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INTRODUCTION

Forty years ago, people may not have cared about which companies used the most carbon-neutral manufacturing processes, or which used non-biodegradable packaging. Things have changed. Now green is everywhere—green cars, green packaging, green buildings. This green wave of current environmentalist thought stemmed from the likes of Thoreau and Muir, while the old guard of environmental thought stemmed from the utilitarian approach favored by Theodore Roosevelt, where the wild lands existed to be tamed.[1] Though the environmentalist movement was slow to start, it began to pick up steam with the publication of *Silent Spring*.[2] Being green started to become synonymous with good business. Companies are now able to capitalize on their new green-collar jobs and biodegradable packaging. However, green manufacturing techniques can only take a company so far. To borrow from the introduction of *Green to Gold*:

> Our economy and society depend on natural resources. To oversimplify, every product known to man came from something mined or grown. The [Note] you're reading was once a tree; the ink these words are printed in began life as soybeans. The environment provides critical support to our economic system—not financial capital, but natural capital.[3]

When, as is often the case, a company's practices don't match up to the image they would like to have, they start to engage in greenwashing.

The term "greenwashing" stems from "whitewashing." While whitewashing a fence may bring up sentiments of down-home Americana,[4] when applied to corporations its meaning is more sinister: "a deliberate concealment of someone's mistakes or faults."[5] Greenwashing is defined as "disinformation disseminated by an organization so as to

1. BRIAN TOKAR, EARTH FOR SALE: RECLAIMING ECOLOGY IN THE AGE OF CORPORATE GREENWASH 6 (1997).
2. RACHEL CARSON, SILENT SPRING (1962).
3. DANIEL C. ESTY & ANDREW S. WINSTON, GREEN TO GOLD: HOW SMART COMPANIES USE ENVIRONMENTAL STRATEGY TO INNOVATE, CREATE VALUE, AND BUILD COMPETITIVE ADVANTAGE 3 (2006).
4. *See, e.g.*, MARK TWAIN, THE ADVENTURES OF TOM SAWYER ch. 2 (1876).
5. *Whitewash*, *in* COMPACT OXFORD ENGLISH DICTIONARY (Catherine Soanes ed., 3d ed. 2005).

present an environmentally responsible public image."[6] Large corporations are most commonly accused of greenwashing. The charges usually stem from some environmental stance a corporation publicizes without putting its rhetoric into practice; talking the talk without walking the walk. Most corporations do not greenwash their reputations by lying outright. Rather, they bend the truth or misrepresent their ecological stances. The deception often lies in the emphasis corporations place on their ecological projects, rather than in the existence of the projects themselves.

Part I will discuss the history and present state of corporate greenwashing, further illustrating the phenomenon with specific examples. Part II examines why greenwashing occurs, and takes into account the actions of consumers, investors, and the greenwashing companies themselves. Part III examines greenwashing's impact on both the environment and on the fabric of society. Finally, Part IV marches out various ways we can address the problem of greenwashing, including implementable legal, legislative, and societal changes.

I. Greenwashing: Past and Present

Greenwashing is a relatively new strategy for corporations. The environment did not have a significant impact on the practice of marketing until the 1970s.[7] "The reasons for this limited impact range from environmental regulations being limited in scope and influence to society being ambiguous with respect to environmentalism and corporate social responsibility."[8] In addition, there was no coercive or regulatory influence motivating ecologically oriented marketing strategies.[9] This changed in the 1980s, when administrations like the EPA and laws like the Endangered Species Act and Superfund came into play.[10] Both the federal government and the general public began to pay attention to companies' environmental practices. Eventually, becoming environmentally friendly, or at least *appearing* environmentally friendly, started to look good for a company's bottom line. This stood as a shift from the traditional corporate response to allegations of environmental-unfriendliness, which had been to deny problems, avoid responsibility, and avoid controls.[11] For example, CFC manufacturers denied their role in ozone depletion for over fourteen years after scientists discovered connections

6. *Greenwash*, *in* CONCISE OXFORD ENGLISH DICTIONARY (Judy Pearsall ed., 10th ed. 2003).

7. Ajay Menon & Anil Menon, *Environmental Marketing Strategy: The Emergence of Corporate Environmentalism as Market Strategy*, 61 J. MARKETING 51, 52 (1997).

8. *Id.* at 52.

9. *Id.*

10. *Id.* at 53.

11. JED GREER & KENNY BRUNO, GREENWASH: THE REALITY BEHIND CORPORATE ENVIRONMENTALISM 14 (Third World Network 1996).

between their products and the destruction of the ozone.[12] During that period of denial, "chlorine built up in the atmosphere and depletion of the ozone layer accelerated worldwide."[13]

Now, green corporations are all the rage, and more and more companies are advertising their green stances. "But too many," said Michael Brune, executive director for the Rainforest Action Network, "are seeking maximum accolades for minimum change."[14] For example, Ford Motors gets a lot of mileage out of running advertisements for its lines of hybrid and flex fuel cars.[15] Brune argues that "[y]ou look beyond the green sheen, and Ford's actions don't match its rhetoric."[16] The rhetoric looks like this: "William Clay Ford Jr., chairman of Ford Motor, stares out from the television screen and pledges that the automaker is 'dramatically ramping up its commitment' to environmentally safer cars like gasoline-electric hybrids."[17] However, the rhetoric doesn't tell the whole story, which includes the move in 2003 where Ford "dropped its promise to increase average fuel efficiency on its sport utility fleet."[18] Likewise, "[i]n 2004, the company joined other automakers in suing to block a California law that would limit emissions of gases linked to global warming."[19]

Toyota, another major auto manufacturer, has received major accolades for its popularization of hybrid vehicles with the launch and promotion of the Prius, a gas-electric hybrid.[20] Toyota claims that "the Prius emits 80 percent less harmful gases than the most efficient standard vehicles."[21] Additionally, the Prius gets much better mileage than most standard vehicles due to its hybrid engine.[22] Left unsaid in Toyota's touting of the Prius is that "[t]he average fuel efficiency of the carmaker's vehicles has fallen to 27.5 miles per gallon, or eight liters every 100 kilometers, from 30 miles per gallon in 1985, because it sells more pickup trucks and SUVs, according to EPA statistics."[23] By greenwashing its reputation through the Prius, Toyota can draw attention away from its worsening fuel efficiency record.

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12. *Id.* at 14, 37.

13. *Id.* at 14.

14. Claudia Deutsch, *It's Getting Crowded on the Environmental Bandwagon*, N.Y. TIMES, Dec. 22, 2005, at C5.

15. *Id.*

16. *Id.*

17. Peter Robison & Gregory Viscusi, *Ecologists Unmoved by "Green" Wave in Advertising*, INT'L HERALD TRIB., Jan. 18, 2006, at 19.

