per day.

**Question 3**

3.1 **Is “restitution” possible? For instance, is it possible to revoke a suspended sentence if the offender does not fulfill certain conditions? For example, conditions to repair all damages and take measures to prevent future damages.**

Yes, restitution is authorized in some criminal environmental cases. In those cases, the court has the discretion to set conditions of probation and may order the violator to pay restitution to the victims affected by the offense. Restitution is not mandatory and may only be awarded to specific victims of the crime, such as an individual resident in an affected community. Criminal enforcement involves fines, restitution, and imprisonment. However, injunctive relief, which requires a violator to perform or refrain from performing an action or to maintain compliance with environmental laws, is a civil enforcement measure—not a criminal measure.

3.2 **In your country is it possible for the Public Prosecutor to decide to impose a fine instead of taking the case to Court (an out of court settlement)?**

No, criminal penalties must be imposed by a judge, not a prosecutor. However, environmental agencies may propose settlement agreements to the judge, and many of these cases settle.

3.3 **In your country is it possible for the Public Prosecutor to take coercive measures, i.e. measures by the Public Prosecutor during a criminal proceeding—like temporarily closing a factory?**

Yes, federal agencies may negotiate agreements with parties who violate environmental laws without court approval. Such settlement agreements usually address cleanup enforcement—such as finding the companies or persons responsible for contamination at a site and negotiating with them to perform the cleanup themselves. However, the court must approve settlement agreements that involve final cleanup requirements—those that order the violating party to perform the cleanup,
those that have the violator pay for the cleanup performed by another party or the agency, or those that recover costs that the agency incurred during the investigation and cleanup.

**Question 4**

*Has your country set up one or more specialized agencies to investigate and identify violations of environmental laws?*

Yes, the Environment and Natural Resources Division of the U.S. Department of Justice, the Environmental Protection Agency, and state enforcement agencies are the primary specialized agencies that investigate and identify violations of environmental laws.

**Question 5**

5.1 *Has your country signed and ratified Agreements, Treaties, or other forms of international cooperation regarding protecting the environment?*

Yes

5.2 *Has your country ratified:*

(a) **The Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal**

The United States has signed the Convention, but has not ratified it. The U.S. signed the convention in 1990, and the U.S. is developing legislation to implement the Convention's requirements in order to complete the ratification process. Until that time, as a non-party to the Convention, the U.S. participates in the meetings of the Convention parties, but cannot vote.

(b) **The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships**

No

(c) **The United Nations Convention on the Law of the Sea**

Yes

(d) **The International Convention for the Prevention of Pollution From Ships—Marpol**

Yes

5.3 *The European Union set up a system for the supervision and control of shipments of waste within its borders and with parties to: The European Free Trade Organization—EFTA; The Organization for Economic Cooperation and Development—OECD; and The Basel Convention. Have you had any experience with this system?*

(a) **The European Free Trade Association—EFTA**

No, the U.S. is not a party to the EFTA.

(b) **The Organization for Economic Cooperation & Development—OECD**

Yes, the U.S. has regulations governing the exports of hazardous waste within the OECD, which require notification, tracking documentation, recordkeeping, and reporting.

(c) **The Basel Convention**

No, until the U.S. ratifies the Convention, we are not required to comply with its provisions. However, dumping hazardous waste is a toxic tort in the U.S., so a violator may be found civilly liable for dumping.
Question 6

6.1 Could your country be more active in the field?
   No

6.2 Is there pressure from companies or governmental organizations to be more lenient regarding environmental laws based on economic reasons, or employment?
   No

Question 7

7.1 Could you, as a judge, be more active in the field?
   No

7.2 Are you, as an individual, active in the protection of the environment? Does that raise questions in your court?
   No

7.3 Do you think that you have enough instruments and qualifications to handle these types of environmental violations?
   Yes

7.4 Is it considered a specialization to handle environmental cases in court?
   No

Question 8

8.1 Do you think there should be rules to govern the situation in which pollution is discovered long after the company responsible for it has disappeared or changed ownership?

