

environmental action



ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
NOV 19 1971

Dear Mr. Lombardo:

You were notified by letter of October 28, 1971, of a proposal to remove you from your position with the Bureau of Mobile Sources Pollution Control.

You did not answer the charge in my letter and after careful review it has been found that the charge of Absence Without Leave (AWOL) is fully supported by the evidence and warrants your removal to promote the efficiency of the service. It is my decision, therefore, that you be removed effective December 3, 1971.

You have a right to appeal this action under the Environmental Protection Agency appeal procedure, or to the Chicago Region Civil Service Commission in accordance with the following:

- a. If you appeal first to the Civil Service Commission, you will have no right to appeal under the Environmental Protection Agency appeal procedure. In order for your appeal to be considered by the Commission, it must (a) set forth your reasons for contesting the removal, (b) set forth your reasons for contesting the removal, (c) be submitted no later than the effective date of your removal. An appeal to the Civil Service Commission should be forwarded to the Regional Office, U. S. Civil Service Commission, 433 W. Van Buren, Chicago.
- b. If you appeal first under the Environmental Protection Agency appeal procedure, you will not be entitled to appeal to the Civil Service Commission until after the Civil Service Commission has made a decision on the appeal. However, if no decision on the appeal is made within 30 days of the date the appeal is filed, you may elect to terminate the appeal with the Civil Service Commission. An appeal to the Civil Service Commission should be sent to the Regional Office, U. S. Civil Service Commission, 433 W. Van Buren, Chicago.

- see p. 3

Is this any way to get clean air?

"Leave This To Me, Officer — I'll Decide Whether He Has A Good Excuse"



---- copyright 1970 by Herblock in *The Washington Post*

On Friday, December 3, 1971, Louis V. Lombardo, a 34-year-old, \$17,000-a-year technical assistant with the Office of Air Programs of the Environmental Protection Agency, and a six-year veteran of the government's automotive pollution control program, was fired.

News of Lombardo's dismissal spread through the nation's capital in what has now become something of a routine, as first one, then another noted liberal journalist picked up the story, trying to raise the public's consciousness and prick the government's conscience over a clear injustice. In Lombardo's case, it was Scripps-Howard columnist William Steif who broke the story in its early phases. Two weeks later, the prestigious muckraker, Jack Anderson, devoted part of his "Washington Merry-Go-Round" column to Lombardo's plight. Through it all, the Environmental Protection Agency (EPA), seemingly unaffected and uninterested in the ripple of bad publicity, maintained an official silence.

However, no matter how much EPA Administrator William D. Ruckelshaus, Office of Air Programs Deputy Assistant Administrator John T. Middleton and a host of other high-echelon EPA officials would like the Lombardo firing to recede into the anonymous twilight of bureaucratic shuffles, it will undoubtedly continue to haunt the Agency for some time to come. Put simply, mild-mannered Lou Lombardo represented a threat to the Agency that it could not tolerate. He was an uncompromising defender of the public's right to clean air and good health and a staunch foe of those who would capitulate to the most powerful economic force in the world, the U.S. automobile industry. He was also one of the few men in EPA who had the courage to state publicly that the Agency was not carrying out the wishes of the U.S. Congress in implementing Public Law 91-604, the Clean Air Act of 1970.

Technically, Lombardo was fired for being absent without leave from an EPA post in Ypsilanti, Michigan. Agency officials point with indignation to Lombardo's stubborn refusal to uproot his wife and three small children from their brand new Washington home — and, additionally, to disrupt his after-hours schooling at the American University where he is pursuing a Masters degree — as proof that he is unwilling to work meaningfully with the Office of Air Programs in its Michigan auto testing laboratory.

Lombardo maintains that his transfer to Michigan was merely a ploy to rid the Washington EPA office of one of its last remaining vocal critics, and that ultimately he would have been fired from the Ypsilanti post anyway. He recites a long list of dedicated, conscientious men who have either quit or been forced out of the Office of Air Programs in the past several years because of its lack of vigorous enforcement.

Most convincingly, however, Lombardo can document a string of harrasing and extraordinary tactics used by EPA to get rid of him: paychecks illegally stopped, compensatory time unfairly denied, letters and protests ignored. For instance, Ruckelshaus, whom Lombardo had thought of as a fair and evenhanded administrator who could iron out intra-staff feuds, merely referred all correspondence, without comment, to EPA's personnel department for "routine handling."

