

C O M M E N T S

# TUMULTUOUS BEGINNINGS OF EPA ENFORCEMENT: AN INSIDER'S ACCOUNT

by James O. McDonald and Joel A. Mintz

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*James O. "Jim" McDonald was the first director of enforcement in the U.S. Environmental Protection Agency's (EPA's) Midwest regional office. His privately published autobiography, Holes in My Shoes: Tales of Growing Up in the Great Depression, provides a candid account of his impoverished childhood and his memorable experiences as a soldier, student, journalist, amateur athlete, and public health official. Of particular interest to students of environmental law and enforcement, however, is his account of his critical leadership role as the Midwest regional director of enforcement in the formative years of EPA. A strong-willed, pragmatic, and inspiring manager with an extraordinary talent for complex negotiations and a bold willingness to seize the initiative, McDonald made an unparalleled contribution to building a credible EPA enforcement effort. Under his guidance, the regional office he headed took more than 50% of the Agency's enforcement actions in its first two years.*

*I (Joel Mintz) had the good fortune to be one of Jim's EPA staff attorneys from 1975 to 1978, and later his longtime mentee, correspondent, and friend until his death in 2018. Through the kindness of his surviving friends and relatives, I was provided a copy of Holes in My Shoes with permission to edit and republish all or part of that memoir.*

*While McDonald was working as an investigator/interviewer in the Public Health Service's venereal disease eradication program in Chicago, in the spring of 1957, he heard of a job opening in a newly created federal program, the Federal Water Pollution Control Agency, to combat water pollution. What follows is a modestly edited version of Jim's account of his pioneering work.*

The program involved the making of grants to local municipalities to aid the construction of municipal sewage treatment plants. Such a program was needed to curb the pollution caused by all the gross discharges of raw and inadequately treated sewage and industrial wastes that were being spewed into the nation's overburdened waterways. The program's regional office would be staffed by a small group of sanitary engineers, but a position was also being created that matched my legal skills: meeting and negotiating on-site with municipal lawyers, contractors, and city officials to ensure that federal grant conditions would be satisfied. I became excited by the position's possibilities and challenges.

Once on the job, I began briefing myself in detail about water pollution and how that pollution affected the uses of the receiving waters. I soon started making trips to various towns within the responsibility of the Chicago regional office: Illinois, Wisconsin, Indiana, Ohio, Michigan, and (later) Minnesota and (briefly) Iowa. Some of the largest and

most notorious municipal and industrial polluters in the United States—in Chicago, Detroit, Cleveland, Milwaukee, Cincinnati, Minneapolis-St. Paul, and Indianapolis—were within the jurisdiction of the Chicago regional office.

The job ahead appeared immense. With the exception of Chicago, none of those large cities, nor hundreds of smaller cities within our responsibility, had more than the most rudimentary municipal sewage treatment works if they had any at all. Moreover, most cities appeared to have a cavalier attitude about treating their wastes. They operated under the then-popular notion that "dilution is the solution to pollution," meaning it was an acceptable practice to discharge raw or inadequately treated sewage and industrial wastes into a river or lake because the effects of the discharges would be diluted by the receiving waterway. So pollution had become a serious problem, limiting the uses of many waterways for swimming, fish and other aquatic life, general recreation, and, most importantly, public drinking water.

From the mid-1950s through the 1960s, public sentiment against the continued abuse of the nation's waters grew, and public officials at all levels felt growing pressure to respond to the water pollution issue. Ultimately, in December 1970, strong public clamor for effective action led President Richard Nixon to create EPA, a new super agency, to combat environmental pollution. This new entity included my own office, which had been housed in the U.S. Department of the Interior. At the same time, the U.S. Congress began to enact a strong set of new federal statutes intended to curb and eliminate environmental threats.

EPA's Midwest office was initially headed by two presidential appointees, Francis Mayo and Valdas "Val" Adamkus, neither of whom then had much experience with environmental matters. Both of those men immediately came under pressure to make effective use of the enforcement tools that Congress had included in its new round of environmental legislation. By good fortune, I was well-positioned to play a role in the new EPA enforcement push. I was still the sole person on EPA's regional office staff with a legal background, combined with job-acquired technical know-how about controlling pollution.

A cautious, self-protective individual by nature, Mayo felt personally ill-prepared to launch an aggressive, highly visible regional enforcement program. In April 1971, in response to a generous recommendation from Murray Stein—a highly respected longtime federal antipollution official based in Washington, D.C., with whom I had collaborated in the past—Mayo essentially implored me to direct the new EPA Midwest enforcement program. I responded by insisting that I be free to run the enforcement division unfettered, with no second-guessing from above. After receiving firm assurance that I would have complete independence, and that Dale Bryson, a young, dedicated engineer, could be my deputy director, I accepted the position with optimism and enthusiasm.