18. *Id.*

19. *Id.*

20. The Prius has become the most popular car in the Silicon Valley as of July 2007. *See* Matthew Sparkes, *Prius Most Popular Car in Silicon Valley*, TREEHUGGER.COM, July 22, 2007, http://www.treehugger.com/files/2007/07/prius_most_popu.php.

21. Robison & Viscusi, *supra* note 17.

22. *See* Marshall Loeb, *Don't Be Fuelish: Try a Hybrid*, RECORD [BERGEN COUNTY, N.J.], May 14, 2008, at B02.

23. Robison & Viscusi, *supra* note 17.

General Motors is the world's number one manufacturer of motor vehicles, and motor vehicles are the number one source of air pollution and consume one-third of the world's oil.[24] The health costs attributable to vehicle emissions in the U.S. alone are $25 billion per year.[25] GM has a program of planting a tree for each car sold in its Geo division, a practice that sounds extremely eco-friendly.[26] However, to counter the amount of carbon dioxide produced by a single Geo car, GM would have to plant 734 trees over the lifetime of each vehicle.[27] GM has also lobbied against fuel efficiency and has supported political organizations which give campaign contributions to political candidates who oppose tighter emissions standards.[28] Against this background, that single tree planted for every Geo sold starts to materialize as a worthless gesture toward environmentalism, and a clear move toward the greenwashing of GM's reputation.

Auto manufacturers aren't the only culprits; power companies have also jumped onto the greenwashing bandwagon with both feet. Pacific Gas and Electric, of *Erin Brockovich* fame, has been running ads like: "Green is a city with country air" and "Green is 4 wheels on the road versus 400."[29] These ads are run despite the company's "history of environmental degradation" and "slow and litigious reaction to rectifying its past mistakes."[30] Aliza Wasserman, founder of letsgreenwashthiscity.org, a website that exposes instances of corporate greenwashing, took aim at PG&E's Climate Smart program, which encourages customers to pay an extra $4.31 per month to offset their carbon emissions.[31] Wasserman argued that PG&E has "launch[ed] an environmental project that relies on the consumer making the choice rather than the company taking on the responsibility to improve its operations."[32] If a company can get a green reputation without taking on any of the financial burden itself, so much the better.

PG&E has some company in British Petroleum, which has been launching its own green advertising initiatives. Of all of the major oil corporations, BP may have the most carefully crafted environmental advertising campaign. The company was placed on CorpWatch's Don't

24. GREER & BRUNO, *supra* note 11, at 161.

25. *Id.* at 162.

26. *Id.*

27. *Id.*

28. *Id.*

29. Amanda Witherell, *Green is the Color of Money*, GOOD MAG., May–June 2007, *available at* http://www.goodmagazine.com/section/Features/green_is_the_color_of_money.

30. *Id.*

31. *Id.*

32. *Id.*

Be Fooled list because of the self-created fanfare around its entrance into the world of renewable energy sources.[33] CorpWatch explains:

> On March 7th, 1999, BP Amoco bought Maryland-based Solarex, making it the largest solar company in the world. Less than a week later, BP Amoco announced it's [sic] "Plug in the Sun" program in which the company will install solar panels in 200 gas stations around the world. BP Amoco's bright ads proclaimed, "We fill you up by sunshine." While these actions are good for the environment, the bottom line is that the company is diverting attention from the real consequences of its fossil fuel business. BP Amoco is still filling you up with gasoline, a leading cause of global warming. BP Amoco's main role in contributing to climate change is through the burning of the oil and gas it produces. In fact, BP Amoco oil and gas accounts for about 2% of all global greenhouse gas emissions. The company's bottom dollar paints a clearer picture. Records show BP Amoco spent almost 600 times more to buy ARCO, another oil company, than it spent to purchase Solarex, the solar energy company. BP Amoco plans to spend $5 billion on oil exploration and development in Alaska alone over the next five years. The corporation is lobbying to drill for oil specifically in the Arctic National Wildlife Refuge, one of the last pristine wilderness areas in Alaska that serves as a home to threatened wildlife species and indigenous people. It is estimated that the area's oil supplies would last just six months.[34]

While BP was lobbying Congress to open the Arctic National Wildlife Refuge for drilling, it was participating in a partnership with the National Wildlife Federation to sell stuffed animals of endangered species at BP's gas stations.[35] More recently, BP has been advertising its investments in solar and wind power and rebranding itself with the label "Beyond Petroleum."[36] "BP's solar division accounted for 0.14 percent, or $400 million, of its $295 billion in sales in 2004."[37] Allen Adamson, an advertising agent who helped BP develop its branding effort, said that "it will still take another five years to determine if the company will be successful in getting the public to think of it as more than just an oil company."[38] What goes unasked is whether the public really *should* think of BP as more than just an oil company. Is diversification of

33. Press Release, CorpWatch, USA, Top 10 Greenwashing Companies of 1999 (Mar. 30, 2000), *available at* http://www.corpwatch.org/article.php?id=331.

34. *Id.*

35. Witherell, *supra* note 29.

36. Robison & Viscusi, *supra* note 17.

37. *Id.*

38. Wendy Melillo & Steve Miller, *Companies Find It's Not Easy Marketing Green*, BRANDWEEK, July 24, 2006, at 8, *available at* http://www.brandweek.com/bw/news/recent_display.jsp?vnu_content_id=1002878049.

0.14% really enough to justify thinking of BP as a green energy producer?

Not even the government is immune from greenwashing. Take, for instance, New York State's enforcement of the Clean Water Act. New York began to issue State Pollutant Discharge Elimination System (SPDES) permits in order to comply with the Clean Water Act. However, thousands of these permits backed up at the Department of Environmental Conservation (DEC), and the DEC allowed for automatic "administrative renewal" of the permits, avoiding the hassle of monitoring the discharge points.[39] The automatic renewal provision also meant that the discharge permit system had almost no effect on water pollution levels. While New York could honestly claim that it was complying with the Clean Water Act mandates, a single loophole managed to pull the teeth out of the CWA.

Likewise, though George Bush Sr. called himself "the environmental president," "his administration scrupulously safeguarded big business interests and ignored, vetoed, or gutted environmental protection measures."[40] He enacted an eight month moratorium on environmental regulations, and deemed the Endangered Species Act "a sword aimed at jobs, families and communities."[41] Together with his Vice President, Bush managed to "sabotage actions by any federal agency that might conflict with the administration's pro-business agenda."[42] "The environmental president" indeed.