Lombardo even went so far as to ask noted public interest lawyer Edward Berlin to intercede in his behalf. Much to his astonishment, that effort failed. "I couldn't believe my ears," Lombardo later said, "when Berlin was told by EPA Personnel Director Charles Barden that there was no hope for a stay of my transfer to Ypsilanti. I couldn't accept that Ruckelshaus

Is this any way . . .

wouldn't grant a temporary delay pending an investigation of my charges."

Lombardo has levelled two separate and distinct accusations against the Environmental Protection Agency, both of them relating to EPA's selection of standards by which to carry out its responsibilities in reducing automobile pollution by 1975. In the one case, Lombardo said, the Agency was permitting more than twice as much hydrocarbon pollution as Congress mandated. In the other, the Agency's automobile testing method was made easier for the manufacturers' benefit, thus endangering health — and violating the law — even further.

Neither of the charges was new to those few observers who had been closely watching EPA activity. In fact, John Esposito of Ralph Nader's Center for the Study of Responsive Law and David Hawkins of the Natural Resources Defense Council had provided superb documentation for the former charge as far back as April, 1971. But, there is a difference between external observers and the Agency's own personnel. Lombardo, though theoretically seeking the same clean air as the other men and women of the Office of Air Programs, began to be looked upon as the "enemy."

Strangely enough, when he first spoke up about the loopholes in the attempt to reduce automotive pollution by 90 percent, Lombardo thought he was bringing new facts to the attention of the Agency. He was convinced that there had simply been a mistake made and that it would be rectified once it was brought out into the open. He soon learned better.

"In retrospect," he admits, "it appears as though I was naive to think that Ruckelshaus was ignorant of the EPA violation of the Clean Air Act. It seems as though I've touched a very sensitive area. The concessions made to the automobile industry must have had very high-level approval so that when Ruckelshaus received my first letter it was not news but a recognition that the corruption had been discovered."

Only a handful of men know for certain how much influence the automobile companies had in getting EPA to water down the pollution requirements for 1975, and Lombardo, a lowly GS-12 in the civil service hierarchy, certainly does not count himself among those privileged few. He does know that when he began working in the government's Mobile Sources Pollution Control (MSPC) program in 1966 (when it was still a part of the Department of Health, Education and Welfare), he was working under some of the toughest and most conscientious men in the business — Smith Griswold and William Megonnell. Then, in early 1967, John Middleton was installed as commissioner and the situation became less clear.

A feud developed between Middleton, who is as shrewd a politician as he is a lax administrator, and his more hard-line underlings; gradually the complexion of the office began to change. Two new men, Eric Stork and Edward Tuerk, gained influence. Megonnell was transferred and Griswold died, and all that was left was to get rid of the two men's assistants. One of them, Lombardo, was informed that he would be sent to Ypsilanti.

The legislative history of the Clean Air Act of 1970, an update of the old 1967 Air Quality Act, is a fascinating one, even for veterans of the Washington political scene. In a sense, it was one of the most radical pieces of legislation that Congress has passed; the legislators arrived at their figures by considering not the capabilities of the auto industry but

rather the health needs of the American public.

On November 20, 1969, the Nixon Administration announced its interim (1975) and ultimate (1980) automotive emission goals. For hydrocarbons, the levels were set at 0.5 grams per mile in 1975 and 0.25 grams per mile in 1980. Based on available figures as to the life expectancy of cars, it was estimated that these levels would assure relatively clean air by 1990. Automotive executives, who were present at the announcement, gave their tacit support to the Nixon goals.

When the Air and Water Pollution subcommittee of the Senate Public Works Committee began its deliberations on necessary amendments to the existing Air Quality Act, it paid close attention to the standards set forth by the Administration. However, the subcommittee members, particularly Senator Edmund Muskie (D-Me.), were very disturbed that Americans would have to wait until 1990 for cleaner air. They therefore moved the 1980 goals forward to 1975 and set them into law as a deadline in the hopes of cleaning the air by 1985.

