



By Carolyn Raffensperger

An Imagined Firm Letter to Industry

DEAR CLIENTS: Our economy is threatened by increased public attention to environmental problems and demands that Congress and the courts address them. They are challenging everything from trade with China (where do they think food and clothing come from?) to mining procedures (those were just illegal Mexicans in that collapsed shaft!) to toxic chemicals in plastics (how else can we move bottled water around the planet?).

We believe that protecting public health and safety should be left to the wisdom of the unfettered market, not edicts from unelected agency officials. Here is our suggested strategy:

1. Pass complex, ambiguous legislation so the implementing agency is free to interpret it as requiring no changes in business.
2. Have the president attach a "signing statement" to the bill that says he won't enforce it.
3. Take decades to draft the implementing regulations.
4. Before the draft regulations are published, hold closed-door sessions with industry (preferably with the vice president so you can claim executive privilege). Obtain promises that the regulations won't impinge on business.
5. Make sure that all health and safety information sent to the agency is designated confidential business in-

formation to deny public access.

6. Require that regulators account for economic factors, minimizing public health and environmental issues. This way, OMB can use its oversight powers under Executive Order No. 12866 to water down regulations.

7. Have the Justice Department write a legal memo nullifying the parts of the regulation that impact industry.

8. Defer finalization of the regulations while industry sues.

9. Lay off agency staff because of budget cuts.

10. Require the states to draft their own regulations and then turn the program over to them.

11. Delay enforcement while the agency and states harmonize regulations.

12. Remind agency lawyers that their job is to protect the president and the agency.

13. Set aside any regulation that interferes with the military or the defense industry.

14. Make compliance with the regulation voluntary.

15. Hire too few inspectors.

16. Deny inspectors access to the site because it is under the jurisdiction of the states.

17. Refuse to fine industry for violations, giving them a chance to rectify their mistakes in a way that best fits their business plan.

18. Fire any inspector who cites or fines industry for exceeding authority.

19. Express extreme surprise when (choose one) the bridge fails, the mine collapses, the ship hits a rock and spills millions of gallons of petroleum.

20. Blame the problem on illegal aliens, alcohol, or insubordinate or lazy inspectors.

21. Promise to fix the problem.

22. Get a presidential promise to veto anything that would impinge on national security or business.

23. Rage against the party in power for refusing to fix the problem.

24. Get conflicting science on the "cause" of the disaster.

25. Hold a congressional hearing on the disaster with the appropriate weeping victims and if possible, a movie star.

26. Repeat steps 1-25 as many times as needed.

A similar strategy applies to enforcement by the courts:

1. Prevent citizen suit provisions in legislation and ensure that there are no fee-shifting provisions so plaintiffs have to pay for litigation.

2. Get the court to deny standing.

3. Challenge all evidence in a pre-trial hearing and have it thrown out on *Daubert* grounds. Do not let the case go to trial, especially before a jury.

4. Hire scientists to perform mis-

leading studies that will "prove" that industrial activities aren't harmful and publish their results in peer reviewed journals. Don't disclose authors' financial conflicts of interest.

5. Coordinate a media strategy, as pioneered by the tobacco

industry, to manufacture uncertainty in the public's mind.

6. Take judges on junkets to Hawaii. As you play golf, brief them on "sound science" and cost benefit analysis.

7. Fund the election of state judges who rule your way. Throw out judges who rule against you.

8. If you can settle, make sure all court records are sealed so the next plaintiff has to spend tons of money getting the same information.

9. Stack the American Law Institute with friends from industry and guarantee that the restatements of the law favor business.

10. If you lose, go back to Congress or the states and demand tort reform.

Should we be leaving protections to the "wisdom" of the unfettered market, not "unelected" agency officials?

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