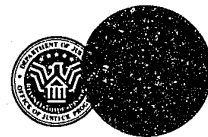


U.S. Department of Justice  
Office of Justice Programs  
National Institute of Justice



# National Institute of Justice

*Issues and Practices*

## Law Enforcement Response to Environmental Crime

151399

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- *Sponsor special projects, and research and development programs* that will improve and strengthen the criminal justice system and reduce or prevent crime.
- *Conduct national demonstration projects* that employ innovative or promising approaches for improving criminal justice.
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ACQUISITIONS

# **Law Enforcement Response to Environmental Crime**

by  
Joel Epstein, Esq.  
Theodore M. Hammett, Ph.D.

with the assistance of  
Laura Collins

January 1995

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*Issues and Practices* is a publication series of the National Institute of Justice. Each report presents the program options and management issues in a topic area, based on a review of research and evaluation findings, operational experience, and expert opinion on the subject. The intent is to provide information to make informed choices in planning, implementing, and improving programs and practice in criminal justice.

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# Foreword

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"Environmental crime" has entered the national lexicon. In recent years an increasing number of communities have acknowledged the key role the criminal justice system has to play in the protection of our environment. These counties and cities have recognized that criminal enforcement is an essential strategy for stemming environmental wrongdoing. Finding a balance between criminal enforcement, regulatory action, and civil litigation — the three main facets of a comprehensive response to environmental violations — is essential to the success of any environmental protection program. The Nation's broad-based system of regulatory activity and civil suits alone is no substitute for the criminal sanction. Only criminal prosecution carries with it the ample threat of incarceration and the stigma of a criminal record.

This report describes how communities that have made a commitment to prosecuting environmental cases have learned the importance of enlisting the support and resources of local authorities. In addition, the report underscores how, once made aware of what to look for, patrol officers can become effective at uncovering environmental crime during routine patrols or investigations of other suspected illegal activities.

The authors explain how a community can create or enhance its environmental crime response so that it is best suited to the community's particular needs. While in some cases environ-

mental crime units based in law enforcement agencies will work best, elsewhere officers assigned to an environmental or regulatory agency will be the most effective means of tackling the problem. The report contains useful information on investigating a range of environmental offenses, including hazardous waste dumping and disposal of construction and demolition debris.

Drawing on the experience of several successful law enforcement responses, the report is designed to encourage more agencies to become involved in this important area by offering basic information on how to initiate and enhance law enforcement programs. The report emphasizes interagency cooperation, enforcement unit placement, investigation and case development strategies, and training. The report was written for an audience of law enforcement and environmental agency leaders. A range of information is included. Two related reports, *Local Prosecution of Environmental Crime*, Issues and Practices, and *Prosecuting Environmental Crime: Los Angeles County*, Program Focus, are also available from the National Institute of Justice.

Jeremy Travis  
Director  
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We wish to acknowledge as well the many others who offered their expert advice as the project moved from its initial stages

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Finally, we wish to thank our colleagues at Abt Associates who assisted with the preparation of this report: Wendy Sanderson oversaw the report's production and assisted with other project tasks; Mary-Ellen Perry and Winn Sinclair produced the document's several drafts and accepted our numerous editorial changes with patience and grace; and Laura Collins was a tremendous help in creating Appendix A, the matrix of characteristics of the law enforcement response to environmental crime in 21 jurisdictions.

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Abt Associates Inc.

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# Executive Summary

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As a result both of past inattention and of ongoing offenses, environmental crime is a growing problem in many American communities. Environmental regulation and civil litigation have not by themselves stemmed the illegal dumping of toxic materials. As local governments across the country seek to better manage their limited natural resources and protect their land, air, and water, a number of communities have acknowledged the important role that criminal investigation and prosecution of environmental laws can play in protecting the public and the environment. Indeed, a comprehensive approach to environmental crime requires the coordinated use of administrative, civil, and criminal procedures.

Based on a national telephone survey and site visits to three jurisdictions that have made a strong commitment to criminal environmental enforcement, this report describes the variety of approaches that can be taken in this area. Directed at leaders and members of law enforcement and environmental agencies, the report builds on two earlier National Institute of Justice reports by the same authors, *Local Prosecution of Environmental Crime, Issues and Practices*, and *Prosecuting Environmental Crime: Los Angeles County, Program Focus*.

A history of underenforcement has left many communities with seriously contaminated land, air, and water. However, the once widespread attitude that environmental offenses are unworthy of the attention of law enforcement agencies and criminal prosecutors is changing in many jurisdictions. This report describes strategies that law enforcement, environmental, and regulatory agencies can adopt to enhance their responses to environmental crime. The jurisdictions studied demonstrate that environmental crime programs need not be situated in a law enforcement department. In some communities basing officers in solid waste authorities or other environmental agencies may be a preferred and cost-effective approach.

The report underscores the importance of the following areas to the development of an effective law enforcement response to environmental crime:

**Training.** Providing law enforcement officers with professional training in environmental crime detection and investigation and in chemical identification can help

improve the vision of patrol officers and increase their awareness of environmental offenses. Cross-training of law enforcement, environmental, and regulatory agency personnel can also convey to all of those involved the responsibilities, skills, and perspectives of the other professionals on the investigation team.

**Specialization.** Creating environmental crime units or designating particular officers as environmental crime officers may increase the efficiency and productivity of the investigation process. Specialization may mean creating liaison officers — single points of contact for prosecutors, regulatory personnel, and other agency staff.

**Interagency Coordination of Efforts.** Coordination and political leadership on the issue of environmental crime have given rise to closer and more effective working relationships among law enforcement departments, prosecutors, public health departments, solid waste authorities, and environmental agencies. Such interagency coordination is essential to an effective response.

**Sting Operations and Other Creative Approaches to Investigation.** Even small environmental crime programs can be effective if creative strategies for identifying and apprehending wrongdoers are developed and used. Hidden tripwire cameras, undercover operations, and stakeouts of suspect sites may be part of an environmental unit's approach.

**The Primacy of Safety and Public Health.** In some cases, because of an immediate threat to investigators' safety or public health or potentially irreversible damage to the environment, the prevention and control of harm may be more important than apprehending the offender. The officer in charge on the scene must be knowledgeable and trained to make such determinations.

**Building on Existing Resources.** Personnel in environmental crime programs should maximize opportunities to learn all they can about their community's environmental problems and possible responses by communicating with staff in environmental regulatory agencies,

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fire departments, parks departments, solid waste agencies, public works departments, fish and game departments, and related organizations.

*Targeting Problem Areas.* Law enforcement departments can conserve scarce resources by focusing efforts on suspect locations and types of establishments with histories of environmental problems. Targets might include establishments that have been cited for environmental violations in the past.

*Enlisting Government, the Public, and the Media.* Teaching the community the dangers and costs of environmental crime and asking the public to help by acting as additional eyes and ears in search of environmental crime can greatly assist an environmental crime effort. Education may also lead a community to reconsider a long-held belief that environmental offenses do not constitute serious crimes.

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# Introduction

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## Purpose and Overview

Events in the United States over the past several years have made it clear that the criminal justice system has a key role to play in the protection of our environment.<sup>1</sup> A waste tire fire in Broward County in 1989 shut down Fort Lauderdale-Hollywood International Airport. A similar fire in Dayton, Ohio, burned for seven months. Both incidents were directly attributable to illegal storage of waste tires. In one 1991 national survey, 84 percent of respondents said that damaging the environment is a serious crime and 75 percent said that corporate officials should be held responsible for environmental offenses committed by their firms.<sup>2</sup> Criminal enforcement is an essential strategy for stemming environmental wrongdoing that cannot be duplicated or replaced by the broad-based system of regulatory activity or the more individualized use of civil penalties, damages, or injunctions. It is the one enforcement tool that effects retribution and deterrence through imposition of prison sentences and the stigma associated with criminal records.<sup>3</sup> In recent years, a growing number of local, county, and State law enforcement agencies have initiated or enhanced their responses to environmental crime. Counties and cities can get involved with environmental cases before cleanup becomes too costly or the damage too great. Increasingly, communities are acknowledging that they face a range of potentially devastating environmental problems. In some cases, serious environmental accidents have prompted communities to develop proactive enforcement strategies.

As more communities make a commitment to prosecuting environmental cases, it is important that they involve and employ the resources and experience of local authorities. Local law enforcement agencies such as city police, county sheriffs, fire departments, and the State highway patrol are routinely in the field, where unreported criminal activities are occurring. Local police, because of their constant, mobile presence in their communities, are natural troubleshooters, the eyes and ears of the community. If they are aware of what to look for, police may frequently uncover evidence of environmental crime during routine investigations of other suspected illegal activities. The execution of a search warrant on a suspected methamphetamine laboratory, for instance, may turn up containers of hazardous chemicals that

pose a serious threat to the investigating officers as well as to local residents. The faster local law enforcement officials respond, the sooner the violation can be halted and the matter prosecuted.<sup>4</sup>

Drawing primarily on the experience of successful law enforcement responses to environmental crime, this report is intended to encourage more departments to become involved in this important area and to provide basic information on how to initiate and enhance law enforcement programs. The report was written for an audience of law enforcement and environmental agency leaders.

Criminal enforcement, regulatory action, and civil litigation are the three main facets of a comprehensive response to environmental violations. The success of any environmental protection program lies in finding a balance among these three approaches. Regulatory or civil action may be most appropriate for first-time offenders, minor offenders, and "accidental" offenders who unwittingly violate environmental laws. However, environmental prosecutors have found the criminal justice system the only effective means against the syndicated criminal, the egregious or repeat offender, and those who engage in environmental crime for profit.<sup>5</sup>

The report underscores the importance of officers, being cross-trained both in criminal investigation techniques and in environmental issues and environmental law. It also describes various models of interagency coordination and explains why close cooperation is essential to effective criminal environmental investigation.

In preparing this report the authors built on prior research efforts including *Local Prosecution of Environmental Crime, Issues and Practices*, June 1993, and *Prosecuting Environmental Crime: Los Angeles County*, Program Focus, August 1993. Both of these earlier environmental crime documents were prepared by the authors for the National Institute of Justice.<sup>6</sup> The present report focuses on efforts by local law enforcement agencies and presents information that should be useful in improving the response to environmental crime at this level. The specific scope and configuration of criminal enforcement must be determined by the leaders of law enforcement agencies, with the cooperation and participation of district attorneys and regulatory agency heads. This

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report emphasizes interagency cooperation, enforcement unit placement, investigation and case development strategies, and training.

## Methods

This study is based principally on telephone interviews with 21 environmental law enforcement programs and on site visits to 3 programs, each representing a different organizational approach: Palm Beach and Broward Counties in Florida, and Middlesex County in New Jersey. In addition to the diversity of organizational approaches, the selected sites displayed innovative enforcement strategies and achieved significant success in apprehending and convicting offenders, as well as in remedying environmental problems. Summary descriptions of all the programs that provided information for the study are included in a table in Appendix A. A literature review and telephone interviews with experts in the field of environmental enforcement were also conducted. Experts interviewed included staff at regional environmental associations such as the Southern Environmental Enforcement Network (SEEN), as well as the Environmental Crimes Committee of the International Association of Chiefs of Police (IACP) and the National Environmental Crime Prosecution Center of the National District Attorneys Association (NDAA).

## Organization of the Report

The report comprises seven chapters. Chapter 1 discusses the characteristics and extent of environmental crime. Chapter 2 is an overview of the legal and enforcement context, including obstacles to effective investigation and prosecution of environmental crime. Chapter 3 describes various types of law enforcement responses, and chapter 4 addresses investigation issues such as sources of leads and environmental

crime scene examination. Interagency coordination is described in chapter 5, and chapter 6 is devoted to issues related to law enforcement working with the prosecutor. A discussion of training techniques, including cross-training and educating the offender, is found in chapter 7. A glossary of terms and acronyms and appendixes of enforcement program summaries, cases, statutes, and resource materials are provided at the end of the report.

## Endnotes

1. Steven J. Madonna, New Jersey State environmental prosecutor, "Local Law Enforcement: A Critical Link in the Statewide Environmental Enforcement Effort," New Jersey State Association of Chiefs of Police (News Release, January 1993).
2. Arthur D. Little, Inc., "Environmental Damage Rated as Most Serious Among Business Crimes; Corporate Executives Should Be Held Liable, Survey Shows" (Press Release, July 1991).
3. Steven J. Madonna, New Jersey State Environmental Prosecutor, "Local Law Enforcement: A Critical Link in the Statewide Environmental Enforcement Effort."
4. T. M. Hammett and J. Epstein, "Local Prosecution of Environmental Crime," *Issues and Practices* (Washington, D.C.: National Institute of Justice, U.S. Department of Justice, June 1993), p. 7.
5. Steven J. Madonna, New Jersey State Environmental Prosecutor, "Local Law Enforcement: A Critical Link in the Statewide Environmental Enforcement Effort."
6. The two reports are available free of charge from the National Criminal Justice Reference Service (NCJRS). Contact information for NCJRS may be found in Appendix E.

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# Chapter 1

## Characteristics and Extent of Environmental Crime

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### Incentives to Commit Environmental Crime

Environmental crimes are committed for a variety of reasons. As with other sorts of monetary crime, some environmental offenders are motivated by greed; others simply want to stay in business and avoid the high cost of legal disposal of hazardous or other wastes; while a third group is ignorant of environmental laws and the dangers posed by improper waste disposal. Since it is much more expensive to dispose of hazardous and solid wastes legally (in landfills and the like), illegal dumping has become a tempting alternative.<sup>1</sup> Increasingly, businesses find that dumpsters left open will fill up immediately. According to Donald Rebovich, the author of *Dangerous Ground: The World of Hazardous Waste Crime*, "Unfortunately for waste-generating businesses, the costs for many disposal methods can be staggering. The cost of legal treatment of hazardous wastes can range from \$15 to \$550 per 55-gallon drum, depending on the chemical."<sup>2</sup>

Environmental prosecutors report that small-business owners, especially dry cleaners, find it nearly impossible to comply with the law and remain in business. The difficulty and prohibitively high cost of disposing of "Perc," or perchloroethylene sludge, the waste product generated by dry cleaning, tempt many otherwise law-abiding dry-cleaning establishments to violate environmental laws by pouring the used cleaning product down the drain.<sup>3</sup> Dr. Rebovich, an expert on hazardous waste crime, notes, "Hazardous waste offenders . . . continue to fit the description of small-business waste generators grappling with 'cost-effective' alternatives to legitimate treatment or independent, enterprising individuals seeking to cash in on the dearth of legitimate disposal outlets."<sup>4</sup> Similarly, of the dozens of interviews conducted by the California Highway Patrol's Coastal Division, none of the witnesses or subjects cited the intent either to commit

homicide or to harm the environment as the motivating factor for illegal disposal of hazardous waste.

### Types of Environmental Crime

Environmental crime tends to reflect the industries and businesses in each community.<sup>5</sup> Certain problems, such as illegal waste tire disposal, improper disposal of furniture stripping and electroplating waste, used motor oil disposal, and hazardous wastes dumped into streams and rivers, are found in nearly all communities. Other environmental criminal activity is either unique or relatively rare and is closely tied to the special character of the city, county, or region where it occurs.

While the risks posed by environmental crime vary considerably depending on the type of activity involved, by far the most troubling crimes are those that pose a threat of serious bodily injury or death. Examples of such activity range from the dumping of illicit drug-manufacturing chemicals to the improper disposal of electroplating wastes, both of which contain highly toxic materials and can cause permanent soil and groundwater contamination.

Higher than normal childhood cancer rates and a loss of use of water, land, and air may give rise to local concern about:

- Hazardous materials and hazardous waste.
- Pollutants illegally discharged into the air or water.
- Underground storage tanks.
- Asbestos.

Environmental offenders exploit lax enforcement to carry out their crimes, but the focus of a new local environmental crime program, whether to stem the dumping of hazardous

materials onto public lands or to stop illegal waste tire dumping, is entirely a local determination. For example, Portland, Maine, and Palm Beach County, Florida, use enforcement action to identify discrepancies between solid waste generation estimates and the actual weight of solid waste crossing the scales at co-generation and solid waste facilities. In addition, in some areas, solid waste issues are of less concern where recycling and economic incentives have created markets for much of a community's solid waste and even used "white goods," or kitchen appliances.

Other communities, such as Middlesex County, New Jersey, find that their biggest problem is not solid waste but the illegal disposal of construction and demolition (C&D) debris. The Middlesex County Prosecutor's Environmental Crimes/Arson Unit has had problems with local construction and related small businesses that violate the law by backfilling wetlands, excavating the land, and then hiding the damage under a thin layer of soil. There have been instances of oil-recycling companies dumping 55-gallon drums of waste oil in the woods, and a good deal of C&D debris from New York City is dumped illegally in Middlesex County.<sup>6</sup>

Broward County, Florida, is not known for its heavy industry, but the county does handle a large quantity of industrial waste generated by light industry. Port Everglades, which once supplied fuel oil to the U.S. Air Force, is still home to a number of oil and propane gas companies and has been a source of past environmental problems. Broward County also has its share of C&D debris from new construction and renovation and has many electroplaters, carpet cleaners, and furniture-refinishing businesses. Compliance with environmental and occupational safety regulations in these industries has long been acknowledged as imperfect at best. Pollution from houseboats, including human wastes dumped directly into the Intercoastal Waterway, is another problem for Broward County. Environmental law enforcement is limited by the fact that only the U.S. Coast Guard and U.S. Customs officers have jurisdiction to board boats on the waterway. Dredge and fill operations that dredge or plow land to bury large quantities of wastes also plague the county. In all communities victims can be an individual, the public, and the environment—while offenders may be individuals, domestic or foreign corporations, or even the government.

Although environmental crime varies from community to community, the five types of offenses commonly targeted by the criminal enforcement efforts visited for this report are the illegal transportation and disposal of:

- Hazardous waste and hazardous materials.
- Waste tires.

- Construction and demolition (C&D) debris.
- White goods.
- Vegetative waste.

### *Hazardous Materials and Hazardous Waste*

The two most important categories of toxics involved in environmental crime are hazardous materials and hazardous waste.