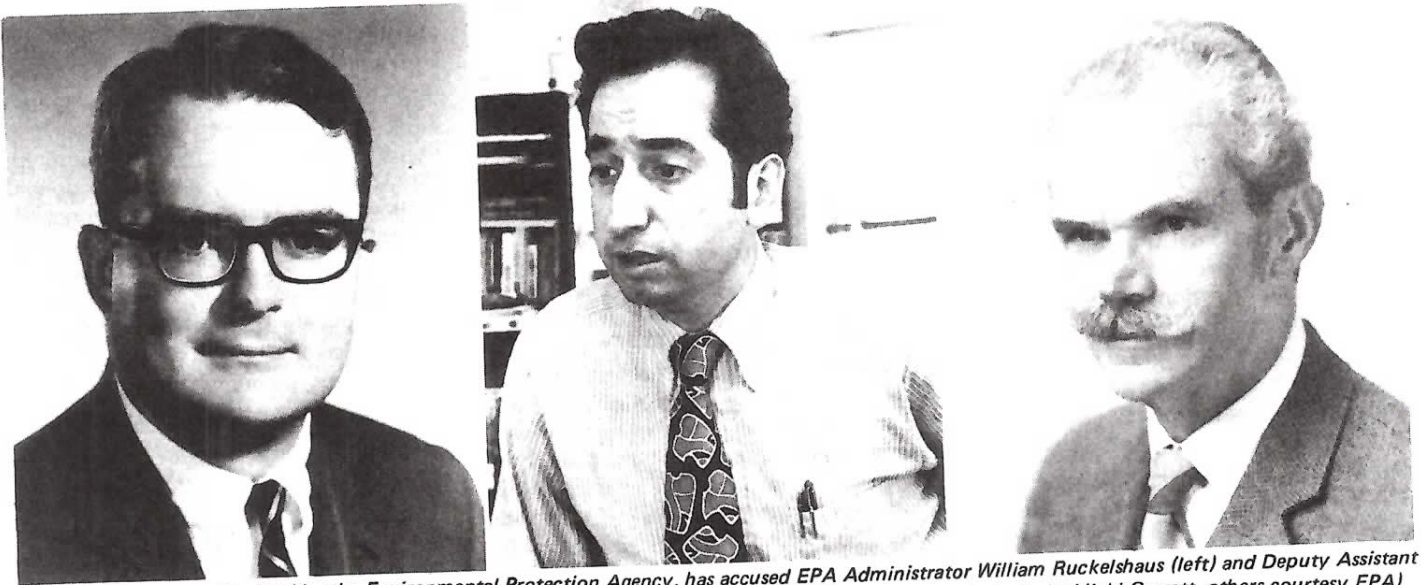
At the time of the subcommittee's deliberations, the standard figure for the allowable level of hydrocarbon emissions in 1970 cars was 2.2 grams per mile. Noting that the figure was approximately ten times as high as the desired level, the subcommittee worded its amendment so as to require 1975 vehicle emissions to be reduced by "at least 90 per centum" over 1970 emissions. At the time, it was clear to all parties involved — including the automobile industry, which protested vehemently — that this would result in a hydrocarbon emission level of 0.22 grams per mile — only 0.03 grams off the Administration's stated goal of 0.25 grams per mile.

Meanwhile, in early 1970, the National Air Pollution Control Administration (NAPCA, forerunner of EPA's Office of Air Programs) made an amazing discovery. NAPCA found that it had been measuring automotive emissions incorrectly! In actual fact, under better testing methods, 1970 cars emitted not 2.2, but 4.6 grams of hydrocarbons per mile! But, lo and behold, when EPA set forth its standards under the new law on February 22, 1971, the Agency selected as its number 0.46 — a 90 percent reduction from an emissions level which complied with the letter but not the intent of the law. Numerically, EPA's standard was nowhere near the 0.22 grams per mile Congress was seeking when it wrote the law.

When Lombardo began to talk about these numerical discrepancies, he still thought that he was merely clearing up honest confusion. However, when EPA made its next procedural decision and it, too, succeeded in weakening the Clean Air Act's intentions, he began to get an inkling of the truth.

The engineers in the Mobile Source Pollution Control program learned a lot in 1970. As mentioned, they found out that cars emit far more pollution than the federal inspectors thought they did. The reason, it turned out, was that Detroit's engineers had watched the testing procedure the government used and had modified the cars so that they performed very well *under that specific testing procedure*. On the open road, under usual driving conditions, the cars were as dirty or dirtier than ever.