One major impetus for this government greenwashing is the lobbying groups that champion anti-environmental agendas and push lawmakers to greenwash. Many of these lobbying groups are funded by greenwashing corporations. Take, for example, Citizens for the Environment. Founded as an offshoot of a right wing consumer group, CFE is a lobbying group and think tank that "advocates strict deregulation of corporations as the solution to environmental problems."[43] Their scientists point out how "myths" like acid rain, natural-resource depletion, and shrinking landfill space "dictate public policy."[44] Their funding comes from the likes of Alcan Aluminum, Amoco, General Motors, Mobil, and Toyota.[45]

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39. Karl S. Coplan, *Of Zombie Permits and Greenwash Renewal Strategies: Ten Years of New York's So-Called "Environmental Benefit Permitting Strategy,"* 22 PACE ENVTL. L. REV. 1, 1–3 (2005).

40. CARL DEAL, THE GREENPEACE GUIDE TO ANTI-ENVIRONMENTAL ORGANIZATIONS 12–13 (1993).

41. *Id.* at 13.

42. TOKAR, *supra* note 1, at 62.

43. DEAL, *supra* note 40, at 43.

44. *Id.*

45. *Id.* at 44.

The Heritage Foundation is another lobbying group which has become a pre-eminent conservative Washington policy center.[46] It promotes "free enterprise, anti-communism, deregulation of industry, and a strong national defense based on an abundant nuclear arsenal."[47] It was so popular with the Reagan Administration that an estimated two-thirds of its policy recommendations were adopted in 1981.[48] The Heritage Foundation characterizes the environmental movement as "extremist," and claims that it is "the single greatest threat to the American economy."[49] Like Citizens for the Environment, its backing comes from corporations not known for their green reputations.[50] This kind of corporate backing has even managed to pollute Earth Day. In 1995, House Speaker Newt Gingrich gave the following statement on Earth Day: "With major polluters such as Texaco and Monsanto attempting to 'sponsor' Earth Day, and every politician in the nation claiming to be 'for the environment,' it is getting hard to figure out who is really protecting the planet and who is poisoning it."[51]

Generally speaking, the practice of greenwashing can be broken down into three types: confusion, fronting, and posturing:

> Confusion flows naturally from the complex nature of the corporate form, reliance on decentralized decision making, and the practices of managerial winking. Fronting is accomplished through the representations of retained counsel, compliance officers, ethics officers, and ethics communities. Posturing seeks to convince internal customers, as much as external stakeholders, of the organization's collective commitment to ethics.[52]

These techniques allow a corporation to clean up its act in the face of the media. Indeed,

> [t]he very firms that wash their reputations through public relations, complex front coalitions, sponsored "think tanks," and who publicly lead the fight against global warming, nuclear waste, and water pollution, remain some of the worst corporate offenders. The appearance of environmental leadership, for example, like the appearance of corporate compliance, may actually serve to decrease care levels. Corporations can rely on their reputations for compliance and social responsibility with lesser scrutiny.[53]

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46. *Id.* at 57.
47. *Id.*
48. *Id.* at 58.
49. *Id.*
50. The Heritage Foundation is funded in part by Alcoa, Amoco, Boeing, Exxon, General Motors, Mobil Oil, Philip Morris, R.J. Reynolds, Shell, and Texaco. *Id.* at 49.
51. TOKAR, *supra* note 1, at 31.
52. William S. Laufer, *Social Accountability and Corporate Greenwashing*, 43 J. BUS. ETHICS 253, 257 (2003).
53. *Id.*

II. WHY GREENWASHING OCCURS

Greenwashing occurs for a number of reasons, but the most important are economic. More and more consumers and investors are mindful of the environmental ethics of the companies they support. Paradoxically, an extension of traditional business ethics leads one to the conclusion that corporations can be ethically led to greenwash their reputations. As the argument goes, greenwashing is still ethical since greenwashing claims are generally true, even though they may give a consumer a distorted image of a corporation. Furthermore, since greenwashing improves a corporation's bottom line, traditional business ethics proclaim the tactic a resounding success, since a corporation's goal under traditional business ethics is to maximize its profits while staying within the rules of "the game." Part A will examine how consumer choices prompt corporations to greenwash, while Part B will examine how investor choices can do the same. Finally, Part C will discuss how corporations can ethically justify greenwashing to themselves and their employees.

A. *The Bottom Line*

The lion's share of greenwashing efforts are motivated by the simple fact that, generally speaking, companies gain a market advantage if they can project an earth-conscious image. Consumers are starting to pay attention. More and more surveys reveal a "growing segment of consumers who either reward or intend to reward firms that address environmental concerns in their business and marketing practices and who punish firms that appear to ignore the environmental imperatives."[54] Consumers tend to take a particularly hard look at industries regarded as heavy polluters, like the auto and oil industries. Corporations in high-pollution fields "don't want to be caught not talking about these issues, because they are a key part of them," said John Stauber, co-founder of the Center for Media and Democracy, which analyzes the truthfulness of advertising and marketing claims.[55] Even in other industries, normative pressures within the institutional environment push companies toward committing to environmental policies, since once a group of visible companies commit to environmental policies, others will follow suit as a sort of benchmarking.[56] If a company is the first to take steps toward stewardship, they can improve their market share through differentiation.[57] Finally, pressures can also come from external organizations like watch-

54. Menon & Menon, *supra* note 7, at 51.

55. Melillo & Miller, *supra* note 38.

56. Catherine A. Ramus & Ivan Montiel, *When are Corporate Environmental Policies a Form of Greenwashing?*, 44 BUS. & SOC'Y 377, 386 (2005).

57. *Id.* at 388.

dog groups, which exert public pressure on companies to commit to protecting the environment.[58]

As a result of these pressures, more and more companies are moving toward green marketing campaigns. According to GE's global executive director of advertising and branding, Judy Hu, "Green is green as in the color of money. It is about a business opportunity, and we believe we can increase our revenue behind these Ecomagination products and services."[59] As mentioned earlier, the move toward green marketing coincided with society's concern with the harms large corporations were inflicting on the environment. While academics framed the issue as green versus greed, environmental interests and profits became aligned.[60] Studies like Ajay and Anil Menon's *Environmental Marketing Strategy: The Emergence of Corporate Environmentalism as Market Strategy* have shown that creating social good and making a profit are often interwoven.[61]

However, the rationale underpinning the greenwashing movement is the realization that a corporation does not need to actually *create* social good in order to reap the benefits of a green reputation. If companies' actions matched up with all of their rhetoric, greenwashing would not be an issue. However, if a company can reap the benefits of a green reputation without actually spending the time or money to substantially change its practices, it reaps all of the benefits without any of the associated costs.