Hazardous materials are substances identified by the U.S. Environmental Protection Agency and U.S. Department of Transportation (DOT) as posing a high risk to health, safety, or property, especially when transported in commerce. Hazardous materials transportation is governed by the DOT.<sup>7</sup>

Hazardous waste is a waste or combination of wastes that may cause or contribute to an increase in illness or disease or may pose a threat to human health or the environment if improperly managed. More specifically, under the Federal Resource Conservation and Recovery Act of 1976 (RCRA),<sup>8</sup> the U.S. Environmental Protection Agency (EPA) may define hazardous waste as any solid waste, or combination of solid wastes, that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

- Cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible illness or
- Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed.<sup>9</sup>

Spills of hazardous materials often occur in highway or railroad accidents. The illegal disposal of hazardous waste includes a wide range of practices, from accidental spills to large, systematic efforts to profit by evading the expense of legal disposal. Agricultural runoff containing pesticides and other hazardous materials causes severe environmental damage in many areas of the country.

Excessive runoff may be a sign of illegal activity. Perhaps the most common form of illegal disposal of hazardous waste is "midnight dumping." In a typical midnight dumping scenario,

Wastes are . . . disposed of in the nearest isolated area. Agents of generating companies can directly commit these offenses or criminally conspire with waste transporters or treaters who, for a percentage



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of the legitimate treatment cost, will illegally dump the wastes. In some instances hazardous waste generators are the victims of fraud committed by midnight dumpers; payment is rendered by the generator to the treater for services that are never performed.<sup>10</sup>

The Los Angeles Superior Court case *People v. Boyce Campbell*<sup>11</sup> contained an interesting and emerging twist on the common practice of midnight dumping. Rather than dump the hazardous contents of the truck he had rented to transport paint product wastes, the defendant abandoned the truck as well as its contents.<sup>12</sup> Similar cases in which individuals using fictitious names rent trucks and then abandon them have been reported in New Jersey and Florida.

While the environmental crimes involving hazardous waste and hazardous materials vary according to local industry or population type, similar *modi operandi* (methods of operation) are discernible regardless of the type of waste or material involved. One widespread practice involves criminal activity by the generator, transporter, broker, or treatment, storage, and disposal facility (TSDF).

In an example of this activity, a generator may act alone or conspire with others to dispose illegally of hazardous waste, either by on-site disposal or by removal and disposal at unauthorized points. Often, an unlicensed transporter will contact unwitting (or uneducated) generators and convince them that a low-cost cradle-to-grave waste strategy is possible, with the transporter arranging for the disposal. The transporter's *modus operandi* may involve either a conspiracy with a known TSDF or a disposal with falsification of manifests.

Because brokers are less closely regulated than other parties to the process, there is an increasing trend toward brokers contacting generators guaranteeing violation-free assistance in storing, labeling, marking, transporting, and disposing of their hazardous waste. This service is offered at a small percentage fee with the promise to make proper arrangements for the processing of the waste. In almost all such cases investigated in California, the broker never even came in contact with the hazardous waste. Commonly, the broker will conspire with the transporter and/or the TSDF to process the waste illegally. In the experience of the California Highway Patrol's Coastal Division, there is usually no written contract for this arrangement and the broker has disappeared by the time the illegal disposal is investigated.

A treatment, storage, and disposal facility will, in rare instances, accept hazardous waste that is outside its permit-

ted scope. This usually is done for several reasons, a primary one being that many TSDF's guarantee a minimum quantity of recycled material for incineration at both domestic and foreign furnaces. This demand creates an incentive for TSDF's to accept "off-spec" and noncompliant wastes or face the possibility of losing their contracts.

### *Illegal Disposal of Waste Tires*

Waste tires, automobile tires discarded by car and truck owners or tire change businesses, were repeatedly identified by interviewees as a major focus of local environmental investigators.<sup>13</sup> The improper and illegal disposal of waste tires is a significant problem in both Florida jurisdictions visited for this report. The problem is addressed using the Florida Litter Law<sup>14</sup> in conjunction with waste tire rules that regulate permits for haulers and include violations for such activities as contracting with an unpermitted hauler, improper storage, and disposal at unpermitted sites. Under the Florida Litter Law, anyone convicted of dumping more than 500 pounds or 100 cubic feet of waste tires and other solid wastes, or in any quantity for commercial purposes, or dumping litter that is a defined hazardous waste, is guilty of a third-degree felony.

The practice of renting warehouses under fictitious names, filling them with waste tires and other wastes, and then abandoning them has become increasingly common in southern Florida.<sup>15</sup> One alleged violator stands accused of warehousing waste tires in several jurisdictions from northern Florida to West Palm Beach. The largest waste tire site in Florida is located in Saint Lucie County. The site is a mound of tires 2,000 feet long, 900 feet across, and 25 feet high. The civil regulators have been trying for years to bring the site into compliance, according to Palm Beach County Deputy Sheriff Layne Schultetus, but now the yard is so big that the cost of shutting it down and cleaning it up would be almost prohibitive. In addition, there are concerns that if a fire should occur, it could create an environmental catastrophe.<sup>16</sup>

In New York City, "Largely because environmental restrictions have raised the cost of disposing of them, discarded tires have increasingly become fixtures of the landscape in poorer neighborhoods in the South Bronx, Queens, and Brooklyn."<sup>17</sup> According to a spokesperson for the New York City Department of Sanitation, in 1992 the department collected roughly 200,000 illegally dumped tires; nationally, nearly three-quarters of the 200 million tires discarded each year are not recycled.<sup>18</sup> While in New York City illegal tire dumpers can be fined \$1,000 to \$7,500 and have their vehicles impounded by the city, the penalties reportedly

deter few. Explains the Sanitation Department spokesperson, "To avoid the costs that the [legal tire] processors charge, some tire repair shops and garages have turned to an underground economy in which anyone with a truck and a strong back can cart away the tires at a cut rate."<sup>19</sup>

### *Illegal Disposal of Construction and Demolition (C&D) Debris*

As communities acknowledge the risks posed by the improper disposal of construction and demolition debris containing hazardous wastes, legally disposing of debris from construction and renovation work has become considerably more difficult and costly. Landfill space in many areas has become limited, and many communities are deciding to preserve their resources for the disposal of clean wastes, such as household refuse. In addition, the recognition of asbestosis and other industrial diseases has changed public attitudes toward once routinely discarded wastes—such as asbestos insulation.<sup>20</sup> Perhaps the greatest danger related to construction debris is the release of asbestos fibers during the demolition process.

The reluctance of landfill owners to accept commingled wastes has contributed to increased illegal dumping of construction and demolition debris on private property.<sup>21</sup> Middlesex County, New Jersey, located about halfway between New York City and Philadelphia, receives a disproportionately large share of illegally dumped construction and demolition debris. An earlier National Institute of Justice report also noted that "the Monmouth County (New Jersey) prosecutor's office identified the illegal disposal of construction and demolition debris, much of it trucked from New York City, as a growing problem."<sup>22</sup>

### *Illegal Disposal of "White Goods"*

The term *white goods* is used to describe common household kitchen appliances, such as refrigerators and ovens, that have entered the waste stream. If improperly disposed of, white goods can pose a danger to the environment and the public. For example, refrigerators often contain freon, a combination of chlorine, fluorine, and carbon, used commercially as a coolant. If an improperly disposed refrigerator is punctured, the gas is released and can damage the ozone layer. The improper disposal of white goods not only is unsightly but also poses a severe threat to the environment. In addition, Palm Beach County deputy sheriffs worry about groundwater contamination from discarded appliances leaking mercury. This is a major hazard in southern Florida, where the fragile water table is only three to five feet from the surface.

### *Illegal Transportation and Storage of Vegetative Waste*

Law enforcement investigators in some communities voice concern over the improper handling of *vegetative waste*: organic wastes such as tree stumps, branches, grass clippings, leaves, and other yard waste. While disposal of vegetative waste may not be regulated by environmental laws, some haulers and disposal companies create illegal fire hazards on their property by storing large and dangerous quantities of unprocessed vegetative waste. Because of their collective volume, these waste products have recently been identified as an environmental management problem for communities. In many States the ban against homeowners' burning leaves and gardening debris, for air pollution and fire safety reasons, has added to the problem, as has the rapid clearing of land for condominium construction and commercial development. In addition, in an effort to circumvent environmental laws, some offenders commingle hazardous wastes with vegetative wastes and then dispose of the mixture as "clean."

As any homeowner probably knows, tree stumps and yard waste are not as easy to dispose of as they once were. Improperly discarded tree stumps can create hazards for years to come, and sinkholes, which result from tree stumps that have been improperly buried, are common where condominiums were quickly constructed during the 1980's. In a much publicized 1993 New Jersey case, a small boy was killed when he was sucked into a sinkhole on a condominium playground.<sup>23</sup>

In Middlesex County, law enforcement investigators are concerned about an area adjacent to an industrial gas company that manufactures many highly flammable gases, where acres of dry tree stumps are piled 15 feet high. Middlesex County investigators fear that this low-priority enforcement concern is a powder keg waiting to ignite. While they seek a public safety rationale to shut down the site, the officials lobby for change in the environmental law or local statutes so that property owners who store industrial quantities of organic waste come under the scrutiny of the law. Law enforcement investigators in New Jersey are also concerned that organic waste collectors may be tempted to dispose of hazardous waste by commingling it with organic waste.

Due to their tropical climate and year-round growing season, Florida jurisdictions also have a problem with illegal disposal of large quantities of vegetative debris. Palm Beach County deputy sheriffs have investigated numerous cases involving companies targeting undeveloped or wooded areas for use as disposal sites for tons of vegetative waste. This

is often done without the property owner's knowledge or permission and results in the property owner's shouldering the burden of cleanup costs, if a violator is not found and arrested.

## Estimates of the Extent of Environmental Crime

Estimating environmental crime is conceptually and practically very difficult.<sup>24</sup> In general, offenses fall into one of three categories of offense:

- Violations of permit conditions or other illegal acts already part of a State or Federal regulatory scheme.
- Acts committed by individuals or companies outside the regulatory scheme.
- Acts that would be illegal regardless of whether the actor was within the regulatory scheme.<sup>25</sup>

To date, no national research has sought to quantify the extent of all types of environmental crime. As for the extent of illegal hazardous waste disposal, which makes up a large percentage of all environmental crime, there are no definitive studies documenting the scope of the problem.<sup>26</sup> "The best estimate seems to place the total amount of hazardous waste generated between 247 million and 275 million metric tons per year."<sup>27</sup>

A recent National Institute of Justice report on local prosecution of environmental crime noted that

several factors account for the difficulty of developing precise figures regarding hazardous waste generation. First, hazardous waste is heterogeneous, including both liquids and solids and a large set of diverse chemicals. Because nonhazardous waste that is mixed with hazardous waste becomes legally hazardous itself, total quantities of hazardous waste generated are sensitive to changes in industrial practices and processes. For example, water used to flush out a container of hazardous wastes may become legally hazardous.<sup>28</sup>

According to Palm Beach County Deputy Sheriff Layne Schultetus, it is difficult to measure statistically whether illegal activity has increased, because many more people now are trained to recognize environmental crime and because many more people now report what they see. For Schultetus, "If you are doing cases, then you are not going to have [as many] visible problems. We have people who have left the county because of the high level of local enforcement,

'This is not a place I want to do business.' If you drive a truck without a waste tire sticker you are going to get stopped."

Estimation is also hampered by regulatory agencies' employment of conflicting definitions of hazardous waste, with both Federal and State definitions having changed over time as wastes are added to or removed from the list. According to the *Hazardous Waste Fact Book*, "The distinction between legally hazardous and nonhazardous waste can be subtle."<sup>29</sup> For instance, whether a waste stream is legally hazardous can depend on how much other waste the generator produces, and thus on whether it exceeds RCRA's limitation for "very small generator" and thus qualifies for regulation.

Another obstacle to obtaining an accurate estimate of hazardous waste generation is the difficulty of identifying the universe of hazardous waste generators and transportation, storage, and disposal facilities. As of 1990, the EPA reported that there were 211,000 generators of hazardous waste in the United States subject to RCRA regulation. The number had increased ninefold since 1980, due primarily to the addition of 118,000 small-quantity generators to the regulated universe by the Hazardous and Solid Waste Amendments that took effect in 1985. In 1990, there were reported to be 4,700 TSDF's subject to RCRA.<sup>30</sup> However, the list of firms that initially notified the EPA that they were generators includes many that are not actually subject to RCRA regulation. Although knowledge of the regulations presumably is better now than it was in 1980, in 1993 the extent to which overreporting and underreporting affect estimates of numbers of generators was still unclear.

## Endnotes

1. Illegal dumping means improperly throwing, discarding, placing, or otherwise disposing of regulated material such as hazardous wastes.
2. D. J. Rebovich, *Dangerous Ground: The World of Hazardous Waste Crime* (New Brunswick, NJ: Transaction Publishers, 1992), p. 3. Pharmaceutical companies average \$125 per drum for proper disposal.
3. For a small dry-cleaning business, the cost of legal disposal of its monthly output of perc sludge may average \$200. This is a substantial portion of the cleaner's \$2,000 per month net revenue (source: T. M. Hammett and J. Epstein, "Local Prosecution of Environmental Crime," *Issues and Practices* (Washington, DC: National Institute of Justice, U.S. Department of Justice, June 1993), p. 9; see also J. K. Hammett and P. Reuter, *Measuring*

- and Deterring Illegal Disposal of Hazardous Waste: A Preliminary Assessment* (Santa Monica, CA: Rand Corporation, October 1988), pp. 11-12.
4. D. J. Rebovich, *Dangerous Ground: The World of Hazardous Waste Crime*, p. 113.
  5. In an earlier study on local prosecution of environmental crime, the authors found that the character of local industry also drives the environmental caseload. For example, prosecutors in Alameda County, California, a county with a wide range of environmental problems, note that while agricultural runoff cases (pesticides, fungicides, and herbicides) are common in rural areas, steel mills and automobile plants are responsible for the bulk of the office's work referred from the older urban areas of Alameda County. See T. M. Hammett and J. Epstein, "Local Prosecution of Environmental Crime," p. 7.
  6. Ibid.
  7. Under the Hazardous Materials Transportation Act, 49 App. § 1801 *et seq.* (West Supp. 1994), DOT designates certain hazardous materials that are not identified by the Environmental Protection Agency.
  8. Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.*
  9. 42 U.S.C. § 6903 (1983 ed., Supp. 1991).
  10. D. J. Rebovich, *Dangerous Ground: The World of Hazardous Waste Crime*, pp. 3-4. Other hazardous waste dumping patterns involve open storage in deteriorating dumps, disposal in insufficiently lined landfills, and burning in defective incinerators (source: S. Wolf, "Hazardous Waste Trials and Tribulations," *Environmental Law* 13 [2], 1983).
  11. *People v. Boyce Campbell*, Superior Court, No. BA025490 (Los Angeles County).
  12. See T. M. Hammett and J. Epstein, "Prosecuting Environmental Crime: Los Angeles County," *Program Focus* (Washington, DC: National Institute of Justice, U.S. Department of Justice, August 1993), p. 10.
  13. Little can be done with such waste, although some experts claim that a mixture of solid waste and chopped waste tires will burn cleaner than coal as fuel in state-of-the-art ("waste to energy facility") incinerators.
  14. Florida Litter Law, FSS § 403.413.
  15. Environmental criminals have also discovered that self-storage units are a good place to dump toxic chemicals. See E. Larson, "Chamber of Horrors: Self-Storage Lockers Often Harbor Secrets," *Wall Street Journal*, January 5, 1994, pp. A1, A5.
  16. Interview with Deputy Sheriff Layne Schultetus, Palm Beach County Sheriff's Office, Palm Beach County, Florida, August 3, 1993.
  17. M. Marriott, "Junked by Night, Dead Tires Haunt New York," *New York Times*, May 17, 1993, pp. A1, B6.
  18. Ibid., p. B6.
  19. Ibid., citing Anne Canty, New York City Department of Sanitation. Under a plan being studied by Bronx Borough President Fernando Ferrer, borough residents would be paid or otherwise compensated for bringing discarded tires to tire collection centers. The plan would be modeled after returnable bottle and can redemption centers (source: M. Marriott, "Junked by Night, Dead Tires Haunt New York," *New York Times*, May 17, 1993, pp. A1, B6).
  20. Similarly, the disposal years ago of asbestos (automobile) brake pads, once the industry standard, at a landfill in Stratford, Connecticut, has recently come to the attention of and caused concern among residents of that community.
  21. Commingled waste is refuse that has been mixed or blended together.
  22. "In one instance, Monmouth County prosecutors uncovered a sophisticated waste management scheme in which construction and demolition debris from New York was shredded and laced with toxic chemicals. The debris was dumped in four areas of the county. In the indictment, the Monmouth County prosecutor asserted that the haulers had planned to mix the shredded waste with topsoil and sell it to people for use on their lawns. Had the scheme succeeded, it would have created small hazardous waste hot spots all over the county." See T. M. Hammett and J. Epstein, "Local Prosecution of Environmental Crime," p. 7.
  23. J. F. Sullivan, "Boy's Death Reveals Underground Peril," *New York Times*, May 2, 1993.
  24. T. M. Hammett and J. Epstein, "Local Prosecution of Environmental Crime," p. 8.
  25. Ibid.

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26. See "The Local Prosecution of Environmental Crimes: A Literature Review" (Alexandria, VA: American Prosecutors Research Institute, National Environmental Crime Prosecution Center, August 14, 1992), p. 19.
27. J. E. McCarthy and M. E. A. Reisch, *Hazardous Waste Fact Book* (Washington, DC: Congressional Research Service, 1987), pp. 5-7.
28. T. M. Hammett and J. Epstein, "Local Prosecution of Environmental Crime," p. 8.
29. J. E. McCarthy and M. E. A. Reisch, *Hazardous Waste Fact Book*, pp. 5-7 (tables 1-2).
30. U.S. Environmental Protection Agency (EPA), Office of Solid Waste and Emergency Response, *The Nation's Hazardous Waste Management Program at a Crossroads: The RCRA Implementation Study* (Washington, DC: U.S. Environmental Protection Agency, July 1990), p. 7.

