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Inside Story:

It's best to trust the numbers, not the politicians

By MIKE DUNNE

How many times have you heard that the Bush Administration is soft on enforcement?

Well, Knight-Ridder's Seth Borenstein gathered 15 years of enforcement statistics from the Environmental Protection Agency and analyzed them. The answer: George Bush, the father of the incumbent, has been the most stringent enforcer of environmental law in the last three administrations, but George W. is soft on environmental enforcement compared to his two predecessors, one Democrat and one Republican.

The Washington, D.C.-based Borenstein loves numbers and his use of them proved what many often said, but could not document.

"This is a city of spin, but numbers give you a sense of trust that rhetoric does not," Borenstein said.

In his story, which ran Dec. 6 in newspapers around the country, Borenstein reported:

"Violation notices against polluters are the most important enforcement tool, experts say, and they've had the biggest drop under the current President Bush. The monthly average of violation notices since January 2001 has dropped 58 percent compared with the Clinton administration's monthly average.

"Those pollution citations dropped 12 percent from 2001 to 2002, and another 35 percent from 2002 through the first 10 months of 2003.

"Punishing polluters — by fines or referrals for prosecution — has dropped as well, but not as dramatically. Administrative fines since January 2001 are down 28 percent, when adjusted for inflation, from Clinton administration levels. Civil penalties average 6 percent less, when adjusted for inflation. And the number of cases referred to the Justice Department for prosecution is down 5 percent," Borenstein wrote.

The numbers make it hard to spin a positive story for the current administration. But, as you can see in our Inside Story, that didn't stop EPA from trying to soften the blow expected from Borenstein's work.

SEJournal talked to the Knight Ridder Washington bureau writer about how he wrote the story:

Q. Tell me how the whole idea for the story started.

A. It started early on in the Bush administration when two top environmental enforcement officials quit, saying they were not allowed to enforce air pollution laws. It's heavily tied up in the political/regulatory issue of new source review. I kept getting told by state air regulators and environmental activists that EPA wasn't enforcing air pollution rules. So I kept watching the issue. At first, I tried David Burnham and TRAC (Transactional Records Access Clearinghouse) analysis, out of Syracuse, on criminal cases, but it didn't quite jibe with what I saw out of EPA. Then I used (former EPA enforcement chief and now watchdog group head) Eric Schaeffer's painstaking analysis of every civil case settlement. I wrote that story, but it was someone else's research and I felt I should look more comprehensively and do it myself. I also wanted to look at 15 years of data because it would give a good comparison to past administrations, especially the first Bush administration. I felt it wasn't right to just compare Clinton and Bush II and that turned out to really make my story because the fact that environmental enforcement was at its zenith under Bill Reilly and Bush I makes this seem less partisan. It's also so counter-intuitive.

Q. I know this was not the first time you tried to document enforcement. What went wrong the first time and what made the difference the second time?

A. At first I asked for way too much. I asked for summaries of each case on disk. I asked for criminal data, too, which was incomplete. I got a few disks and tried (to analyze them) for months back and forth with EPA officials who prepared the disks. I was looking to see if there was a trend on who was enforced, not just enforcement. If I had the time, patience and computer knowhow (EPA insists on using out-of-date WordPerfect files), I may have gotten something even better. But I have to do these projects on the side while doing dailies.

Q. What documents did you request and why?

A. I asked Eric Schaeffer, Sylvia Lowrance (who was the acting enforcement chief under Bush II for 16 months) and Dan Esty of Yale (a former Bush I top aide) what to look for. They said EPA keeps quarterly summaries for all sorts of enforcement categories and then told me what they were. All I had to do was ask for them. I went back 15 years because going back further would not have been fair because laws have changed dramatically.

It was a good date that brought in three administrations. Quarterly figures also give you the ability to look for short- and longterm trends. They said enforcement is a pipeline (everyone uses this analogy and I grew sick of it). So Bush II inherited many cases from Clinton and looks good because of previous work, and the same for Clinton and Bush I. The key way to eliminate this, they said, is to ask for notices of violations. These are the first step in the enforcement process. They are initial citations from EPA saying, we caught you doing something wrong, let's talk.

