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May 20, 2002

B. Todd Jones, Esq., Chair  
Advisory Group on Organizational Guidelines  
c/o Office of Public Affairs  
United States Sentencing Commission  
Suite 2-500 South Lobby  
One Columbus Circle, NE  
Washington, DC 20002

Re: Request for Public Comment  
Advisory Group on Organizational Guidelines

Dear Mr. Jones:

On behalf of the Corporate Environmental Enforcement Counsel (“CEEC”), an organization of 29 major corporations that focuses exclusively on civil and criminal environmental enforcement issues, we appreciate the opportunity to submit these comments to the Advisory Group on Organizational Guidelines regarding the Advisory Group’s review of the effectiveness of the Chapter Eight guidelines.

CEEC has worked extensively on all aspects of environmental enforcement, and has previously submitted comments to the Sentencing Commission and met with members and staff to address issues of concern. On January 9, 2002, CEEC submitted comments in response to the Sentencing Commission’s request for comment on forming an ad hoc advisory group on the Organizational Sentencing Guidelines (66 Fed.Reg. 48306 (September 19, 2001)); a copy of those comments is enclosed. CEEC has also worked on environmental enforcement issues closely with the United States Environmental Protection Agency, the United States Department of Justice, and state environmental agencies and enforcement officials.

CEEC’s members have been at the forefront of the development and implementation of innovative environmental management systems and self-assessment by the regulated community over the past decade. CEEC’s members have long recognized the substantial benefits that are realized when effective voluntary compliance programs are put in place – benefits including improved environmental performance, reduced risk to human health and the environment, and higher compliance levels. To that end CEEC supports the inclusion of provisions in the Organizational Guidelines recognizing the importance of such a voluntary program to prevent and detect criminal conduct.

CEEC also shares the Commission’s recognition that the Organizational Guidelines have generally worked well. In fact, companies (including CEEC members) have utilized the Organizational Guidelines, including the criteria listed in Application Note 3(k) to Section 8A1.2, to develop and enhance internal compliance programs. This Application Note includes a detailed list and discussion of criteria that the Commission believes represent the minimum due diligence that an organization must have performed to have “an effective program to prevent and detect violations of law.”

To CEEC's knowledge there is no information suggesting that the Guidelines need to be revised or supplemented, particularly with respect to the criteria listed in the Application Note referenced above. The Sentencing Commission itself has explicitly recognized this, stating: "the organizational guidelines have had a tremendous impact on the implementation of compliance programs...[and have] prompted a serious reconsideration within the American business community of ...improved corporate governance." 66 Fed.Reg. at 48307. In light of the success of these Guidelines, and given the absence of evidence that they need to be reformed, CEEC continues to believe that there is no need for a broad review of them.

CEEC also has concerns with respect to the scope of the review suggested in the Advisory Group's Request for Public Comment.<sup>1</sup> The Sentencing Commission's charter to the Advisory Group places emphasis on the issue of the criteria in the Application Note referenced above. In the Request for Public Comment, however, the Advisory Group suggests that "it will consider whether there are other features of the organizational guidelines that merit review or change." CEEC encourages the Advisory Group to limit the scope of its review to that stated in the Commission's charge to the Group, particularly in light of the absence of information suggesting that there are deficiencies in the Guidelines.

Finally, CEEC strongly opposes any consideration of an expansion of the Guidelines to include social responsibility programs or "integrity and ethics based" systems. In the September 19<sup>th</sup> Federal Register notice the Sentencing Commission requested comment on this specific issue; CEEC and other organizations<sup>2</sup> submitted comments opposing any such expansion. For the reasons set forth in CEEC's January 9<sup>th</sup> comments, CEEC believes that any such expansion would neither be appropriate nor within the bounds of the Commission's authority.

CEEC appreciates the opportunity to participate in this process, and looks forward to working with the Advisory Group as it undertakes this review. Please do not hesitate to call me if you have any questions with respect to these comments or would like any additional information.

Sincerely yours,



Kenneth R. Meade  
Counsel, Corporate Environmental Enforcement Council

Enclosure

cc: Steve Hellem

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<sup>1</sup> As an additional issue, CEEC would encourage that the Advisory Group take steps in the future to more broadly disseminate notice of its activities to ensure that all interested parties have the opportunity to participate in this process. CEEC notes that the Sentencing Commission published notice of its solicitation of comments on this issue in the Federal Register, and suggests that the Advisory Group do the same.

<sup>2</sup> See, e.g., Comments submitted by the American Chemistry Council and the General Electric Company on November 6, 2001.