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# Chapter 2

## The Legal Context of Environmental Enforcement

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The success that environmental enforcement meets in any community is directly linked to the legal framework and to the level of support received from the public, government, press, and business community. A comprehensive and balanced response to environmental crime includes administrative, civil, and criminal remedies. To carry out such a balanced response, agencies must have a firm grasp of their jurisdiction's environmental laws and regulations and must work together to ensure that these laws and regulations are enforced equitably. Decisions regarding the appropriate use of criminal, civil, and regulatory process depend not only on knowledge of the legal framework, but also on reasonable decision rules regarding which process to use in different situations. The EPA's Office of Criminal Enforcement has prepared guidelines in this area that State and local prosecution and investigative agencies may wish to consult.<sup>1</sup>

### Overview of the Law

A variety of Federal and State laws, as well as county and local regulations, define environmental enforcement. However, much of this legislation is hard to understand and difficult to enforce. State and Federal court rulings have also played a role in shaping enforcement efforts by interpreting statutes and regulations.

### *Federal Legislation*

Federal environmental statutes include minimum requirements for the handling and disposal of hazardous waste and criminal penalties for violations. In addition, Federal statutes (and their State equivalents) extend to such environmental media as air and water and to toxic substances, pesticides, and solid waste, although the Federal laws and regulations in these areas have varying applicability to the activities of law

enforcement.<sup>2</sup> Eight Federal statutes define the Federal criminal environmental enforcement scheme. The eight laws are:

- The Clean Air Act (CAA).<sup>3</sup>
- The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).<sup>4</sup>
- The Federal Water Pollution Control Act, or Clean Water Act (CWA).<sup>5</sup>
- The Resource Conservation and Recovery Act (RCRA).<sup>6</sup>
- The Rivers and Harbors Act of 1899 (RHA).<sup>7</sup>
- The Safe Drinking Water Act (SDWA).<sup>8</sup>
- The Toxic Substances Control Act (TSCA).<sup>9</sup>
- The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).<sup>10</sup>

Federal environmental laws have a number of common characteristics:

- Generally, both corporations and individuals are subject to either criminal or civil liability or both for violating provisions of one of these statutes.
- Federal environmental laws hold corporate officers and employees responsible if they knew or should have known that their acts violated a Federal statute.
- Concerning the degree of knowledge that constitutes a violation, most courts require more than negligence but less than specific intent.
- The constitutionality of Federal environmental laws has been consistently upheld.<sup>11</sup>

A 1992 report by the American Prosecutors Research Institute's National Environmental Crime Prosecution Center explains that "by virtue of the Commerce and Supremacy Clauses of the U.S. Constitution, States are preempted from legislating more lenient environmental standards than those that Congress has mandated" through federally enacted environmental statutes.<sup>12</sup> "Thus, for example, if Arizona passed a law imposing more lenient fines or less stringent pollution standards in an area within the scope of a Federal statute, the law would be unconstitutional and void. If, however, Arizona legislated more stringent standards, these standards would not be preempted by Federal environmental statutes."<sup>13</sup>

Although the impact of the recent reorganization of the U.S. Environmental Protection Agency's enforcement effort on local and State criminal environmental enforcement is not likely to be felt for some time, in recent years the EPA has demonstrated an increasingly strong commitment to criminal enforcement. In an October 1993 memo to all EPA employees, Carol Browner, the EPA Administrator, listed one of the EPA's key objectives as "building the capacity of State, local, and tribal enforcement authorities."<sup>14</sup>

### *State Laws, County and Local Regulations and Ordinances*

The Federal statutory and regulatory framework remains the model for most State environmental laws: "Concepts common to State environmental enforcement including *prohibition* and *permitting* of regulated activities, notice requirements (before a regulated act takes place — as in the case of asbestos removal; during the regulated act, as in the case of discharge monitoring; and after the act, as in the case of a release of hazardous materials), *cradle to grave* regulation, and labelling and placarding requirements all attest to the prominent role the Federal approach has played in the shaping of State-level responses to environmental enforcement."<sup>15</sup>

A recent National Institute of Justice report on local prosecution of environmental crime noted:

State laws and regulations also reflect the complex enforcement patterns called for by the Federal framework. Many environmental violations do not constitute criminal offenses, while others may be handled administratively, civilly, or criminally at the discretion of the authorities, and still others require criminal prosecution.<sup>16</sup>

Despite the enduring central importance of the Federal environmental enforcement model, considerable State legislative activity in the environmental area has taken place since 1970. A 1983 survey found that "between 1967 and 1983 the number of State environmental laws or amendments grew from 375 to 1,425."<sup>17</sup> Moreover, the survey found that provisions of State laws regulating the environment are diverse, covering "administrative, tort, labeling, business confidentiality, liability, statute of limitations, and right-to-know provisions."<sup>18</sup>

Environmental crimes that might be charged under recently enacted State laws include the following:

- *Air pollution* — including open burning, catalyst removal, emissions inspection fraud, uncontrolled vehicle emissions, visible emissions violations, and illegal asbestos removal.
- *Water pollution* — including unpermitted discharges to surface water, sewers, or groundwater; unpermitted filling of wetlands and fraud in reporting discharge to publicly owned treatment works (POTW's).
- *Pesticide distribution and use* — including sale, distribution, and use of unregistered pesticides; use of pesticides not in accordance with label instructions; and death or injury from illegal pesticide application and use.
- *Excessive noise* — operation of noise-producing equipment in excess of allowed decibel levels.
- Possession or emission of chemicals not reported on government inventories.

According to Deputy Sheriff Layne Schultetus, during fiscal year 1988, Palm Beach County spent approximately \$450,000 on cleaning up the damage caused by illegal dumping in parks, along roadways, and on other public land.<sup>19</sup> The State of Florida strongly enhanced environmental criminal penalties in October 1988 when the legislature passed the felony section of the Florida Litter Law. In 1989, moreover, the legislature amended Florida State Statute 403.161 to add criminal penalties for "knowing violation" of any Florida Department of Environmental Protection rule, regulation, certification, order, or permit.

Broward County has effectively adopted Title 17 of the Florida Administrative Code and incorporated its provisions into the county codes. In addition, according to Broward

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County Detective Michael Szish, the Florida Litter Law is "broadly written and easy to enforce."<sup>20</sup>

Assistant State Attorney Douglas Leifert claims that "the Florida Litter Law is probably the best environmental law in the country," but the law does have its critics. Some attack it as overly broad, arguing that "it classifies a cigarette flicked from a car as hazardous waste." In addition, even its supporters acknowledge that the law could be used to charge a driver whose car had broken down on the side of the road.

Assistant State Attorney Leifert notes that many of those charged with illegal dumping of solid waste are also charged with "organized scheme to defraud" based on their false claims to clients that their fee covered legal disposal. Detective Michael Szish of the Broward County (Florida) Sheriff's Office explains:

Most illegal tire haulers/dumpers conduct their business during daylight hours in order to remove waste tires from tire stores. These unlicensed tire haulers can be stopped while hauling if they fail to display a "waste tire collector" decal<sup>21</sup> on their vehicle. If the hauler is found to be carrying 25 or more waste tires and is not licensed or displaying the decal, the hauler can be placed under arrest for violating F.S.S. 403.161(1)(b).<sup>22</sup>

### *Forfeiture Laws*

Seizing equipment used in allegedly illegal environmental activity has become an important part of some law enforcement strategies directed at reducing environmental crime. For example, in New Jersey, where State law permits the seizure of equipment owned by a company involved in illegal activity (including environmental offenses), the Middlesex County Environmental Crimes/Arson Unit makes frequent use of the process. New Jersey law requires a company to post a bond to reclaim seized equipment. The unit can then redeem the bond, and moneys raised are turned back to environmental investigation and prosecution efforts in the county. Middlesex County Sergeant Ken Huber notes that equipment seizure is often the most effective method of ending the illegal activity and preventing further damage.

In New Jersey, under Title 13, *Solid Waste Dumping*, any cash settlement goes to the municipality, so that towns are receptive to working with law enforcement and the county prosecutor's office. In one Middlesex County investigation of a wood recycler, investigators from the Middlesex County Prosecutor's Office Environmental Crimes/Arson Unit seized

\$1.6 million in equipment.<sup>23</sup> Seizure of the wood recycler's trailers, tub grinders, bulldozers, and related heavy equipment effectively shut down the multimillion-dollar-a-year business. The company was charged both criminally and civilly when investigators discovered solid waste mixed in with their wood recycling. When tested, some samples of the company's mulch were found to contain hazardous waste.

Palm Beach County deputy sheriffs believe that law enforcement should make greater use of forfeiture provisions for equipment used in the commission of environmental crimes. Deputy Pearsall adds, "Certain individuals and businesses are reluctant to change operating procedures until it is demonstrated that their failure to comply directly affects the 'bottom line.'" Palm Beach County also makes use of a Florida law allowing for the recovery of investigative costs. The recovered costs go into a line item in the budget and are used for future investigations, training, and equipment.<sup>24</sup>

### **Legal Complexity**

The complexity of environmental laws and regulations is sometimes an obstacle to broader environmental enforcement. When this is seen as a problem, law enforcement and environmental agency leaders can call on legislatures to codify and simplify the law. County Investigator Steve Ogulin of the Sussex County (New Jersey) Prosecutor's Office feels that while inadequate funding and staffing are a problem, "simplifying the law [is where the real changes need to come]. Just the chemistry is hard enough. 'Is this a hazardous waste?' But some of the other stuff is impossible." Investigator Ogulin cites the example of a recent New Jersey case in which the decision hinged on the meaning of "solid waste landfill," as defined within the New Jersey Public Utilities Act.

Certain chemicals defined as hazardous waste by the civil statutes, but not so defined by the criminal statutes, also frustrate investigators. In addition, investigators interviewed for this report complained that a State's environmental laws are often scattered throughout the State codes.

Sergeant Dennis Colasurdo of the Atlantic County (New Jersey) Prosecutor's Office notes that investigators would benefit from codification of the environmental statutes in a "single book of environmental laws that contains all of the relevant law. Currently, relevant laws are found in 2c of the Administrative Code, Title 13, Conservation; Title 7 of the Administrative Code; Chapter 26; and Title 48. There is a need for a book of consolidated statutes."<sup>25</sup>



## Varying Levels of Severity in State Environmental Laws and Their Enforcement

According to Middlesex County's Sergeant Ken Huber, companies use strict environmental enforcement in New Jersey as an excuse to move businesses to Pennsylvania and elsewhere, where environmental laws are either less strictly enforced or considered lax.<sup>26</sup> In his recent book on hazardous waste crime, Donald Rebovich adds that "stricter State environmental laws, such as those in New Jersey, have prompted major corporations to relocate some of their facilities to Alabama and other states where environmental laws are still in the evolutionary stage."<sup>27</sup>

### Endnotes

1. See memorandum: "The Exercise of Investigative Discretion," by Earl E. Devaney, director, Office of Criminal Enforcement, Environmental Protection Agency, January 12, 1994. A copy of the memorandum may be obtained by faxing a request to Ms. Brenda Chappell, Information Specialist, Criminal Investigations, EPA, Mail Code 2233, 401 M Street, SW, Washington, DC 20460. Phone: (202) 260-9665; fax: (202) 260-6612.
2. See T. M. Hammett and J. Epstein, "Local Prosecution of Environmental Crime, *Issues and Practices* (Washington, DC: National Institute of Justice, U.S. Department of Justice, June 1993), p. 3.
3. Clean Air Act, 42 U.S.C. §§ 7401-7642 (West 1988, Supp. 1990). The CAA was amended and reauthorized by the Clean Air Act Amendments of 1990.
4. Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* (West 1988).
5. Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387 (West 1988, Supp. 1990).
6. Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k (West 1988, Supp. 1990).
7. Rivers and Harbors Act of 1899, 33 U.S.C. § 407 (West 1988).
8. Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26 (West 1988).
9. Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671 (West 1988, Supp. 1990).
10. Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136-136y (West 1988, Supp. 1990).
11. R. Weiner et al., "Environmental Crimes," 28 *American Criminal Law Review* 427 (1991).
12. "The Local Prosecution of Environmental Crime: A Literature Review" (Alexandria, VA: National Environmental Crime Prosecution Center, American Prosecutors Research Institute, August 14, 1992), p. 11.
13. *Ibid.*
14. Carol Browner, EPA Administrator, memorandum to all EPA employees, "New Strategic Enforcement Organization," October 1993. The detailed memo also announced that the name of the EPA's Office of Enforcement would be changed to the Office of Enforcement and Compliance Assurance (OECA) to "convey the broader aim of the enforcement mission — to ensure compliance with this nation's environmental laws."
15. T. M. Hammett and J. Epstein, "Local Prosecution of Environmental Crime," p. 3.
16. *Ibid.*
17. R. D. Speer and G. A. Bulanowski, *Speer's Digest of Toxic Substances State Law: 1983-84* (1983), p. 3.
18. See "The Local Prosecution of Environmental Crime — A Literature Review," p. 12.
19. Interview with Deputy Sheriff Layne Schultetus, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.
20. Interview with Detective Michael Szish, Broward Sheriff's Office, Fort Lauderdale, Florida, August 4, 1993.
21. Florida Administrative Code § 17-711.520, Waste Tire Collector Requirements.
22. Memorandum from Detective Michael Szish to Captain Dennis Creamer, commander, District One, Broward Sheriff's Office, Fort Lauderdale, Florida, February 16, 1993.
23. Interview with Sergeant Ken Huber, Environmental Crimes/Arson Unit, Middlesex County Prosecutor's

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- Office, Edison, New Jersey, discussing the *Dauman Pallet* investigation.
24. Interview with Deputy Sheriff James Pearsall, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.
25. Interview with Sergeant Dennis Colasurdo, Environmental Crimes Task Force, Atlantic County Prosecutor's Office, Northfield, New Jersey, May 27, 1993.
26. Interview with Sergeant Ken Huber, Environmental Crimes/Arson Unit, Middlesex County Prosecutor's Office, Edison, New Jersey, August 10, 1993.
27. D. J. Rebovich, *Dangerous Ground: The World of Hazardous Waste Crime* (New Brunswick, NJ: Transaction Publishers, 1992), p. 125.

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# Chapter 3

## The Law Enforcement Response

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### Genesis of the Law Enforcement Response

Local, county, and State law enforcement agencies create environmental crime investigation units for a variety of reasons. The particular geography or geology of a community may make it vulnerable to certain environmental crimes. Likewise, unusually fragile environmental conditions may demand meticulous protection of the groundwater from improper waste disposal. Public or industry ignorance about the damaging effects of pollution may also drive law enforcement agencies to adopt proactive environmental responses. The following are examples of circumstances that precipitated the creation of environmental crime programs in several communities:

- Concern about a community's fragile natural resources.
- Geography—isolated, sparsely settled, or heavily wooded areas that offer easy dumping terrain for unlicensed waste haulers.
- Difficult economic conditions, which may have given rise to a class of environmental criminals.
- Lax enforcement or regulatory supervision of companies and individuals.
- A devastating environmental or occupational safety incident.
- Evidence from a county's solid waste or co-generation facility suggesting that solid waste is being disposed of illegally.
- Public health concerns linked to an industry or environmental practice.
- A community eyesore—illegal solid waste dumping on public lands.

### *Hazardous Materials Incidents*

The Illinois State Police developed its Hazardous Materials Transportation Enforcement program in response to two hazardous materials rail accidents and a handful of other incidents in the early 1970's. In August 1977 these incidents resulted in legislation that created the enforcement program.

### *Geography*

The special character and geography of certain jurisdictions often define their particular approach to criminal environmental enforcement. In San Diego, California, an environmental crime task force was established because of several hazardous waste cases with international (United States/Mexico) implications. In addition, cases involving the U.S. Navy and local military contractors have resulted in the participation of the U.S. Air Force Office of Special Investigations (OSI) and the Navy Office of Criminal Investigations, as well as the FBI. Contract fraud is a particular focus of some criminal environmental investigations involving military contractors. San Diego also suffers from hazardous wastes in the Tijuana River, flowing north from Mexico into the county.

### *Fragile Water Supply*

In May 1994 Suffolk County, New York, formed the Suffolk County District Attorney's Office-based Environmental Crime Unit in response to two specific problems:

- A number of corporations/manufacturers were not complying with regulatory agency consent orders. The new office took cases in which the regulatory agency only possessed the power to issue another consent order and compliance was unlikely.
- As a result of tougher regulatory supervision, there was a large increase in off-site dumping of hazardous waste (55-gallon drums).

Similarly, local hydrology was part of the impetus for the Palm Beach County response. The county discovered that several large chemical companies were dumping hazardous and other wastes into the local drainage district. Currently, the unit's caseload involves 325 cases, ranging from hazardous and biohazardous waste to solid waste abandonment and waste tire cases.

### *Lower Than Expected Use of a County Solid Waste Facility*

In Palm Beach County, Florida, during the 1980's, the Palm Beach County Solid Waste Authority began to notice that deliveries of solid waste made to its landfill were lower than expected. This suggested that solid waste either was being illegally disposed of elsewhere in the county or was being hauled out of Palm Beach County for disposal at lower cost. Both suspicions were accurate.

Deputy Sheriff Layne Schultetus explains: "Originally, the main reason the Palm Beach County Solid Waste Authority wanted to do this was because waste wasn't crossing the scales at the county landfill. We knew tons of waste was out there, we just couldn't account for it. The county needs to show that tonnage to meet its performance bonds."<sup>1</sup> Schultetus adds, "Other reasons for starting the program were the cleanup costs being incurred by both State and local agencies as well as many private local landowners, not to mention the long-term effects of illegal dumping on the land and groundwater."