When the MSPC engineers found out they had been tricked by their Detroit counterparts, they altered the testing procedure. Whereas the simulated course had previously measured a car's "clean" activities — constant speed and gradual acceleration and deceleration — the new course rooted out an auto's "dirtier" phases — cold starts, rapid acceleration and stop-and-go driving. It was through this procedure that the engineers found, for instance, that hydrocarbon emissions averaged 4.6 rather than 2.2 grams per mile. The new method is more realistic than the old because it measures from the extreme



Lou Lombardo, recently fired by the Environmental Protection Agency, has accused EPA Administrator William Ruckelshaus (left) and Deputy Assistant Administrator John Middleton (right) of improperly implementing the Clean Air Act of 1970. (Lombardo photo by Vicki Garrett, others courtesy EPA)

beginning ("key-on") to the extreme end ("key-off") of the driving cycle, rather than from an arbitrary point once the car is running.

What a shock, then, to find out that the Agency had issued regulations calling for a watering down of the testing procedure beginning in 1973! Whereas all pollution control agencies had always relied on testing emissions from "cold" cars (those that have been sitting for at least 12 hours), EPA decided to now average in emissions from "hot" cars (those which had recently been driven). Lombardo was appalled, for all engineers know that a car pollutes the most when it is first started.

Writing to Ruckelshaus on October 7, 1971, still confident that the Administrator was unaware of the meaning of these changes, he said, "In lieu of the simple stringent cold start test, we now measure the high emissions of the cold start test and then water the measurement down by averaging in the low emissions of an added hot start test. This new loophole which they have led you to create postpones for an indeterminate period of time the achievement of air quality protective of the public health."

In that letter to Ruckelshaus, Lombardo also speculated on the reasons he was being harassed:

"One must ask why would Messrs. Middleton, Tuerk and Stork be so persistent in their persecution . . . Was it solely because I worked for Mr. Megonnell? I can only conclude that my beliefs, of which they as well as many others in the motor vehicle pollution control field are well aware, are contrary to theirs. I learned about motor vehicle pollution control beginning in 1966 under the tutelage of Mr. Smith Griswold and Mr. Megonnell, both staunch pollution fighters. My beliefs leave no room for actions contrary to the public interest nor for actions calculated to accrue personal power. These beliefs apparently cannot be tolerated by these men who have guided EPA into taking at least two major actions to the detriment of the public health."

The dismissal of Lou Lombardo is a personal tragedy for the man, his wife and children, just like the dismissals of the thousands of others who have confronted with moral integrity an impersonal profit- or ego-motivated system. In this case, moreover, the firing represents a real tragedy to all Americans, since it means there is one fewer outraged voice to be lifted inside that agency which is responsible for an important aspect of America's health.

By forcing Lombardo out, Ruckelshaus, Middleton and the others have shored up a feared "weakness" in the Environmental Protection Agency and assured themselves of a more united front the next time they try to deceive the public. They certainly have instilled an additional measure of fear into the hearts of those who may be aware of shortcomings in the Agency — fear which will undoubtedly make them hesitant to speak up.

"Whistleblowing," Lombardo now says, "is not rewarded in this society. It is not even condoned. What I and some of the others have been saying is in the clear interest of all Americans, it is the clear mandate of the Environmental Protection Agency and it is the intent of national legislation. When others see what came of my speaking out, it isn't likely they will be anxious to follow suit."

Senator Muskie has announced that he will be holding hearings in early January to determine how well the Clean Air Act has been enforced in the year since its inception, and to bring up any problems that have been encountered. Although he has been made aware of the Lombardo case by Environmental Action, he has given no public indication that this will be one of the matters looked into by his subcommittee. Not surprisingly, Lombardo has not been the only one to criticize the Act's enforcement (see *Environmental Action*, November 16, 1971).

When he found out he was to be fired in late November, Lombardo told *Environmental Action*, "In the past two months I've gone through a cycle of emotions from optimism, shock, dismay, worry and finally hope." Asked whether he feels he should have left the government earlier, he replied, "With 20-20 hindsight, yes."

Lombardo presently has two major concerns. "First," he says, "I want to help obtain a reversal of EPA's regulations to get standards which will achieve air quality protective of the public health."

"Second, on the broader issue of whistleblowing, I'm going to work to get protection for scientists, engineers and people everywhere from the kind of oppression I've gone through."

Lombardo has been offered a job at the Center for Science in the Public Interest, a group with wider interests but similar goals. His future, though far from secure, is unfortunately more secure than that of the Clean Air Act of 1970.

Peter Harnik