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## "Who Ya Gonna C(S)ite?" Ghostbusters and the Environmental Regulation Debate

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# "WHO YA GONNA C(S)ITE?" *GHOSTBUSTERS* AND THE ENVIRONMENTAL REGULATION DEBATE

CHRISTINE ALICE CORCOS\*

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\* Associate Professor of Law, Louisiana State University (LSU) Law Center. JD, Case Western Reserve University (CWRU) Law School; AMLS, University of Michigan; MA, BA, Michigan State University. This Essay grew out of the introductory lecture and discussion of clips from *Ghostbusters* in an experimental course which I co-taught with Professors Melvyn R. Durchslag, Andrew P. Morriss, and Wendy E. Wagner at CWRU Law School in 1994 and 1995. See Christine A. Corcos et al., *Teaching a Megacourse: Adventures in Environmental Policy, Co-Teaching, and Group Grading*, 47 J. LEGAL EDUC. 224 (1997). The term megacourse was created by the bemused and desperate Associate Dean, Wilbur C. Leatherberry, who tired of repeating the course's official title, Selected Problems in Environmental Law and Policy, along with four faculty names on every CWRU Law School curricular document. He eventually abbreviated the course title to "Mega" and the names to "Faculty." I wish to thank Dr. Morriss and Professor Wagner, kindred spirits, for many stimulating discussions about the importance of environmental law, law and film, slimers, etc. I am particularly indebted to Professor Wagner for her valuable comments on the symbolism of *Ghostbusters* and for the value-added pun in the title of this Essay. Professor Jay Bybee of LSU kindly provided guidance in the Chevron area, Professor John Devlin, also of LSU, made useful suggestions about pedagogy, symbolism, and the nature of evil over muffalattas and beer, and Professor Kenneth Muchison of LSU read the manuscript with great attention and contributed valuable criticisms. Professor Thomas C. Galligan gave questions about potential application of the Federal Tort Claims Act much more consideration than they deserve. Professor Jonathan Entin, of CWRU, commented wisely on a film he still has not seen. Thanks are also due to Cheryl Cheatham, CWRU Law Library, for her thoughtful comments on an early draft of this Article, and to Alison Colwell, CWRU Law School Class of 1996) and Jill Kuswa, LSU Law Center Class of 1998, for superb research assistance.

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## I. INTRODUCTION

*Ghostbusters*,<sup>1</sup> the phenomenally successful<sup>2</sup> Bill Murray/Harold Ramis/Dan Ackroyd comedy is generally considered to be an amusing takeoff on horror films of the thirties and forties, a kid's movie, or a satire on academia, intellectuals, city government, yuppies, tax professionals, and apathetic New Yorkers.<sup>3</sup> What no one has considered this movie to be is a thoughtful introduction to environmental law and policy, suitable for discussion in a law school class,<sup>4</sup>

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1. (Columbia Pictures Corp. 1985). Refer to this note for all future references to GHOSTBUSTERS. A film taking an even more lighthearted view of environmentalism is NAKED GUN 2 1/2: THE SMELL OF FEAR (Paramount Home Video 1991).

2. By September of 1984, the year Columbia Pictures released the film, GHOSTBUSTERS had earned a gross of \$200.9 million, making it the most successful movie for Columbia Pictures at that time. See *Columbia's Ghost Is a Smash, Too*, N.Y. TIMES, Sept. 29, 1984, § 1, at 31. The movie spawned many products, including a Saturday morning cartoon series and a sequel, GHOSTBUSTERS II (Columbia Pictures Corp. 1989), as well as a training manual for would-be paranormal investigators. See CHRISTOPHER BROWN, THE OFFICIAL GHOSTBUSTERS TRAINING MANUAL: A GUIDE TO CATCHING GHOSTS (1984); see also Karen Cherry, *Busting Loose/Ghostbuster Role is Just One of Many for Ernie Hudson*, ST. PETE. TIMES, June 24, 1989, at D1.

3. See Richard Schickel, *Exercise For Exorcists*, TIME, June 11, 1984, at 83. Rick Moranis plays the tax professional, Lewis Tully, a successful but nerdy certified public accountant, who is taken over by one of the psychic entities loose in the city, thereby immeasurably improving his personality quotient. He actually gets the girl, albeit temporarily. Tully subsequently goes to law school and returns in GHOSTBUSTERS II as a tax lawyer; a subspecies of the *Avocatus Americanus* generally considered to be even less personable than CPAs. See Paul L. Caron, *Tax Myopia, Or Mamas Don't Let Your Babies Grow Up To Be Tax Lawyers*, 13 VA. TAX REV. 517, 530 n.50 (1994) (discussing the image of tax professionals in GHOSTBUSTERS and GHOSTBUSTERS II); see also Erik M. Jensen, *The Heroic Nature of Tax Lawyers*, 140 U. PA. L. REV. 367, 369 n.13 (1991). On the application of film and television to other law school subjects, see Christine Alice Corcos, *Columbo Goes To Law School*, 13 LOY. L.A. ENT. L.J. 499 (1993).

4. However, the topic has been discussed in passing in various law review articles. See Robert A. Prentice & John H. Langmore, *Hostile Tender Offers and the "Nancy Reagan Defense": May Target Boards "Just Say No?" Should They Be Allowed To?*, 15 DEL. J. CORP. L. 377, 436 (1990) (citing the depiction in GHOSTBUSTERS II of incidents of tortured logic and bad faith); Leonard R. Jaffee, *The Troubles With Law and Economics*, 20 HOFSTRA L. REV. 777, 871 (1992) (citing the existence of Slimer and the Ghostbusters breakfast cereal as an example of a product designed to appeal to infant consumerism). Since GHOSTBUSTERS, other entertainment vehicles have carried an environmental message, including the cartoon television series *The Simpsons* (Fox Television Network, 1989-1997) (depicting the father, Homer Simpson, as an intellectually

or a serious examination of the competing interests in the environmental regulation debate. Yet, the film's premise is that ghosts, like television advertising, marshmallows, and non-biodegradable packaging materials, can be classed as pollutants—messy, disruptive, loud, dangerous entities that need to be rounded up effectively and confined forever.<sup>5</sup> Further, a government's inability to admit that an environmental danger, represented here by psychic pollutants, might exist<sup>6</sup> increases the likelihood that such a danger may damage the environment, just as the government's unwillingness to recognize the true dangers of the pollutants at Love Canal put nearby inhabitants at risk.<sup>7</sup> Thus, the film contends that the traditional reaction of the independent-thinking American to a danger which government is unable or unwilling to respond to is a kind of justified vigilantism. Too much government, like too much dependence on government, creates an environment suitable for disaster.

Discussion of this theme serves as an entertaining and stimulating entrée into the world of environmental law.<sup>8</sup> Unlike such films

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challenged nuclear power plant worker); see also Tony Perry, *San Diego at Large: "Simpsons" Enlightened, But Don't Expect Glowing Praise for Nukes*, L.A. TIMES, Dec. 28, 1990, at B1.

5. Of course, the Ghostbusters themselves do not manage the ghosts for very long. After their first attempt, which Walter Peck torpedoes, they keep "Zul," the dangerous interloper from the Ancient Near East, incarcerated for only as long as it takes Hollywood to develop *GHOSTBUSTERS II* (Columbia Pictures Corporation 1989). See Jay Boyer, *Bill Murray Is "Ghostbusters II" Hero*, ORLANDO SENT., Aug. 28, 1994, at 48. In environmental terms, that's very temporary storage.

6. Another theme portrayed in movies is that of hauntings substantially reducing the value of suburban neighborhood property constructed over former burial grounds. This is the theme of *POLTERGEIST* (MGM 1982) and *Grave Secrets: The Legacy of Hilltop Drive* (Hearst Entertainment Productions, Inc. 1992), both of which postulate venal land developers as a subgroup of avaricious business people. In *Grave Secrets: The Legacy of Hilltop Drive*, the unwary property owners are unable to recover from the title company, which takes the position that they knew or should have known of the prior existence of the burial ground. A sympathetic real estate attorney points out that even though the homeowners have a good case, they are unlikely to prevail at trial, and appeals will be costly. Eventually, the owners abandon the property after unsuccessfully suing their real estate agents for "abuse of corpse." See BEN WILLIAMS ET AL., *THE BLACK HOPE HORROR: THE TRUE STORY OF A HAUNTING* (Morrow 1991); see also Michele Meyer, *Houston's Haunted Houses: Spirits Leave Calling Cards All Over Town*, HOUSTON CHRON., Oct. 31, 1991, at 1 (discussing the events at the Galveston Wal-Mart, said to be built over a cemetery).

7. See Scott Allen, *US Accepts \$129M for Cleanup of Love Canal: Some Say Case Set a Wrong Course*, BOSTON GLOBE, Dec. 22, 1995, at 1 (discussing the history and cleanup of the Love Canal). Similarly, many citizens are concerned that electric power lines put them at risk for developing cancer. Mainstream science currently dismisses the possibility. See PAUL BRODEUR, *THE GREAT POWER LINE COVER UP* (1993); Terry C. Cavanaugh, *Fear & Loathing*, 13 CELLULAR BUS. 56 (Nov. 1996); see also *Panel Sees No Clear Evidence That Power Lines Cause Cancer; But a UCR Scientist Calls For More Research Into an Unexplained Link to Childhood Leukemia*, PRESS-ENTERPRISE, Nov. 1, 1996, at A5.

8. The failure of critics to recognize *GHOSTBUSTERS* as a social and political satire is surprising given the preference that Bill Murray, Harold Ramis, and Dan Ackroyd have always shown for social and political satires in their early *Saturday Night Live* (Broadway Video/ NBC Productions) work and in other films. See, e.g., Jay Carr, *Bill Murray's Somber Side*, BOSTON GLOBE,

as *Incident at Dark River*,<sup>9</sup> *C.H.U.D.*,<sup>10</sup> *Silkwood*,<sup>11</sup> *Dead Ahead: The Exxon-Valdez Story*,<sup>12</sup> *Chernobyl: The Final Warning*,<sup>13</sup> and *The China Syndrome*,<sup>14</sup> which depict the impact widespread pollution and the misuse of chemicals and radiation may have on everyone,<sup>15</sup>

Nov. 20, 1988, at 93 (discussing the actor's views on filmmaking); see also Lois Romano, *Busting 'Em Up: Harold Ramis, On the Million-Dollar Laugh Trace*, WASH. POST, Sept. 5, 1984, at B1 ("Our characters are rebels, but not losers. Other characters may accuse them of being neurotic, but our characters are radical heroes. And the audience thrives on heroism."). Students of the work of both Ramis and Ackroyd immediately spot the social critique rampant in GHOST-BUSTERS. See Interview with Rita Knight-Gray, Independent Film Maker, in Cleveland, Ohio (Sept. 14, 1994).

9. (Made for TV movie 1989).

10. (New World Pictures 1984). *C.H.U.D.* (Cannibalistic Humanoid Underground Dwellers), is a cinematic portrayal of toxic waste and its impact on living or formerly living beings. This film depicts entities living under New York City that feed on unwary inhabitants; a variant on the "alligators in the sewers" urban myth. See Richard Harrington, "C.H.U.D.": *Subterranean Sludge Movies by Richard Harrington*, WASH. POST, Sept. 26, 1984, at D6. Accidental exposure to toxic waste produces the Toxic Avenger, the Teenage Mutant Ninja Turtles, the Penguin (in the film version of Batman), The Incredible Hulk, Swamp Thing, Spiderman, and various teenage characters in the series of NUKE 'EM HIGH films. Recent "environmentally conscious" films and television shows include FREE WILLY (Warner Bros. 1993), *Star Trek: The Next Generation: Force of Nature* (Paramount, Nov. 13, 1993), and the *X-Files: Darkness Falls* (Fox television broadcast, Apr. 15, 1994) episodes. Children's cartoon shows also seem more inclined to feature environmental issues. See Donna Parker, *EMA Noms to "Willy," "X-Files,"* THE HOLLYWOOD REP., Aug. 17, 1994. Amphibia are a particular theme. Note the environmental message directed at the youngsters by the Muppets, in Kermit the Frog's theme song, IT'S NOT EASY BEING GREEN. Turtles and tortoises seem to be a popular subject in environmental law and popular culture. For example some individuals make films about them, see *TURTLE DIARY* (Vestron 1985) (Two British environmentalist try to free sea turtles kept at the London Zoo), where others slash sea turtles' throats, see Maura Dolan, *Nature at Risk in a Quiet War*, L.A. TIMES, Dec. 20, 1992, at A1 (Angry fishermen kill endangered sea turtles that become entangled in their nets while some property owners dispose secretly of endangered desert tortoises.). Turtles can also be expensive to maintain. See Linda Matchan, *One Family's Turtle Diary: Shelling Out to Pamper a Pet*, BOSTON GLOBE, Nov. 19, 1992, at A1 (detailing expenses in three figures incurred in a treating bored, lonely, sickly \$12 turtle).

11. (20th Century Fox 1983). Female environmental heroes are less common than male ones, and usually less forceful. See Roberta Green, *Diana to Dian Fossey: Hollywood's Women as Protectors of the Environment*, 37 W. VA. U. BULL. PHILOLOGICAL PAPERS 9 (1991) (discussing women as traditional advocates for flora and fauna).

12. (BBC 1992). This film is also known under the title *Disaster at Valdez*. See LEONARD MALTIN, *LEONARD MALTIN'S MOVIE AND VIDEO GUIDE 1994* 292-93 (1993).

13. (1991). When released on video, the title was changed to *The Final Warning*. See MALTIN, *supra* note 12, at 461.

14. (Columbia Pictures Corp. 1979).

15. Environmental disaster made the mainstream as a bankable theme with THE CHINA SYNDROME, which debuted shortly before the Three Mile Island nuclear power plant accident. See Rich Kirkpatrick, *Three Mile Island: America's Age of Nuclear Innocence Ended 10 Years Ago*, L.A. TIMES, March 26, 1989, at 2. Later, in STAR TREK IV: THE VOYAGE HOME (Paramount Pictures 1986), an interstellar probe visits Earth to communicate with whales. This film reemphasized environmental science fiction which had first surfaced in films such as THEM! (Warner Brothers 1954) (featuring radioactive ants invading the L.A. sewer system) and THE TIME MACHINE (MGM 1960). Other nuclear disaster films include THE DAY AFTER (ABC Motion Pictures 1983), TESTAMENT (Paramount Pictures 1983), and numerous science fiction films including LOGAN'S RUN (MGM 1976). For other ecological films, see Terry George, *Hollywood Goes Green*, 94 AUDUBON 86 (March 1992); see also Tom Gliatto, *Have a Blast With These Films*, USA TODAY, Oct. 19, 1989, at 6D (listing movies that focus on nuclear disaster).