The joint Palm Beach County Sheriff's Office/Solid Waste Authority program also works with other State and local regulatory agencies to monitor legitimate waste management facilities throughout the county. Explains Deputy Sheriff James Pearsall: "Ongoing monitoring enables us to address problems while they are still manageable for the business operator. Working together allows us to select the most appropriate enforcement approach to each particular situation."<sup>2</sup> In addition, because there are no legal hazardous waste facilities in southern Florida, some of the deputies' work involves monitoring the transportation of hazardous wastes through Palm Beach County to the nearest facility, located near Talladega, Alabama.

### *Complex Investigations*

Impetus for the Broward County, Florida, effort was ongoing. Recurring environmental problems, complex environmental investigations, and a proactive sheriff who recognized the need for environmental awareness training inspired

the effort. Broward County's response is nearly two years old; before that, Detective Michael Szish explains, the county's strong civil enforcement response was long held. An urgent need for a criminal enforcement component did not appear until a few years ago, when county law enforcement recognized that a number of those involved in improper environmental offenses were repeat offenders.<sup>3</sup> Prior wrongdoing also has a cumulative effect, first recognized several years ago.

## **Organization of the Law Enforcement Response**

Policymakers in law enforcement and environmental agencies should be aware of the various organizational approaches that may be adopted to serve the enforcement needs of a community. For some communities, assigning county deputy sheriffs to the solid waste authority is the preferred strategy; elsewhere, assigning criminal investigators to a specialized prosecutor's office environmental crime unit may work better. The most traditional approach remains law enforcement-based units in which responsibility for environmental crime investigation and enforcement rests with officers situated within the department.

### *Identifying Enforcement Resources*

According to Prosecutor Robert Gluck, of Middlesex County, New Jersey, a good environmental crime response means taking inventory of available resources. Gluck notes the range of groups involved, including the solid waste authority, the HAZMAT<sup>4</sup> response, the fire department, and community groups, and emphasizes the importance of close cooperation with other agencies, a commitment of sufficient funding, and a commitment to proper training for staff.

### *Building on Existing Skills and Strengths*

While white-collar criminal investigation skills and course work in earth sciences have often been cited as useful training for criminal environmental enforcement, arson investigation may also be an ideal background for an environmental investigator. In the view of the chief of the Middlesex County Prosecutor's Office Environmental Crimes/Arson Unit, the specialized unit is an ideal merger of the two criminal investigation areas. For Sergeant Ken Huber and County Investigator Raymond Durski of the joint unit, there are natural links between environmental cases and arson investigations: both may use HAZMAT and Emergency Re-

sponse, and both may require investigators with an understanding of various chemicals.

### *Developing the Response Gradually and Building Interagency Relationships*

Local support for environmental crime units should be built gradually, says Palm Beach County Deputy Sheriff James Pearsall.<sup>5</sup> He notes, "Start with small cases and even treat them like large complex investigations."<sup>6</sup> Pearsall also suggests that environmental investigators conduct an inventory of each of their likely partners in the community. In Palm Beach County, for example, the Department of Environmental Protection (DEP) now assigns criminal tracking numbers to investigations. Moreover, by working with the DEP, deputies are able to use information from a regulatory investigator's record that may be relevant to a criminal investigation. Now, when seeking a search warrant for a suspected violator, deputy sheriffs can often attach a DEP investigator's affidavit to support the statement of probable cause.

## **Attitudes Supporting and Obstructing Criminal Enforcement**

An effective response to environmental problems enlists support from the public, government, the press, and industry. Law enforcement agency leaders can identify a community's most pressing environmental concerns with the goal of more effectively enlisting public support. At the same time, agencies must take into account concerns that an aggressive response may harm the business climate. In addressing such concerns, law enforcement agencies should stress that

active local environmental enforcement generally benefits legitimate business. The direct benefit to local business is an open and fair playing field. Many legitimate businesses spend a large part of their operating costs on environmental control such as training staff members, and purchasing and installing safety equipment. These costs are expended in an effort to comply with complex and ever-expanding environmental regulations. At the same time, their competitors may be saving large sums of money by cutting corners, not complying with the regulations, and even intentionally violating the law.<sup>7</sup>

Law enforcement agencies may also argue that communities "that rely on tourism, clean water and air, unspoiled habitat,

and controlled growth, directly benefit from high visibility [environmental investigations and] prosecutions, sending the message that the community will not tolerate environmental degradation. Active local environmental enforcement sends businesses a message that the local community has made environmental enforcement a priority."<sup>8</sup>

Enlisting the public's support can mean pointing out to the taxpayer the hidden costs of environmental crime. Educational campaigns have made the public aware of the high cost of cleaning up illegally dumped wastes in Palm Beach County and in many other communities. According to Deputy Sheriff Schultetus, individual and organization landowners resent having waste dumped on their property.<sup>9</sup> Moreover, in the view of an environmental supervisor at Solid and Hazardous Waste Control at the Health and Rehabilitative Services/Palm Beach County Public Health Unit, "Word in the newspapers that a guy got arrested helps [regulatory] compliance."<sup>10</sup>

While "support from the public in Broward County is excellent," according to Broward Sheriff's Detective Szish, "perception is the problem. Witnesses still often say, 'All he did was dump barrels of waste, all that needs to be done is cleanup.'"<sup>11</sup> Law enforcement agencies should consider selecting for criminal investigation and prosecution only those cases in which civil and regulatory action are insufficient to achieve the goals of environmental protection. In this regard, a number of potentially conflicting factors must be considered, including the history and motives of the offender, the damage and likelihood of cleanup under various scenarios, and the deterrent and incapacitation effects of criminal sanctions.

At the same time, it is important to educate the public about the immediate and long-term effects of environmental crimes. Broward County law enforcement has sought to inform the community through an environmental awareness campaign. The campaign aims to change public reluctance to view businesspeople who commit environmental offenses as criminals. Detective Szish also notes the inherent tension that exists when a company that employs local people is involved in illegal activity, but believes that some of these attitudes can be changed over time. He believes that what is needed is the kind of support that law enforcement departments have received to combat drug trafficking and domestic violence. Palm Beach County, too, has experienced opposition to criminal investigation of a business leader. In a recent case involving hazardous waste violations at a company in the city of Riviera Beach (Palm Beach County), the fining of the business, which employs 135 local people, was widely criticized. The deputies encountered similar opposition in

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the city of Mangonia Park, where Palm Beach County was investigating a biohazardous waste facility. Deputy Sheriff Pearsall's strategy for pursuing cases in a hostile atmosphere is to use discretion at every step along the way, and "if you don't have what it takes to go criminal, go civil."

Deputy Sheriff Pearsall concedes that large corporate investigations can be the most difficult: "These businesses have the resources to fight you." In a recent case involving the improper handling of xylene (dimethyl benzene), the violator sought to file charges against Deputy Pearsall, filed complaints with the Sheriff's Office Internal Affairs Division, and alleged that the deputy was stalking the company president's wife. In addition, the company hired a private investigator to follow Palm Beach County investigators. Deputy Pearsall was cleared of any wrongdoing, and after a year and a half, the defendant entered into a plea agreement just as the trial got under way.<sup>12</sup>

In Portland, Maine, local government has reportedly been very supportive of the police department's enforcement efforts. In the view of Police Lieutenant Mark Dion, "Local officials know that the bag of garbage on the sidewalk is a bag of money, depending on where it is disposed of."<sup>13</sup> A town's assessment by the regional waste authority (whose incinerator is in Portland) increases if the town does not deliver the expected weight of garbage.

According to Sergeant Dennis Colasurdo of the Atlantic County (New Jersey) Prosecutor's Office, the Environmental Crimes Unit has a "great relationship with the media." Local TV and newspapers have assisted with public appeals on problem investigations, and the unit also uses billboards, business cards, and signs in stores to enlist public support. "Now," says Sergeant Colasurdo, "law-abiding people see us as doing good, going after those who are flaunting the law."

According to Captain William Murphy of the Michigan Department of Natural Resources Environmental Investigations Section, public support for the section's work is generally quite good. Nonetheless, Captain Murphy notes, "There is some business opposition and a tendency to see environmental regulation as the boogie man that causes business problems. The University of Michigan recently came out with a report blaming environmental regulation for the decline of the auto industry in Michigan."<sup>14</sup>

While support for environmental law enforcement appears to be growing, a number of institutional and attitudinal obstacles to the use of criminal sanctions remain. Many prosecutors initially resist getting involved in environmental

cases because they think these cases are hopelessly complicated and impossible to win. While some environmental crime may be so devastating that it brings local residents into the streets protesting any delay in an offender's prosecution, criminal investigation of large employers may elicit resounding demonstrations of public support for defendant companies. Prosecutors and law enforcement officials who must convince the public of the severity of environmental crime that has no immediate manifestations often fight an uphill battle.<sup>15</sup> Careful case selection is important in this regard. Indiscriminate use of criminal sanctions in cases that can be effectively pursued through regulatory or civil channels may undermine public support for legitimate application of criminal enforcement.

Environmental investigators need to be aware of the persistent view that environmental crime is not "real" crime, and they must make judicious and appropriate use of criminal sanctions, particularly when offenders do not respond positively to regulatory action. Law enforcement officers must work with regulatory agencies to ensure that criminal sanctions are applied when appropriate. Simply requiring cleanup is not the proper approach in all cases. In some jurisdictions, however, years of reliance solely on civil and regulatory action continues to be an obstacle to the effective use of criminal enforcement.

A recent investigation conducted by the Broward Sheriff's Office demonstrates the persistence of the problem.<sup>16</sup> The investigation involved an unlicensed furniture restoring company who had filled a dumpster in its facility with acetone stripper. Workers in the building were provided with masks but admitted they regularly became ill from the fumes. The firm's two owners received felony charges for operating without a hazardous materials facility license and for transporting hazardous materials without an industrial license. On his arrest, one of those charged commented, "I thought this stuff was civil." Ultimately, the owners were found to have "blatantly and in bad faith violated Chapter 27 of the Broward County Code of Ordinances by operating a facility without a hazardous materials facility license, and by transporting hazardous materials without an industrial waste hauler's license."<sup>17</sup> The company was ordered to pay civil fines, as a result of a plea bargain, totaling \$24,089 to the Department of Natural Resource Protection (DNRP).

Palm Beach County Deputy Sheriff James Pearsall feels that many in law enforcement still view environmental enforcement as a fad that will decline. Because of concern that officers fail to take environmental crime seriously, when

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talking to officers at rollcall or training sessions, Palm Beach County environmental deputies focus their preliminary comments on hazardous materials encountered on patrol, hazardous waste crimes, and officer safety. Pearsall says: "Officer safety is always an area of concern for police. By relating enforcement of environmental control laws to safety, the material becomes personal and this makes it worth remembering." As evidence that local officers are getting the message, Pearsall points to two recent investigations — one involving solid waste dumping and the other a hazardous waste case — that both originated with road patrol enforcement.

Pearsall stresses that "it is important to be accepted by one's peers as one involved in a legitimate law enforcement function in order to gain their respect and cooperation."<sup>18</sup> This has happened in Palm Beach County because along with providing training, striving to involve other divisions within the Sheriff's Office, and the publicity from some high-profile cases, both environmental investigators have developed and employ several standard methods and forms. Deputy Schultetus believes the use of standardized techniques and forms adds to the professionalism of the environmental investigations field.<sup>19</sup> These standard protocols make for a safer investigation, justify costly but necessary expenses, and help when there are questions or a complaint is made about a procedure used or later when the investigator is called to testify.

Despite some continuing public image problems, the chief of the Environmental Crimes Unit of the Office of the State Attorney in Palm Beach County feels that this is an area of criminal law in which one can make a difference.<sup>20</sup> "Most defendants," explains the prosecutor, "are decent people who want to settle and get on with their lives."<sup>21</sup> On the whole, he has found judges to be sensitive to the severity of this type of crime. He notes that some judges have themselves been victims of the illegal disposal of solid waste on their property.

Sometimes it takes a company that brazenly flaunts environmental laws, coupled with strident community opposition, for a government to take action against the offender. In August 1993, years of lawsuits and community opposition to the illegal dumping of construction debris on a privately owned two-acre Bridgeport, Connecticut, lot finally resulted in jail terms and fines totaling \$868,000 for the owners of a Connecticut demolition company.<sup>22</sup> The area had come to be known as Mount Trashmore, and illegally dumped construction debris — including lead, asbestos, and creosote — once rose to a height of 35 feet.

### *Resource Limitations*

Environmental enforcement is but one of many areas whose proponents call for additional resource allocation. An earlier National Institute of Justice study on local prosecution of environmental crime noted:

Many environmental cases are resource-intensive. Proper investigation and prosecution of these cases may require substantial staff time, expert witnesses, sophisticated equipment, laboratory analysis, and examination of large amounts of documentary material. When a case is won, followup may be needed to ensure compliance with site cleanup and remediation requirements that may be part of the sentence or settlement.<sup>23</sup>

Environmental investigations that are hampered by labor shortage or inadequate equipment are not only ineffectual but also frustrating for investigators. Testifying before a 1989 U.S. Senate Subcommittee on toxic substances, Jefferson and Gilpin Counties, Colorado District Attorney Donald Mielke identified the lack of available adequate laboratory and technical resources as a major stumbling block to effective prosecution of environmental crime.<sup>24</sup> While resources are obviously limited and not all worthy law enforcement initiatives can be funded at the levels sought by their supporters, there are some ways in which environmental enforcement efforts can be effective, even in limited-resource situations.

The cost of sample collection and analysis alone can be prohibitive. A deputy with the New Jersey Department of Law and Public Safety's Environmental Prosecutions Bureau notes that it may cost "thousands of dollars for analysis of a small bottle. Many local departments cannot dedicate resources on the scale necessary to properly pursue environmental cases."<sup>25</sup> For this reason, the bureau shares a fund with the New Jersey Department of Environmental Protection and Energy (DEPE) to do proper sampling on select local cases.

Creative solutions to limited equipment resources may also involve sharing with routinely better-equipped HAZMAT and fire departments. Shortages of environmental investigators may be addressed by training road patrol officers in environmental awareness. The officers' familiarity with their beats and businesses in the community can help them make important contributions to the work of environmental investigators.

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## Situating the Environmental Crime Response

Considerations such as those discussed in chapter 3 help policymakers decide on the best location for the criminal investigation unit. The following factors should also be considered:

- Where the greatest problems are located.
- What environmental media are involved.
- What skills are required.
- What other agencies can and should contribute to the effort.
- Where resources for investigating cases will be most available.

The setting for a law enforcement response to environmental crime may also be defined by the jurisdiction of applicable laws and regulations. Federal environmental laws are enforced by Federal authorities, while local ordinances are typically the domain of local enforcement. Of the 20 programs considered in the preparation of this report, 11 are prosecutor's office-based, 5 are environmental agency-based, and 4 are law enforcement agency-based responses. (A table summarizing each of these programs is included in appendix A.) Each approach has its advantages and disadvantages.

## Law Enforcement Agency-based Programs

Local police are often viewed as a community's best eyes and ears. Road and foot patrol officers know their beats and, if properly trained, can spot some types of environmental crime when it happens. Determining whether to designate a special investigator or to create an environmental crime unit depends on the extent of the problem in a community and the fragility of the local environment. In some places, the county sheriff is the leading law enforcement agency; elsewhere, the police department has primary responsibility. Other agencies such as drainage districts and fish and game departments may also find it an effective approach to employ criminal investigators and assign them to investigate illegal solid waste dumping.<sup>26</sup> Programs in Broward County, Florida, and in Portland, Maine, described below, present lessons for cities and counties considering their own environmental crime responses.

### *Sheriff's Office-based Programs*

*Broward County, Florida.* The complexity of environmental cases prompted the Broward Sheriff's Office (BSO) to organizationally address the problem in 1990.

Criminal environmental enforcement in Broward County is divided into:

- Regular solid waste cases (for example, used tires dumped in a lot, and construction and demolition [C&D] debris cases) handled by community policing.
- Other cases, including hazardous and biohazardous waste cases, handled by the Organized Crime Division.

The Community Oriented Police Enforcement (COPE) unit handles the first group of investigations, and a detective from Organized Crime investigates cases that fall into the second.

According to Detective Michael Szish, the Broward Sheriff's Office initially concentrated on developing basic environmental law enforcement techniques through training provided by the Southern Environmental Enforcement Network (SEEN) and the Federal Law Enforcement Training Center (FLETC). The BSO then incorporated environmental law enforcement into the ongoing rollo call training of road patrol officers. Because it is only recently involved in criminal environmental enforcement, the BSO's response is still largely reactive rather than proactive.

### *Police Department-based Programs*

*Portland, Maine.* Portland has an unusually active local police response. Lieutenant Mark Dion of the Portland Police Department directs a response to what many do not consider to be an environmental crime problem. The effort began as a mini-investigation into the amount of waste being sent to a regional co-generation facility in Portland. The investigation has since grown into a massive effort, scrutinizing waste disposal practices in 40 communities in the southern tier of Maine.

Tonnage at the co-generation facility was below that projected for participating towns. A preliminary investigation indicated that customers were being charged the legal disposal rate by haulers, when in fact the waste was being disposed of illegally. Initially, the Portland Police Department investigated 11 companies involved in 15 different waste disposal schemes. Whereas elsewhere in the country the issue has usually been illegal dumping and labor rack-



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eteering, the Maine case involved an effort to defraud the county and to engage in antitrust activity. To date, Portland's leading investigation has led to civil indictments of 11 companies for the improper hauling of solid waste.

## **Prosecutor's Office-based Programs**

An environmental law enforcement response based in a county prosecutor's office offers several advantages. The arrangement may aid close coordination between prosecutors and environmental crime investigators and may offer ongoing informal cross-training for both professionals. Sharing an office means there is always a prosecutor on hand to explain a point of law or an investigator to consult about anything unclear in the investigation report.

A potential disadvantage of the in-house relationship is that investigators may come to feel like a less important player in case preparation. Situating the environmental investigator away from the law enforcement agency may also have the unintended effect of cutting off an important source of informal leads derived from daily contact with fellow officers. These are only potential disadvantages that by no means affect all prosecutor's office-based programs.