The eight years that followed brought challenges, stresses, and successes, as Bryson and I built and administered an aggressive enforcement effort. We quickly recruited a staff of eager young lawyers and more supporting technical staff, and before long we became the biggest law office in Chicago devoted to one purpose only: fighting pollution no matter what the source. Joel Mintz, an outstanding attorney on our enforcement staff, along with Dave Ullrich, Gail Ginsberg, Peter Kelly, and Mike Smith, formed the nucleus of our growing staff of charged-up idealistic young attorneys with a fervent passion for their jobs; they spearheaded many cleanup successes in the Chicago region. We soon began scoring a succession of victories that paved the way for massive pollution cleanups. I tried at every turn to imbue my staff with still further dedication, always reminding them that our *modus operandi* was not only to be unrelenting in our quest for a cleanup, but also always to operate with integrity, fairness, and balance.

In directing my staff, I demanded accountability. When assigning work, I followed up with regular, periodic face-to-face progress report meetings. Those meetings motivated the staff to do a good job and, to the dismay of some,

I actually thrived on holding the staff accountable. Even though I did make my share of mistakes, I plunged forward with passion, never reluctant to move ahead swiftly. I was working on something I totally believed in, an attitude that held me in good stead when the going got rough.

In some instances, polluting industries used whatever means they could to try getting us to back off from taking enforcement actions. We had deliberately targeted steel mill pollution in our first set of enforcement cases, reasoning that this approach would yield important cleanup successes while also sending a message to smaller sources that we meant business. One of our earliest court cases was an attempt to close down two existing, grossly polluting coke ovens at U.S. Steel's huge Gary Works in Gary, Indiana. We sought to have the ovens replaced by readily available technology that would stem the tons of toxic air pollution from them that were endangering the health of local residents and steel mill workers. In fact, U.S. Steel was the most egregious polluter within our jurisdiction. That is why we devoted all the resources necessary, including much of my own time, to bring this giant, defiant polluter into compliance.

One Saturday morning, while I was in my office doing some catch-up weekend work, I received a call from Alan Kirk, then EPA's national enforcement chief and general counsel. Kirk told me that EPA's top boss, Administrator Russell Train, had been informed by a steel company executive, who happened to be a neighbor at Train's Maryland vacation home, that EPA had been treating U.S. Steel unfairly, and that our court case was likely to result in the loss of more than 2,100 jobs at the company's Gary Works and significant economic hardship in the local community.

Not acquainted with the details of our case against U.S. Steel, Train agreed to hold a meeting two days hence with U.S. Steel's high-ranking brass and attorneys, with me there to present the government's side of the case. So, I got up in the middle of the night and hopped a plane to Washington to attend an early Monday morning meeting in the Administrator's conference room. Though I was surprised that Train would agree to a meeting involving an ongoing court case, I had no qualms. I was confident that we had treated the company fairly and reasonably, as we tried to treat all polluters.

When the meeting started, Train asked the company to present its side of the case. U.S. Steel's environmental affairs vice president, Earl Mallick, took the floor, trashing me personally in the process with "facts" that just weren't so. His misstatements fell in with my typical encounters with the company, which would say and do anything to avoid spending money on environmental improvements. When Train asked me to present the government's side of the case, he listened attentively. By the conclusion of my presentation, Train had obviously realized that he had made a mistake in agreeing to the meeting at all. He turned to Kirk, said "I don't know what the hell I'm doing here, Alan. Let me know how it all turns out," and abruptly left the room.

Back at my office the next day, I got a call from Train, an old Washington hand who clearly knew how to use power

when he had to. He said that he had gotten in touch with an editorial writer for the *New York Times* who would be contacting me for details about our case against U.S. Steel and then writing an editorial about the case. The editorial writer called me within an hour, and I filled him in on the details of our case against the company's Gary Works. Impressed, the writer told me to look forward to an editorial in the paper within the next day or two that he thought I would like. A damning editorial appeared two days later, with dramatic effect.

Shortly thereafter, the company capitulated by closing down those polluting coke ovens. Only 30 jobs were lost as a result, a far cry from the 2,100 jobs U.S. Steel had claimed would be eliminated. We had scored big against a major adversary. I used the occasion to remind the staff that in operating fairly and reasonably, with a compelling set of facts on our side, it was hard to go wrong.

U.S. Steel continued to be the biggest and dirtiest polluter in our region, however, and we therefore continued to devote all the resources necessary to bringing it into compliance. The biggest notch in our U.S. Steel enforcement belt occurred in June 1977, when we settled two major pollution suits against the company's Gary, Indiana, plant just short of going to trial. After playing the stalling and haggling game for years, the company finally agreed to upgrade its pollution controls to come into full compliance and avoid imminent fines of \$10,000 per day.