Bill Reilly, EPA chief under Bush I, said these really get companies' attention and he knows this from personal experience while on the board of directors of a cruise ship company. I also asked for enforcement categories by the law violated, i.e. Clean Air Act, Clean Water Act, RCRA. That was to see if there was any trend by resource – air, water, hazardous waste.

In addition to NOVs (notices of violation), which former EPA people said were most important but Bush EPA people said were useless (because [EPA's issuance of NOVs had] dropped precipitously), I asked for administrative penalties in dollar amounts, administrative penalties, civil and criminal referrals to DOJ, and civil penalties assessed (in dollars also). The criminal figures turned out to be too fluid because of prosecutions and trials, so I limited this to just civil enforcement. I was then able to break down each of these categories into sub-categories by law or resource. Thus I had air NOV's, water NOV's, etc. I only broke categories down when I had enough numbers to be meaningful, granted a judgment call here.

Q. Once you began to receive all of this information, how did you manage all of it?

A. This time, I was called by a data officer in the Office of Enforcement who was extremely helpful. We talked back and forth for a couple of months. I explained what I needed. He explained what he had, and then we tried to mesh the two. The guy was fantastic to work with. Eventually, he ran internal computer programs and sent me two inches of paper with summaries.

The only glitch was, at first, he sent some figures based on fiscal years and some based on calendar years and some that were hard to tell the difference. Eventually, he re-did them at my request to all fiscal years (except NOVs which luckily he had by calendar month so that was even better). I then painstakingly put them on an Excel spreadsheet so I could get a better trend look. Using Excel, I was able to take quarterly figures and find yearly trends, trends by administration.

The fiscal quarter begins Jan. 1, 2001, so there were a couple weeks of poorly applied credit, but not much. Given that I had 33 months of Bush II data I felt that I had enough data to see a trend. I let Excel point out trends and do the math. Then I took that Excel spreadsheet and created a summary Word document.

One other thing, on the dollar amount, I went year by year and converted them to 2003 dollars using an on-line inflation adjusting calculator.

Q. How did you analyze them?

A. I looked for trends by year, by administration and by law. I looked for record-low months and compared them to record-high months.

Q. What were the most surprising things you found?

A. That the first Bush administration did the most enforcement by far. It confirms a long-time feeling that the Bill Reilly EPA never got the credit that it deserved.

Q. OK, now you have numbers, what do you do with them?

A. I wanted them explained. Seeing that they made Bush I EPA look good, I decided that they would be good people to talk to. It also makes a story better if it is Republicans criticizing Republicans because then it seems less about politics and more about results and good government. I talked to past enforcement chiefs – Sylvia Lowrance of Bush II, Steve Herman of Clinton and James Strock of Bush I, Stan Legro of Ford.

I talked to several other ranking EPA officials, former EPA administrators Bill Reilly of Bush I and Russell Train of Nixon/Ford, as well as Dan Esty of Yale and former regional deputy chief Dave Ullrich.

I knew Sylvia and Dan as well as Bill Reilly and Russell Train. I had to use the EPA history website to find out who some of these people were and Google searches to find previous enforcement chiefs. But they were pretty easy to find. I also just asked people who I should talk to.

The Bush I people I approached about how good they did, why it was important and why things changed. Bill Reilly and James Strock would not outright criticize Bush II administration, but they explained why it was important and that helped with the story. Then others did the criticizing.

Through these people – Republicans and Democrats – I found current enforcement people who would talk not-for-attribution about what was going on in the administration.

Q. The strength of your story was not only documenting those downward trends, but also getting former officials to comment on them, many of them Republicans. Did you already have a long-standing relationship with those former officials?

A. There are a number of moderate Republican environmental officials who dislike what this administration is doing. They feel tarred by this administration and with a little pushing and prodding, you can get them to say so. I highly recommend Russ Train. What many reporters forget is that Richard Nixon and George H.W. Bush signed some of the most landmark environmental laws in existence.