Sergeant Ken Huber of the Middlesex County (New Jersey) Prosecutor's Office Environmental Crimes/Arson Unit directs the county's environmental crimes effort. The specialized initiative team includes a sergeant, a detective, two investigators, and an assistant prosecutor working as a joint environmental crime/arson prosecution component within the Office of Middlesex County Prosecutor Robert Gluck. Currently, about 70 percent of the unit's cases involve environmental crime, while the balance are arson investigations.

According to Sergeant Huber, the unit chief, smaller companies with no history of environmental wrongdoing have started to commit environmental crimes. Most of the investigations that are ultimately prosecuted involve first-time offenders who qualify for the Middlesex County's Pretrial Intervention Program (PTI). Under the program, adjudication of an accused's civil violations precedes any criminal prosecution. In fact, case law in New Jersey holds that the imposition of civil fines against an environmental offender may preclude the bringing of criminal charges. Several Middlesex County cases involve individuals and companies charged with operating an unlicensed solid waste facility. An investigation of one local waste-hauling company resulted in

the sentencing of the firm's owner to Pretrial Intervention Program community service work at the Middlesex County Landfill.<sup>27</sup>

## **Environmental Agency-based Programs**

A number of environmental regulatory agencies recognized the effectiveness of criminal punishment against environmental crime and, starting in the late 1970's, began to develop environmental law enforcement responses. The two main types of environmental agency-based programs are described below.

### *Solid Waste Authority-based Program*

Situating the law enforcement response in a solid waste authority may give the investigator more independence than the investigator would have if assigned to an enforcement-based program. The alternative siting also creates a forum for the open exchange of ideas and information between law enforcement and regulators.

The Palm Beach County Sheriff's Office Contract Service Division enables outside organizations to enter into a written agreement with the Sheriff's Office for "enhanced law enforcement." Deputies assigned to this unit communicate with a selected liaison within the outside agency but report to and are governed by Sheriff's Office supervisors.

Under a five-year-old contractual arrangement with the Palm Beach County Solid Waste Authority, the Palm Beach County Sheriff's Office provides environmental law enforcement services. Similar arrangements are also in place in some of the larger sheriff's departments in the State, including Duval and Hillsborough.<sup>28</sup>

The Palm Beach County effort has a staff of two deputies who serve as a freestanding unit located at the Solid Waste Authority (SWA). The program's annual budget of \$105,000 is paid by the SWA to support the two officers' salary and benefits, vehicles, uniforms, and supervisory costs. According to Deputy Pearsall, "It is important for supervisory authority in criminal investigations to remain with the law enforcement agency and for both parties to understand that the agreement is for 'enhanced environmental enforcement,' in order for the program really to work. This means all environmental laws, not just those governing solid waste."<sup>29</sup>

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Although the SWA pays the costs for the two investigators, the Sheriff's Office absorbs additional costs such as most training, some specialized equipment, and investigative costs such as additional personnel and equipment, helicopter time, search warrant expenses, case-related travel, and photography expenses.

In addition, other members of the Palm Beach County Environmental Task Force, including the Florida Department of Environmental Protection and the Palm Beach County Public Health Unit, supply personnel and resources. The two deputy sheriffs acknowledge that in an era of budget cuts environmental law enforcement officers are tough to justify, and without the Solid Waste Authority's support, this program might not have gotten off the ground. Nonetheless, Deputy Sheriff Pearsall feels that environmental enforcement must be proactive.<sup>30</sup>

Deputy Sheriff Layne Schultetus reports that since the Sheriff's Office Solid Waste Authority program began, Palm Beach County has seen an increase in the solid waste flow across the County Waste Facility's scales and a reduction in the volume of illegal solid waste dumping in the county. While the bulk of Palm Beach County's cases involve solid waste, the two deputy sheriffs also handle construction and demolition debris, wetlands, hazardous wastes (including biohazardous waste), and waste oil investigations.<sup>31</sup>

Increasingly, the Palm Beach County deputies assigned to the Palm Beach County Solid Waste Authority are working to coordinate and involve municipal law enforcement agencies in environmental investigation within the city limits, because the two deputies are finding it increasingly difficult to keep up with the caseload.<sup>32</sup>

### *Department of Natural Resources-based Program*

Captain William Murphy of the Environmental Investigations Section of the Law Enforcement Division of the Michigan Department of Natural Resources (DNR) directs the first criminal program of its kind. The section, established in 1978, a year before the New Jersey program, is staffed by 15 field investigators assigned around the State. The program began 15 years ago as an internal DNR initiative, created in response to several major environmental disasters that occurred in Michigan in the 1970's. There was no empowering legislation or statutory enactment of the program. Early in the 1970's, Michigan suffered a frightening polybrominated biphenyls (PBB) accident: bags of PBB's were mistaken for cattle feed grain and mixed in with normal feed for cattle farms statewide. Studies continue to assess the health conse-

quences of people's eating beef raised on the PBB-contaminated feed. In response to another 1970's incident, in Montague (White Lake), Michigan, a civil action was ultimately filed against a large chemical company for the improper and illegal dumping of massive amounts of hazardous chemicals into the lake.<sup>33</sup>

The Environmental Investigations Section conducts 130 to 150 investigations per year and handles cases involving all types of environmental media. As a result of good regulation and enforcement, hazardous waste cases represent a smaller share of the section's current workload. The section is seeing growth in the investigation of State CERCLA-type (superfund) cases, and in problems with oil and gas wells. According to Captain Murphy, oil wells cover much of the State's lower peninsula (roughly 85 percent), outside of the Lansing and Detroit areas. Many of the State's wells are old and exhibit numerous problems with leaking, spills, and abandonment, especially wells near Midland and Mount Pleasant. In Michigan, southern Florida, and many other farming communities, there is a growing focus on agricultural problems including runoff, improper pesticide application, improper storage (especially at bulk storage facilities), and intentional improper dumping of excess, old, or unusable chemicals.<sup>34</sup> This new area of focus for the Environmental Investigations Section has met with some success; so far five chemical companies have been prosecuted.

## **Recruitment**

Recruiters for environmental units look for a variety of skills in investigators and officers. Criminal investigation experience, especially arson investigation and white-collar crime investigation, and course work in the hard sciences are commonly sought. Brian MacMaster, director of investigations for the Maine Attorney General's Office, believes that investigators with prior law enforcement experience do better with criminal environmental cases than those with prior regulatory agency experience.<sup>35</sup> For Palm Beach County Deputy Sheriff Schultetus, a background in chemistry and other hard sciences, a college degree, and an ability to work with regulators are essential to this work.

### *Evidence Sampling Skills*

County Investigator Steve Ogulin of the Sussex County (New Jersey) Prosecutor's Office notes the importance of prior training in proper sampling to environmental cases: "For example, if you're working with a drum, ferricyanide acid can be explosive. When removing the bung of the drum, if it's a little rusty and causes a spark, the whole drum may

blow like a bomb."<sup>36</sup> Candidates for environmental investigator positions should have either prior training in hazardous materials sampling or at least a familiarity with the chemical properties of toxic substances.

### *White-Collar Criminal Investigation*

For Criminal Investigator Donna Blake of the San Diego County District Attorney's Office, a background in white-collar crime work has been invaluable. To Investigator Blake, "These are like combination fraud/drug cases. A strong background in criminal investigation and strong evidence-collection skills are important."<sup>37</sup> Captain William Murphy of the Michigan Department of Natural Resources Environmental Investigations Section agrees. He cites white-collar crime investigation, computer literacy, and advanced abilities or a background in the hard sciences as essential. Michigan investigators also receive training through FLETC, the Midwest Environmental Enforcement Association's (MEEA's) investigator's academy, the EPA, and the Occupational Safety and Health Administration (OSHA) (40-hour course).

According to Portland, Maine, Police Lieutenant Mark Dion, white-collar investigative skills have been essential to identifying violators. For one major investigation, staff with database management experience had to be hired to manage the 1.5 million documents that had been obtained. The system enabled the investigators to see a pattern of activity equivalent to conspiracy.

### **Endnotes**

1. Interview with Deputy Sheriff Layne Schultetus, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.
2. Interview with Deputy Sheriff James Pearsall, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.
3. Interview with Detective Michael Szish, Broward Sheriff's Office, Fort Lauderdale, Florida, August 4, 1993.
4. HAZMAT means hazardous materials, as in "HAZMAT Unit."
5. Interview with Deputy Sheriff James Pearsall, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.
6. Ibid.
7. M. S. Pollock, "Local Prosecution of Environmental Crime," *Environmental Law* 22 (1992), pp. 1405, 1414.
8. Ibid., pp. 1414-1415.
9. Interview with Deputy Sheriff Layne Schultetus, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.
10. Interview with John O'Malley, environmental supervisor, Solid and Hazardous Waste Control at the Health and Rehabilitative Services/Palm Beach County Public Health Unit, West Palm Beach, Florida, August 3, 1993.
11. Interview with Detective Michael Szish, Broward Sheriff's Office, Fort Lauderdale, Florida, August 4, 1993.
12. Interview with Deputy Sheriff James Pearsall, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.
13. Interview with Lieutenant Mark Dion, Portland Police Department, Portland, Maine, May 19, 1993.
14. Interview with Captain William Murphy, State Environmental Investigation Section, Michigan Department of Natural Resources, Lansing, Michigan, May 27, 1993. See S. P. McAlinden and D. J. Andrea, "Michigan: Still the Automotive State?" (Ann Arbor, MI: Office for the Study of Automotive Transportation, University of Michigan Transportation Research Institute, March 17, 1993).
15. Ibid., p. 50.
16. *Broward County Department of Natural Resources Protection v. Restoration Clinic*, Citation Nos. 22016, 22017, Before the Hearing Examiner for the Broward County Department of Natural Resources Protection (July 26, 1993).
17. *Final Order*, *ibid.*
18. Interview with Deputy Sheriff James Pearsall, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.
19. Interview with Deputy Sheriff Layne Schultetus, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.
20. Interview with Douglas Leifert, chief, Environmental Crimes Unit, Office of the State Attorney, West Palm Beach, Florida, August 3, 1993.
21. Ibid.

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22. "Neighbors Hail Demise of Bridgeport Trash Pile," *New York Times*, August 5, 1993, p. B7, discussing the case of the *Connecticut Building Wrecking Company*.
  23. T. M. Hammett and J. Epstein, "Local Prosecution of Environmental Crime," *Issues and Practices*, (Washington, DC: National Institute of Justice, U.S. Department of Justice, June 1993), p. 29.
  24. Two common problems with understaffed laboratories are the loss of samples and slow turnaround time on analysis. T. M. Hammett and J. Epstein, "Local Prosecution of Environmental Crime," p. 40.
  25. Interview with Deputy Wally Stafford, Environmental Prosecutions Bureau, New Jersey Department of Law and Public Safety, Trenton, New Jersey, June 15, 1993.
  26. Palm Beach County Deputy Sheriffs Schultetus and Pearsall coordinate their effort with the Lakewood Drainage District. The drainage district has had problems with individuals dumping solid waste into its canals.
  27. Interview with Sergeant Ken Huber, Environmental Crimes/Arson Unit, Middlesex County Prosecutor's Office, Edison, New Jersey, August 10, 1993, discussing the case of *Falgi Carting Company* and the sentencing of Sal Fagiano.
  28. Interview with Deputy Sheriff Layne Schultetus, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993. In Hillsborough County, Florida, 12 sheriff's deputies are contracted to the county's Solid Waste Authority.
  29. Interview with Deputy Sheriff James Pearsall, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.
  30. Both Deputy Sheriffs Layne Schultetus and James Pearsall are actively involved in training other law enforcement personnel in criminal environmental investigations. In many ways the work of the two has made Palm Beach County a model and an inspiration for other counties and municipalities in Florida. Pearsall is also the author of *Local Agency Criminal Environmental Investigation: A Place to Start*. The booklet is a useful planning guide for law enforcement agencies interested in becoming involved in environmental crime investigation. The recent decision by Martin County, Florida, to designate an environmental deputy is due largely to the encouragement of Pearsall. Contact information for Pearsall is provided in appendix D.
  31. The Florida Department of Environmental Protection does not classify waste oil as a hazardous waste unless the oil contains hazardous waste.
  32. One problem created by the Palm Beach County program's aggressive approach to enforcement is that law enforcement in other county municipalities tends to look to Deputies Schultetus and Pearsall to take on investigations that should be handled locally. With the exception of Boca Raton and Jupiter, which have environmental officers, most of the cities and towns in Palm Beach County believe there is no need for an environmental program because the County Sheriff's Office is so good. Because of this trend, Deputies Schultetus and Pearsall have increasingly declined strictly local cases, emphasizing that their role is to help the callers help themselves.
  33. Interview with Captain William Murphy, State Environmental Investigation Section, Michigan Department of Natural Resources, Lansing, Michigan, May 27, 1993, discussing the case of *People v. Hooker Chemical and Plastics*, No. 79-22878-CE (Ingham County Circuit Court [Michigan], October 30, 1979). The case was ultimately settled out of court and involved the defendants' paying a civil penalty in excess of \$5 million to the State of Michigan for restitution. The defendants also agreed to clean up the site, a process that requires a groundwater purge through a massive activated charcoal filtration system. The cleanup is expected to continue for generations.
  34. For instance, in recent years, the Federal government and the State of Florida have increased pressure on Florida's sugarcane growers to make better efforts to clean up agricultural water runoff from farms that drain into the Everglades. The emerging strategy to restore the Everglades demonstrates the Federal government's attempts to reverse environmental damage to entire ecosystems. See J. H. Cushman, "U.S. and Florida Lean on Sugar Producers To Restore Polluted Everglades," *New York Times*, January 16, 1994, p. 20.
  35. Interview with Brian MacMaster, director of investigations, Maine Attorney General's Office, Augusta, Maine, May 19, 1993.
  36. Interview with County Investigator Steve Ogulin, Sussex County Prosecutor's Office, Newton, New Jersey, May 25, 1993.
  37. Interview with Criminal Investigator Donna Blake, San Diego County District Attorney's Office, San Diego, California, May 19, 1993.

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## Chapter 4

# Investigating Environmental Crimes

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To create an environmental crime response, law enforcement departments build on the existing skills and resources of their investigators. As with other types of criminal investigation, developing effective sources of leads and tips is essential to the work of the environmental investigator. Environmental cases pose unique crime scene investigation challenges. As noted earlier, environmental investigation techniques seem to overlap naturally with arson investigation approaches. Existing environmental crime programs have honed a number of approaches that will be valuable to departments now creating their own programs. Investigation unit leaders and line investigators may benefit from this experience and knowledge base.

### Source of Leads/Tips

Environmental crime investigators are finding that health department and regulatory agency records can be important sources of leads. Regulators familiar with particular industries or sites may be especially useful information sources regarding suspected environmental hazards. Investigators need to know about the industries in their jurisdiction and to take an inventory of potential environmental problem areas. Becoming proactive to potential environmental problems benefits public health and safety and is gratifying to the investigator or officer. In California, an experienced investigator will use informants, suspects from prior arrests, and disgruntled employees such as truck drivers or chemists.<sup>1</sup> In the programs studied, investigators describe learning to look for obvious targets such as chemical companies, service stations, tire change firms, electroplaters, and dry cleaners. In some communities, industries or individuals known to have taken criminal environmental actions in the past are deemed worthy of continued monitoring. In Palm Beach County the environmental crimes deputies have noticed that prior offenders tend to be repeat offenders.<sup>2</sup>

### *Being Creative About Developing Sources*

Palm Beach County relies on a range of sources for information, including the public and regulatory agencies. The media have been very supportive in publicizing the danger posed by this sort of crime. Tips to the Portland, Maine, Police Department come from a variety of sources, including land-fill attendants, employees, and local police. A survey of waste tire generators conducted by the Palm Beach County Solid Waste Authority has been another important source of leads for environmental investigators.

According to Palm Beach County Deputy Sheriff Pearsall, the county's Small Quantity Hazardous Waste Generator list (which includes furniture refinishers, dry cleaners, and auto repair shops) is an indispensable source of leads for the deputies. In addition, Ken Berg, Special Programs coordinator for the Palm Beach County Solid Waste Authority, is developing a map of all solid waste facilities in the county. It is anticipated that the map will assist investigations by showing the preexisting condition of a property.

### *Anonymous Toll-free Tip Numbers*

Ninety-nine percent of the county's cases come from the public, says Middlesex County Sergeant Ken Huber, many via anonymous phone calls. The county's Environmental Crimes/Arson Unit also puts up posters in local businesses and schools. In California as well, anonymous crime-tip programs, successfully employed in combating other types of crime for many years, are leading to many convictions in the environmental area.

### *The Offenders Themselves*

According to Sergeant Huber, another important source of leads has been the investigated companies themselves. Often a company accused of some environmental offense points to

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other local firms involved in similar activity. In this manner, the unit leverages small investigations to identify many other suspects. Explains Sergeant Huber:

The unit has a reputation in the county for being hard on environmental crime. When . . . [one recent suspect] was popped, he gave up names of other people who were doing illegal activity. The problem is, because of the cost of disposal, everyone is using everyone else's dumpsters.

### *Regulatory Agencies*

The Atlantic County (New Jersey) Environmental Crimes Task Force assesses roughly 650 complaints received by the health department each year. It also receives approximately 300 complaints a year through a toll-free telephone number. Sergeant Dennis Colasurdo of the Task Force encourages calls to the health department, which can better assess whether the lead presents any public health or safety concerns. Other leads in Atlantic and Middlesex Counties, New Jersey, come through HAZMAT and the County Solid Waste Unit, while in San Diego, California, tips come primarily from regulatory personnel. Air pollution violations are often a good way to identify smaller-source polluters.

### *Whistleblowers*

Investigators in Broward County get most of their leads from the Broward County Department of Natural Resources Protection, which in turn receives information from employee whistleblowers and from road patrol officers. According to Broward Sheriff's Detective Michael Szish, "The mentality of the public is to report suspected illegal activity to the local environmental protection agency rather than to law enforcement."<sup>3</sup>

Also, in the Michigan Department of Natural Resources (DNR), State Environmental Investigation Section Captain William Murphy finds that some of the best leads come from employees or ex-employees.<sup>4</sup> According to Captain Murphy, however, the best source of leads is the DNR's toll-free hotline.