*Ghostbusters* demonstrates the impact of concentrating massive amounts of waste in a small area to allow the greatest good for the greatest number. The vapors, entities, and slimers that the Ghostbusters accumulate in their storage facility represent the tragedy of the commons<sup>16</sup> and are the ghosts of our past environmental misdeeds; out of sight, and presumably out of mind.<sup>17</sup> That the EPA official who investigates their operation does not believe in the existence of psychic phenomena, preferring to believe the Ghostbusters' services are a fraud, emphasizes the communication problems between individuals and government.<sup>18</sup>

The urge to make disposal and storage sites as safe as possible delays action indefinitely, as various special interest groups go through a political, social, and legal dance.<sup>19</sup> Further, the enormity of the problem posed in *Ghostbusters*—the unanticipated eruption of an overwhelming threat for which neither academia nor government is prepared—makes it a parable for Judgment Day, through the actions of humankind creating the architecturally elaborate portal through which psychic entities enter the material world. Faced with

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Only a few movies that examine the attempt to control natural resources have been made. However, *CHINATOWN* (Paramount Pictures 1974) is one of the few movies that examine the attempt to control natural resources. *CHINATOWN* details the attempt by a Los Angeles-based syndicate to preempt use of the Colorado River. The hero, Jake Gittes (Jack Nicholson), is ultimately unable to undo the damage. Television shows that have emphasized environmental messages include *Star Trek: The Next Generation: The Force of Nature*, *supra* note 10, *The X-Files: Darkness Falls*, *supra* note 10, and the short lived *Quark* (NBC television broadcast, May 7, 1977-Apr. 7, 1978) (about an interstellar garbage scow). See *From Space Junk to Stellar Missions; The Worst to the Best*, *SACRAMENTO BEE*, Jan. 3, 1993, at EN 15.

16. Ecologist Garret Hardin originated this term in *The Tragedy of the Commons*, 162 *SCI* 142 (1968).

17. Though, as we see demonstrated through *GHOSTBUSTER'S* characters Lewis Tully and Dana Barrett, the ghosts are not out of body.

18. One of the underlying problems in environmental regulation is the lack of consensus on what constitutes reliable science on which to base policy decisions. See Wendy E. Wagner, *The Science Charade in Toxic Risk Regulation*, 95 *COLUM. L. REV.* 1613, 1614 (1995). Venkman is accused of being a poor and unethical scientist by the University administration, the EPA, and his client (Dana Barrett); both because his critics do not like his manner, and because his grasp of the scientific method seems shaky at best. Yet, his seat-of-the-pants approach is reminiscent of the stereotypical American desire to get the job done without worrying about seemingly pointless bureaucratic demands.

19. The extent to which business must anticipate potential dangers to the public is generally a thorny problem. For example, the elaborate precautions taken by the developers in *JURASSIC PARK* (MCA/Universal Pictures 1993) was not enough to protect the public from rampaging dinosaurs. Thus, society should consider what risks it is willing to take in order to carry on a moderately rational existence. For the developers in *JURASSIC PARK*, the question is not so much whether a dinosaur will escape, but rather the risks it poses to public health and welfare, and the amount of money available to minimize those risks. "Is it a big dinosaur or a little dinosaur? Is it a people-eating dinosaur?" Comments of Robert Avant, Jr., Deputy Director, Texas Low-Level Radioactive Waste Disposal Authority, Cleveland, Ohio (Oct. 4, 1994).

such technologically facilitated, thoughtlessly induced catastrophe,<sup>20</sup> only through independent action can traditionally individualistic Yankees save the world.

This Essay examines the law and policy likely to be invoked when governments and individuals face an unexpected and undefined environmental threat. Who decides which procedures will be followed to meet that threat? By what process? Who determines whether those procedures should be abandoned in favor of another approach? Should competing regulatory schemes be allowed to muddy the waters, perhaps ultimately preventing any action at all if the parties involved make the wrong choice of forum or law? What course of action might various parties take to enjoin the Ghostbusters' activities? Which actions might be successful and why? The plethora of choices and arguments over potential jurisdiction<sup>21</sup> in *Environmental Protection Agency v. Peter Venkman et al., d/b/a Ghostbusters* and related cases demonstrate the confusion in which current environmental law can be mired.<sup>22</sup> As the following sections of this Essay demonstrate, negotiating the forest of environmental orders, regulations, decisions, and statutes for anyone involved can be lengthy and complex. Each Legislative Act closes certain legal avenues as it opens others. Part II discusses the parties and issues involved in the film. This is followed by Part III which reviews the new environmental problems unique to *Ghostbusters*. Part IV then highlights causation, liability and remedy issues, and Part V follows with an overview of regulations to prevent environmental accidents. After Part VI evaluates how emergency problems are handled, Part VII discusses the symbolic pollution presented in *Ghostbusters II*. This essay concludes by discussing the distrust of government which

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20. Such a lack of preparedness marks several ecological disasters over the past few years, including the Exxon-Valdez oil spill in Prince William Sound, the massive radiation poisoning of sheep and nuclear test site employees on Nevada ranges, and the Chernobyl disaster. See Casey Bukro, *Alaska Team Aims to Prevent Oil Spills*, CHICAGO TRIB., July 19, 1991, at C6 (reporting on the Exxon-Valdez spill); see also Maria L. LaGanga, *Legal Fallout; Judge Rejects Claim That Nevada Test Site Radiation Caused Worker Illnesses*, L.A. TIMES, Aug. 1, 1994, at A3; STEWART UDALL, THE MYTHS OF AUGUST (1994); Stuart Diamond, *Chernobyl Causing Big Revisions in Global Nuclear Power Policies*, N.Y. TIMES, Oct. 27, 1986, at A1; Aleksei Mikhailov, *Sore Spot: Victimization Being Reversed: More Than Half a Million Children Live in Areas Contaminated by the Chernobyl Disaster*, CURRENT DIG. SOVIET PRESS, April 13, 1994, at 21 (examining the effects of Chernobyl).

21. On the clash between federal and state jurisdictions in the environmental protection area, see David R. Hodas, *Enforcement of Environmental Law in a Triangular Federal System: Can Three Not Be a Crowd When Enforcement Authority Is Shared in the United States, the States, and Their Citizens*, 54 MD. L. REV. 1552 (1995); see also Kenneth M. Murchison, *Enforcing Environmental Standards Under State Law: The Louisiana Environmental Quality Act*, 57 LA. L. REV. 497 (1997).

22. If the answers are not clear by the end of this Essay, well, that is my point.

results in the vigilante ghostbusting, and more generally, vigilante action in the environmental arena.

## II. PARTIES AND ISSUES

### A. *The Premise of the Film*

Early in the film, the three future Ghostbusters reveal their philosophies. Peter Venkman (Bill Murray), the con artist of the group, wants success, almost at any price. He is a self-promoting entrepreneur<sup>23</sup> who we fear would cheerfully create environmental havoc,<sup>24</sup> and then charm<sup>25</sup> the government into hiring him to clean it up for an exorbitant fee.<sup>26</sup> Ray Stantz (Dan Ackroyd), is the enthusiastic doer, who sees a problem and sets out to solve it. On hearing of an oil spill, he's the one most likely to jump into his Jeep to race down to the beach to clean sludge off ducks. Like his namesake,<sup>27</sup> Egon Spengler (Harold Ramis) is the intellectual who buries himself in his work. As he tells Janine, the Ghostbusters'

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23. Business people in general are subject to widespread criticism in the movies. See generally Stuart Feldman, *At the Movies: Business Gets a Bad Rap; Hollywood's Portrayal of Business and Executives*, 81 MGMT. REV. 49 (1992).

24. Some companies are beginning to object to the media's portrayal of them as cloddish, money-hungry robber barons, primarily responsible for our present ecological disasters. See Laurie Lande, *Marathon Oil Quits Parade to Protest Seagal Portrayal*, DALLAS MORNING NEWS, July 4, 1994, at D1 (discussing Marathon Oil's pullout from the Cody, Wyoming Independence Day celebration in protest over the image of an oil executive in the Steven Seagal film *ON DEADLY GROUND* (Warner Brothers 1994)). Some commentators have expressed concern over the oil and gas industry's failure to promote a more attractive image as well as the movie's inaccuracy: "I don't think the future of the industry will rise or fall based on one movie," said Robert Stewart, president of the National Ocean Industries Association, a group that represents the offshore oil and gas industry, "but if that movie is all the public is seeing, then we have no one to blame but ourselves." *Id.*; see generally Greg Hassell, *Hollywood Casts Big Oil the Villain; In Movies, the Energy Industry Can Do No Right—and That Bad Image Reflects on Houston*, HOUSTON CHRON., May 29, 1994, Business Sec. at 1 (discussing the negative image of the oil industry in movies). Television reinforces this image in series like *Dallas* (Columbia Broadcasting System, 1978-1991), in which J. R. Ewing cheerfully personifies both corporate greed and environmental insensitivity.

25. Dana Barrett (Sigourney Weaver) tells him bemusedly, "You don't seem like a scientist. More like a game-show host," a putdown that leaves Venkman undaunted.

26. When the three decide to go into business, Venkman is enthusiastic, even though seeking out venture capital for this unknown technology puts them at the mercy of the overly greedy financial world. "Will you guys relax? We are on the threshold of establishing the indispensable defense science of the next decade—Professional Paranormal Investigations and Eliminations. The franchise rights alone will make us rich beyond our wildest dreams." Stantz is dismayed at the exorbitant rate of interest he'll have to pay on his mortgaged home. "Nineteen and a half percent? You didn't even bargain with the guy!" The lugubrious Spengler contributes the sobering thought that the payments on the interest alone over the next few years will amount to ninety-five thousand dollars.

27. Oswald Spengler, *THE DECLINE OF THE WEST* (Charles Francis Atkinson trans., Oxford University Press 1991).



receptionist, his hobbies are collecting spores, molds, and fungus.<sup>28</sup> When she flirtatiously tells him that she likes to read, he barks back that "print is dead."<sup>29</sup> For him, much of the disruption that technology brings is inevitable; the best course is to understand it, control what one can, and be philosophical about the rest. Such an attitude is useful considering the fate that befalls these heroes in the opening minutes of the film.

After the University tosses the Ghostbusters off the campus for what it considers highly questionable scientific practices,<sup>30</sup> the three psychic investigators decide to make use of their specialized knowledge by becoming professional ghostbusters, psychic investigators who will rid clients of pesky poltergeists for a hefty fee.<sup>31</sup> They acquire a dilapidated former fire station which they convert into a storage facility, and an old, environmentally unsafe, ambulance,<sup>32</sup> which they decorate with sirens, lights, and "Fatso," their famous "No ghosts allowed" emblem.<sup>33</sup> Their ghost-capturing equipment consists of unlicensed nuclear accelerators, which they carry on their

28. The proper word is "fungi," but, after all, Spengler is a hard sciences man. See RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 776 (2d ed. 1987).

29. But the dead are coming back, and significantly make their first appearance in a building, the public library, devoted to print.

30. Venkman, for example, uses his position as a researcher to skew results in an ESP experiment in order to seduce one of the female participants. Whether it is politically wise for the Dean to toss all three of them out based on Venkman's performance is another question. Scientists with funded projects are not normally treated this way, although perhaps some of them should be. For a recent example of questionable scientific methods, see JUDY SARASOHN, SCIENCE ON TRIAL (1992) (discussing accusations of faulty or falsified research results in the lab of David Baltimore, the Nobel Prize winner of 1975, and former Rockefeller University president). Theresa Imanishi-Kari, the scientist who was the primary target of Congressman John Dingell's investigation, was eventually cleared by a National Institutes of Health (NIH) panel in 1996. See Gina Kolata, *Inquiry Lacking Due Process*, N.Y. TIMES, June 25, 1996, at C3. The end of the NIH probe has simply triggered further discussion of scientific misconduct. See Joseph Palca, *Scientific Misconduct: Ill-Defined, Redefined*, 26 HASTINGS CNTR. REP. 4 (1996).

31. For a ten minute sweep of a hotel, during which they destroy property with great abandon, they charge the establishment \$5000.

32. Stantz tells Venkman, "I found the car. Needs some suspension work, and shocks, and brakes, brake pads, lining, steering box, transmission, rear end . . . only \$4800 . . . maybe new rings, also mufflers, a little wiring." The car is a former ambulance, emphasizing the similarities between the Ghostbusters' venture and responses to other tragedies.

33. Harvey Famous Cartoons sued Columbia Pictures over the use of the emblem, which bears some physical, though not psychic, resemblance to one of the characters in Casper's ghostly trio. See Stuart M. Wise, "Ghostbusters" Buster, NAT'L L.J., Dec. 3, 1984, at 43; Harvey Cartoons v. Columbia Pictures Indus., Inc., 645 F. Supp. 1564 (S.D.N.Y. 1986) (holding similarities between cartoon and GHOSTBUSTERS emblem not copyrightable, or had entered public domain). Another suit, by Filmation, over the title of the film was settled out of court. See *Dispute Over "Ghostbusters" Title Is Vaporized By Settlement*, 6 ENT. L. REP. 20 (August 1984). Still more litigation surrounded the use of the theme song for the film. See David May, "So Long As Time Is Music": *When Musical Compositions Are Substantially Similar*, 60 S. CAL. L. REV. 785, 791-94 (1987) (discussing composer Huey Lewis' suit against Ray Parker, Jr. for copyright infringement).

backs<sup>34</sup> and operate by focussing the emitted beams of radioactive energy at the disruptive entities. None of the Ghostbusters has much experience with this technology, although Egon points out that they should never cross the beams since that would result in a major explosion, to which Venkman responds, "Important safety tip." Once they capture ghosts in their traps, they imprison them in their storage facility. Disposal and storage become intertwined since the Ghostbusters have no offsite storage plans.

Fully equipped, the Ghostbusters embark on their mission to rid the world of ghosts entering the physical plane through what Egon defines as "Spook Central," an apartment building on Central Park, and a unique example of point-source pollution.