One of the most common forms of greenwashing occurs when corporations release environmental policy statements—broad, high-minded statements proclaiming a corporation's commitment to preserving the environment. The impression, as described by DuPont's Paul Tebo, is that "[o]nce you go public, it's no longer voluntary."[62] These statements can positively influence public perceptions of a company's commitment to environmental protection and sustainable development, "possibly even resulting in increased market share and improved stakeholder relations. And, there is little downside to making a public commitment."[63] Tebo's interpretation of environmental policy statements is exceedingly idealistic. Since environmental policy statements rarely include any specifics regarding the implementation of the policy, they tend to bring about good publicity without actually obligating the corporation to change anything. Without specific commitments, the corporation putting forth the statement is not bound to any benchmarks which might be used to measure its progress toward its goal. For example, BP's Indonesian envi-

58. *Id.* at 385.
59. Melillo & Miller, *supra* note 38.
60. *See* Menon & Menon, *supra* note 7, at 53–54.
61. *Id.* at 64.
62. ESTY & WINSTON, *supra* note 3, at 211.
63. Ramus & Montiel, *supra* note 56, at 378.

ronmental policy states that "[o]ur project is committed to working toward the goals of no harm to people, no accidents and no damage to the environment."[64] Since no endeavor which requires natural resources can have "no damage to the environment," the fact that BP is "working toward" such an impossible goal allows it to duck any allegations of specific environmental problems by pointing to its laudable goals and policies.

B. *The Market Impact of Green Investing*

Consumers aren't the only ones who pay attention to environmental ethics before they decide when to pull out their wallets. Some investors also pay attention to the environmental ethics of the companies they support. Companies which do not project a green image are avoided by green investors, who currently control about 10% of the market.[65] "Both the analytic comparative statics and the numerical examples indicate that the number of green investors in an economy does affect the proportion of acceptable, unacceptable, and reformed firms in the economy and the costs of capital of those firms."[66] When green investors boycott polluting companies, fewer investors hold the stock of these firms, causing share prices to fall to reflect the lost diversification.[67] The larger the market share controlled by green investors, the more expensive it will be to be labeled a polluter.

Moreover, the number of green investors is rising, and "[a]s the number of green investors grows, the expected returns of unacceptable firms will be higher than the expected returns of reformed firms, given the same systematic risk for each firm."[68] An important determinant of the impact of green investing is the cost of reforming.[69] Corporations will have to measure the costs of reforming their environmental practices against the revenue they lose if they don't reform. If green investing continues to rise, mostly polluting industries will consist of firms with a high reforming cost, and mostly clean industries will contain firms with low reforming costs.[70]

Individual investors aren't the only ones paying attention. "Over the last few years, banks have been waking up to the fact that the environmental and social risks on projects they lend money to, while hard to

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64. BP Indonesia: Environmental Policy (2008), *available at* http://www.bp.com/sectiongenericarticle.do?categoryId=9004784&contentId=7008767 (last visited Mar. 9, 2009). The rest of the statement is similarly vague.

65. Robert Heinkel, Alan Kraus & Josef Zechner, *The Effect of Green Investment on Corporate Behavior*, 36 J. FIN. & QUANTITATIVE ANALYSIS 431, 431 (2001).

66. *Id.* at 444.

67. *Id.* at 432.

68. *Id.* at 444.

69. *Id.* at 445.

70. *Id.* at 448.

quantify, can be very damaging to . . . business."[71] JPMorgan told the world in 2005 that it would "calculate in loan reviews the financial cost of greenhouse-gas emissions, such as the risk of a company losing business to a competitor with lower emissions because it ha[d] a better public standing."[72] Goldman Sachs announced that it would "promote activities that protect forests and guard against climate change," and pledged $1 billion for investment in alternative energy.[73]

Unfortunately, despite their best intentions, green investors are often suckered into investing in polluting corporations through greenwashing. Without verifiable information it is difficult for investors to make informed decisions about environmentally responsible practices and companies.[74] The investors have little more to rely on aside from corporate representations[75]—representations which, as we have already seen, are often major mischaracterizations of corporations' actual activities. With nothing to rely upon besides the corporations' own information, green investors end up investing in many corporations with unsavory environmental practices. Many corporations creatively manage their environmental reputations for this very reason.[76]

C. *The Corporate Ethics of Greenwashing*

Lots of greenwashing comes from companies following the classical model of business, which holds that "there is one and only one social responsibility of business—to use its resources and engage in activities to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud."[77] Since greenwashing is not deceptive in the classic sense, and since it falls well short of fraud, it is arguably ethical under the classical model of business ethics. Under the classical model, environmental ethics don't even enter the picture. This model "denies that business has any direct environmental responsibility."[78] It also means that when it comes to a showdown between what is good for business and what is good for the environment, the environment always loses. "For the entire range of issues in which economic growth competes with environmental or ecological ends, the classical model necessarily locates corporate responsibility on the side of economic growth."[79]

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71. ESTY & WINSTON, *supra* note 3, at 95.
72. *Id.* at 96.
73. *Id.* at 9.
74. Laufer, *supra* note 52, at 251.
75. *Id.* at 254.
76. *Id.* at 255.
77. MILTON FRIEDMAN, CAPITALISM AND FREEDOM 133 (1962).
78. Joe DesJardins, *Corporate Environmental Responsibility*, 17 J. BUS. ETHICS 825, 827 (1998).
79. *Id.* at 828.

Another, slightly more flexible version of corporate theory holds that corporations are loyal to their stakeholders.[80] Stakeholders have been defined as "any group or individual who can affect or is affected by the achievement of the organization's objectives" or "groups or individuals who 'have an interest in the actions of an organization and . . . the ability to influence it.'"[81] Stakeholders in a corporation generally include stockholders, employees, the local community, the media, and perhaps even the environment itself.

Corporations greenwash in order to play to their stakeholders in a number of different ways. Some green ad campaigns are targeted at a corporation's employees. For example, Alcan, a Canadian aluminum producer, hired CGCom, an advertising firm, to produce a series of green ads for the company. The company's president doesn't pretend that the ads will help Alcan sell more aluminum; his primary audience was internal. "Every time we survey our 70,000 employees, we hear that they want to be proud of our environmental leadership," he said. "Outsiders may not remember the Alcan ads a few months down the road, but our employees will remember them with pride."[82] Most greenwashing ad campaigns are run to influence the media. Oil companies like Exxon, under attack for reaping windfall profits from soaring fuel prices, are trying to position themselves as part of the solution to energy problems rather than the cause.[83] Manufacturers of green products are recognizing that they can burnish their image even as they promote their products, and realize larger payoffs from their efforts.[84]

How companies view their stakeholders affects how they conduct business.[85] Firms seen as leaders in the environmental field view environmental management as an important business function.[86] When viewed under the stakeholder theory of corporations, these corporations view the environment as an active stakeholder and conduct their businesses accordingly. Firms that fit the reactive profile, the environmental followers, only saw the media as an important stakeholder when it came to environmental policy.[87] "[R]eactive firms appear to be more concerned about being caught doing something wrong by a reporter than

80. Not to be confused with the narrower category of stockholders.

81. Irene Henriques & Perry Sadorsky, *The Relationship Between Environmental Commitment and Managerial Perceptions of Stakeholder Importance*, 42 ACAD. MGMT. J. 87, 89 (1999) (quoting R. EDWARD FREEMAN, STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH 46 (1984); Grant T. Savage et al., *Strategies for Assessing and Managing Organizational Stakeholders*, 5 ACAD. MGMT. EXEC. 61, 61 (1991)).