### **Law Enforcement Strategies**

Special approaches may be required in environmental investigation. Undercover surveillance and sting operations may be used to monitor more sophisticated operations. In Palm Beach County, hidden cameras have captured violators illegally dumping waste tires and other solid wastes at

suspected crime scenes. Persistence is also important. Sergeant Ken Huber of the Middlesex County Prosecutor's Office Environmental Crimes/Arson Unit reports that his strategy is to "stay after suspect sites," returning to violator companies even after a case is closed. Sergeant Huber believes that this continued scrutiny discourages the would-be repeat environmental offender.

### *Leadership Styles*

The leadership style of the head of an environmental crime unit largely determines the types of investigation that unit will pursue. While all investigations must be selected for attention on the basis of a violation of the law, the chief of units such as the Middlesex County Prosecutor's Office Environmental Crimes/Arson Unit tends to pursue larger investigations that stand a greater chance of being covered by the press. This approach both offers the unit badly needed exposure and informs a larger share of the public of the danger posed by environmental crime. In turn, press coverage can help law enforcement enlist the public's support for future environmental investigations by making citizens aware of some of the signs of environmental wrongdoing.

The leadership style of Sergeant Ken Huber, the chief of the Middlesex County Prosecutor's Office Environmental Crimes/Arson Unit, means that many of Middlesex County's smaller environmental investigations are left to local municipality police departments to pursue. In Sergeant Huber's view, this builds a local capability and helps the local law enforcement departments develop a facility with environmental investigation. Sergeant Huber has encouraged local law enforcement to keep logs in which the issuance of warnings to small-time violators can be recorded for future monitoring.

Elsewhere, the leadership style of the chief of an environmental unit dictates that the unit take as many cases of all kinds as it can handle. In Palm Beach County, Florida, for example, because of the proactive approach taken over the years by the deputy sheriffs assigned to the Palm Beach County Solid Waste Authority, many county municipalities now look to the deputies for leadership on even the most modest and local of investigations. Palm Beach County's environmental crime deputies are presently trying to change this perception among local law enforcement by helping local police develop their own in-house capabilities. Other approaches to leadership allow line officers or investigators to make their own judgments about what sorts of investigations they are going to pursue. One outcome of this approach may be the development of a particular expertise by each officer or investigator.

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## *Keeping Tabs on Waste Haulers*

Middlesex County is home to the Edgeborough landfill, the largest active landfill in New Jersey.<sup>5</sup> On average the site accepts 360 to 385 truckloads of solid waste a day. According to the director of the Middlesex County Department of Environmental Health, "By monitoring waste flow and following it back to its source, you can learn a lot about a county's problems with solid waste."<sup>6</sup> Similarly, monitoring trucks traveling on county highways and local roads may identify previously overlooked criminal environmental activity. Commercial haulers of solid waste, hazardous materials, and other dangerous products must have special permits and licenses and may be required to carry manifests (lists of cargo) stating their cargo and its weight. Drivers of improperly manifested or licensed vehicles may be identified by road patrols familiar with relevant regulations.

According to Palm Beach County Deputy Sheriff Layne Schultetus, environmental cases often take months to solve. Because circumstantial cases are considered weak by the courts, Palm Beach County deputies rely heavily on the direct surveillance of suspected violators. County investigators have tracked biohazardous wastes south to Miami and waste tires from Port Saint Lucie south to Palm Beach County.

In one Palm Beach County case, an individual appeared at the county's free hazardous waste returnables facility with five 55-gallon drums he claimed to have found. When the facility asked the driver to pay for the waste disposal because of the quantity involved, he drove off with the waste. Following their training for these types of situations, hazardous waste facility staff promptly contacted Palm Beach County Sheriff's Office investigators, providing them with information on the truck and driver. Sometime earlier, sheriff's deputies had seen a classified advertisement for this hauler, and an intelligence file including addresses, phone numbers, and truck descriptions had been started. Concerned that the driver would dispose of the wastes illegally, Deputy Sheriff Pearsall used the car telephone number in the intelligence file to reach the hauler in his truck. When the driver answered the phone, Pearsall said, "Randy, this is Deputy Sheriff Pearsall. You don't know me but you need to come back to the hazardous waste facility and dispose of that waste properly." On returning to the facility, the driver produced a check from the person who had hired him. The check's memo read, "For Disposal of Hazardous Waste," but the driver did not have manifests for hauling. Palm Beach Deputy Sheriff Pearsall's approach also yielded another lead, the company that had hired the hauler. In Palm Beach County, trip wired still cameras and time-lapse video cameras have also been used

to gather intelligence information as well as evidence for prosecution when the locale or a staffing shortage does not permit a deputy to be present at an illegal disposal site around the clock.

## *Undercover Operations*

If the budget permits, undercover operations can be an effective means of collecting evidence for building a case against environmental offenders. Portland, Maine, is using undercover officers to track waste hauling operations throughout much of the northeastern United States. What began as a small examination of waste hauling practices in Portland has grown into an investigation of companies from as far away as New Jersey. Similarly, one New Jersey investigation (which began in 1988 under the New Jersey Department of Law and Public Safety's Environmental Prosecutions Bureau) grew into a case involving the company and 30 subsidiary companies that provided barges to sewage treatment plants for ocean dumping.<sup>7</sup> In the end, investigators from the bureau caught the company dumping sludge into New Jersey rivers rather than out at sea.<sup>8</sup>

Hazardous waste undercover operations require an experienced multiagency team of investigators. This team must have ability to make split-second investigative decisions, choices that may affect the eventual outcome of a prosecution. The specific type of hazardous waste used in the operation needs to be considered. For example, the prosecutor may desire that an extremely toxic hazardous waste be used in the operation so that the case has jury appeal. On the other hand, investigators need to consider the threat to the community (including themselves), the ability to procure the waste, the ease of handling and presenting the waste, and the ultimate disposition of the waste after the undercover operation has been completed. In addition, investigators must consider the problems they may encounter with regulatory agencies such as the EPA. An example of this would be the movement of wastes to an undercover location without a manifest. All of these considerations may affect the outcome of the case and will directly reflect the commitment of each agency involved.

## *Sting Operations*

Asking local businesses and individuals "if they want their waste tires disposed of for less than the going rate" is not the only method that law enforcement agencies employ in conducting sting operations. One Palm Beach County environmental sting operation involved a commercial hauler suspected of dumping numerous loads of trash in wooded lots

throughout the county. The Sheriff's Office hired the hauler, helped load the truck, and then followed him to the woods, where an in-progress felony arrest was made.

Sting operations help law enforcement stay abreast of the state of the art in environmental crime. During a recent operation in Suffolk County, New York, investigators from the District Attorney's Office had to lower their asking price several times to match the black market dumping rate.<sup>9</sup> Referring to the Suffolk County sting operation, a 1992 publication of the American Prosecutors Research Institute's National Environmental Crime Prosecution Center noted:

In fact, one company made inquiries whether the undercover officers would consider payment plans. The overall illegal rate was fourteen and a half times lower than the legal market rate. The differential was even greater to dispose of cyanide alone — \$450 as compared to \$10,400 for the legal rate.<sup>10</sup>

In California, the California Highway Patrol (CHP) has asked for and received cooperation from waste haulers to use their trucks to pick waste up from suspect illegal generators. In one instance, the CHP picked up waste asbestos from a contractor and was paid on the spot to make the waste disappear. When one of the undercover investigators asked the suspect, "Where do you want us to take the waste?" the suspect stated, "I don't care where the hell you take it."<sup>11</sup>

In another California sting operation, a CHP undercover investigator posing as an employee of a waste generator actually helped load liquid circuit-board waste containing copper sulfate onto a tanker truck owned by an unlicensed waste transporter. The investigator wore a wire, allowing tape-recording of the crime, and the entire incident was videotaped.<sup>12</sup>

### *Aerial Photography*

The Palm Beach County Sheriff's Office makes extensive use of aerial photography to monitor suspected environmental violators. The office has only two environmental deputies to cover activity over a vast area, and flyovers have become indispensable to their work.

Environmental crime investigators who rely heavily on aerial surveillance of suspected crime sites point to the U.S. Supreme Court's decision in *U.S. v. Dunn* as helpful to their work.<sup>13</sup> This so-called open fields case involved an appeal of a defendant's conviction for conspiracy to manufacture controlled substances, but environmental prosecutors argue

that the holding of the case applies to criminal environmental investigation as well.<sup>14</sup> The Supreme Court ruling held that a barn located 60 yards from the defendant's home, but not within a fence surrounding the house, was not within the curtilage<sup>15</sup> of the home. The Court's decision stated that police officers standing in open fields could look into the barn, even if the defendant did have a reasonable expectation of privacy in the barn; and that use of a flashlight to illuminate the inside of the barn did not transform the officers' observations into unreasonable searches. Palm Beach County deputy sheriffs feel the case justifies flyovers of suspected environmental crime sites.

### *Be Prepared*

The two environmental deputies in Palm Beach County drive four-wheel vehicles fitted with equipment that permits them to respond to a wide variety of calls. Both deputies also carry two still cameras, one loaded with slide film and one with print film, and a video camera.<sup>16</sup> Their experience investigating cases involving a range of environmental media has taught the deputies how and how not to investigate environmental crime. For example, warns Deputy Sheriff James Pearsall, "Never photograph a bunch of people casually standing around a dangerous spill." A good defense attorney will lose no time in pointing out to the jury how, while the prosecution alleges that the spill presented a dangerous situation, the people were entirely comfortable standing so close to it. Likewise, "In videotaping a spill be mindful of who and what appears on the tape." "Panning from a bird chirping in a clean pristine field to the leaking drums can catch the jury's attention." "In general," explains Deputy Sheriff Schultetus, "Do not photograph people taking samples, as this can turn the focus of the trial from the crime to the sampling methods followed." Both Palm Beach County deputies are OSHA site certified and are prepared to suit up for on-site hands-on work.

## **Scene Examination Issues**

Environmental crime scene concerns include evidence collection and preservation, public and officer safety, the accident containment, and site remediation. As with other sorts of criminal cases, environmental crime investigation requires preserving the chain of custody of trial evidence. Some communities have developed laboratory protocols for storing evidence in secure lockers at the lab rather than in law enforcement evidence-storage lockers.



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### *Evidence Collection and Preservation*

Collecting and preserving evidence in environmental cases does not mean physically preserving large quantities of hazardous materials or large parcels of contaminated property. Laboratory test results, photography, and other documentary evidence of the crime are routinely used instead.

### *Safety Concerns*

In any incident or environmental investigation, the first concern is containment and cleanup. Field sample analyses should be conducted, if possible, and evidence samples should be collected, but the safety of the officer and the public comes first. In Middlesex County, for example, the HAZMAT unit is often called on to assess the safety of a hazardous materials site. HAZMAT responds to all spills in Middlesex County, and Sergeant Huber finds it helpful to take witness statements concerning a site from the HAZMAT professionals who have responded to a call. Criminal Investigator Donna Blake of the San Diego County District Attorney's Office concurs that, in criminal environmental investigations, "health comes first." If an investigation endangers the safety of investigators, the site should be secured but the environmental problem should be left alone until the safety of the investigating officers can be assured. Pending the arrival on the site of required equipment or protective clothing, officers should stand clear of the hazard and ensure that the public is kept away or evacuated if necessary.

### *Laboratory Analysis of Samples*

Increased coordination between law enforcement and regulatory personnel has meant that regulatory personnel are now trained in proper evidentiary procedures. This practice helps ensure that evidence will be admissible at trial. In the past, the Palm Beach County Sheriff's Office had problems with the agency that performed its laboratory analysis. "They are not cops," explains Palm Beach County Deputy Sheriff Layne Schultetus. The problem was remedied once lab personnel were trained to cover the chain of evidence.

In all three counties visited, trial evidence is stored in locked evidence-storage lockers at the lab and technician staff are trained in chain of custody issues. The assigned environmental prosecutor considers any evidentiary issues raised by the sampling method, or the manner in which evidence is tested or stored.

Recognizing that a basic understanding of the criminal process and a good working relationship between law en-

forcement and the lab providing an analysis of site samples is essential, the Middlesex County Environmental Crimes/Arson Unit works closely with the lab to develop chain of custody provisions. For their part, the lab's director and technicians have explained to Middlesex County Prosecutor's Office staff the chemical properties and hazards posed by certain substances with which the office's investigators commonly come in contact.

### *Site Remediation*

Prompt site remediation, to protect public safety or help employees return to work, may preclude optimal investigation of the site for criminal prosecution purposes. The task of investigating a suspected environmental crime site is a balancing act among the interests of law enforcement and those of the public, the municipality, and local industry. Because they bring together professionals with a range of perspectives on site remediation, multiagency task forces may be ideally suited to developing procedures for such eventualities and then streamlining the process in the event of a toxic or other environmental incident.

## **Endnotes**

1. Correspondence from Sergeant Lance Erickson and Sergeant Gary Hanson, California Highway Patrol, May 1994.
2. Interview with Deputy Sheriff James Pearsall, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.
3. Interview with Detective Michael Szish, Broward Sheriff's Office, Fort Lauderdale, Florida, August 4, 1993.
4. Interview with Captain William Murphy, State Environmental Investigation Section, Michigan Department of Natural Resources, Lansing, Michigan, May 27, 1993.
5. Edgeborough's permit requires that a 60 percent recycling rate be achieved by 1995. But the director admits that the current statistics for Middlesex County are suspect. Many local towns have large concentrations of townhouses and condominiums, and these often use private solid waste haulers. The current charge at the Edgeborough landfill is \$58 per ton. A big concern of Middlesex County's landfill operators is monitoring the out-of-flow wastes from outside the county. Dennis Malinowski, program coordinator for the Department of

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Environmental Health, estimates that one-third of the waste going into Edgeborough is C&D debris.

6. Interview with Richard Hills, director, Middlesex County Department of Environmental Health, North Brunswick, New Jersey, August 10, 1993.
7. J. P. Fried, "Four in Prominent Harbor Family Are Charged With Polluting," *New York Times*, July 2, 1993, p. B7. The article discusses the investigation of *General Marine, Inc.*
8. The practice involved General Marine's pulling a smaller barge up to one of its larger barges to make it appear as though they were transferring wastes to the smaller barge. Undercover bureau investigators photographed company employees dumping directly into rivers. Officers of the company were indicted, and eventually guilty pleas were obtained from all of those charged. The head of the firm, Evelyn Berman Frank, received a prison sentence.
9. J. Barbanel, "Elaborate Sting Operation Brings Arrests in Illegal Dumping of Toxic Wastes by Businesses," *New York Times*, Long Island Metro Section, May 13, 1992, p. 1. Also see "The Local Prosecution of Environmental Crimes: A Literature Review" (Alexandria, VA: American Prosecutors Research Institute, National Environmental Crime Prosecution Center, August 14, 1992), p. 22.
10. "The Local Prosecution of Environmental Crimes: A Literature Review," p. 22.
11. Correspondence from Sergeant Lance Erickson and Sergeant Gary Hanson, California Highway Patrol, May 1994.
12. *Ibid.*
13. *U.S. v. Dunn*, 480 U.S. 294, 107 S.Ct. 1134 (1987). Also see *Florida v. Riley*, 488 U.S. 445, 109 S.Ct. 693 (1989).
14. Interview with Douglas Leifert, chief, Environmental Crimes Unit, Office of the State Attorney, West Palm Beach, Florida, August 3, 1993.
15. *Curtilage* refers to a courtyard, garden, or enclosed space of grounds immediately surrounding a dwelling house. Today its definition has been extended to include any land or building immediately adjacent to a dwelling; usually it is enclosed in some way by a fence or shrubs.
16. Palm Beach County deputy sheriffs are seeking contributions of used but working video cameras from local businesses and the public, so that they may set up other monitoring operations.

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# Chapter 5

## Interagency Coordination

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Collaborative work on environmental crimes cases should be a perfect marriage of the skills of the law enforcement and regulatory agencies. This is not a turf thing; it is a matter of working together to resolve a mutual problem.

— Richard Hills, director, Middlesex County (New Jersey)  
Department of Environmental Health, August 10, 1993

Environmental crime investigation requires the involvement of many agencies in addition to law enforcement. Fire departments, health departments, drainage districts, solid waste authorities, public works departments, and fish and game agencies are just some of the agencies that law enforcement may need to work with on an investigation. The relationships among the agencies may be defined by formal written agreements or informal protocols. Regularly scheduled task force meetings may offer settings at which ongoing investigations are discussed, or phone calls may be the standard means of coordination. Finally, although all of the

agencies involved in creating a response to environmental crime may agree on the goal, each agency may have an inherently different perspective on enforcement.<sup>1</sup> Table 5.1 demonstrates the potentially divergent approaches to environmental enforcement taken by environmental regulatory and law enforcement agencies. The fundamental goals of interagency cooperation are to ensure that criminal, civil, and regulatory actions are applied in a coordinated and appropriate fashion, based on resource availability and the characteristics of violators and violations.

**Table 5.1**

### **Approaches to Environmental Enforcement: A Comparison**

<u>Environmental Regulatory Agency</u>	<u>Law Enforcement</u>
Identify responsible parties	Identify suspects
Ensure remedial action	Document the crime scene
Begin civil action/issue notice of violation (NOV)	Conduct investigation
Cleanup and mitigation	Refer to prosecution
License and permit consolidation	

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Both of these perspectives make vital contributions to environmental improvement, particularly if they are pursued in a coordinated way. The Los Angeles County Environmental Crimes Strike Force, described in "Prosecuting Environmental Crime — Los Angeles County," a recent National Institute of Justice publication, represents one of the more successful formalized task force approaches to interagency coordination.<sup>2</sup> Organizing task forces and identifying sources of leadership may benefit the process, as may cross-training professionals from the different agencies involved.