*B. Initial Concerns: Siting, Zoning, and Dangerous Practices at a LULU (Locally Undesirable Land Use) Site*

*1. Threshold Questions*

The Ghostbuster facility is housed in a former fire station, in which the Ghostbusters also reside.<sup>35</sup> The surrounding area seems to have a mixture of small businesses and warehouses.<sup>36</sup> One may well ask whether the area is zoned for uses that include waste storage facilities. If not, the city might object that the facility is a public nuisance. The neighbors may argue that the Ghostbusters' facility is a private nuisance<sup>37</sup> due to their strange activities including the comings and goings of various employees and visitors, the sirens on the Ghostbusters vehicle,<sup>38</sup> and the oddity of some of their clientele.<sup>39</sup>

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34. Such use would seem to fall within the ambit of prohibited transactions involving nuclear materials. See 18 U.S.C. § 831(a)(1) (1994) (prohibiting receipt, possession, use, transfer, alteration, disposition of, or dispersion of any nuclear material). Naturally, any misuse may also suggest liability on the part of the Ghostbusters should harm come to any bystander (e.g., the hotel maid). See *infra*, note 52.

35. Their use of the facility as a residence may or may not also violate city zoning ordinances. Like firefighters and staff physicians, the Ghostbusters may have good reason to be on the premises in case of emergency.

36. Spengler asserts that the neighborhood is like a demilitarized zone, but we have no independent evidence that it is particularly dangerous or in more need of urban renewal than the average downtown area.

37. On nuisance, see generally J. D. LEE & BARRY A. LINDAHL, 3 MODERN TORT LAW: LIABILITY & LITIGATION 191, 194 (rev. ed. 1996).

"A *public* nuisance affects the community as a whole. It is an invasion of a right common to members of the public generally; or to an indefinite number of persons. A *private* nuisance is an individual wrong caused by unreasonable or unlawful use of one's property. An individual so affected may maintain an action to enjoin or abate the nuisance, or to recover damages."

*Id.*

38. Do the Ghostbusters have a right to install a siren on their vehicle? A siren implies a demand for a right-of-way on city streets, to which the company is not yet entitled, as far as we

Many, if not all, of the public nuisance issues would have been appropriately explored through hearing and licensing procedures set forth in relevant agency regulations.<sup>40</sup> Another issue, which a hearing may examine, is the wisdom of locating a facility in such a densely populated and economically depressed area.<sup>41</sup> Further, various experts could have explored the nature of the waste to be stored in the facility. Given its sliminess, is the waste more like liquid waste or more like solid waste? Does contact with the radioactive streams emitted by the "positron colliders" make it gaseous? Can it be stabilized in one form sufficiently to be stored indefinitely? For Resource Conservation and Recovery Act (RCRA) purposes, this question might be irrelevant.<sup>42</sup> If another statute applies, these questions may need resolution for a determination of agency jurisdiction.

For the local inhabitants, a hearing on this private nuisance is the obvious first step. One of their strategies might be to take the position that the noise and disruption substantially limit the private enjoyment of their property.<sup>43</sup> These concerns are discussed in later

know. Yet in their work, time may be of the essence, and the Ghostbusters may be able to make an argument that they are entitled to negotiate municipal thoroughfares as rapidly as possible in order to deal with rapidly developing ecological problems. On the other hand, noisy devices, whose signal requests for immediate passage installed willy-nilly on motor vehicles, may violate city ordinances in a way that the mounting of loudspeakers on sound trucks designed for the broadcast of political rhetoric may not. *See generally* *Kovacs v. Cooper*, 336 U.S. 77 (1949) (affirming the lower courts decision that Kovacs did violate a city ordinance which prohibited the use on the city streets of sound amplifying devices making loud and raucous noises). Further, owners and drivers of emergency vehicles bear a responsibility for the safe operation of those vehicles, as complaints about the increasing number of accidents due to high speed driving attest. *See, e.g.,* *Deb Kollars, 4 Crashes Mar City-Run Ambulance Service*, SACRAMENTO BEE, May 8, 1995, at B1 (reporting on lawsuits faced by the city based on death and injuries caused by ambulances driven over the speed limit).

39. A policeman delivers Lewis Tully to the facility, telling Egon that although the man should get medical treatment, "Bellevue doesn't want him and I'm afraid to put him in the lockup." Does this statement constitute some kind of recognition on the part of the city that the Ghostbusters' business is a legitimate public service and the premises meet (unnamed) requirements?

40. *See generally* 40 C.F.R. for EPA regulations.

41. President Clinton made the possibility of environmental racism a consideration in siting decisions. "[E]ach Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations . . ." *Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 30 WKLY. COMP. PRES. DOC. 276 (Feb. 11, 1994).

42. *See American Mining Congress v. EPA*, 824 F.2d 1177 (D.C. Cir. 1987). In *American Mining*, the court held that "in light of the language and structure of the RCRA, . . . Congress clearly and unambiguously expressed its intent that 'solid waste' . . . be limited to materials that are 'discarded' by virtue of being disposed of, abandoned, or thrown away." *Id.* at 1193.

43. *See, e.g.,* LA. CIV. CODE ANN. art. 667 (West 1996) ("Although a proprietor may do with his estate whatever he pleases, still he cannot make any work on it, which may deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him.").

sections of this article.<sup>44</sup> Note, however, that one of the unsatisfactory characteristics of the nuisance suit is its likelihood of failure.<sup>45</sup>

One of the threshold questions in determining which government agency, if any, has jurisdiction over the Ghostbusters' activities is deciding the nature of the waste.<sup>46</sup> The factors that complicate this determination are (1) the initial lack of evidence that the waste exists; (2) the continued reluctance of the EPA (represented by Walter Peck) to admit that it exists; and (3) the mixed nature of the waste. The Ghostbusters implicitly demonstrate their recognition of these factors by bypassing any licensing procedures, an act that symbolizes their lack of respect for authority. We ultimately share this lack of respect after meeting Peck and also share the Ghostbusters' impatience with the rules that authority imposes as the price for living under its protection. Because the authority demonstrates its inability to identify and protect the community from the spirit world's dangers, under the Ghostbusters' theory, government loses the respect necessary to demand cooperation and obedience.

## 2. *An Examination of Ghostbusting Activities*

The differences among the three Ghostbusters are nowhere more evident than in their initial reactions to locating their facility in the abandoned firehouse. True to his belief that he should be the only individual profiting outrageously from any likely investment possibility, Venkman objects that "it's a little pricey for a unique fixer-upper opportunity." Spengler is more direct: "I think this building should be condemned. There's serious metal fatigue in all the load-bearing members; the wiring is substandard; it's completely inadequate for our power needs, and the neighborhood is like a demilitarized zone."<sup>47</sup> But as Stantz cheerfully slides into view, he pointlessly shouts, "Hey, does this pole still work?"

Based on Spengler's knowledge of engineering, the three already have notice that their place of business is less than adequate for its intended use; although perhaps not badly located. Although the wiring may have been updated by the time they open for business, the new owners do not appear to have corrected any structural problems. Nor do any backup systems appear available for the storage

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44. See *infra* Part II.B.3.b.

45. See Murchison, *supra* note 21, at 508-09.

46. See *infra* note 103 and accompanying text.

47. Note that Spengler already realizes that the building may not withstand the use to which they hope to put it, which may expose them to additional liability.

facility.<sup>48</sup> Thus, when Peck obtains a court order<sup>49</sup> to shut down electrical power to the Ghostbusters' grid, some of the resulting destruction may be due to the structural weakness of the building and storage facility. However, exactly how much damage is attributable to that weakness might be difficult to determine after the explosion.<sup>50</sup>

One of the objections that either a governmental regulatory body or the Ghostbusters' neighbors might raise is the Ghostbusters' documented lack of familiarity with the equipment they use so blithely to combat the psychic plague. In the elevator of a ghost-infested hotel, while standing under a prominently displayed "No Smoking" sign, Venkman points out that each of them is "wearing an unlicensed nuclear accelerator on his back."<sup>51</sup> Stantz responds: "You know, it's just occurred to me that we've never had a completely successful test of this equipment."<sup>52</sup>

Like other disaster victims, the hotel manager is dismayed at the unanticipatedly high cost of capturing the "free floating apparition or full roaming vapor." Presumably envisioning the reaction of the insurance company<sup>53</sup> to a claim for exorcism and repair of the building and contents, he tells the trio, "I had no idea it would be so much. I won't pay it." "That's okay," responds Stantz, "We'll just let him out right over here."<sup>54</sup> In a panic the man quickly agrees to their terms.

48. The question of built-in redundancies is another topic that a complete siting and licensing procedure would have explored. Compare Venkman's response to Peck with Jack Lemmon's explanation to Jane Fonda of the "backup systems to backup systems" that protects the core of the nuclear power plant in *THE CHINA SYNDROME* (Columbia Pictures Corporation 1979). Ironically, the plant's structural shortcomings in *THE CHINA SYNDROME* already threaten the integrity of those systems, as Lemmon discovers when he examines the X-rays of the plant's underground supports. The X-rays reveal that the builders provided the same X-ray for each support. The builder's justification is the high cost of providing independent verification of compliance for each support when the building has already been deemed structurally sound. *See id.*

49. *See infra* Part IV.A. (discussing Peck's second visit).

50. On liability for abnormally dangerous activities, *see, e.g., Shockley v. Hoechst Celanese Corp.*, 793 F. Supp. 670, 647-57 (D.S.C. 1992) (holding operator of chemical reclamation facility liable for improperly storing waste when operator knew or had reason to know of improper storage), *aff'd in part and rev'd in part*, 996 F.2d 1212 (4th Cir. 1993).

51. Interestingly, they are chasing a thirsty ghost who's busily polluting himself with conveniently provided wedding reception liquor.

52. After they nearly vaporize a hotel maid, they decide that this encounter qualifies as a "completely successful test."

53. Are the Ghostbusters' services likely to be covered under a conventional business premises policy? Is the psychic plague an act of God? Is any specific god implied in traditional insurance policy language?

54. Are the Ghostbusters required to explain their rates before accepting the job? Because they did not explain their rates, they are the only company available to provide the service, and since the ghostly apparitions are apparently developing into a plague, should the government act to regulate the Ghostbusters under the Sherman Antitrust Act? *See, e.g.,* 15 U.S.C. §§ 1-7

In addition to lacking experience, the Ghostbusters also fail to follow elementary safety precautions, presumably expecting a certain amount of deference from clients as well as the government in regard to their methods. All of them, as well as their newest recruit, Winston Zeddemore (Ernie Hudson), smoke profusely in the storage facility, which is festooned with "caution" and "danger" signs. Venkman, clearly more interested in money than in the service they are selling, downplays the extent of their problems, even the existence of ghosts, until they confront him physically. Nor is Zeddemore a believer at first.<sup>55</sup> During his job interview, Janine asks him in a bored tone whether he believes in "UFOs, astral projections, mental telepathy, ESP, clairvoyance, spirit photography, telekinetic movement, full trance mediums, the Loch Ness Monster and the theory of Atlantis." Responds a practical Winston, "Uh . . . if there's a steady paycheck in it, I'll believe anything you say." Yet Winston, the intelligent and observant non-scientist, is the first Ghostbuster to identify the cause of the problem: the return of the dead and the coming of Judgment Day. Like the heroes of *Incident at Dark River*,<sup>56</sup> *Silkwood*,<sup>57</sup> and *The China Syndrome*,<sup>58</sup> he represents the ordinary citizen victim who finally notices the signs of environmental catastrophe. Basing his analysis on common sense and a general knowledge of *The Bible* he calls them by their rightful name, uninfluenced by politics or special interests.

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(1994). Does the manager have an argument that such a charge is exorbitant, given the emergency situation? Are the Ghostbusters in the nature of a public utility, like policemen or physicians (or Consolidated Edison)? Or, are they providing an optional service, like elective surgery, whose necessity is in the eye of the beholder? EPA representative, Walter Peck, certainly believes that they are fraudulently creating the need for their services. On price-gouging by suppliers after natural disasters, see Shannon King, *5 Gulf Coast States Unite to Combat Disaster Rip-Offs*, BATON ROUGE ADVOCATE, July 9, 1996, at A6 ("People lost thousands of dollars to fly-by-night contractors who failed to deliver on promises to restore homes; with goods scarce, people paid triple the usual prices for generators and emergency supplies."). Of course, since the Ghostbusters have no competition, it's difficult to know what the usual price is for a service like psychic waste capture.

55. However, Zeddemore is a character people believe in. He seems so real in fact that Hudson said he often is called upon to do real-life ghostbusting. He once was asked to go to Arizona to investigate a ghost named Jake who had been sighted for more than a hundred years in a hotel. He traveled to Arizona but was not able to find Jake. See Cherry, *supra* note 2, at D3. Egon and Ray, however, firmly believe in the evidence produced by their equipment. Unlike Venkman, they are archetypal mad scientists transformed into reluctant saviors of the world, a perfect, if unlikely, combination. Ever since Dr. Frankenstein's appearance in Mary Shelley's *FRANKENSTEIN* (1818), mad scientists and their impact on the environment have also been a favorite topic for novelists and filmmakers. See Bob Thomas, *Old Mad Scientist Is New Again*, Clevel. PLAIN DEALER, July 22, 1994, at 6E.

56. (Made for TV Movie 1989).

57. (20th Century Fox 1983).

58. (Columbia Pictures Corp. 1979).