Q. You told me you love number stories. Most reporters are turned off by numbers. What turns you on about them?

A. With numbers, you don't have the he-said, she-said spin of giving both sides. Numbers are numbers. This is a city (Washington, D.C.) of spin, but numbers give you a sense of trust that rhetoric doesn't. After I spend a lot of time with numbers, I feel more comfortable that I know what I'm talking about. I know that sounds silly, but numbers give me a warm-fuzzy. And in press conferences, I almost always ask number questions. You can trip people up or cut to the chase with numbers.

For example, one of the best ways of illustrating global warming is to point out this: The five hottest years on record all have occurred since 1997, and the 10 hottest since 1990. It's been 221 months since the world recorded a colder-than-normal month.

Yes, you can warp numbers in many ways, but if you approach numbers well they lead down a wonderful path in some vicinity of the truth.

Also, too many reporters are afraid of numbers, so I feel it gives me a competitive advantage to know numbers, spreadsheets, and data analysis.

The key is to not overuse numbers in a story so an editor's or reader's eyes glaze over. I haven't quite mastered that. I usually write up what I want and then try to limit each paragraph to no more than three or four numerals. But my editors still say I'm too number-oriented.

Q. How did EPA react?

A. They tried to pre-empt the story. First, I confronted new EPA chief Mike Leavitt in our initial get-acquainted interview and got vague stuff from him. It was usable, but not good. That put EPA on notice about what I had and where I was going. Then I told EPA that I wanted enforcement chief J.P. Suarez to talk about this. Leavitt said EPA was about to come up with its own numbers...so I had to hurry. On a Friday, I said I wanted to talk to Suarez by Tuesday for a story to run Wednesday. Over the weekend, EPA tried to hurry and pre-empt my story with its own numbers. On Saturday, a rare workday here in Washington, EPA's legislative liaison emailed some Capitol Hill people that they wanted to hurry up with a briefing on the issue on Tuesday so they could release their numbers that day. (Strange coincidence on timing, huh?)

I found out. So by Monday afternoon, I told EPA my story would run Tuesday.

They cried foul and said they couldn't get Suarez for me Monday. I said tough, you tried to screw me over, so this is what happens. They said they couldn't get the numbers together for their planned Tuesday press release, so could I wait. My editors and I agreed that we couldn't trust them given what they did and when we heard what they planned to do, so we let our papers know the story was coming.

We told EPA the story was running Tuesday no matter what and they had only their own conniving to blame. At 5:15 p.m., they gave me Suarez on the phone and I inserted his explanations.

He said NOVs don't matter. Strangely enough, everyone else told me just the opposite.

Q. What were some of the repercussions of your story? Did it spur new tips?

A. First, EPA went out on a public relations blitz with their numbers, but luckily there were few takers. Three top EPA enforcement people – including Suarez – quit in December. A couple of them – not Suarez – said it was because they were not being allowed to enforce new source review. In January, EPA took the unusual action of finally enforcing new source review.

Tips, I got tips. I'm looking at other federal agency enforcement. Unfortunately, I have to learn the lingo and minutiae there, unlike knowing EPA from the beginning. I could spend months just looking at Bush enforcement policies and just may.

[Read Borenstein's story.](#)

Borenstein has been a national correspondent for Knight Ridder's Washington bureau since June 1998. He covers environment, science, space, public health, disasters, aviation "and Santa Claus," he says. "I really did a story on the science of Santa just after my enforcement piece."

Before joining Knight Ridder's Washington bureau, he covered NASA for the *Orlando Sentinel*, and hurricanes, disasters, environment and city government for the *Sun-Sentinel* in Fort Lauderdale. He has worked at the *Daily News* of Newburyport, Mass., covering city hall and was editor of the now-defunct *Belmont Citizen*, a weekly in the Boston suburbs.

He went to Boston University and was graduated with a bachelors of science degree in journalism. He and his wife have three children and he is the cubmaster for Pack 460 in Kensington, Md.

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