## Who Takes the Lead?

Law enforcement is often the natural leader in environmental crime response. However, regulators may be reluctant to relinquish an investigation in some cases, or prosecutors may want to direct the case. The Palm Beach County Sheriff's environmental crime deputies have been the driving force behind criminal enforcement efforts in that county, although they are striving to take a less prominent role in local cases and to become more of a resource and referral service. An individual prosecutor's commitment or a regulator's reaction may also determine who leads a particular incident or case. In Middlesex County, newly elected County Prosecutor Robert Gluck has been very supportive of the Environmental Crimes/Arson Unit's proactive approach to environmental criminal investigation, without wanting to direct the work himself. The unit was started under Gluck's predecessor in response to the State's overloaded environmental regulatory agency. Gluck reportedly has been very supportive of the revamped and expanded program led by Sergeant Ken Huber.<sup>3</sup>

Since the main goal of the investigation and prosecution of environmental crime is deterrence, some law enforcement administrators find they must demonstrate to prosecutors the criminal nature of some illegal environmental activity.

The former chief of the Environmental Crime Unit of the Solano County (California) District Attorney's Office explains:

The public, generally, will only consider the placement of hazardous waste in a stream to be a crime when people are actually prosecuted and convicted for it. In addition, the police and fire agencies in a given county will only begin to divert resources to investigate environmental crimes when they become aware that there is a prosecutorial agency within that State willing to take a case, try it, and win it.<sup>4</sup>

## Demonstrating Success

Building a law enforcement response to environmental crime takes time and requires outreach. Law enforcement may want to meet with local environmental groups and present an overview of environmental crime investigation. Building bridges through outreach to county health and environmental agencies and laboratory personnel may also be important. Educating lab technicians in criminal evidence collection, the chain of custody concept, and criminal evidence sampling are important early steps for law enforcement initiating an environmental crime response. In all of his environmental awareness presentations to regulatory personnel and others, Broward Sheriff's Office Detective Michael Szish seeks to impress on his listeners the importance of sharing this work and the responsibility for enforcement:

Among county environmental regulatory personnel, those most receptive to criminal enforcement were field staff, who felt themselves constantly going back again and again to the same sites. The field people felt that criminal enforcement puts teeth in their work. Field staff appreciate that this is not just pressure to comply. This can also have a punitive outcome.<sup>5</sup>

A supervisor in the Enforcement Unit of the Broward County Department of Natural Resources Protection agrees: "Law enforcement is much more of a deterrent to these guys. When they see a badge come in, three attorneys show up and we get calls at home."<sup>6</sup>

## Enlisting Other Agencies at the Outset

Involving other agencies from the start may help retain their assistance over time. In developing the Broward Sheriff's Office's program, Detective Michael Szish sought the assistance of other local, county, State, and Federal law enforcement and regulatory agencies. Active Broward County agencies include the Fort Lauderdale Police Department, the Florida Marine Patrol, the Department of Natural Resources Protection (DNRP), the Florida Department of Environmental Protection (DEP), the Florida Game and Fresh Water Fish Commission, the U.S. Environmental Protection Agency's Criminal Investigations Division, and the Florida Department of Law Enforcement (FDLE). Both the DNRP and Broward County's fire departments have standing memorandums of understanding (MOU's) on responding to a hazardous materials incident. FDLE provides periodic 40- and 80-

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hour training courses on law enforcement and environmental crime. Detective Szish warns, however, that "each agency continues to have its own agenda." Moreover, according to Szish, "In the courts environmental cases are looked at almost as a double-jeopardy problem, between civil and criminal. There is a concern with overkill, and judges will not allow a case to proceed both civilly and criminally at the same time. County jail time is only given to a serious repeat offender." In addition, notes Szish, in the private sector, businesses tend to view environmental litigation, which usually results in civil fines, as a cost of doing business—rather than as a motivation to stop doing something they should not do.<sup>7</sup> In the view of the former chief of the Environmental Crime Unit of the Solano County (California) District Attorney's Office:

The relationship between local agencies and local prosecutors [and law enforcement] is a symbiotic one. The agencies need the prosecution of environmental violations to provide them with enforcement credibility in order to regulate effectively. The prosecutors [and law enforcement] need the local regulatory agencies as a source of cases to prosecute.<sup>8</sup>

## Task Forces

Palm Beach County Deputy Sheriff James Pearsall underscores the importance of task force meetings to monitor suspected criminal activity in regulated industries. An interagency task force exists in Palm Beach County for the exchange of information on cases. In addition to the Palm Beach County Sheriff's Department, representatives come from the Florida Game and Freshwater Fish Division and from the Health, Fire, and Zoning Departments.

The environmental task force of Middlesex County, New Jersey, with representatives from all municipalities, meets monthly. Working through channels established by the task force, the Environmental Crimes/Arson Unit closely coordinates its activities with the Middlesex County HAZMAT Unit and the Middlesex County Health Department's Solid Waste Unit. HAZMAT notifies the unit of all spills, and the Solid Waste Unit is extremely cooperative. In addition, Sergeant Ken Huber has built a strong relationship with the Solid Waste Unit and often uses its reports when obtaining a search warrant.

Middlesex County's task force involves local liaisons from each municipality, as well as HAZMAT and the State. For Prosecutor Robert Gluck, criminal environmental enforce-

ment is not a passing fad; he acknowledges the need to upgrade the unit's technology and the skills of staff. To foster the professional development and a rapport between investigators and prosecutors, the prosecutor keeps his door open for communication with both. Gluck feels that for now one prosecutor is sufficient to handle the criminal matters being investigated by the unit.

## Turf Issues

Sergeant Huber concedes that he runs into some jealousy once in a while, but that the county, the State, and other agencies generally work effectively together. He notes: "There is a need to approach local officials correctly. My approach is that I am there to help, to assist the municipality make the proper investigation."<sup>9</sup> Huber's background is in arson investigation, where he learned the importance of teamwork. To foster good will, Huber has the local department sign the criminal complaint for most investigations that result in criminal cases. Also, unless an investigation is confidential, Huber notifies the local police or fire department before the Environmental Crimes/Arson Unit visits a municipality.

There are no turf issues in Palm Beach County, says Deputy Sheriff Layne Schultetus, because Florida has looked to the county for instruction and direction in this emerging law enforcement area. He attributes part of their success to "environmental investigators sharing information and case techniques. It's a real plus to be able to call someone who's already done a similar case and ask for pointers." He adds, "The Florida Department of Law Enforcement recently came to my partner for help in preparing a search warrant in a case involving burial of C&D debris."<sup>10</sup>

The Broward Sheriff's Office (BSO) is part of the southeastern Florida chapter of the League of Environmental Enforcement and Prosecution (LEEP). LEEP is an environmental-training clearinghouse for law enforcement and regulatory agency personnel in Florida, serving as a library of training videotapes and other training materials. Detective Michael Szish of the Broward Sheriff's Office describes LEEP as a Florida version of the Southeast Environmental Enforcement Network, one of the Nation's four regional environmental organizations. Broward County also works on cases with officials in Palm Beach and Dade Counties.

The Broward Sheriff's Office participates in the Broward Environmental Crime Team (BECT). The office also meets informally with the County's Hazardous Materials Committee, so staff from different county agencies may share infor-

mation on suspected sites and evidence collection at those sites.

According to Captain William Murphy of the Michigan Department of Natural Resources Environmental Investigations Section, there are no other major regulatory agencies in Michigan. Reportedly, relations between the Environmental Investigations Section and the State Department of Agriculture, the Michigan State Police, the FBI, and the U.S. Attorney's Office are good. According to Captain Murphy, "At the outset there was a critical need to develop that rapport. Unlike other areas of law enforcement, you can't handle these sorts of investigations alone."<sup>11</sup>

## Building on an Existing Foundation

Sometimes law enforcement develops a successful relationship with one part of an agency but not with another. Investigators able to underscore their successful collaborative work on investigations may be able to leverage their success to gain further assistance. Requesting the involvement of other agencies may involve a quid pro quo. Regulatory personnel and others may understandably want to know what is in it for them. A good response may be effective, lasting enforcement that will spare the regulator from returning to a site.

Law enforcement professionals should also get used to the idea that their relations with certain individuals or agencies are always going to be better than with others. According to Sergeant Ken Huber of the Middlesex County Prosecutor's Environmental Crimes/Arson Unit, although the Department of Environmental Protection and Energy (DEPE) works closely with the unit, the regulatory agency does not always refer leads that look like criminal cases to the specialized unit. There are many branches of the regulatory agency, and the Environmental Crimes/Arson Unit's relationship with some branches is admittedly better than with others. For Sergeant Huber, the bottom line is that "DEPE knows that the unit will take a case and run with it."<sup>12</sup> He also notes that the new acting director of DEPE has made statements and taken actions that suggest she will seek to increase coordination between the regulatory agency and the Middlesex County Prosecutor's Office.

## State Involvement

The States have a range of approaches to involvement in local criminal enforcement. New Jersey's approach is somewhat unique: a New Jersey environmental prosecutor coor-

dinates environmental enforcement activity at the local, county, and State levels. In addition, two extremely helpful resources for local law enforcement are State Investigator Bob Brescia and supervisory State Investigator Vincent Matulewich in the State Attorney General's (AG's) Office. According to Sergeant Huber, the Environmental Crimes/Arson Unit contacts the AG's Office whenever a larger local investigation learns whether the AG's Office has an ongoing investigation. In Sergeant Huber's view, the New Jersey State Attorney General's Office is quite busy and generally encourages local law enforcement to pursue the case on its own. Turf is not an issue. In one recent case, Middlesex County asked the AG's Office to let it pursue a case that Middlesex County felt was not being pursued aggressively enough. According to Sergeant Huber, "State Investigators Brescia and Matulewich are living archives of information about environmental investigation, and while they often do not have the time to become directly involved in a local case, they are available to walk units such as the Middlesex County program through difficult cases."<sup>13</sup>

In California, the California Highway Patrol (CHP) has been involved in the investigation and prosecution of environmental crimes since 1985. As a State agency, the CHP has statewide jurisdiction. Because hazardous waste cases require closely coordinated multijurisdictional investigation, the CHP is the primary investigative agency for these types of crime within California. Over the years, the CHP has developed a reputation as the forerunner of investigations concerning the illegal transportation of hazardous wastes.

In California, the FBI and CHP have worked together closely on a number of illegal transportation cases. In 1990, the CHP, the EPA, Customs, and the FBI formed a mini task force that has resulted in tens of Federal cases being filed in California. The FBI has also been instrumental in providing the resources to carry out a joint undercover operation involving several Federal agencies and the CHP.<sup>14</sup>

The CHP works with any and all regulatory agencies, whether local, county, or State. Because of the vast areas of responsibility, the CHP investigators work with these agencies on a one-to-one basis.

## Federal Involvement

The involvement of Federal law enforcement and regulatory agencies in local and county response varies considerably from region to region. Although Federal agencies in San Diego—including law enforcement from the armed services—are reportedly closely involved, Federal agencies

have had very little involvement in southern Florida environmental cases. In the Pollution Prevention Act of 1990, Congress required the Federal government to have at least 200 criminal environmental investigators by October 1, 1995. Still, in the view of some observers, Federal assistance to counties and localities remains less than optimal in this area.<sup>15</sup>

## Other Examples of Interagency Coordination

In Middlesex County, the HAZMAT Unit notifies the Middlesex County Prosecutor's Environmental Crimes/Arson Unit of all incidents that it is called out on. Additionally, the Prosecutor's Unit often asks the HAZMAT Unit to accompany its investigators on calls. HAZMAT is then on hand if the scene presents a potential safety concern for the investigators or the public. Coordination with HAZMAT also brings to the criminal enforcement effort environmental professionals who are EPA-licensed to open unlabeled 55-gallon drums. HAZMAT comes to a site with the equipment necessary to pursue an investigation safely.

Sergeant Huber of the Middlesex County Prosecutor's Environmental Crimes/Arson Unit underscores the importance of a good working relationship between units like his and the county solid waste authorities in New Jersey:

The county solid waste authorities wields a lot of power because certain problems will put guys out of business. We're not the Gestapo. We don't need to bust businesses; so when they know it's not serious, they may go civil to bring businesses up to code. The goal is to end environmental crime, and we'll work with someone who shows a willingness to comply. If you shut a company down, then you have to pay for the cleanup.<sup>16</sup>

## Endnotes

1. In addition, it is important for law enforcement to build a good rapport with regulatory and other agency personnel so that professionals from these agencies can testify at trial as to what they observed at the scene, or what the health and environmental consequences of a given crime may be.
2. T. M. Hammett, and J. Epstein, "Prosecuting Environmental Crime: Los Angeles County," *Program Focus*

(Washington, DC: National Institute of Justice, U.S. Department of Justice, August 1993).

3. The unit has its own office, away from the prosecutor's office, and has a local police officer assigned to it on a rotating basis. The local officers are ideal for undercover operations.
4. M. S. Pollock, "Local Prosecution of Environmental Crime," *Environmental Law* 22 (1992), pp. 1405, 1411.
5. Interview with Detective Michael Szish, Broward Sheriff's Office, Fort Lauderdale, Florida, August 4, 1993.
6. Interview with Anita Allen, supervisor, Enforcement Unit, Broward County Department of Natural Resources Protection, Fort Lauderdale, Florida, August 4, 1993.
7. Interview with Detective Michael Szish, Broward Sheriff's Office, Fort Lauderdale, Florida, August 4, 1993.
8. M. S. Pollock, "Local Prosecution of Environmental Crime," *Environmental Law* 22 (1992), pp. 1405, 1407. Since this article was written, budget cuts in California have resulted in the elimination of the Environmental Crime Unit of the Solano County District Attorney's Office.
9. Interview with Sergeant Ken Huber, Environmental Crimes/Arson Unit, Middlesex County Prosecutor's Office, Edison, New Jersey, August 10, 1993.
10. Interview with Deputy Sheriff Layne Schultetus, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.
11. Interview with Captain William Murphy, Michigan Department of Natural Resources Environmental Investigations Section, Lansing, Michigan, May 27, 1993.
12. Interview with Sergeant Ken Huber, Environmental Crimes/Arson Unit, Middlesex County Prosecutor's Office, Edison, New Jersey, August 10, 1993.
13. Interview with Sergeant Ken Huber, Environmental Crimes/Arson Unit, Middlesex County Prosecutor's Office, Edison, New Jersey, August 10, 1993.
14. Correspondence from Sergeant Lance Erickson and Sergeant Gary Hanson, California Highway Patrol, May 1994.

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15. V. A. Matulewich, "Environmental Crime Prosecution: A Law Enforcement Partnership," *FBI Law Enforcement Bulletin* (Washington, DC: Federal Bureau of Investigation, April 1991), pp. 23, 25. The passage of the Pollution Prevention Act of 1990 (42 U.S.C. § 13101 *et seq.*) also required the EPA to create a National Enforcement Training Institute (NETI). The purpose of NETI is

to offer comprehensive criminal and civil environmental enforcement training to Federal, State, and local personnel.

16. Interview with Sergeant Ken Huber, Environmental Crimes/Arson Unit, Middlesex County Prosecutor's Office, Edison, New Jersey, August 10, 1993.



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## Chapter 6

# Working With the Prosecutor

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The Environmental Crimes/Arson Unit is only as good as the assistant prosecutor. Her perseverance and commitment is important to the process and essential to our success.

— Sergeant Ken Huber, Environmental Crimes/Arson Unit,  
Middlesex County (New Jersey) Prosecutor's Office

As noted in chapter 3, situating an environmental crimes response in the prosecutor's office offers several important advantages, including the opportunity for the free exchange of information between prosecutors and law enforcement. Wherever the unit is situated, however, its relationship with the prosecutor will be critical to its success.

### The Prosecutor's Office

A district attorney who strongly supports environmental prosecution can be critical to the development of local investigation and prosecution efforts. In Middlesex County, New Jersey, Assistant Prosecutor Robin Stacy works hand in hand with the investigators in the Environmental Crimes/Arson Unit. However, local prosecutors who do not have the resources or are not prepared to make environmental cases a major priority of their offices can still make a difference in the battle against environmental crime.<sup>1</sup> Smaller district attorney's offices should not overlook the related professional experience of their deputy prosecutors. For instance, an office might find that one of its attorneys had worked in the environmental area before coming to the district attorney's office. The role of the district attorney in this instance is to keep abreast of the interests and abilities of deputy prosecutors. By conducting an inventory of available experience, training, and interests, prosecutors may identify formerly untapped resources in the fight against environmental offenders.<sup>2</sup>

### *The Prosecution Model*

A vertical model of prosecution in environmental cases is probably the best approach because it enables investigators and prosecutors to develop close working relationships from the start of an investigation through final adjudication. The relationship between Palm Beach County's Assistant State Attorney Douglas Leifert and its deputies is good because Leifert is dedicated as an environmental prosecutor. In an investigation prior to Leifert's appointment, a pollution case was dropped by the regular State's attorney filing process because the reviewing prosecutor believed the deputies should have seized and impounded all contaminated dirt instead of obtaining samples and photos of the site as they had done. While this was frustrating for all, the State Attorney's Office used this incident to speed up its plans to put a trained environmental prosecutor on staff. Currently, the information and education flows freely between Leifert and environmental investigators. This has resulted in the prosecutor's educating the investigators on changing case law and legislative issues that may come up and has enabled all involved to gather the type of evidence required, in a manner the prosecutor feels comfortable presenting in court. The free flow of information also allows the investigator to educate the prosecutor about investigative limitations so that together they can work to overcome obstacles. According to Palm Beach County deputies, having the prosecutor ride along with them has also been an effective means of sensitizing him to the concerns of law enforcement and the limitations on what they can uncover.

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## *Educating the Prosecutor*

Detective Michael Szish of Broward County finds that while they were always receptive to criminal prosecution of environmental offenses, at the outset prosecutors were often untrained in these sorts of cases. Now several of the county's prosecutors are formally trained through LEEP classes for prosecutors.