### 3. *The Case for Private Nuisance*

While causation in a case of environmental harm is difficult to prove, a negligent act is much easier to identify. For the Ghostbusters' neighbors, several tort theories might offer some relief from the noise as well as the possible danger.<sup>59</sup>

#### a. *Negligence*

The immediate cause of the release of pollutants into the local atmosphere (not to mention all of New York City) is Peck's order to shut down the electric grid that confines the psychic wastes. However, but for the Ghostbusters' act in setting up their hazardous waste facility, and their failure to comply with EPA regulations, that release would not have occurred. Opening such a facility in a heavily populated area is a dubious environmental decision.<sup>60</sup> Further, the Ghostbusters are in a unique position to understand the danger:

The courts have held that where someone has special or superior knowledge, as is expected of hazardous waste facility operators, a higher standard of care must be met. As a result, where there has been a release, carelessness or the act of negligence is not as difficult to prove. In addition, most jurisdictions regard an unexcused violation of state statute or regulation as negligence *per se*. Because it is established by virtue of the violation, negligence need not be shown. Only the causal element must be argued: whether the negligent act actually caused the injury claimed.<sup>61</sup>

#### b. *Nuisance*

The distinction between public and private nuisance is a difficult one to determine. Among the questions the neighbors would have to decide are whether the Ghostbusters operation is inherently a nuisance because of its noise, the increased traffic, and the nature of the business conducted, or whether it only becomes a nuisance after the release of the psychic wastes. If they take the former position, arguably only a few residents are affected, and the business may qualify as a private nuisance. Further, of those residents, it may be

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59. The outline of tort theories and possible remedies is taken from MICHAEL J. LAST, TORT AND INSURANCE ISSUES, IN SITING OF HAZARDOUS WASTE FACILITIES & TRANSPORT OF HAZARDOUS SUBSTANCES 20, 23 (Washington DC: American Bar Association Public Services Division, 1984).

60. "[O]perating a hazardous waste disposal site in downtown Boston might be deemed inherently dangerous, whereas in a more remote location like Last Chance, Colorado, it might not." *Id.* at 20.

61. *Id.*

that only property owners have standing to challenge the Ghostbusters' use of their property.<sup>62</sup> Objecting neighbors would have to demonstrate that the noise, traffic, and general disruption in the area substantially limit their quiet enjoyment of their property. Once the release takes place however, it affects the entire city and becomes a public nuisance. In the first case, the neighbors would have to sue; in the latter the city officials are charged with bringing the suit against the Ghostbusters, assuming they are liable for the disaster.<sup>63</sup> Based on the subsequent actions of a government employee, Ghostbuster liability is by no means certain.

The neighbors could have tried to obtain an injunction against the operation of the facility before it opened, charging that it is an inherently dangerous operation. However, we have no evidence that they knew of the Ghostbusters' plans; we have no proof that the trio had informed their real estate agent of their intentions either.

Nuisance theory requires a balancing of the risks inherent in the facility operation, in the ability to control those risks, and in the public utility associated with the facility. Proof that a facility is a state-of-the-art design with a low degree of risk when maintained in accordance with acceptable operating procedures should be sufficient to overcome a pre-construction nuisance action.<sup>64</sup>

While the Ghostbusters' storage facility seems capable of containing the psychic wastes, we know nothing about a backup system. We also have no evidence that any other similar business is in operation. Therefore, whether the storage facility design is "state-of-the-art" is open to discussion, absent a finding that ghostbusting is essentially the same type of activity as toxic waste storage and disposal.

Whether a nuisance action could succeed after the release is also debatable. "It can be argued that the potential for future harm has been established by the release, and the facility has shown itself to be sufficiently dangerous and the controls against risk sufficiently tenuous to justify a permanent injunction against future operation."<sup>65</sup> The Ghostbusters' defense would, of course, be that Peck caused the release through an independent and ill-advised action, and that nothing in the design of the Ghostbusters' facility prevents its safe

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62. See Kenneth M. Murchison, *Interstate Pollution: The Need for Federal Common Law*, 6 VA. J. NAT. RESOURCES L. 1, 3-6 (1986). Murchison points out substantial problems with the use of either private or public nuisance theory to support environmental claims. Private nuisance theory requires a demonstration of *substantial* interference with private enjoyment of one's property, and traditionally, public nuisance theory required a demonstration of *criminal* wrongdoing. See *id.*

63. See discussion *infra* Part IV.

64. Last, *supra* note 59, at 20.

65. *Id.* at 21.



operation absent bureaucratic stupidity. They would need to demonstrate, however, that shutting down the grid could not be accomplished accidentally, for example through an electrical power failure.<sup>66</sup>

### III. IDENTIFYING AND APPROACHING NEW ENVIRONMENTAL PROBLEMS

While Venkman and Zeddemore may not be convinced of the existence of a ghostly plague at first, the media eagerly covers the Ghostbusters' activities. The clients who hire the Ghostbusters seem eager for their service.<sup>67</sup> The doubters are the EPA, and to some extent the municipal government, which is uncertain what to believe.<sup>68</sup> Like many people in positions of authority, Peck tries to apply existing law to what he judges to be an unexceptional situation; the failure of the Ghostbusters to adhere to perfectly adequate environmental regulations. His analysis is correct as far as he knows, and his legitimate concerns are the health and safety of the local population. Unfortunately, the ghostly plague presents an example of an ecological crisis that moves far more quickly than the ability of the affected regulatory body to respond to it. To that extent, it demonstrates the inadequacy of existing environmental law and policy.

#### A. *The Introduction and Licensing of New Technologies to Address Previously Unidentified Environmental Problems*

The question of new environmental threats is an interesting and intricate one. Through what mechanisms do and should we recognize previously unconsidered ecological problems? At what point do we seek government regulation of the technology used to combat these problems? And how much regulation is too much given the

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66. If the citizens could establish that RCRA applies, they could of course bring suit to compel the Ghostbusters to obtain a permit or correct other statutory violations, or otherwise compel the EPA to enforce various provisions of RCRA. See 42 U.S.C. § 6972(a)(1) (1994).

67. This is evidenced by a scene in which Janine gives the Ghostbusters a list of the day's clients including several free repeaters.

68. The New York City municipal government's attitude is represented by the mayor's reaction to the psychic plague unleashed by Peck in the second half of the film. The EPA's willingness to pursue suspected polluters adversarially seems to fluctuate with the Administration in power, as demonstrated by the agency's changing attitude toward Superfund. For contrasting approaches see H. C. Barnett, *Crimes Against the Environment: Superfund Enforcement at Last*, 525 ANNALS AM. ACAD. POL. SOC. SCI. 119 (1993).

possibility that no one, including the regulators, understands the extent of the problem?<sup>69</sup>

In the *Ghostbusters'* case, psychokinetic energy is a previously unrecognized threat to health and welfare. Its effects are also rapidly increasing. So, the time most government agencies require to organize, carry out, and report on such a threat is likely to delay necessary remedial action until well after the problem reaches crisis proportions. Indeed, the threat begins overwhelming the Ghostbusters to the extent that they begin considering opening another storage facility because the current facility is likely to break down as a result of the increased ghost population it confines.<sup>70</sup>

The debate between those who deny the existence or extent of an environmental problem and those who recognize it, and may tend to overstate it, is a classic and recurring debate in environmental law and policy. For example, at Love Canal, the inhabitants had great difficulty convincing the government and the public that the problem was as monumental as it later proved to be.<sup>71</sup> Even when government and the public are essentially in agreement, the argument is frequently over the extent of the pollution and the financial responsibility of the polluters. The debate can drag on for years and leave bitter memories as well as economic and personal hardship.

"The problem in these mining communities is people have been used to living with this [pollution] for 100 years[.]" "It's not an acute toxicity problem—people getting cancer and dying—so they don't understand why there's a risk." But the risk is real, the EPA says, especially lead poisoning in kids exposed to soil tainted by mine and smelter waste. Many don't believe it. They point to studies that have not found dangerously elevated lead levels in

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69. See Thomas J. DiLorenzo, *Federal Regulations: Environmentalism's Achilles Heel*, 123 U.S.A. TODAY, Sept. 4 1994, at 48 (noting the EPA's failure to consider cost-benefit ratios when enacting new regulations).

70. Egon explains the dimensions of the problem to Winston by analogy to a Twinkie, an interesting choice since Twinkies are generally acknowledged to be nearly indestructible (as well as possibly inedible). The use of the Twinkie as a symbol naturally leads one to consider other associations. Although the Twinkie defense implies that continuous, unsupervised Twinkie consumption may be harmful to humans, the animal population may actually benefit from the concoction. "In Sarasota, Florida, when an elephant refused his normal diet following surgery, the attending veterinarian prescribed Twinkies. The elephant recovered and grew strong. In 1976 in Kings Mill, Ohio, runaway baboons were captured with bait of Twinkies and bananas." Jane and Michael Stern, *Twinkie, Twinkie, Little Suet-Filled Sponge-Cake Cisco Log, Now I Know What You Are*, SPY MAG., July 1989, at 96, 98. While this story may be farcical, the Japanese Environment Assessment Center in Okayama announced the successful creation of a new delicacy called "environmental sausage," made from "recycled Toyko 'sewage solids' by adding soybean protein and steak flavoring. Officials concede 'a slight image problem' probably will keep the sausage from ever being sold commercially." See Brian E. Albrecht, *Journalassic Park!*, CLEVE. PLAIN DEALER, Dec. 26, 1993, at 1H.

71. See generally ADELINE LEVINE, *LOVE CANAL: SCIENCE, POLITICS, AND PEOPLE* (1982).

children's blood. Generations of youngsters have played in Leadville's dirt with no ill effects. And residents say that for all the warnings, the EPA has never proved lead occurring in its natural state—different from lead in paint, water or exhaust—is harmful when ingested. For many, the last straw was when the EPA, unable to find high lead levels in children, began an experiment to force-feed pigs soil with lead in it.<sup>72</sup>

Even the suggestion that land may be tainted can lead to falling property values<sup>73</sup> and disastrous drops in stock prices,<sup>74</sup> further fueling unwillingness on the part of some to admit to the possibility of an environmental hazard. The hidden costs of cleanup and bureaucratic intransigence, when revealed, further discourage a public disgusted by ever-higher taxes and costly regulations that seem to provide no benefit. For example,

[i]n 1991 Congress ruled that all sewage treatment plants must remove at least 30% of the organic waste from incoming sewage. For some cities, like Anchorage, Alaska, this is nearly impossible to achieve because the city has little organic matter to remove in the first place. The EPA was not flexible; it told Anchorage it must meet its 30% standard. The city could have spent \$135 million on a new sewage treatment plant to meet the standard, but it discovered a much cheaper option. It invited two local fish processing plants to dump 5,000 pounds of fish viscera into the sewer system. The fish waste was easy to remove and Anchorage easily met the 30% rule.<sup>75</sup>

*B. Problems of Preemption and Regulatory Oversight: The First Walter Peck Interview*

Ghostly encounters increased drastically within a few weeks of starting their business, and the Ghostbusters increased their business a thousand-fold, as a result. The Ghostbusters quickly become objects of media adoration, thanks to both Venkman's remarkable huckstering ability and the successful capture of various malevolent

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72. John Ritter, *In Mining Town, Years of Bad Blood With EPA // Bitter Colo. Cleanup Fight Could Take a Turn Today*, USA TODAY, August 26, 1994, at A10 (discussing differences of opinion concerning extent of damage and responsibility for cleanup in a small Colorado town). The television movie INCIDENT AT DARK RIVER, *supra* note 9, deals with a similar, Love Canal-like problem and documents the frustration of a homeowner unable to obtain redress through the courts for the death of his daughter, caused by her exposure to point-source pollution illegally discharged by a local chemical plant.

73. See generally Vincent D'Elia & Catherine M. Ward, *The Valuation of Contaminated Property*, 111 BANKING L.J. 350 (1994).

74. See Margaret Murphy, *Viewpoints; Warning: Disclose Environmental Cost*, N.Y. TIMES, Sept. 4, 1994, § 3, at 9.

75. DiLorenzo, *supra* note 69, at 48.

entities. Their fame leads to a visit from Walter Peck.<sup>76</sup> Peck neither shows credentials or identifies himself, though he behaves like a bureaucrat, demands to see the facility, and becomes angry when Venkman refuses to oblige. Peck's high-handed attitude clearly supports the opinion many people have about the officiousness and meddling that some government employees seem to display. Peck leaves in a fury after trading insults with Venkman.

Venkman's independent stance shows the reluctance of individuals and newly emerging companies in unregulated industries to cooperate with a government they perceive as too bureaucratic, hysterical, expensive, demanding, and obsessed with detail.<sup>77</sup> Unfortunately, the Ghostbusters do not have a lawyer to tell them that refusing to cooperate with a government official, while it might be legally justified in some cases, is often a tactical error. Venkman may be (incorrectly)<sup>78</sup> relying on Peck's failure to notify him of the inspection to justify denying Peck's request. While the EPA generally takes the position that a warrant is required, inspection may be unannounced. In *Dow Chemical Co. v. United States*,<sup>79</sup> the Supreme Court held that other methods of acquiring information, such as aerial photography, are acceptable in order for the EPA to verify compliance.<sup>80</sup> A safer position for the Ghostbusters to take would be to question Peck's authority to inspect, arguing the EPA lacks jurisdiction. Validation of this position would come, if ever, only after expensive and tedious litigation. One option, however, might be to explore whether the EPA lacks jurisdiction based on its failure

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76. The name is suggestive of Peck's penchant for nipping at the Ghostbusters and their activities, constantly battering away at the same point (the lack of proper procedures) rather than stopping to examine their purpose and effectiveness. Peck never seriously believes in the existence of the ghost entities, although he uses it as a justification for investigating and attempting to regulate their business.

77. See, e.g., Sandra L. Goodman, *Why Does EPA Issue Exaggerated Warnings?* SACRAMENTO BEE, July 31, 1994, at FO3.

Few people would dispute that exposure to high levels of toxic chemicals is dangerous; the health effects of low-level exposure, however, are not so clear. Low levels of exposure are what you find at most Superfund sites. But rather than providing an accurate assessment of the most probable dangers . . . EPA prefers to whip up public hysteria.

*Id.* Note, however, that Peck's objection to the Ghostbusters' operation is that it is unsafe, not because they are mishandling the environmental hazard they are hired to eradicate, but because he believes they are *creating* an environmental hazard through fraud and reckless use of dangerous equipment.

78. See Murchison, *supra* note 21, at 508-09; see also *supra* notes 20-21 and accompanying text. However, nothing requires that the EPA continue to take this position, since the statutes are silent on the issue.

79. 476 U.S. 227 (1986).