82. Deutsch, *supra* note 14.

83. *Id.*

84. *Id.*

85. *See generally* Henriques & Sadorsky, *supra* note 81.

86. *Id.* at 95.

87. *Id.*

about being caught by a regulator."[88] If an environmental crisis were to occur, reactive firms would not (and proactive firms would) be able to demonstrate due diligence.[89]

Ironically enough, for some of these reactive firms, "hypocrisy is the first step toward meaningful change."[90] If firms begin talking the environmental talk, it may not be long until they're walking the walk. To some, this may be looking at greenwashing in an overly charitable light, but big changes need to begin with small steps. Stakeholders can move firms toward the switch from rhetoric to action through the various pressures they can apply.

III. Greenwashing's Impact

Greenwashing's impact is somewhat difficult to ascertain, since it can be hard to distinguish what environmental practices occur as a result of greenwashing from practices which occur regardless of greenwashing. However, due to the widespread nature of greenwashing, the effects are far from insignificant. Part A discusses the environmental impact of greenwashing, while Part B discusses its social and societal impact.

A. *Environmental Impact*

As one might fear, many of the world's biggest greenwashers are the world's biggest polluters. In fact, greenwashing often leads to more egregious offenses from corporations that already cause large shares of the problems. Greenwashing companies and organizations can rest on their good reputations to some extent, and may get more leniency from regulating authorities, the media, and the public when they do commit offenses.

Take, for instance, New York's implementation of the Clean Water Act, mentioned earlier.[91] If pressed on its environmental record, the state legislature could point to its implementation of the CWA, despite the gaping loophole that automatically renewed discharge permits without on-site inspection. The fact that the implementation of the Act was nearly toothless only registered to those few who knew the details of the permit process. New York could then rest on its laurels, avoiding the need to pay for a larger staff to handle the permit process, and allowing New York corporations to continue to pollute the state's waterways unchecked. Likewise, Toyota can continue to disregard its fleet's overall fuel efficiency while resting on the laurels garnered by its flagship Prius.

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88. *Id.* at 95–96.

89. *Id.* at 95.

90. Witherell, *supra* note 29.

91. *See* text accompanying note 39 *supra.*

B. *Social Impact*

While the environmental impact of greenwashing may be the most obvious, the social impact of greenwashing is no less important. Though it may not be fraud, greenwashing is, at its heart, the product of corporations which willingly mislead the public. This deception, once uncovered, bothers a lot of people, and for good reason. "Truthful advertising about goods and services is an unequivocal social good. It reduces uncertainty and improves the quality of decisionmaking. It facilitates search, promotes competition, and increases the likelihood of consumer satisfaction."[92]

Part of the problem is moral. James Nash argues that "[a]ll creatures are entitled to moral consideration."[93] Though the taking of life is inevitable—it forms the basis of our model of the ecosystem—it is not without moral cost. Another, similar ethical model holds that we must have a moral consideration of "the systems that together comprise the biosphere."[94] In fact, most ethical models give ethical standing, if not to individual animals, at least to the integrity of ecosystems. By obfuscating the damage they do to ecosystems, greenwashing corporations attempt to hide their moral wrongs. If and when this subterfuge is uncovered, people become even more disillusioned with corporate America.

Another disconnect lies at the center of what a business *is*. Paul Hawken argues,

> The ultimate purpose of a business is not, or should not be, simply to make money. Nor is it merely a system of making and selling things. The promise of business is to increase the general well-being of humankind through service, a creative invention and ethical philosophy. Making money is . . . totally meaningless.[95]

While Hawken's perspective may strike a chord with many consumers, very few companies appear to be following his business model. Fortunately, some successful companies are attempting to increase the general well-being of humankind instead of simply trying to increase profits. Take Clif Bar, for example. Founder Gary Erickson has taken the company from his mom's kitchen to a 150 million dollar corporation.[96] A corporation which runs on biodiesel, and does not tout the fact that it supports sustainable farming and uses organic ingredients.[97] Greenwash-

92. Lillian R. BeVier, *Competitor Suits for False Advertising Under Section 43(a) of the Lanham Act: A Puzzle in the Law of Deception*, 78 VA. L. REV. 1, 14 (1992).

93. LARRY L. RASMUSSEN, EARTH COMMUNITY, EARTH ETHICS 107 (1996) (citing JAMES NASH, LOVING NATURE 181 (1991)).

94. *Id.* at 108.

95. Paul Hawken, *A Teasing Irony*, *in* BUSINESS AND THE ENVIRONMENT: A READER 5, 5 (Richard Welford & Richard Starkey eds., 1996).

96. Witherell, *supra* note 29.

97. *Id.*

ing isn't even a remote concern, since Clif Bar does not advertise.[98] Companies like Clif Bar show that it's possible to sustain economic growth without misleading customers or destroying ecosystems. If more companies follow their lead, they can collectively combat the skepticism and disillusionment currently confronting big business.

IV. Addressing Greenwashing

Now that I have identified the problem, it is time to start pinning down some possible solutions. Much of the pressure on companies should come from the companies' stakeholders. If they talk, companies will listen.

> NGOs, customers, and employees increasingly ask pointed questions and call for action on a spectrum of issues. To give just one example, HP says that in 2004, $6 billion of new business depended in part on answers to customer questions about the company's environmental and social performance—up 660 percent from 2002.[99]

A number of legal recourses are also available. Part A will discuss the use of various citizen suit provisions incorporated into pieces of environmental legislation. Part B will discuss the need for the implementation of verifiable reporting schemes to give the public a clear picture of companies' environmental track records. Part C will propose additional environmental legislation. Part D will discuss the use of common-law torts to punish greenwashers. Part E takes a broader view, discussing the adoption of a neoclassical model of business ethics in order to stem the tide of greenwashing. Finally, Part F looks at the enactment of environmental and ethical policy statements as a way to move toward a neoclassical model of business ethics.

A. *Citizen Suits*

One of the most obvious responses to greenwashing resonates within the battle cry of the tort lawyer: "Sue the bastards."