The significance of what happened in bringing the company to heel was not lost on the local or national media. Banner headlines appeared in all the Chicago papers proclaiming the victory. It was a front-page story in the *New York Times*, and the case received heavy television network coverage as a result of a news conference we held at the regional office the day of the settlement. I was also the subject of very favorable personal publicity in such varied outlets as the *Chicago Tribune*, the *Chicago Daily News*, an Iowa PBS station, and *Time* magazine.

As flattering (and invigorating) as it was, I considered getting such publicity as part of my job. I had no intention of letting it sidetrack me or my team. We still had a big job facing us, and we had no intention of resting on our laurels. Instead, we hoped to push forward with renewed vigor and use the U.S. Steel case as a wedge to settle other cases.

While the job was exciting and invigorating, it entailed a high-keyed rhythm that was at the same time utterly exhausting. After five years directing EPA enforcement in the Midwest, a "burned out" feeling began to take hold of me. I knew that I needed more than a two-week vacation to refresh myself. Although I had little hope of gaining approval for an extended hiatus, I decided to try for one. I learned that the University of Southern California (USC) was seeking students for enrollment in a three-month graduate program at its Environmental Management Institute in Los Angeles. I was accepted to that program and, much to my surprise, I had little problem receiving approval for a leave of absence.

As it turned out, my boss, Regional Administrator Mayo, was in the process of being transferred to Cincinnati. He was happy to approve my leave. Mayo was replaced by

George Alexander, a lawyer who was serving as EPA's congressional liaison officer in Washington. An ambitious guy with an ego, whose background as a business executive had aroused (unfounded) suspicions among some influential environmental activists, Alexander saw my being absent as an opportunity to establish his own commitment to vigorous enforcement.

So, off to balmy southern California went my wife, Mary, and I for a badly needed three-month break. My one tie to the office was the weekly phone call I made to my deputy, Bryson, to check on how things were going under his leadership. Things were going well at times and chaotically at other times. Situation normal.

After returning from USC, it took me about six weeks to get back into the swing of things in Chicago. I wanted to stay low-key, but I simply couldn't. The job's routine was the same go, go, go as always. As each year went by, we had more and more judicial cases in the pipeline, and I felt those cases required my personal involvement. I wanted to be directly involved to help train some of our less experienced staff lawyers by letting them watch me in action, particularly in settlement negotiations. I also got much personal satisfaction in confronting hard-nosed polluters and their lawyers. My competitive instincts would be at full throttle during those sessions, and I relished participating in them.

All went well and with the victories our office was scoring against polluters, I had become an increasingly hot commodity to those wanting me to fill one of the top enforcement jobs in our Washington headquarters office. As a result, I received a stream of job offers, all of which would have required me to transfer to Washington to head up one segment or another of the national enforcement effort. As fast as those offers came, however, I declined them just as speedily.

Occupying that kind of job simply had no appeal to me, even though I would have had a seemingly more prestigious job title and higher pay than was available in a field office job in Chicago. Temperamentally and intellectually I would not fit into the Washington environment—setting national policy, preparing budgets, and doing related paperwork—and fortunately I knew it. So, I continued sailing along in Chicago, content to do the exciting and meaningful work I felt I was doing as the enforcement chief in the most active and productive regional office in the country.

But my ability to stay in my job in Chicago became uncertain in the summer of 1978. Because the headquarters office could not summarily transfer me or other regional executives to any geographic location they wished, to any other job they wished to fill in the Agency, the headquarters gang designed a new personnel scheme. Under the new arrangement, they could transfer personnel to any other place in the nation with the stroke of a pen, and also remove certain people from any job they wanted to fill with a political appointee.

Headquarters announced that the jobs of the 31 senior executives assigned to the 10 EPA regional offices were to be abolished, and those who had occupied those jobs, myself

included, would have to apply for their own jobs within six weeks in order to be reappointed. Moreover, after headquarters had selected individuals to fill the 31 “vacant” executive positions, those selected were to be required to sign a “mobility agreement” that would allow them to be reassigned to other jobs anywhere in the country, including in the Agency’s Washington headquarters.

Headquarters’ announcement hit those of us affected like a bombshell. Personally, I considered the fact that my job was being abolished, and that I would have to apply for the exact same job along with other applicants, a gross insult. Was the abolition of my job headquarters’ thanks for all the hard work that I and others had invested in our roles over the years? Almost immediately, I decided I would leave the Agency rather than apply for my own job in competition with others. Being competitive by nature, competing with others didn’t bother me. But the devious process that brought about that competition did bother me a lot.