80. See *id.* at 239.

to designate the waste as hazardous under the appropriate statutory definition.<sup>81</sup>

### C. *The Applicability of the Low Level Radioactive Waste Act*

The initial Venkman/Peck interview poses some interesting environmental law and policy questions. What environmental statutes, if any, have the Ghostbusters violated? What bases can Peck advance for the EPA's right to regulate the Ghostbusters' activities? Although he doesn't know about the unlicensed nuclear accelerators, Peck believes that some type of harmful waste is being generated and/or stored on the premises.<sup>82</sup> Further, he suspects the Ghostbusters are creating the waste themselves, rather than collecting it from the environment. If pressed for legal justification to intervene he would be likely to point, for example, to the Low Level Radioactive Waste Act (LLRWA),<sup>83</sup> as well as statutes regulating the disposal of high level radioactive waste.<sup>84</sup>

The LLRWA sets forth extremely specific terms under which sites must be proposed, evaluated, and chosen. It also mandates environmental impact statements,<sup>85</sup> which the Ghostbusters could not have prepared since they did not notify any agency of their activities. Additionally, the LLRWA guidelines require that the waste being stored, and the disposal site, be structurally stable.<sup>86</sup> Apparently the psychic waste being stored does not meet Class B or C waste

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81. See generally *United States v. State of New Mexico*, Civ. No. 90-276 SC, 1992 WL 437983, at \*1 (D.N.M. Oct. 14, 1992) (discussing extent of EPA's power to regulate activity based on failure to specify exact nature of waste at issue as falling within statutory definition), *aff'd*, 32 F.3d 494 (10th Cir. 1994).

82. Although Peck may not believe that ghosts exist, a New York Court of Appeals allowed rescission of a real estate contract on the basis that the seller had failed to disclose the reputation of the property as "haunted," therefore breaching the agreement to deliver a "vacant" house to the buyer. See *Stambovsky v. Ackley*, 169 A.D.2d 254, 259-60 (N.Y. App. Div. 1991). On haunted real estate, see generally Daniel M. Warner, *Caveat Spiritus: A Jurisprudential Reflection Upon the Law of Haunted Houses and Ghosts*, 28 VAL. U. L. REV. 207 (1993) (discussing, among other cases, *Stambovsky*).

83. 42 U.S.C. § 10171 (1994).

84. The term "civilian nuclear activity" is defined by statute as "any atomic energy activity other than an atomic energy defense activity." 42 U.S.C. § 10101(5) (1994). The term "disposal" is defined as "the emplacement in a repository of high-level radioactive waste, spent nuclear fuel, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such waste." *Id.* § 10101(9). The Ghostbusters' use of the unlicensed nuclear accelerators may bring their activity within the ambit of these sections. According to 42 U.S.C. § 10132, proposed nuclear waste disposal sites must be thoroughly investigated by the EPA and approved by the President.

85. See 42 U.S.C. § 10134(f) (1994).

86. See 10 C.F.R. § 61.7(b)(2) (1997). For a general discussion of C.F.R. guidelines, see Michael A. Petrella, *Wasting Away Again: Facing the Low-Level Radioactive Waste Debacle in the United States*, 5 FORDHAM ENVTL. L.J. 103 (1993).

guidelines,<sup>87</sup> nor does it seem to have the minimum stability required by any other class. As we see on Peck's second visit to the facility, it is neither liquid nor solid, and if released will likely ignite or emit toxic vapors.<sup>88</sup> Furthermore, storage is likely to be advisable not for 100 years, as with Class A and B wastes,<sup>89</sup> but forever. However, under RCRA, the government need only show that the waste is hazardous within the statutory definition. The EPA might prefer to exercise this option for this particular case.<sup>90</sup>

While the LLRWA does not address the particular nature of psychic waste directly, such waste clearly seems dangerous to human health and safety. As a practical matter, therefore, those believing in this waste may demand some governmental agency to regulate their disposal. Taking the position that the LLRWA does not apply may be intellectually justifiable; but such a stand will only delay regulation.

Inarguably the use of radioactive emissions to capture ghosts brings the operation under the aegis of some government agency, but which agency is an open question. The Nuclear Regulatory Commission,<sup>91</sup> rather than the EPA, regulates the disposal of nuclear waste. However, states also have some jurisdiction in this area.<sup>92</sup> Peck may not have any authority to demand access to inspect the facility, yet someone may have authorized him to investigate. In addition, New York is not a compact state,<sup>93</sup> so that whatever disposal mechanisms are decided upon are likely to bind the inhabitants and the governments for many years. Yet, conspicuously absent from the Ghostbusters' confrontations with governmental authorities are the State of New York representatives; although individual states have the authority to set up hazardous waste programs according to guidelines set out by the federal EPA guidelines.<sup>94</sup>

Further, as Egon tells his colleagues, the disposal unit that the Ghostbusters are using is filling up quickly due to ever-increasing

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87. See 10 C.F.R. § 61.7(b)(2) (1997). The waste could only retain a stable physical character if mixed with some stabilizing agent; the radioactive gases that the Ghostbusters use to capture it seem very unstable.

88. See generally 10 C.F.R. § 61.7 (1997).

89. See 10 C.F.R. § 61.55(2) (1997) (detailing Class A, B, and C distinctions).

90. See 42 U.S.C. § 6903(5) (1994) (defining hazardous waste).

91. See 42 U.S.C. § 5841(a) (1994) (establishing the Nuclear Regulatory Commission).

92. See 42 U.S.C. § 5842 (1994).

93. See *Congress Must Help States Settle Low-Level Waste Issue New York Isn't Alone in Having No Solution*, BUFFALO NEWS, June 26, 1994, at F10.

94. See 42 U.S.C. § 6926(b) (1994).

levels of psychic activity.<sup>95</sup> Although they discuss opening another storage facility, they probably should act quickly to obtain additional disposal units or franchise the operation somehow.<sup>96</sup> Thus, time is of the essence, both in dealing with the environmental problem and in getting whatever licenses and permissions that are required to comply with the federal regulations.<sup>97</sup> Yet we know that environmental siting decisions take years to complete<sup>98</sup> and we also know that the Ghostbusters have a matter of days or weeks, not years, to deal with the pollution problems created by psychic waste.

#### D. Other Possibly Applicable Statutes and Standards

Peck's first visit identifies several specific concerns in which one can discern the basis for a *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*<sup>99</sup> showing. "I'm curious about what you do here," he tells Venkman, implying that the activities carried out on-site are of concern not only as a general matter but also to the neighborhood. The activities are also somewhat mysterious because they are based on an unknown technology and are intricately involved with an unknown and unrecognized hazard. One can deduce the existence of other possible hazards through an examination

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95. See *supra* note 70. Based on the Ghostbusters' specialized knowledge, they may also have a duty to inform various governmental bodies that an environmental hazard exists. For example, the EPA requires a good faith effort on the part of past and present owners of hazardous waste disposal facilities to file reports. See 46 Fed. Reg. § 22,144 (1981). The Ghostbusters know that they are using unlicensed nuclear accelerators, therefore, they know that their equipment is emitting radioactivity.

96. Franchising might be difficult since (at least in Spenglerian terms) ghostbusting is such a precise and dangerous activity, and would seem to require a certain amount of practice and expertise. Such a franchise operation may eventually implicate licensing concerns in the environmental area: how does one obtain the education and/or training necessary to become a Ghostbuster? See, e.g., 10 U.S.C. § 2701 (1994) (mandating educational programs and standards for environmental restoration by armed forces). Unhappy clients of ghostbusting franchises might quickly line up at the courthouse door to petition for redress against incompetent operators who do an inadequate job of eradicating psychic wastes, just as unhappy homeowners file complaints about incompetent termite control companies. See Teresa Burney, *Lennar Buyers Sue Over Termites*, ST. PETE. TIMES, July 16, 1996, at E1 (citing lawsuit against Lennar Homes Inc. and Ace Professional Pest Control Inc. for improper treatment of newly built dwellings against pest infestations).

97. Once the balance shifts so that the psychic disturbances become an invasion, a city-wide emergency exists. At that point, the city is unlikely to quietly allow the federal government to take over the counterattack and cleanup operations completely. The mayor obviously wants the glory of saving the city from disaster, although he would probably like the federal government to pick up the tab. On local preparedness to deal with environmental emergencies, see Bill Dietrich, *Near-Disaster Shows Alaska's Spill Savvy*, SEATTLE TIMES, Jan. 11, 1993, at A1.

98. See U.S. GEN. ACCT. OFF., PUB. NO. GAO/RCED-94-172, NUCLEAR WASTE: FOREIGN COUNTRIES' APPROACHES TO HIGH-LEVEL WASTE STORAGE AND DISPOSAL (1994) (identifying siting procedures as main obstacles to successful disposal programs).

99. 467 U.S. 837 (1984).

of the Ghostbusters' regular procedures for capturing, transporting, and disposing of psychic waste. By examining the number of agencies potentially involved in regulating such transport, we can appreciate the concerns of all parties in balancing public health concerns, private property rights, and the rights of businesses engaged in lawful commerce.

### E. *The Chevron Standard*

While the Ghostbusters never articulate their assumptions about the nature of the psychic waste they entrap, they clearly believe it is both physically and psychologically dangerous. Walter Peck never articulates his assumptions either. However, he clearly believes that the psychic waste, if it exists, is environmental waste, and subject to the existing federal environmental regulatory scheme. The *Chevron* case provides his justification for interpreting various statutes to cover the psychic waste. In *Chevron*, the Supreme Court held that administrative agencies must be granted discretion in determining the scope of their jurisdiction when enabling legislation is unclear and the agency determination is not inconsistent with the statute.<sup>100</sup>

Peck is equally concerned about the disposal methods used to contain the waste. These disposal methods fall under the EPA's mandate to regulate the use of and access to radioactive materials. Therefore, crucial to successful EPA regulation of the Ghostbusters' activities, is an as yet uncompleted legal determination that the waste being stored is of the type envisioned by an applicable statute.

At no time does the overly smug Peck indicate that an appropriate investigation has determined that the psychic entities under consideration correspond to any environmental category over which the EPA has regulatory authority. Peck may be operating on the assumption that they do. For example, he tells Venkman that he has received reports about the nature of the Ghostbusters' business that have prompted him to investigate and intervene. Thus, Peck has two possible positions to assert to intervene on behalf of the EPA. First, he may claim the EPA has jurisdiction over the entities themselves as waste referred to in the statute. Second, he may assert control over the disposal methods. If he chooses the latter, then the Ghostbusters are in violation of RCRA<sup>101</sup> and the Hazardous and Solid Waste Amendments of 1984 which require that hazardous waste facility

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100. *Chevron*, 467 U.S. at 843 ("[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.").

101. See generally 42 U.S.C. §§ 6921-39 (1994).



operators request permits.<sup>102</sup> Since the Ghostbusters have not done so, they are in violation of EPA regulations and liable for civil penalties.<sup>103</sup> RCRA may offer more justification for Peck's later action in shutting down the facility. If he can demonstrate that the Ghostbusters' practices present imminent or substantial danger to human health or the environment, the EPA may either issue an administrative order or bring suit to shut down the operation.<sup>104</sup>

Once the EPA has issued a subsection (a) order, it can request "the production of relevant papers, books, and documents."<sup>105</sup> Furthermore, the EPA "may promulgate rules for discovery procedures."<sup>106</sup> Where Peck goes wrong in his handling of the Ghostbuster case is in turning off the grid before a hearing is held, rather than following proper procedure.<sup>107</sup> Ironically, his actions result in an immediate discharge of dangerous waste into the atmosphere; the precise result the Ghostbusters are trying to avoid.

Thus before we can subject ghostbusting activity to the strictures of EPA regulation, the EPA must be prepared to make a *Chevron* showing that the entities can be considered "waste" under the meaning of some relevant statute.<sup>108</sup>

While a *Chevron* showing is not necessarily difficult, justifying regulatory authority over ghostbusting storage and disposal is even easier. Peck's objections to the Ghostbusters' operation may be rooted in any number of other federal statutes, depending on how we interpret the composition of the psychic waste. Certainly, the Ghostbusters might be failing to comply with the solid and hazardous waste disposal provisions of 42 U.S.C. § 6901.<sup>109</sup> The radioactive "positron colliders" that the Ghostbusters use to capture

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102. See 42 U.S.C. § 6925 (c) (3) (1994) (requiring "[a]ny permit under this section shall be for a fixed term, not to exceed 10 years in the case of any land disposal facility, storage facility, or incinerator or other treatment facility").

103. See 42 U.S.C. § 6928(a)(3) (1994) ("Any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation.").

104. See 42 U.S.C. § 6973(a) (1994).

105. 42 U.S.C. § 6928(b) (1994).

106. See *id.*; see also *Chemical Waste Management, Inc. v. EPA*, 873 F. 2d. 1477, 1482 (D.C. Cir. 1989) (finding the EPA practice of holding informal hearing to investigate violations of orders brought under RCRA and Hazardous and Solid Waste Amendments permissible under the statute).

107. See generally 40 C.F.R. §§ 24.10(b), 24.14(a)(1) (1997) (detailing record submissions for responding parties). The Ghostbusters never have a chance to submit information for the record, but given Venkman's attitude, they are very likely not to have done so even if a hearing were held.

108. It should be clear, however, that even if the Ghostbusters do not violate any storage and disposal regulations with their psychic waste, their use of radioactive equipment certainly violates other environmental laws and regulations.

109. See 42 U.S.C. § 6901 (1994).

their prey, and arguably some of the waste they store in their basement storage unit falls within the definition of solid waste in 42 U.S.C. § 6903:

(27) The term "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include . . . source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 . . . .<sup>110</sup>

However, the radioactive materials used to capture ghosts, could make part, if not all, of the Ghostbusters' waste subject to provisions of the Atomic Energy Act.<sup>111</sup>

Are the Ghostbusters in violation of the solid waste disposal statutes? The EPA has the authority to issue regulations on radiation exposure only with regard to the use of radioactive materials in "construction or land reclamation."<sup>112</sup> If this statute applies, the Ghostbusters must also comply with 42 U.S.C. § 6922.<sup>113</sup> When Venkman tells Peck that he has "no idea" how many ghosts the team has captured, he is in violation of the record keeping requirements in RCRA because records must accurately identify "the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment."<sup>114</sup> Additionally, the Ghostbusters are required to submit reports to the administrator of the EPA or the relevant State agency.<sup>115</sup>

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110. 42 U.S.C. § 6903(27) (1994). In regard to the renovation of the fire station,

(2) The term "construction," with respect to any project of construction under this Chapter, means (A) the erection or building of new structures and acquisition of lands or interests therein, or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures, and (B) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (including trucks and other motor vehicles, and tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project . . . .

42 U.S.C. § 6903. The fire station requires extensive renovation. See *supra* note 47 and accompanying text. The technology needed to build and operate the actual storage unit is completely new.