> Private groups can use the courts to pursue better environmental quality in three main ways: (1) by suing polluters to recover monetary damages caused by the pollution, (2) by suing public officials entrusted with responsibility for implementing the laws to force compliance with Congressional or Constitutional requirements, and (3) by suing polluters for the purpose of bringing them into compliance with the law.[100]

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98. *Id.*

99. Esty & Winston, *supra* note 3, at 9.

100. Wendy Naysnerski & Tom Tietenberg, *Private Enforcement of Federal Environmental Law*, 68 Land Econ. 28, 28 (1992).

Most environmental protection legislation includes a citizen suit provision of one sort or another. Since the government may not have the resources required to prosecute each and every violation, it has, in essence, allowed concerned citizens and non-governmental organizations to take the place of the government prosecutors. Who can bring suit varies depending on the statute, whether it's the Clean Water Act, the Clean Air Act, CERCLA, RCRA, or some other act. The provisions are far-ranging, and "allow a private citizen more than a challenge to arbitrary agency action; citizen suit provisions essentially confer 'private attorney general' status, allowing a citizen to proceed on behalf of the general public."[101]

Under many of these provisions, making out a case is relatively easy. For example, the CWA allows for citizen suits if a company exceeds its permitted discharge amounts, a fairly common offense:

> It is relatively easy, with minimum training, for a citizen to check and compare the facility permits with the discharge reports if the citizen (or community group) suspects that violations may be causing undue pollution. If there is a violation, the citizen should be able to establish liability at the summary judgment phase of a case simply by submitting the permit and the discharge monitoring reports indicating a discharge beyond permit limitations.[102]

However, considerable vigilance is required just to get the ball rolling. "Regardless of whether the enforceable requirement is easy to isolate or more difficult, the community must first become aware of a risk to the public and associate the risk with a suspected violation."[103] Considering the proliferation of greenwashing tactics, the local community may not even be aware that they have a pollution problem.

In addition to enforcement actions against regulated entities, citizen suit provisions allow action-forcing suits against regulatory officials for failure to perform nondiscretionary duties.[104] These suits have a beneficial side-effect of drawing more media and public attention to the case, hopefully prompting a speedier remedy to the problem.

Though citizens filing suit under these provisions have a lot going in their favor, there are some limitations on citizen suits. Citizens must serve the Environmental Protection Agency, the state in which the violation occurred, and the alleged violator notice of the intent to sue and then wait sixty days before suing, unless the violation involves substances which present an imminent hazard.[105] The Attorney General and Envi-

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101. Eileen Gauna, *Federal Environmental Citizen Provisions: Obstacles and Incentives on the Road to Environmental Justice*, 22 ECOL. L.Q. 1, 4 (1995).

102. *Id.* at 47 (internal citations omitted).

103. *Id.* at 46.

104. *Id.* at 70.

105. Naysnerski & Tietenberg, *supra* note 100, at 31.

ronmental Protection Agency administrator have forty-five days to review settlement to see if they agree with it.[106] Finally, citizen suits are barred if a federal judicial suit or administrative action has been filed against the alleged violator for the same violation.[107]

Remedies for these suits can include injunctive relief, penalties (which can be up to $75,000 per day, per violation) and attorney's fees.[108] The plaintiff's bar has already landed some heavy blows. "W.R. Grace, which once had a multibillion dollar market capitalization, was driven into bankruptcy in 2001 by an avalanche of asbestos-related lawsuits."[109] Others are on the horizon. "A class action lawsuit for Hurricane Katrina victims was filed against ten oil and gas companies for destroying wetlands that might have reduced the severity of the floods."[110]

B. *Verifiable Reporting*

As things currently stand, consumers and investors are generally left to trust or distrust corporations' self-reports of their environmental practices. Unless a citizen suit, media report, or administrative action uncovers some sort of wrongdoing, the corporations themselves provide the majority of the information. While self-reporting of a corporation's environmental impact is to be encouraged, it's almost worthless unless there is a way to verify the accuracy of the reports.[111] "The growing wisdom is that companies must produce verified accountability reports—verified reports by auditors specializing in social accounting and auditing."[112] In addition, "[a] good environmental report should discuss the important aspects of the company's footprint. It should use quantitative metrics and cover core issues such as air emissions, water pollution, hazardous waste disposal, energy consumption, greenhouse gas emissions, and notices of legal violations."[113] These reports would not just help consumers and investors become better informed; they would help the companies as well—"If for no other reason, with accusations of greenwashing and evidence of its practice, decisions to defer third party auditing or to forgo the requirement entirely strongly undermine an appearance of legitimacy."[114] If corporations accused of greenwashing are able to prove that there is action behind their rhetoric, their trustwor-

106. *Id.*
107. *Id.*
108. *Id.* at 32.
109. ESTY & WINSTON, *supra* note 3, at 79.
110. *Id.*
111. *See generally* Laufer, *supra* note 52; Ramus & Montiel, *supra* note 56.
112. Laufer, *supra* note 52, at 259.
113. ESTY & WINSTON, *supra* note 3, at 226.
114. Laufer, *supra* note 52, at 259.

thiness is enhanced and they can reap the public benefits of having a reputation for being both trustworthy *and* green.

C. *Enact and Enforce Environmental Legislation*

Environmental regulation is a prime example of an instance where private market pressures are not helpful in bringing about an optimum balance between current needs and the protection of future resources. The market can be helped along by environmental legislation if the legislation turns over the right information to the market. If verifiable reporting is required by law, consumers can make informed choices about the products they buy and the companies they support. As we have seen, consumers and investors are making green choices, but the problem has been getting accurate information to them through the screen of disinformation and greenwashing that gets in the way. It would not be difficult for legislation to enact reporting schemes along with any emissions regulations that may be otherwise implemented. Furthermore, when armed with this information, the public will be more apt to take advantage of citizen suit provisions in environmental legislation.

D. *Torts*

Another way to combat greenwashing is through common-law torts. Civil tort cases allow individuals to recover damages from those that harm them. Since greenwashing arguably harms those duped by a greenwasher's claims, as well as the business community at large, it seems to follow that greenwashers can be sued for their actions.

One prime example of a private tort claim against a greenwasher is *Kasky v. Nike*,[115] in which a private citizen sued Nike for misrepresentation. The suit was in response to Nike's claims that its workers are protected from sexual abuse, that they are paid in accordance with applicable local laws, that they are paid on average double the local minimum wage, that they receive free meals and health care, and that their working conditions comply with local laws.[116] Nike made these statements in press releases, in letters to newspapers, in a letter to university presidents and athletic directors, and in other documents distributed for public relations purposes.[117] However, "Nike's happy talk started sounding hollow . . . when someone leaked a 1996 Ernst & Young audit, commissioned by Nike itself, of one of its Vietnamese factories, documenting a range of unsafe worker conditions from exposure to toxins such as toluene and acetone to lack of protection against high-decibel noise."[118]

115. Kasky v. Nike, Inc., 45 P.3d 243 (Cal. 2002).

116. *Id.* at 248.