   In the United States, a federal law—the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")—provides broad federal authority to clean up hazardous substances. Under CERCLA, the EPA identifies parties responsible for contamination—including the owner or operator of a site at the time of the disposal of a hazardous substance, pollutant or contaminant—and compels them to clean up the site. When the responsible party cannot be found, the EPA is authorized to clean up sites itself.

Question 9

Is there any other comment on the subject that you would like to make?

No
Supplement to Response of the United States Delegation to the Questionnaire

Question 5.2:

Has your country signed and ratified the following Agreements, Treaties, or other forms of international cooperation regarding protecting the environment?

(a) The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

The U.S. has signed but has not ratified the Basel Convention. As of May 2013, more than 160 states and the European Union are parties to the Convention. The U.S. signed the Convention in 1990 and the U.S. Senate consented to ratification in 1992. The administration is developing legislation to implement the Convention's requirements in order to complete the ratification process. Until that time, as a non-party to the Convention, the U.S. participates in the meetings of the Convention parties, but is not allowed to vote.

The Basel Convention is an international treaty that was designed to reduce the movements of hazardous waste between nations, and specifically to prevent transfer of hazardous waste from developed to less developed countries. It does not address the movement of radioactive waste. The Convention regulates the import and export of hazardous waste among the parties to it and establishes legal obligations to ensure that waste is managed in an environmentally sound manner.

(b) The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships

The U.S. is not a member of the Hong Kong Convention, which is aimed at ensuring that ships—when being recycled after reaching the end of their operational lives—do not pose unnecessary risk to human health, safety, or the environment. Open for adoption in May 2009, the Convention intends to address all issues involving ship recycling, including the fact that ships sold for scrapping may contain environmentally hazardous substances such as asbestos, heavy metals, hydrocarbons, ozone depleting substances and others. It also addresses concerns about working conditions and environmental conditions in many of the world's ship recycling facilities.

(c) The United Nations Convention on the Law of the Sea, also called the Law of the Sea Treaty

The U.S. is a party to the Law of the Sea Convention, which defines the rights and responsibilities of nations in their use of the world's oceans and establishes guidelines for businesses, the environment, and the management of marine natural resources. Aside from its provisions defining ocean boundaries, the Convention establishes general obligations for safeguarding the marine environment and protecting freedom of scientific research on the high seas. It also creates a legal regime for controlling mineral resource exploitation in deep seabed areas beyond national jurisdiction.

(d) The International Convention for the Prevention of Pollution From Ships: Marpol Convention

The U.S. is a party to the International Convention for the Prevention of Pollution from Ships, which is the main international Convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. The Convention includes regulations aimed at preventing and minimizing pollution from ships—both accidental pollution and that from routine operations.
Question 5.3

The European Union set up a system for the supervision and control of shipments of waste within its borders and with parties to: The European Free Trade Organization—EFTA; The Organization for Economic Cooperation and Development—OECD; and The Basel Convention. Have you had any experience with this system?

(a) The European Free Trade Association—EFTA
The U.S. does not have experience with the EFTA, which is a free trade organization between four European countries—Liechtenstein, Iceland, Norway and Switzerland—that operates in parallel with the European Union.

(b) The Organization for Economic Cooperation & Development—OECD
The U.S. has regulations governing the exports of hazardous waste within the OECD, which require notification, tracking documentation, recordkeeping, and reporting. The OECD promotes policies that are intended to improve the economic and social well-being of people around the world. OECD countries agree on rules of the game for international cooperation.

OECD negotiations may result in: guidelines, such as those on corporate governance or environmental practices; formal agreements by and between countries, such as those that combat bribery, or arrange for export credits; standards and models, such as the application of bilateral treaties on taxation; or recommendations, such as those on cross-border cooperation in enforcing laws against spam.