111. See 42 U.S.C. §§ 2071-2114 (1994).

112. 42 U.S.C. § 6921(b)(3)(B)(iii) (1994).

113. See 42 U.S.C. § 6922 (1994) (proscribing standards applicable to generators of hazardous waste).

114. 42 U.S.C. § 6922(a)(1) (1994).

115. See 42 U.S.C. § 6922(a)(6) (1994). The Ghostbusters may also have violated 42 U.S.C. § 6923 (1994) (regulating the transportation of hazardous wastes); 42 U.S.C. § 6924 (1994)

If the Solid Waste Disposal Act is applicable, Venkman's refusal to let Peck inspect the facility and look at the company's records is clearly in violation of the act. According to section 6927:

[A]ny person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes and permit such person at all reasonable times to have access to, and to copy all records relating to such wastes.<sup>116</sup>

Whether Peck's request is reasonable, however, is a matter of interpretation. He arrives during the regular business day and seems content at first simply to inquire about activities on site. Peck arrives without warning,<sup>117</sup> and fails to show any identification. Venkman might be able to ask him to return at a later time for purposes of the inspection. However, this could cause Peck to suspect that the Ghostbusters want to conceal materials or evidence of illegality, and the statute does require compliance upon request. Peck, like many of us, suspects the worst of companies that seem to profit from societal misfortune.

*F. Problems of Overreaching and Governmental Recklessness: The Second Peck Visit*

Once Venkman refuses Peck's entry,<sup>118</sup> Peck's recourse is to request a compliance order after notifying the State of New York that he intends to inspect the premises.<sup>119</sup> Peck, as a representative of the EPA, also has the authority to order monitoring and testing of the

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(regulating the standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities); and 42 U.S.C. § 6925 (1994) (requiring permits for treatment, storage and disposal of hazardous waste).

116. 42 U.S.C. § 6927(a) (1994).

117. Although, the EPA position is to obtain a warrant. See Murchison, *supra* note 21, at 508-09 and accompanying text.

118. Note that Venkman is apparently in charge of the operation.

119. See 42 U.S.C. § 6928(a)(2) (1994). We have no indication in the film that Peck notifies the State of New York. Therefore, this failure may invalidate the court order he obtains should the Ghostbusters choose to challenge the order. This section also provides for criminal penalties for knowing violations of the chapter. See 42 U.S.C. § 6928(d) (1994). Presumably this justifies the arrest of the Ghostbusters after Venkman attempts to prevent Peck from shutting down the operation.

facility.<sup>120</sup> Venkman's intransigence adds yet another violation to the list of infractions.

Peck returns to the Ghostbusters' facility with a Consolidated Edison (Con Ed) employee and a police officer. Peck presents a cease and desist all commerce order, a seizure of premises and chattels order, an order banning the use of utilities for unlicensed waste-handlers, and a federal entry and inspection order. Peck also accuses the Ghostbusters of "violation of half a dozen environmental regulations."<sup>121</sup> All present then rush to the basement where Peck waves at the impressive looking equipment and tells the Con Ed technician to shut them all down. When the Con Ed technician objects that he has never seen such a setup, Peck simply tells him to follow orders. The electrical shut-off causes an immediate explosion, releasing the psychic entities into the environment to terrorize Manhattan. Peck's second visit introduces the problem of officious and rigidly thoughtless government inference, compounded by a quasi-iatrogenic catastrophe; his cure for the environmental violations committed by the Ghostbusters is much worse than the disease.

#### IV. WHO YA GONNA SUE? CAUSATION, LIABILITY, AND REMEDY

Once Peck orders the grid turned off, the problem is exacerbated. Whose actions are most proximately related to the undesired result? Who is responsible for remediation? Where will the responsibility lie regardless of fault? Is the situation an act of (anyone's) god, and if so is the simple answer that no human being can be held legally accountable?

##### *A. EPA Liability: Peck's Authority to Intervene and the Ghostbusters' Response*

The escape of hazardous gaseous materials may be regulated under the Clean Air Act.<sup>122</sup> Peck's unilateral action may leave the EPA liable for suit by New York City residents under the Federal Tort Claims Act.<sup>123</sup> A successful suit would have to fall outside one of two exceptions to the federal government's waiver of immunity.

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120. See 42 U.S.C. § 6934(a) (1994).

121. Law school instructors could amuse themselves and bedevil their students by asking what are the "half dozen" violations. As this Article demonstrates, there are more than half a dozen to choose from.

122. 42 U.S.C. §§ 7401-7671q (1994).

123. See 28 U.S.C. §§ 1346(b), 2671-80 (1994). However, holding the federal government or its employees liable is difficult. See *Wells v. United States*, 655 F. Supp. 715 (D.D.C. 1987) (allowing liability to be assessed against the United States government only if the private party would be liable in similar circumstances, and government liability would not otherwise be prohibited by statute).

The discretionary function exception, exempts the acts and omissions of a government employee "exercising due care in the execution of a statute or regulation,"<sup>124</sup> or specific intentional torts, such as assault, battery and false imprisonment.<sup>125</sup> Peck's behavior in forcing the release of the psychic waste arguably falls within the battery exception, as would Venkman's claim of malicious prosecution. However, Peck's defense to a charge of battery would be his disbelief in the existence of the waste. Since he does not credit the existence of the waste and has no personal independent knowledge of them, he lacks the mens rea of recklessness or knowledge.

How much sovereign immunity shields the agency from accusations of recklessness in causing collateral damage is another question.<sup>126</sup> The escaping entities run rampant through Manhattan, crashing taxicabs, causing injury, and destroying other property. As a matter of policy, should the EPA be held responsible for such damage caused by Peck's miscalculation of the existence of the harm when he has made an absolute, yet erroneous, determination that no injury is possible? Given the results of his ill-advised action, the EPA is almost certain to take the position that Peck had exceeded his authority in demanding the shutdown prior to a complete investigation. If no psychic pollution problem exists, then he could not have had any legitimate justification for bypassing agency requirements for a hearing.

For their part, the Ghostbusters would certainly think about suing for what Venkman angrily calls "wrongful prosecution," perhaps on theories of tortious interference with business, trespassing, and perhaps even defamation or false light.<sup>127</sup> The latter might be a difficult win because one institution thinks so little of their methods that it revoked their grant and tossed them out into the real world.<sup>128</sup>

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124. 28 U.S.C. § 2680(a) (1994).

125. See *id.* § 2680(h). On sovereign immunity and the Federal Tort Claims Act, see generally FRANK L. MARAIST & THOMAS C. GALLIGAN JR., *LOUISIANA TORT LAW* 258-59 (1996).

126. While this question has not been litigated, the Office of the General Counsel of the EPA suggests that the government would not be liable for damage caused by pesticides duly registered under FIFRA. Coupled with the *Wells* decision, *supra* note 123, we might analogize, therefore, that the EPA may not be held liable for damage caused by hazardous but properly registered materials even when an employee negligently causes such damage. On the FIFRA question, see Environmental Protection Agency, 74 Op. Gen. Counsel 6 (1974).

127. See generally Goodman, *supra* note 77. See also Mary Judice, *Taylor Questions Oil Bond*, *TIMES-PICAYUNE*, Apr. 26, 1994, at C1 (considering financial surety requirements of the Oil Pollution Act of 1990 overkill).

128. The institution in question seems to be Columbia University, although it is not named in the film. In an appeal of this action, the burden would be on the Ghostbusters to demonstrate that the Dean exceeded his authority, or failed to comply with any necessary due process requirements before evicting them. Since Columbia University is private, due process requirements are almost nonexistent. Due process in institutions of higher education generally

They would also have to refute Peck's allegations that the ghosts they capture are really hallucinations they induce in their clients. If this is so, the EPA's authority to intervene is less obvious, although the Ghostbusters' use of radioactive materials still falls under the regulatory oversight of some governmental agency. However, New York City might be interested in allegations of fraud.

At the point of shutdown, Peck may claim to be operating under the provisions of 42 U.S.C. § 6973, which provides:

[U]pon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit . . . in the appropriate district court against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed . . . to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation, or disposal, to order such person to take such other action as may be necessary, or both.<sup>129</sup>

However, Peck apparently has no hard evidence that the imminent and/or substantial endangerment condition exists, since he does not believe in the psychic plague. Thus, justification for his act would theoretically be based solely on the Ghostbusters' unauthorized use of radioactive materials.

One of the Ghostbusters' remedies might be to petition a federal court for review of Peck's actions. Certainly, both the Ghostbusters and their neighbors could argue that Peck was extremely reckless in shutting down the power grid without first understanding its proper operation and use. However, both federal statutes and the Administrative Procedure Act (APA)<sup>130</sup> strictly limit the types of agency action open to judicial review.<sup>131</sup> Further, the government's response is likely to be, as Peck snaps at Venkman, that "[y]ou had your chance. You chose to insult me. Now it's my turn." The EPA's

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is a complex area. The nature of the institution is crucial in determining the amount of process due. See Donna P. Grill, *Due Process Protection For Nontenured Faculty in Public Institutions of Higher Education: Long Overdue*, 83 W. VA. L. REV. 99 (1980); see also Michael J. Phillips, *The Substantive Due Process Rights of College and University Faculty*, 28 AM. BUS. L.J. 567 (1991). The law dealing with student due process in public institutions is only marginally clearer. See *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150, 151 (5th Cir. 1960) (holding that due process clause of the Constitution applies only to expulsion).

129. 42 U.S.C. § 6973(a) (1994).

130. 5 U.S.C. §§ 551-59, 701-06 (1994).

131. See *id.* §§ 701-06.

discretion to issue administrative orders or decisions is broad, and invokes the protective tradition of judicial respect for agency discretion. Venkman's opportunity to demonstrate proper use of the radioactive equipment has already passed. While government representatives ought not to be vindictive, given Venkman's animosity toward him, Peck's resentment and subsequent vengefulness is understandable.

Again, assuming that the Solid Waste Disposal Act is applicable, members of the neighborhood, or any other individual, can attempt to file suit against the EPA for Peck's abrupt shutdown of the facility on the theory that Peck should have thoroughly inspected the facility and determined how best to cease its operations rather than by simply cutting off power to the storage grid.<sup>132</sup> Of course, either the person bringing suit, or the Ghostbusters, are likely to have to pursue such claims under the APA, rather than under the statute specifically authorizing agency action.<sup>133</sup> As noted above, there might also be an action under the Federal Tort Claims Act.<sup>134</sup> A private nuisance claim may also be pursued by arguing negligence on the Ghostbusters' part in siting the storage facility in a ramshackle building, increasing the amount of traffic in the neighborhood, and disturbing the peace at odd hours.

The Locally Undesirable Land Use (LULU) aspect of the Ghostbusters' facility is one of the most powerful arguments the neighborhood has against it sitting in their area. However, lawyers will have to carefully investigate the zoning requirements, the procedures the Ghostbusters followed, if any, to obtain any necessary business licenses, the regulatory status of the business, and other issues discussed in this Essay in order to prevail at a hearing. The social good the company performs may also weigh against any immediate citizen objections to the storage facility's location. If the Ghostbusters' activities violate a zoning ordinance, the local authority could enjoin their activities without further investigation. However,

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132. See 42 U.S.C. § 6972 (1994).

133. Compare 42 U.S.C. § 9659 (1994) (authorizing citizen suits under CERCLA) with 5 U.S.C. § 704 (1996).

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

*Id.*

134. See *supra*, note 123.

because a fire station already existed on the site, and because the area looks fairly commercial, a finding of a violation of the ordinance is not a foregone conclusion. If the local courts were to find a violation, however, federal law might not preempt the local authority.<sup>135</sup>

### B. Ghostbuster Liability

Even if the EPA is found liable for failure to designate the waste as hazardous under the Clean Air Act, the Ghostbusters may not be absolved of liability if a court finds that they should have known of the hazardous nature of their waste and the likelihood of harm should it escape.<sup>136</sup> Under the Emergency Planning and Community Right-to-Know Act of 1986,<sup>137</sup> the community may also have a "right to know" of hazardous substances stored in the Ghostbusters' facility, if it can show that the substances appear on the EPA's list of regulated substances.<sup>138</sup>

Under a trespass theory, individuals or groups might also sue the Ghostbusters. While absolute liability is no longer the rule once trespass is established,<sup>139</sup> "conduct associated with an abnormally dangerous activity"<sup>140</sup> might be shown. Another difficulty for plaintiffs is the existence of physical trespass; psychic wastes may not equate with what human beings traditionally assume to be inherently capable of the trespass action. However, "[m]any courts now hold that an entry on property by fumes or gaseous material is a trespass and actionable as such."<sup>141</sup>

Several strict or absolute liability theories may also offer an approach for any of the parties interested in suing the Ghostbusters. This approach can be summarized as follows: (1) the *Rylands v. Fletcher*<sup>142</sup> line of cases, under which an activity's hazardous nature is evaluated according to the nature of the activity and the location of the activity; (2) the *Restatement (Second) of Torts* approach, which holds that anyone carrying on an abnormally dangerous activity is strictly liable to anyone harmed by that activity (factors include the

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135. See *Izzo v. Borough of River Edge*, 843 F.2d. 765, 767 (3d Cir. 1988) (holding that federal interest may require district courts to balance federal and state land use concerns).

136. See *United States v. Goldsmith*, 978 F.2d 643, 645 (11th Cir. 1992) (holding that government need only show defendant's knowledge of general hazardous nature of chemical in use, not EPA's pre-existing classification of chemical as hazardous to be liable). The problem is of course that the Ghostbusters' case involves radioactivity and phantasms, not chemicals.

137. 42 U.S.C. §§ 11001-50 (1994).