117. *Id.*

118. Josh Richman, *Greenwashing on Trial*, MOTHER JONES, Feb. 23, 2001, http://www.motherjones.com/news/feature/2001/02/greenwash.html.

Kasky filed his suit under California's false advertising law, which makes it unlawful for

> any person, . . . corporation, . . . or any employee thereof . . . to make or disseminate . . . before the public in this state . . . in any newspaper or other publication . . . or in any other manner or means whatever . . . any statement, concerning [the corporation's] services . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.[119]

Violation of this provision is a misdemeanor.[120] When the case was filed, Joshua Karliner, executive director of a corporate watchdog group called CorpWatch, commented, "If this case is successful, it could undermine the greenwashing strategies of a lot of corporations that attempt to promote a positive environmental or social image to undermine their critics and minimize the damage done to their brand."[121] The California court's analysis of the case came down to the difference between commercial and non-commercial speech. As one journalist noted, "The issue essentially boils down to whether Nike's public statements can be considered product-touting advertising, in which case they are subject to truth-in-advertising laws, or whether they are simply public statements, in which case they are protected by the First Amendment."[122] The Court held that

> [b]ecause the messages in question were directed by a commercial speaker to a commercial audience, and because they made representations of fact about the speaker's own business operations for the purpose of promoting sales of its products, we conclude that these messages are commercial speech for purposes of applying state laws barring false and misleading commercial messages.[123]

The court found Nike liable for damages. This case opens up the possibility of a string of suits for greenwashing, since it gets at the heart of the lies and disinformation that can so easily mislead consumers and investors. Of course, for a suit like Kasky's to be successful, the information can't just be misleading, but actually false. Ford's advertisement of its flex-fuel vehicles may be misleading, but the ads wouldn't open Ford up to liability under the same law.

A greenwasher's competitors can also file suit under false advertising statutes. Section 43(a) of the Lanham Act gives competitors a federal cause of action against rivals who engage in false advertising.[124] Statutes

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119. WEST'S ANN. CAL. BUS. & PROF. CODE § 17500 (West 2009).
120. *Id.*
121. Richman, *supra* note 118.
122. *Id.*
123. Kasky v. Nike, Inc., 45 P.3d 243, 247 (Cal. 2002).
124. 15 U.S.C. § 1125(a) (2006).

like the Lanham Act are relatively new. For example, "[r]ecovery by a competitor against a rival who misrepresented the quality, as opposed to the source, of his own goods was virtually non-existent at common law."[125] Lanham Act suits are also significantly different from trademark suits, since the plaintiff is not alleging any direct infringement against his own intellectual property.[126] Since these suits are filed by competitors, the practice itself has occasionally come under fire, since it's tough to quantify how much one company loses from another's false claims. Some think the losses are negligible.[127] "The consumer—whose welfare the rule is designed to protect, whose search and decisionmaking processes are most thwarted by its violation, and who accordingly stands most unambiguously to gain by its optimal enforcement—is almost never the plaintiff in section 43(a) litigation."[128] However, the Lanham Act is directed at punishing the violator, not benefiting the consumer. "The traditional assumption is that not only is deceptive advertising bad, but that it is 'an evil that can be avoided simply by an act of will on the part of the advertiser, with no costs to the rest of society.'"[129]

In order to prevail on a Lanham Act claim, the plaintiff must show:

> (1) in its comparison advertisements, defendant made false statements of fact about its own product; (2) those advertisements actually deceived or have the tendency to deceive a substantial segment of their audience; (3) such deception is material, in that it is likely to influence the purchasing decision; (4) defendant caused its falsely advertised goods to enter interstate commerce; and (5) plaintiff has been or is likely to be injured as the result of the foregoing . . . by direct diversion of sales from itself to defendant . . . . In order to recover damages under Section 43(a), plaintiff must establish that the buying public was actually deceived; in order to obtain equitable relief, only a likelihood of deception need be shown.[130]

If the advertising is false, the advertisers face strict liability which makes them suffer all of the costs.[131] Plaintiffs in Lanham Act cases usually seek injunctive relief due to the higher standards of proof required for damages.[132] However, companies can't always get away just by changing

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125. BeVier, *supra* note 92, at 18.

126. *Id.* at 19.

127. *See generally id.*

128. *Id.* at 16.

129. *Id.* at 24 (quoting Richard Craswell, *Interpreting Deceptive Advertising*, 65 B.U. L. REV. 657, 679 (1985)).

130. *Id.* at 27 (quoting Skil Corp. v. Rockwell Intern. Corp., 375 F. Supp. 777, 783 (D.C. Ill. 1974)).

131. *Id.* at 30.

132. *Id.* at 26 & n.73.

their advertisements; in 1986, a Ninth Circuit court affirmed a $40,000,000 Lanham Act verdict against Jartran.[133]

Another source of ammunition is the Sarbanes-Oxley Act of 2002, which mandates that companies "shall disclose all material off-balance sheet transactions, arrangements, [and] obligations . . . that may have a material current or future effect on financial condition."[134] The "material" issues include environmental liabilities, and though the law is still developing on the Act, the trend is moving toward more and more disclosure.[135] Acts like Sarbanes-Oxley give citizens the information they need in order to start investigating companies and testing advertising claims, allowing greenwashing practices to be combated on multiple fronts.

E. *Adopt a Neoclassical Model of Business Ethics*

If we take the long view for a moment, it becomes clear that the real change that needs to occur in order to stop greenwashing is a shift from a classical to a neoclassical model of business ethics. As discussed earlier, the classical model of business ethics views a maximization of investment returns while playing within the rules of the game as a corporation's sole goal.[136] In contrast, the neoclassical model of corporate social responsibility holds that "corporations ought to seek profits while nevertheless obeying a 'moral minimum.' . . . A moral minimum is incorporated into the 'rules of the game' and becomes part of standard business practice."[137] This moral minimum can take a number of different forms. This moral content could include avoiding intervention in the political process for the purpose of defeating or weakening environmental legislation, for example. If environmental concerns are integrated within the moral minimum, they become part of a business' social responsibility.[138]

Likewise, societal marketing has started to develop, which suggested that "marketers should balance three considerations in formulating and implementing marketing strategies: company profits, consumer needs and satisfaction, and society's interests."[139] This balancing act brings up the idea that society's interests should be viewed on a longer time scale, and the best plan for making immediate profits may actually work against humans' longer-term interests.

It shouldn't be presumptuous or particularly leftist to suggest that "effective policy should appeal to the interests, albeit long-term, of

133. U-Haul Int'l v. Jartran, Inc., 793 F.2d 1034 (9th Cir. 1986).

134. ESTY & WINSTON, *supra* note 3, at 77 (quoting Sarbanes-Oxley Act of 2002 § 401(a)(j), Pub. L. No. 107-204, 116 Stat. 745).