After talking it over with my wife, we decided that my days at the Agency would soon come to an end. At a meeting in New York City on November 8, 1978, I informed some of the Washington brass, including Marvin Durning, the relatively new national chief of enforcement, that I had decided not to compete for my own job. I told them that I considered the new personnel policy to be a below-the-belt move, and that I wanted no part of such a rigged scheme. I indicated that my decision to leave was final but that I would stay on the job, for purposes of continuity, until a successor was ready to report for duty.

My decision to leave sent ripples through my office. Everyone had taken it for granted that I would apply to continue on in my job. After all, I was the only enforcement boss most of the staff had worked under. My regional staff had gone from having six people on board when I first took over, to the 140 people who composed the staff when I announced I would be leaving. The big buzz among the staff was about who my replacement was going to be. Until that was resolved, the staff would operate under a cloud of uncertainty.

The news of my leaving soon hit the newspapers, and the *Chicago Sun-Times*, the *Detroit News*, and others published editorials praising the work I had done. Those tributes were flattering, but my immediate thoughts were on trying to decide what to do after EPA. Although job offers and feelers from law firms and industry came my way at a big boost in pay, I ruled out considering any of them. As far as I was concerned, accepting one of those jobs would have been going over to “the other side” after what I thought was a career on the side of the angels (even if some others had a vastly different opinion). Frankly, I was not constitutionally suited to joining a law firm promoting or defending the cases of polluters. I also received offers from within EPA itself and from state governments, along with an offer to be an adjunct instructor in environmental law at DePaul University.

The one offer I actually did consider came from Tom Sullivan, a great lawyer and good friend, who was the U.S. Attorney for the Northern District of Illinois headquar-

tered in Chicago. Tom offered me a job forming and heading up a pollution control prosecution unit in his office. Much as that offer appealed to me, however, I knew Mary very much wanted to return to California, and it was time for me to think of her needs first. I told Tom it was no dice without saying much more. Mary and I would head for California. There would be no turning back. But first I had to wait until my successor was appointed, as I had promised to do.

A new regional administrator, John McGuire, an attorney and a Chicago Democrat, had recently been appointed to succeed George Alexander. I was sorry to see George go. We had worked extremely well together, and he had wholeheartedly supported a strong enforcement program. After just a few weeks, I really learned how much I missed George.

As November rolled into December of 1978, I honored my commitment to stay on the job until my successor was picked. During my last weeks on the job, the great majority of my time was spent getting as many lawsuits in the pipeline as possible. This would allow my successor to get off to a running start, whether that running start was wanted or not. Industry representatives, as a chorus, accused me of ganging up on them in my final months. In fact, they were right. I was ganging up on them simply because they were in violation of the nation’s environmental laws. I would otherwise have had no interest in filing cases to force them to clean up their messes and pay penalties.

Finally, in mid-March 1979, more than four months after I had announced my intention to leave the Agency, McGuire named my successor. She was Sandi Gardebring, a 31-year-old Democratic lawyer from Minnesota’s Twin Cities who had previously headed the Minnesota Pollution Control Agency. I had known Sandi for several years, and personally I had worked well with her. I wanted her to be as successful as possible since I had invested a lot of years building up an organization to fight pollution effectively; the last thing I wanted was to see that organization come crashing down.

In my last few days on the job, having declined to participate in a large staff-wide going away party, I agreed to a series of small lunches with my staff. Individual staff members also stopped by my office to say goodbye, and my secretary, Donna Sowinski, couldn’t resist setting up a modest cake and coffee party just outside my office. Also, to my great surprise, on my very last day, McGuire presented me with the Agency’s top honor award, the Gold Medal for Distinguished Service, along with a check for \$2,000. I later learned from Frank Corrado, our regional press officer, that it was Val Adamkus who had pushed for these awards.

At three o’clock on my final afternoon at EPA, I walked out of the Agency’s offices for the last time. Among my emotions were feelings of emptiness and some uncertainty. I wondered how hard it would be to adjust to my new status in life. Still, I had no regrets about my decision to leave EPA. I would now be the captain of my own ship, and that was intriguing. It had been a great ride and that ride was now done. My EPA career was finished.

*Jim McDonald lived the rest of his life in southern California. In December 1998, after 47 years of marriage, he was predeceased by Mary, a loss that caused him immense pain and anguish. He eventually met a woman named Donna (who, coincidentally, had acquired the last name McDonald after marrying another man named Jim McDonald), and they became close friends and companions in his remaining days.*

*McDonald briefly considered running for Congress, but abandoned that plan when he learned that such a campaign*

*would be prohibitively expensive. He remained alert and active, however, writing books and manuscripts about management techniques, testifying on environmental issues before local, state, and federal governmental bodies, and briefly pursuing some environmental consulting. Jim also had several hobbies in his final years, including travel, distance walking, and participating in a local script-in-hand theater company. After contracting kidney disease and cancer, he died of a heart attack in 2018 while completing a crossword puzzle.*