138. See 42 U.S.C. § 11046 (1994) (authorizing citizen suits).

139. See *Last*, *supra* note 59, at 21.

140. *Id.*

141. *Id.*

142. LR 3 HL 330 (1868).



extent of the risk, the location of the activity, and the value of the operation to the general public);<sup>143</sup> and (3) the "Magnitude of the Risk" doctrine, under which the conduct of any sufficiently hazardous activity imposes absolute liability on the operator.<sup>144</sup>

### C. Other Parties' Liability

While a Con Ed employee disconnects the power to the system, neither the Ghostbusters, their neighbors, nor the city is likely to sue the employee or his company. Apart from the fact that the employee is probably judgment proof, the employee is acting according to company policy in cooperation with the EPA, and has no reason to question Peck's authority to order him to assist in the operation. Further, Peck has a court order. Only someone with much greater authority and responsibility at Con Ed, or someone with authority to represent New York City could challenge Peck's decision to seek the court order or the evidence he presents to obtain it, and as a practical matter they are unlikely to do so. While the Con Ed employee is resistant, he must ultimately comply with Peck's order. The employee's inability to refuse to comply is another example of the helplessness and frustration that many people, including some civil servants and public utility employees, feel in the face of ever-increasing and seemingly petty, arbitrary, or dangerous regulatory directives.<sup>145</sup>

### D. Acts of Gods<sup>146</sup> Defense

One party who is unlikely to be brought into court is "Gozer the Destructor" in any of its manifestations. As in the case of *Satan*, service of process on Gozer is, as a practical matter, impossible without serious loss of life.<sup>147</sup> Whether Gozer is entitled to due process is questionable.

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143. See RESTATEMENT (SECOND) OF TORTS §§ 519-20 (1964).

144. See Last, *supra* note 59, at 21.

145. A more likely candidate for suit, based on the "deep pocket theory," is the Ghostbuster business. *Ghostbusters* gives no information on its form of incorporation, if any, but the movie shows that the boys were extremely busy. If they charge all their clients according to the scale they describe to the hotel manager, they were certainly taking in a great deal of money in a short time. Of course, how much of it is profit is a question for discovery.

146. See 42 U.S.C. § 9601(1) (1994) (defining the term "act of God" as "an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight").

147. See *United States ex rel. Mayo v. Satan and his Staff*, 54 F.R.D. 282 (W.D. Pa. 1971) (holding that plaintiff attempting to sue Satan for constitutional violations failed to allege residence of defendant within the district, thus making personal jurisdiction over the Dark Angel unlikely). The *Satan* Court found that:

V. PREVENTING ENVIRONMENTAL ACCIDENTS: REGULATING  
TRANSPORTATION OF PSYCHIC WASTE AS AN ALTERNATIVE TO LLRWA,  
RCRA, AND SIMILAR STATUTORY REGULATIONS

The process of regulating transport of psychic phenomena is another good example of the amount of law and the number of agencies involved in hazardous waste transport. That the Ghostbusters' psychic waste may fall within the definition of "hazardous substance," as set out in applicable hazardous waste transport legislation, seems clear from the following example:

The term "hazardous substance" means:

[a]ny substance or mixture of substances which (i) is toxic, (ii) is corrosive (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use . . . .<sup>148</sup>

Further, the statutory definition of "toxic" seems to encompass the effects of exposure to psychic waste.<sup>149</sup> Section 1261(g) provides: "The term "toxic" shall apply to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface."<sup>150</sup> Such substances require special packaging and labeling.<sup>151</sup> Transportation of the ghosts from the capture site to the storage facility may also be regulated under the Hazardous Waste Management subchapter of the Solid Waste

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Even if plaintiff's complaint reveals a prima facie recital of the infringement of the civil rights of a citizen of the United States, the Court has serious doubts that the complaint reveals a cause of action upon which relief can be granted by the court. We question whether plaintiff may obtain personal jurisdiction over the defendant in this judicial district. The complaint contains no allegation of residence in this district. While the official reports disclose no case where this defendant has appeared as defendant there is an unofficial account of a trial in New Hampshire where this defendant filed an action of mortgage foreclosure as plaintiff. The defendant in that action was represented by the preeminent advocate of that day, and raised the defense that the plaintiff was a foreign prince with no standing to sue in an American Court. This defense was overcome by overwhelming evidence to the contrary. Whether or not this would raise an estoppel in the present case we are unable to determine at this time.

*Id.* at 283; *see also* STEPHEN VINCENT BENET, *THE DEVIL AND DANIEL WEBSTER* (1937) (discussing the cited unofficial New Hampshire trial).

148. 15 U.S.C. § 1261(f)(1)(A) (1994).

149. *See id.* § 1261(g).

150. *Id.* § 1261(g).

151. *See id.* §§ 1261, 1263.

Disposal Act,<sup>152</sup> as well as under Interstate Commerce Commission regulations promulgated under the authority of the U.S. Department of Transportation (DOT).<sup>153</sup> Apparently, the Ghostbusters take no precautions when they transport captured psychic phenomena in their traps; federal regulations mandate certain standards in the packing, repacking, handling, labeling, marking, and placarding of hazardous materials.<sup>154</sup> Should they find themselves in an automobile accident, for example, the trap might easily be crushed, allowing the trapped ghosts to escape. The Ghostbusters may need to install some backup system to guard against accidental release of the ghosts during transport. The trap should also be labeled with appropriate caution signs to guard against a thief or passerby, unfamiliar with its contents, from mishandling the trap. Furthermore, under the New York State Environmental Conservation Law,<sup>155</sup> the state and city may regulate waste transport. Various state insurance agencies also regulate use of vehicles.<sup>156</sup>

Under the Occupational Safety and Health Act (OSHA),<sup>157</sup> Congress has empowered the United States Occupational Safety and Health Administration to promulgate regulations governing the clothing and equipment to be used when working with or transporting waste on public roads.<sup>158</sup> The Ghostbusters' responsibility for their two employees, Winston Zeddemore and Janine, falls within the "catch-all provision" of OSHA,<sup>159</sup> which states: "[e]ach employer

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152. See 42 U.S.C. § 6923 (1994) (articulating standards for transporters of hazardous waste).

153. See 49 U.S.C. § 5103(b)(1) (1994) (authorizing the Secretary of Transportation to "prescribe regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce"). A case such as *New York v. Mattiace*, 568 N.E.2d 1189 (1990), illustrates the number of state, local and federal violations with which someone accused of "commercial hazardous waste disposal crimes" could be charged. However, the federal government has jurisdiction to regulate the transportation of hazardous materials. See § 5103.

154. See 49 U.S.C. § 5103 (1994) (authorizing the Secretary of Transportation to promulgate rules for the safe transportation of hazardous materials).

155. N.Y. ENVTL. CONSERV. LAW § 27-0305 (Consol. 1997) (regulating permits for waste transporters).

156. See, e.g., *Fireman's Fund Ins. Co. v. Corcoran*, 548 N.Y.S.2d 211 (N.Y. App. Div. 1989) (discussing the difficulties encountered when an insurance company not licensed in New York forces policy holders to obtain additional insurance to operate in New York to comply with federal regulations governing interstate transportation of hazardous waste).

157. See 29 U.S.C. §§ 651-78 (1994).

158. See *id.* § 655.

159. See generally JOHN HARTNETT, *OSHA IN THE REAL WORLD; HOW TO MAINTAIN WORKPLACE SAFETY WHILE KEEPING YOUR COMPETITIVE EDGE* (Merritt Publishing 1996) (explaining in layperson's terms the workings of OSHA). "When enforcing compliance, OSHA inspectors often cite employers under the General Duty Clause because the agency does not have a specific regulation that addresses a particular hazard in the workplace. Employers should note that any recognized hazard in the workplace, whether specifically addressed by OSHA or not, can be cited under the General Duty Clause. It is up to you, not OSHA, to identify and eliminate all existing and potential hazards." *Id.* at 51. For a discussion of the

shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."<sup>160</sup> In a naturally hazardous but ill-understood activity like ghostbusting, the employer cannot be allowed to escape responsibility by pleading such hazards that occur do not fall within the statute because they are not commonly known and detectable, or are generally recognized as hazards in the industry that the employer should be aware of. Moreover, in a case in which specific statutes do not address the hazards, the general duty imposed must apply.<sup>161</sup> The Ghostbusters seem to fall within the general duty requirement by using their "unlicensed nuclear accelerators," but use of these accelerators almost certainly violates EPA regulations, as noted above. The combination of federal agencies (EPA, DOT, and OSHA), and state and local insurance and environmental agencies and bureaucracies can seem overwhelming and counterproductive to even the most willing companies.<sup>162</sup>

Other issues that may concern the local residents include the question of long-term liability for any damage due to leakage or improper storage should the Ghostbusters go out of business.<sup>163</sup>

#### VI. DEALING WITH THE ENVIRONMENTAL ACCIDENT: WHEN A PROBLEM BECOMES AN EMERGENCY

Once a problem becomes a crisis, compliance with any government regulation seems less important than dealing with the emergency presented. The necessity for avoiding panic and limiting the destruction impels the mayor to disregard Peck's objections and the court's orders. His decision may be legally justifiable since if the EPA has no authority in the matter, the court orders obtained are void.<sup>164</sup> Further, as part of his authority as chief officer of the city,

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legislative history of the general duty clause, see BENJAMIN W. MINTZ, *OSHA: HISTORY, LAW, AND POLICY* 436 (Bureau of National Affairs, Inc., 1984).

160. 29 U.S.C. § 654(a)(1). (1994).

161. See generally JOSEPH M. ROBERTS, SR., *OSHA COMPLIANCE MANUAL* 27-28 (1976); 29 C.F.R. pt. 1910 (1997) (detailing Occupational Safety and Health Standards for General Industry). Ghostbusting may be a naturally hazardous activity, but no government agency has yet made a determination that this is so.

162. For a good general overview of the tensions created by overlapping jurisdictional regulations and public frustration, see William L. Rosbe, *Transport of Hazardous Substances, in SITING OF HAZARDOUS WASTE FACILITIES & TRANSPORT OF HAZARDOUS SUBSTANCES* 23-25 (Washington DC: American Bar Association Public Services Division, 1984).

163. As *GHOSTBUSTERS II* shows us, they do go out of business shortly after the end of *GHOSTBUSTERS*.

164. See *supra* note 93.

the mayor has broad powers under the emergency powers acts of the New York City Charter.<sup>165</sup>

The last question one might pose is whether the amount of destruction the Ghostbusters carry out in the course of their activities and the noncompliance with public health and welfare regulations they exhibit is appropriate or justifiable, or whether they are somewhat reckless in their approach. Certainly they damaged the apartment building in which Dana Barrett lives. Further, Gozer the Destructor's appearance as the Sta-Puft Marshmallow Man is a direct result of Stantz's failure to follow Venkman's instructions "not to think of anything." The amount of goo produced through the torching of the Marshmallow Man adds to the cleanup costs.<sup>166</sup> However, given the physical and mental strain they are under during the attack on Gozer, the necessity of their actions, the reluctance or inability of anyone else to tackle the problem, and the near-impossibility of "not thinking about anything,"<sup>167</sup> one should acquit them of any charges of negligence or recklessness in the handling of their equipment as well as this particular situation.

#### VII. GHOSTBUSTERS ON REMAND: *GHOSTBUSTERS II* AND SYMBOLIC POLLUTION

Like the original film, *Ghostbusters II* takes pollution as its subject: pollution of the soul that occurs when evil takes control of human beings and encourages them to exploit the other and other living things. Such self-indulgence is a much darker concept than that in the original *Ghostbusters*. In order to make its discussion more palatable, *Ghostbusters II* is a wilder, more farcical ride through the Murray/Ramis/Moranis view of law and society. The psychic plague in *Ghostbusters* represents the accumulated generalized evil and desire for power in the world, left to pollute the commons until it overwhelms the ability of the earth to absorb and neutralize it. *Ghostbusters II* considers the existence and nature of Evil. The film postulates that it lies hidden beneath human consciousness, and personifies evil as a polluting river of slime that runs underneath

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165. See New York, N.Y., City Charter § 1403(h) (1997) (granting power to the local executive to intervene when natural or man-made disasters have or are about to occur).

166. Consider the controversy over the enormous sums and unforeseen costs involved in Superfund and CERCLA site cleanup. On dissatisfaction with cleanup costs, see generally John Nielsen, *The Failure of the Superfund Law—Part 5*, MORNING EDITION, Sept. 16, 1994 (Transcript #1435-9) (NEWS Library, CURNWS File); see also BENJAMIN H. SHIAO & PHILIP J. HOLTHOUSE, *Deductibility of Environmental Cleanup Costs: The Debate Continues*, 21 J. REAL ESTATE TAX 3 (1993).

167. Although one could argue that, given the nutritional value of marshmallows, Stantz actually did not think of anything.

New York city. When this accumulated ugliness finds an entrance into the physical world, ironically represented by the imaginary Manhattan Museum of Art, it bursts through and infects the city. Like Gozer the Destructor in *Ghostbusters*, the personification of evil in *Ghostbusters II*, a seventeenth century "genocidal maniac" named Vlad, needs both a door through which to enter and a physical body through which to appear to the human race. For its incarnation it chooses Dana Barrett's eight-month-old son Oscar.

As in *Ghostbusters*, the legal system represented in *Ghostbusters II* is concerned with process and procedure, and not with the substantive issues of life and death and good and evil that occupy the Ghostbusters' time. When discussing how to help Dana and her son, the reunited Ghostbusters consider drilling under the street to locate the river of slime. Winston reminds them that their last attempt to save the city was not an unqualified success. "Apart from destroying a whole apartment building, and covering the city with marshmallow gunk, we got sued by every city, state, and federal agency and paid \$25,000 in damages. We were wiped out." Clearly, the Ghostbusters did not have a good lawyer.

Nor does the mayor acknowledge their contribution. When Venkman accidentally runs into him and points out that the city never paid for disposing of Gozer and Zul, a mayoral aide pushes the discredited entrepreneur away.

Completely bankrupt, the Ghostbusters have each gone their own ways: Venkman is the host of a local television show, "World of the Psychic," which seems only slightly more respectable than pro wrestling.<sup>168</sup> Stantz runs a bookstore, "Ray's Occult Books," specializing in New Age materials. His store serves as the meeting place for the Ghostbusters and their few remaining friends. In his spare time, he and Winston entertain at children's parties singing and dancing to the original *Ghostbusters* theme. Spengler has what passes for an academic position; he carries out bizarre testing designed to measure the effect of temperature on human psychology. When Dana approaches him for assistance he assures her of his willingness to help. His warm reaction to this friend from the past contrasts markedly with his approach to a young and obviously lonely test subject who is cradling a puppy: "Let's see what happens when we take away the puppy." This scene recalls and contrasts with the

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168. Venkman's guests include a man whose hardcover book predicts the end of the world occurring on New Year's Eve, and a woman whose prediction of the end of civilization was revealed to her by an alien she met at a Holiday Inn in Paramus, New Jersey. When Venkman questions why he can't get more credible guests, his assistant points out that reputable psychics think he is a fraud. "I am a fraud!" he responds matter-of-factly.

opening scene in *Ghostbusters* in which we see Venkman carrying out his parapsychological research, oblivious to any result except the one that benefits him personally.