135. *Id.* at 77.

136. *See* discussion in Part II.C *supra*.

137. DesJardins, *supra* note 78, at 828.

138. *Id.* at 829.

139. Menon & Menon, *supra* note 7, at 54.

human beings."[140] Though it sounds noble to try to protect the panda bear or spotted owl, it is tough to persuade corporations, voters, or any other stakeholders to protect the environment for the intrinsic value of the environment. It is not impossible, but it is difficult. However, if we argue that the environment should be protected for the sake of our grandchildren, people start to listen. One way to incorporate this theory of business ethics is to talk about avoidance of harm to ecosystems, rather than merely to individual living organisms.[141] Sustaining ecosystems is clearly in humankind's best interests. Put another way, "[a] helpful image for understanding these responsibilities is to think of natural resources as capital. Our economic goal should be maximum sustainable yield in which we live off of the income generated by that capital without depleting the investment itself."[142]

The focus of neoclassic businesses should change from the growth of resources to the development of resources.[143] "Developing" resources includes extracting as much benefit from the available resources as possible—allowing our utilization of resources to catch up to our needs, instead of allowing our consumption of resources to increase. It allows companies to move toward sustainability, which would "meet[ ] the needs of the present without compromising the ability of future generations to meet their own needs."[144]

F. *Corporate Codes of Ethics*

A common greenwashing technique is employed through corporations' publication of their corporate codes of ethics or codes of environmental ethics. More often than not, these public commitments elicit favorable articles in the press. However, since the commitments rarely outline specific steps the corporation plans to take in furtherance of their broad goals, the policy statements don't cost the corporations anything. Though the publication of corporate codes of ethics often gives companies an opportunity to greenwash their reputations, corporate codes of ethics can also serve as a tool to change a corporation's practices.

Perhaps surprisingly, codes of ethics can have a significant impact on the behavior of a corporation's management.[145] A code of ethics is "a written, distinct, and formal document which consists of moral standards used to guide employee or corporate behaviour."[146] A review of how

140. DesJardins, *supra* note 78, at 830.
141. *Id.* at 830.
142. *Id.* at 832.
143. *Id.* at 831.
144. *Id.* (quoting WORLD COMM'N ON ENV'T & DEV., OUR COMMON FUTURE 43 (1987)).
145. M. Schwartz, *The Nature of the Relationship Between Corporate Codes of Ethics and Behaviour*, 32 J. BUS. ETHICS 247, 247 (2001).
146. *Id.* at 248.

ethical codes affect behavior suggested that "it is those areas of activity which are 'grey' and not 'black and white' (e.g. fraud or theft) where the code would potentially influence behaviour."[147] Greenwashing is likely one of those grey areas, where the information disseminated by the corporation isn't necessarily fraud, but the ethics of the practice is still on shaky grounds at best.

Environmental policy statements go hand-in-hand with corporate codes of ethics. Environmental policy statements, like codes of ethics, are not required by law; they are voluntary statements which make a public commitment to maintaining environmentally friendly practices.[148] Industry-wide pressures move companies toward voluntary commitments to policy statements, so it's unsurprising that policy statements are often very similar across a certain industry.[149] However, the statement does not always lead to making commitments to specific policies that would aid in the implementation of the overreaching environmental policy.[150] Corporate policy statements don't vary much between industry sectors, but policy *implementation* does.[151] When examined in context, this isn't particularly surprising:

> The environmental literature specifies the following drivers for environmental management: regulation, the degree of stakeholder pressure, economic advantage, and mimetic pressures from the institutional environment. These drivers can be generalized to the industry level. For example, large companies in the same industry face the same environmental regulations and the same types of stakeholder pressure, engage in the same type of industrial activity as defined by their products and services, and can easily imitate each others' practices.[152]

Since there is no mechanism to track commitment to environmental policies, the implementation of policies and a company's commitment to them are very separate things, and can vary widely.[153] Studies have shown that without explicit sanctions, self-regulation is not consistent, and companies in the same industry will commit to different levels of environmental protection.[154] For example, companies in the services sector "have fewer economic incentives and disincentives to implement environmental change and . . . companies in this industry sector would therefore be less likely [than companies in the oil, gas, and manufactur-

147. *Id.* at 253.
148. Ramus & Montiel, *supra* note 56, at 377–78.
149. *Id.* at 400.
150. *Id.*
151. *Id.* at 378.
152. *Id.* at 379–80 (internal citations omitted).
153. *Id.* at 378 (citing Monika I. Winn & Linda C. Angell, *Towards a Process Model of Corporate Greening*, 21 ORG. STUD. 1119 (2000)).
154. Ramus & Montiel, *supra* note 56, at 382.

ing industries] to implement environmental policies."[155] The service companies were just as likely to commit to the environmental policies, but less likely to take concrete steps to implement them.[156]

Communicating environmental and ethical codes to employees and shareholders is an important sign that the firm is serious about its plan.[157] "The act of communicating with shareholders establishes publicly that a company is committed to the environment and shows how that commitment has been translated into improved environmental performance in the firm."[158]

If corporations make an effort to include specific, implementable steps in their environmental policy statements and corporate codes of ethics, and communicate these values to their employees, we should see a sharp decrease in corporate greenwashing.

SUMMARY

Though greenwashing stands as a significant impediment to ecological progress, it can be combated with a number of small, effective, interrelated steps. In reality, it only takes a small chink in the greenwashing armor in order to stop the majority of the practice. Once the general public is alerted to a corporation's greenwashing practices, tort claims and citizen suit provisions allow the public to act as private attorneys general. If the public vigorously prosecutes greenwashers, the entire practice of greenwashing will no longer be beneficial to corporations' bottom lines. Defending themselves against lawsuits will become expensive, and the greenwashing corporations will find themselves receiving bad press and facing negative public opinion. The storm will drive both consumers and investors away. It will become more profitable to actually bring about environmental change instead of talking about change but doing nothing. This change would bring economic incentives into line with a corporation's incentive to create social good. With these forces aligned, we should see corporations walking the walk instead of just talking the talk.

The final result will be the creation of social good. Green business practices will more effectively utilize natural resources and preserve ecosystems for the use and benefit of future generations. Though these changes would initially come as a result of financial pressures, hopefully the ideals of neoclassical business ethics will be absorbed by the corporate sphere, and eventually corporate leadership won't think twice about conducting operations above a certain moral minimum, which would consider the corporation's effect on the environment. Once these ideals are

155. *Id.* at 408.
156. *Id.*
157. Henriques & Sadorsky, *supra* note 81, at 89.
158. *Id.*

internalized, greenwashing and its moral trappings will become a thing of the past, and we will enter a new period of corporate honesty.[159]

159. At least when it comes to the environment.