At first, since Dana objects to involving her former lover Venkman in her problems, Spengler and Stantz decide to help Dana on their own. Eventually, Venkman worms the truth out of them. Dana, like the rest of New York, is in danger once again from malevolent psychic forces which appeal to the worst side of human nature.<sup>169</sup> They quickly identify the entry point as a painting at the Manhattan Museum of Art and locate the river of slime that runs beneath the city and carries with it the accumulated Evil of centuries. This Evil is not just malevolence or criminality. It also encompasses the self-indulgence and selfishness that lead to the casual commission of heinous crimes.

Ignoring Winston's warnings, the trio don bright orange safety gear and masquerade first as telephone repairmen, then as utility workers, and excavate part of a Manhattan street in the middle of the night. They initially elude capture by feigning ignorance of any contrary regulations and asserting that they are just "doing their jobs," in a buried reference to the traditional excuse ordinary citizens give to explain their acceptance of the rise of the kind of tyranny that Vlad and other evildoers represent. The police finally apprehend the Ghostbusters, and the district attorney disposes of them in a very quick trial, remarkable for its lack of procedural safeguards. The lapse of time is only a few days (the film opens just before Christmas and they are tried and sentenced before New Year's Eve, presumably the same year). Their lawyer is the hapless Lewis Tully, who practices only tax law and "went to night school." Venkman approves stating, "it (the excavation) happened at night." The prosecuting attorney is an unpleasant young woman, unattractively attired, who hammers home her legal points to Tully's dismay.<sup>170</sup> "You could

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169. Unlike the original *GHOSTBUSTERS*, *GHOSTBUSTERS II* tells us, rather than shows us, the effect that the psychic phenomena have on the city's inhabitants. This flaw in the script makes the film's argument that Evil is eternal and cumulative, and pollutes the human soul less persuasive than the similar theme in *GHOSTBUSTERS*.

170. This portrait of a woman attorney is an archetype, meant to appeal to the public's dislike and distrust of lawyers in general and women lawyers in particular. On the female attorney in film, see CHRISTINE A. CORCOS, *CIVIL WARS*, in *LAW AND THE SMALL SCREEN* (Bob Jarvis & Paul Joseph ed., forthcoming 1998); Diane M. Glass, *Portia in Primetime: Women Lawyers, Television and L. A. Law*, 2 *YALE J. L. & FEMINISM* 371 (1990); Louise Everett Graham & Geraldine Maschio, *A False Public Sentiment: Narrative and Visual Images of Women Lawyers in Film*, 84 *KY. L.J.* 1027 (1996); Judith Mayne, *L. A. Law and Prime-Time Feminism*, 10 *DISCOURSE* 30 (Spring/Summer 1988); Carolyn Lisa Miller, *Note: "What a Waste. Beautiful, Sexy Gal. Hell of a Lawyer."*: *Film and the Female Attorney*, 4 *COLUM. J. GENDER & L.* 203 (1994); Carole Shapiro, *Women Lawyers in Celluloid: Why Hollywood Skirts the Issue*, 25 *U. TOL. L. REV.* 955 (1994); Ric S. Sheffield, *On Film: A Social History of Women Lawyers in Popular Culture 1930 to 1990*, 14 *LOY.*

give me a break," he mutters to her at one point. "We're both lawyers."

The judge sentences the trio to long prison terms and fines, but before the bailiff leads them away, out pop two executed criminals (representing recidivism<sup>171</sup> and the failure of the legal system) whom the judge has sentenced. Other psychic entities seize the prosecutor and carry her off upside down, symbolizing the reversal of the traditional operation of the legal system as well as the eventual reversal of the Ghostbusters' sentences. The judge takes refuge underneath the defense table. Amid courtroom chaos the Ghostbusters seize their equipment off the evidence table and capture the apparitions. Relieved, the judge screams, "Case dismissed!" and the vindicated trio marches off to save the city.

Salvation ultimately comes in a reaffirmation of the essential and basic desire of human beings for individual liberty, a theme already developed in *Ghostbusters*. The Statue of Liberty takes the Sta-Puff Marshmallow Man's role, though not its meaning, and marches through the city to destroy the evil forces at work.

#### VIII. CONCLUSION: DISTRUST OF THE GOVERNMENT AND VIGILANTE GHOSTBUSTING

One of the clearest messages of *Ghostbusters*, its sequel *Ghostbusters II*, and darker films like *Falling Down*, *The Star Chamber*, the "Dirty Harry" movies and film characters like those portrayed by Charles Bronson is that government cannot be trusted to protect the people. Whether through incompetence or conspiracy, government officials carry out an agenda designed to disenfranchise the very people they represent. According to these films, the transfer of power from the individual to the government has gone so far that neither the individual nor the group can reclaim it. Therefore, vigilante justice or outright rebellion is justified.

Further, such conspiracy extends from corruption in the legal system, a pervasive theme of many films and television shows as well as popular fiction,<sup>172</sup> to an active conspiracy to "cover up" the

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L.A. ENT. L.J. 73 (1993); Elaine Weiss, *Who's Missing in This Picture?* BARRISTER, Winter 1989, at 5.

171. I am indebted to Jill Kuswa for this observation.

172. On conspiracy theories in films see Christopher Sharrett, *Hollywood Fuels the Panic Years*, USA TODAY, July 1, 1995, at 67. Sharrett describes conspiracy films as follows:

The genre [crime films] has been very prescient in this regard, touching on the topic by the early 1960s, with its most incisive contemporary examples being Sidney Lumet's 'Prince of the City' and 'Q & A.' The crime movie is the natural territory for an exploration of corruption, having gone from individuals being



existence of extra-terrestrials and their visits to Earth. A plethora of films and TV shows has offered variations on this theme since cinema was invented.<sup>173</sup> Extra-terrestrials and the threat they may pose to human existence are a short step from dangerous psychic phenomena like ghosts and perverted life forms like vampires and werewolves. The popularity of such cult shows as *The Night Stalker*,<sup>174</sup> in which every week a newspaper reporter braves the ridicule of his editor and the hostility of the local police force, combines the conspiracy theory with the dangers of psychic phenomena; its formula for scarifying the masses has returned in *The X-Files*.<sup>175</sup> Shows like *Millennium*,<sup>176</sup> in which the psychic investigator assists a supportive police force, are fewer. More often, the psychic investigator finds himself alone, as in the sixties and seventies series *The Invader*,<sup>177</sup> *The Night Stalker*, and the current crop of television series featuring paranormal phenomena.<sup>178</sup>

Combining the stupidity theory (Peck), the conspiracy theory (the city government which doesn't want the public to become aware of the problem once it becomes convinced of the danger), and the element of overwhelming danger posed by the psychic apocalypse creates a climate for increasing public distrust of government officials. The very institutions that have encouraged the public to turn over control of many human activities to elected and non-elected representatives over the past five decades now seem unworthy of that control.

*Ghostbusters*, like many other films, appeals to a public whose frustration with what it perceives to be government bureaucracy

born evil to the notion 'we have met the enemy and he is us between the Great Depression and the Greed Decade.'

*Id.*

173. On this theme see MARK JANCOVICH, *RATIONAL FEARS: AMERICAN HORROR IN THE 1950S* (Manchester University Press 1996); see also PATRICK LUCANIO, *THEM OR US: ARCHETYPAL INTERPRETATIONS OF FIFTIES ALIEN INVASION FILMS* (Indiana University Press 1987); BILL WARREN, *KEEP WATCHING THE SKIES!: AMERICAN SCIENCE FICTION MOVIES OF THE FIFTIES* (MacFarland Press 1982).

174. (ABC 1974-1975). Two movies of the week, *The Night Stalker* and *The Night Strangler*, preceded the series. A big-screen version was due in the spring of 1997. See Marilyn Beck and Stacey Jenel Smith, "Stalker" Gets Big-Time Walking Papers, *PORTLAND OREGONIAN*, December 20, 1996, at 29.

175. (Fox 1992-Present).

176. (Fox 1996-Present). See Larry Bonko, "Millennium" Makes Scary Debut Tonight, *VA-PILOT & LEDGER STAR*, Oct. 25, 1996, at E2.

177. (ABC 1967-1968). See Frank Lovece, *Hide Under Your Couches! Unfriendly Visitors from Outer Space Will Soon be Invading Your Living Room*, *NEWSDAY*, July 28, 1996, at C16. For a comparison of *The Invaders* with newer but like-minded series, see Noel Holston, *Fumes and Flies Foul TV's New "Invaders"*, *MINNEAPOLIS STAR-TRIB.*, Nov. 11, 1995, at O9E.

178. See Charles S. Clark, *Popularity of the Paranormal is no Fiction to Television*, *Film Industries*, *ROCKY MOUNTAIN NEWS*, June 2, 1996, at 9D.

inaction or overaction, an overly litigious<sup>179</sup> and corrupt legal system, corporate greed, and the individual's inability to control his or her own decisions has reached epic proportions.<sup>180</sup> Through its obvious satire of many sources of authority, *Ghostbusters* telegraphs the desire of many people to act affirmatively to combat what they consider to be dangerous situations. At the same time, it glorifies the ability of the individual to create opportunities, to become important, and therefore become authoritative and powerful. When Roger Delacorte, the library administrator, objects to Venkman's questioning of the librarian-witness to the New York Public Library psychic occurrence, Venkman snaps, "Back off, man. I'm a scientist."<sup>181</sup> While we may question how scientific his methods are (the University administration certainly does), we nevertheless applaud his defense of his behavior. His response to the Dean's charge that he is a "poor scientist" is to start his own business and make more money

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179. Witness the recent flap over a six-year-old boy's "sexual harassment" of a classmate (he kissed her after she asked him to) and his subsequent suspension. See *Another School Boy Suspended For Kissing Girl*, AGENCE FRANCE-PRESSE, Oct. 2, 1996. On the suspension of the teenager who gave her friend a Midol tablet, see Rene Sanchez and Victoria Benning, *Fearing Abuse and Lawsuits, Schools Just Say No to Legal Drugs*, WASH. POST, Oct. 12, 1996, at A01. While the sentiments behind prosecution of such acts are intended to promote child safety, their result is to encourage the general public to belittle the very real problems that gender discrimination, harassment, and child abuse litigation are intended to eradicate.

180. Other recent examples are films such as *Falling Down* (1993), the Michael Douglas vehicle showing a frustrated executive "taking the law into his own hands" by taking revenge on everyone who annoys him. One commentator suggests that the character is based in part on Bernard Goetz. See Al Martinez, *Let the Games Begin*, L. A. TIMES, Sept. 6, 1994, at B3 (discussing local residents that stand up to gang violence). Charles Bronson, Steven Seagal, and Chuck Norris have made their careers depicting individuals who take independent revenge on wrongdoers in society to the delight of much of the movie-going public. See "'Death Wish' Sequel No. 1 at Box Office," SAN DIEGO UNION-TRIB., Nov. 13, 1985, at C7 (reporting that DEATH WISH 3 grossed \$3.1 million during one weekend in 1985).

The individual who rights society's wrongs is not a new phenomenon. Maverick characters such as the Scarlet Pimpernel, Batman, the Lone Ranger, and Zorro are so common that they have become archetypal heroes, in some cases with supernatural powers (Superman). In some cases they are part of "the system," but in many cases not (Sherlock Holmes, Simon Templar ("the Saint"), Mike Hammer, Sam Spade, The Equalizer). Their primary interest is in justice, not in the letter of the law. However, in one way these characters are fundamentally different from characters like Venkman. They operate within and are faithful to a moral code. On the vigilante tradition and public frustration see *Justified Bloodshed: Robert Montgomery Bird's Nick of the Woods and the Origins of the Vigilante Hero in American Literature and Culture*, 15 J. AMERICAN CULTURE 51 (Summer 1992). Venkman and other picaresque characters are interested in their own well-being. Although at the end of the movie, Venkman and his colleagues face a terrifying ordeal in order to destroy Gozer, one can argue that they really have no choice if they hope to survive, and also want to rescue Lewis Tully and Venkman's "would-be girlfriend" Dana Barrett.

181. Admittedly, when Dana Barrett asks him if he is using the equipment correctly to test for psychic phenomena, he replies, "Well, I think so." But he is more interested in scoring points with her than in looking for her ghostly roommates, in whom he does not at that time believe.

in a few weeks than the Dean will likely make in a lifetime.<sup>182</sup> We recognize his self-promotion and the carnival atmosphere that surrounds his activities, yet he gets results when the various governments, to which we pay what we consider to be exorbitant taxes, cannot.<sup>183</sup> *Ghostbuster's* farcical elements entertain us, but they also comment on the lack of control many of us feel in regard to our personal and professional environments.<sup>184</sup> The impossibility of dealing with many of the Earth's environmental problems overwhelms us at times.

The appeal of *Ghostbusters* is in its presentation of the individual who fights back, who retakes control, who demands and receives respect from those in power, who are after all public servants, and who is vindicated by events and the evidence of his own abilities. Walter Peck wants to cite Peter Venkman and the Ghostbusters for environmental violations, and in a rational world he may be right. The Ghostbusters' world is a world of crisis, however, and in such a world we should cite Venkman, Stantz, and Spengler for "spirited" ingenuity, and site them in our law schools for a "friendly"<sup>185</sup> introduction to environmental law.

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182. On academic salaries, see Philip Walzer, *Highest-Paid Academics Break Six Figures; Salaries Often Reflect Prestige of Schools*, VA.-PILOT, July 31, 1994, at A1.

183. "[T]he average American thinks 37 percent of the \$1.5 trillion federal budget could realistically be cut as wasteful." See *95% in Survey Think Government Wastes Lots of Tax Dollars*, ARIZ. REPUBLIC, Sept. 6, 1993, at A2.

184. See generally *Is Your Building Sick?* ARIZ. REPUBLIC/PHOENIX GAZETTE, Aug. 27, 1994, at 2.

185. See *supra* note 33 (discussing likeness of GHOSTBUSTERS emblem to Casper, the Friendly Ghost).