According to Sergeant Colasurdo of the Atlantic County (New Jersey) Prosecutor's Office Environmental Crimes Task Force, initially prosecutors tended to oversimplify cases. Now that they have received training, this no longer happens. In the first five years of the Palm Beach County Sheriff's Office's contract with the Palm Beach County Solid Waste Authority, the program saw eight prosecutors come and go. In 1993 the newly elected State attorney made environmental crimes a priority. As a result, a prosecutor not only was appointed but received training through the Florida Department of Law Enforcement's 40-hour Environmental Investigations course and the 24-hour Southern Environmental Enforcement Network Prosecutor's Training course. The present environmental prosecutor in Palm Beach County understands the field and has built a strong rapport with the investigators as well as State and local regulatory personnel.

## *Visiting the Site*

When to bring the prosecutor out to a site is difficult to determine. Wanting to expose the prosecutor to the suspected crime—but not wanting the prosecutor to be a witness at trial—creates a dilemma. While investigating a tire hauler that was filling large warehouses with tires and then abandoning them, Palm Beach County Deputy Sheriff James Pearsall recalls that Prosecutor Leifert had not seen large-scale warehouse abandonment and had doubts about prosecution. Pearsall arranged to take the prosecutor to a warehouse that had been abandoned by the suspect in Port Saint Lucie, Florida, outside Palm Beach County.<sup>3</sup> One look at the sheer volume of waste tires convinced Leifert of the severity of the crime.

## *Parallel Proceedings*

Many environmental cases can be handled effectively by both civil and criminal process, and sometimes both proceedings are initiated concurrently. When this occurs, parallel prosecution issues may arise.<sup>4</sup> In deciding whether to proceed civilly or criminally, prosecutors consider:

- The relative speed of prosecution.

- The different standards of proof required.
- The deterrent effect.
- The desirability of compliance and site remediation versus punishment.<sup>5</sup>

Some local prosecutors have both civil and criminal jurisdiction, as described in *Local Prosecution of Environmental Crime*, Issues and Practices,<sup>6</sup> a recent NIJ report:

The Alameda County [California] D.A.'s Office has both civil and criminal jurisdiction but prepares all of its cases as though they will be tried criminally. From an investigative perspective preparing for criminal trials which require proof "beyond a reasonable doubt" assures that even if the case is ultimately pursued civilly, the higher standard of proof will have been met. Typically, the office will proceed with a civil case when some kind of evidentiary shortfall precludes criminal prosecution. It is a case-by-case determination and, in addition to weighing evidentiary concerns, the decision hinges on the egregiousness of the conduct and the defendant's character. The office will seek injunctive relief where there is a need to put a quick stop to harmful environmental conduct. Moreover, civil penalties are an important source of operating revenue for the office. Awards are commonly shared with the other investigative and regulatory agencies involved in the case. Alameda prosecutors report that criminal prosecution is generally less labor- and document-intensive than civil litigation with its lengthy discovery.<sup>7</sup>

A parallel proceedings policy involves four main points:

- Criminal prosecutions should normally precede related civil proceedings, except in certain defined circumstances.
- Prosecutors may not share grand jury material with civil attorneys, but may share any other evidence gathered in criminal investigations.
- Civil attorneys may generally share information gathered in civil or administrative discovery with prosecutors, provided there was a good-faith civil basis for conducting the discovery.
- Civil attorneys need not give *Miranda* warnings in civil discovery.

The Environmental Protection Agency recently issued guidelines for parallel proceedings that State and local investigators and prosecutors may find helpful.<sup>8</sup> Given the widespread belief among environmental crime prosecutors that criminal conviction has a considerable deterrent effect on environmental offenders, investigations should be undertaken with the goal of proving the offender's guilt "beyond a reasonable doubt," the criminal standard. "Experience has taught us that true polluters view . . . [civil and administrative action] as a part of the cost of doing business. Until a potential for criminal prosecution is added to the equation, many of these environmental criminals will continue to illegally store, transport and dump hazardous wastes in blatant violation of the law."<sup>9</sup> In many jurisdictions, the filing of a letter of notice of violation signals the regulatory agency to stop the civil process if the decision is made to pursue the case criminally. This is done so that no alternative to prosecution exists for the court to look at. In addition, regular communication between law enforcement and regulatory agencies may ensure that regulatory agencies avoid cases that are being pursued criminally.

### *Search Warrant Procedures*

Obtaining evidence that will be admissible in court in environmental prosecutions, as in all other types of criminal cases, requires compliance with the search and seizure provisions of the Federal constitution and the relevant State constitution.<sup>10</sup> The Fourth Amendment applies no differently to environmental crime searches than to other criminal searches by law enforcement authorities. The U.S. Supreme Court's ruling in *Camara v. Municipal Court*,<sup>11</sup> creating the distinction between administrative inspection warrants and search warrants, prompted a number of States to codify the procedural distinction. For example, in California the attractiveness of the search warrant is that it can authorize the search and seizure of items anywhere on a suspect's premises in which there is probable cause to believe the evidence sought in the warrant may be located.<sup>12</sup>

Unlike searches pursuant to criminal investigations, administrative inspections are aimed at securing compliance with a jurisdiction's fire, health, and safety codes. Administrative inspection warrants are court orders granting government agents the right to conduct inspections of private property in the interest of public health and safety. An inspection warrant is required when consent to inspect commercial premises is denied. In determining whether a particular inspection is reasonable—and thus whether there is probable cause to issue a warrant for that inspection—the need for the inspection must be weighed in terms of the reasonable goals of code enforcement.<sup>13</sup>

An administrative inspection warrant can be obtained with less than a showing of criminal probable cause, but the resulting search is limited by the provisions of the State's legislative or regulatory sections authorizing the inspection. For example, a regulation may state that a city building inspector is authorized to inspect the foundation of a building to determine whether or not the building is structurally sound. Armed with an administrative inspection warrant, the building inspector will not be able to search parts of the building that have no bearing on the building's structural soundness.<sup>14</sup>

Because a search warrant cannot be issued except on probable cause supported by an affidavit, naming and describing the person, and particularly describing the property and the place to be searched, to obtain a search warrant the Government's agent must be able to demonstrate that there is probable and reasonable cause to believe and the agent does believe that the said property is:

- Stolen or embezzled,
- Property or things used as a means of committing a crime,
- Property or things in the possession of any person with the intent to use them as a means of committing a public offense or in the possession of another to whom he or she may have delivered it for the purpose of concealing it or preventing its being discovered, or
- Property or things that consist of any item or constitute any evidence that tends to show a crime has been committed.<sup>15</sup>

The execution of an environmental search warrant can be similar to other types of criminal investigations, but in many important ways it is different because of the use of civilian regulatory personnel and the safety procedures necessary to gather evidence.

In *Morris v. Florida*,<sup>16</sup> a medicaid fraud case, a criminal search warrant was executed. During the search the police officer, who was not trained in medicaid fraud cases, simply sat in the doctor's reception area while the trained civil investigators gathered the evidence. The Appellate Court suppressed the evidence gathered during the search, saying the rules and procedures surrounding search warrants are to protect the public's privacy. Criminal search warrants can be conducted only by law enforcement. The court did recognize the need for law enforcement to obtain the aid of civilians as long as the officer specifies in the warrant the aid needed and who will provide it. In addition, the officer executing the

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warrant is responsible for the search, and any assistance obtained must be only in the form of aid.

Investigators with the Palm Beach County Sheriff's Office have incorporated *Morris v. Florida* into their presearch warrant briefing checklist. Deputy Sheriff James Pearsall explains, "Some time ago we started the checklist to enable us to reevaluate our actions and make adjustments on a continuing basis." The list is kept on a computer disk. This allows it to be modified with suggestions that arise during each search warrant debriefing. Search warrant debriefings are conducted within 72 hours of the search and include all investigative personnel, both civil and criminal, who were involved. Areas covered in Palm Beach County's checklist include health and safety (such as any current health problems of personnel), special entry circumstances, evidence gathering, photography, as well as the command structure and emergency action plan. Deputy Sheriff Layne Schultetus adds: "Our main emphasis is the safe and thorough gathering of evidence. The checklist is a big part of that."<sup>17</sup>

### *Warrantless Searches*

Warrantless searches and seizures can generally occur through statutorily authorized inspections, consensual searches, and lawful observations. However, warrantless searches must still pass constitutional muster.<sup>18</sup> Statutorily authorized searches such as routine fire code, sanitation department, and building code inspections may disclose the illegal storage of hazardous waste or hazardous substances and other environmental violations.<sup>19</sup>

As noted in the previous section, in certain jurisdictions regulatory personnel whose job is to inspect businesses and other sites for public safety or health purposes may be an important means of obtaining information about suspected illegal activity. Typically, so long as they are not acting as agents for law enforcement, health and other regulatory inspectors do not need a warrant to go onto a site. Fostering cooperation with such personnel can be an effective way to identify suspect businesses and other environmental sites. Through cross-training (discussed in chapter 7), regulators can be trained in environmental crime investigation. While this practice remains viable in many jurisdictions, in California a State court's ruling in *Los Angeles Chemical v. Superior Court*<sup>20</sup> ended the practice there, holding that searches by Los Angeles County Department of Health Services investigators were unconstitutional under the U.S. Constitution's Fourth Amendment prohibition against unreasonable search and seizure.<sup>21</sup>

Environmental crime investigators should not overlook voluntary consent to a search as a way to gain warrantless access to a suspect's premises. Some environmental offenders may not even be aware of the illegality and danger posed by their acts and may grant law enforcement access to their property. In the case of a consensual search, the government proves that the consent was freely and voluntarily given. Law enforcement officers interviewed for this report recommend obtaining the consent in writing.

### *Assessing the Extent of the Damage*

Determining when to pursue a criminal investigation is difficult. According to Criminal Investigator Donna Blake of the San Diego County District Attorney's Office, the decision may rest on whether:

- This is a repeat offender (cases referred by regulators who have been repeatedly at the site but nothing has been done).
- There has been a catastrophic occurrence.<sup>22</sup>

The Portland, Maine, Police Department tends to investigate major violators and those incidents in which the largest sums of money are involved. Portland's focus has been incidents in which cities are losing money because they are being forced to pay more for disposal of their solid waste. Another factor that prosecutors and law enforcement take into account is the availability of alternative civil proceedings.

### *Negotiated Pleas*

The vast majority of environmental cases are settled before they go to trial. The importance of excellent case preparation, such that the defendant sees the benefit in settling, cannot be overstated. In her one year with the Middlesex County Prosecutor's Office Environmental Crimes/Arson Unit, Assistant Prosecutor Robin Stacy has not had a single case go to trial. Instead, while several cases are often set for the grand jury, most end up being pleaded out and funneled through pretrial intervention. Negotiated pleas are a fact of life in the American judicial system. Court dockets are often clogged and parties are encouraged to settle their civil and criminal disputes short of trial. While negotiated pleas do not necessarily result in site remediation, the better the prosecution's case preparation the more likely that the defendant will recognize the desirability of settling short of trial on a strong criminal complaint.

## *Informal Solutions*

Environmental investigators interviewed for this report admitted that not every case should be pursued criminally. Sergeant Ken Huber of the Middlesex County Prosecutor's Environmental Crimes/Arson Unit often seeks informal solutions to minor environmental violations. He suggests to local law enforcement that if they catch a "one-time dumper," they may want to supervise the offender's thorough cleanup of the site, require the violator to bring the waste to a legal disposal facility, and obtain a proper waste hauling manifest. These informal arrangements may help local law enforcement build good will with local individuals and businesses. Effectively, they involve the officer's advising the wrongdoer that he or she can correct the damage or see the officer in court. Subsequent violations are another matter.<sup>23</sup> Even as chief of the Middlesex County Prosecutor's Environmental Crimes/Arson Unit, Sergeant Huber is sensitive to the fact that the punishment should be proportional with the crime.

## *Sentencing Alternatives*

Making an offending business comply with environmental laws is a preferred alternative to shutting it down. Creative penalties permit violator businesses to remain open while working off fines and the cost of cleanup. This may also save jobs, often a sensitive issue for local government and the public.

Setting an example for the community and for other potential violators may be a consideration in sentencing. Equally important may be demonstrating to the violator that there is a right way to run the business in compliance with the law. In Palm Beach County, community service directed toward the environment, such as cleanup of county or State lands, other forms of corrective action, and donations to environmental causes, is used. This is in addition to the required cleanup or remediation of the damage caused by the violator.

## *Fines Can Help Pay for More Enforcement*

"In some jurisdictions, money generated from fines by local prosecution can be divided up between the agency that prosecuted the action and the local agency that investigated or referred it."<sup>24</sup> For example, a section of the California Health and Safety Code provides that civil and criminal penalties collected pursuant to this chapter shall be apportioned in the following manner:

- Fifty percent shall be deposited in the Hazardous Substance account.

- Twenty-five percent shall be paid to the office of the city attorney, city prosecutor, district attorney, or attorney general, whichever office brought the action.
- Twenty-five percent shall be paid to the health department and used to fund the activity of the local health officer to enforce the provisions of this chapter.<sup>25</sup>

*People v. Transocean Liners*<sup>26</sup> involved a German-registered freighter that negligently discharged bilge oil into San Francisco Bay. A number of agencies, including the California Regional Water Quality Control Board, the California Department of Fish and Game, the Office of the Solano County District Attorney, the Solano County Environmental Health Department, and the Western States Hazardous Waste Project, responded to the spill. The settlement of a civil action against the company reimbursed all of the agencies involved. Notes the former chief of the Environmental Crime Unit of the Solano County District Attorney's Office, "While the settlement of this particular case is not remarkably large, the participation and coordination of the various agencies with the local prosecutor is significant, because it exemplifies the ability of a local district attorney to generate revenue for the participating agencies. This revenue, in turn, encourages each of the participating agencies to participate in the future."<sup>27</sup>

## *Other Sentencing Issues*

Incarceration of offenders is still rare in environmental cases. Most convicted offenders pay a fine and the cost of cleanup. Because most cases are settled before a full criminal trial, relatively few case law precedents have been established. Many offenders can go into pretrial diversion or probation contingent on adhering to laws and regulations and complying with terms of settlement. Palm Beach County has developed a "plea sheet" to inform sentencing judges of the actual costs of one of these cases, and judges may consider the information contained on the plea sheet in setting a fine or prison sentence. Although not always followed, the sheet elicits information such as the cost of lab fees and the cost of the investigation (recovery of this cost is allowed under Florida law).

## **Endnotes**

1. T. M. Hammett and J. Epstein, "Local Prosecution of Environmental Crime," *Issues and Practices* (Washington, DC: National Institute of Justice, U.S. Department of Justice, June 1993), p. 27.
2. Ibid.

3. Interview with Deputy Sheriff James Pearsall, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993. The waste tire site in Port Saint Lucie containing an estimated 8,000,000 tires was described by Palm Beach County sheriffs as resembling a massive coal pile. The site is a fire hazard (as well as a massive breeding ground for mosquitoes) and sits directly over the main feeder line for a nuclear power plant. The site also straddles a line of tank cars situated at a railroad spur on the property of a neighboring chemical company.
4. T. M. Hammett, and J. Epstein, "Local Prosecution of Environmental Crime," p. 48.
5. *Ibid.*
6. T. M. Hammett, and J. Epstein, "Local Prosecution of Environmental Crime."
7. *Ibid.*, p. 48.
8. See memorandum: "Parallel Proceedings Policy" by Steven A. Herman, assistant administrator, Environmental Protection Agency, June 22, 1994. A copy of the memorandum may be obtained by faxing a request to Ms. Brenda Chappell, Information Specialist, Criminal Investigations, EPA, Mail Code 2233, 401 M Street, SW, Washington, DC 20460. Phone: (202) 260-9665; fax: (202) 260-6612.
9. D. E. Mielke, "Remarks of Donald E. Mielke to the Subcommittee on Toxic Substances, Environmental Oversight, Research and Development, of the Committee on Environmental and Public Works of the United States Senate," November 15, 1989, p. 3.
10. T. M. Hammett, and J. Epstein, "Local Prosecution of Environmental Crime," p. 51.
11. *Camara v. Municipal Court*, 387 U.S. 523 (1967).
12. T. M. Hammett, and J. Epstein, "Local Prosecution of Environmental Crime," p. 52; also see California Code of Civil Procedure § 1822.51.
13. See L. Blazer, "Search Warrants, Inspection Warrants, Regulator's Right of Entry," in *Environmental Cases: A One Day Training Seminar for Police, Fire, and Health Officers* (Alameda County District Attorney's Office), Pleasanton, California, August 23, 1990.
14. Investigations by the appropriate regulatory agency can generally occur through statutorily authorized inspections, lawful observations, and consensual searches. Examples of statutorily authorized inspections include California Health and Safety Code § 25185 (Hazardous Waste), California Health and Safety Code § 25508 (Routine Fire Code Inspections), and California Health and Safety Code § 25289 (Local Agency Monitoring Underground Storage Tanks). See L. Blazer, "Search Warrants, Inspection Warrants, Regulator's Right of Entry" in *Environmental Cases: A One Day Training Seminar for Police, Fire, and Health Officers*.
15. T. M. Hammett, and J. Epstein, "Local Prosecution of Environmental Crime," p. 52.
16. *Morris v. Florida*, 622 So.2d 67 (4th D.C.A. 1993).
17. Interview with Deputy Sheriffs James Pearsall and Layne Schultetus, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.
18. On warrantless searches for pervasively regulated activities, see *New York v. Burger*, 482 U.S. 691 (1987) (chop shop); *Commonwealth v. Blosneski Disposal Service*, 566 A. 2d 845 (Pa. 1989) (waste transfer station).
19. T. M. Hammett, and J. Epstein, "Local Prosecution of Environmental Crime," p. 52.
20. *Los Angeles Chemical v. Superior Court*, 226 Cal. App. 3d. 703 (December 1990).
21. T. M. Hammett, and J. Epstein, "Local Prosecution of Environmental Crime," p. 52.
22. Interview with Donna Blake, criminal investigator, San Diego County District Attorney's Office, San Diego, California, May 19, 1993.
23. Interview with Sergeant Ken Huber, Environmental Crimes/Arson Unit, Middlesex County Prosecutor's Office, Edison, New Jersey, August 4, 1993.
24. M. S. Pollock, "Local Prosecution of Environmental Crime," *Environmental Law* 22 (1992), 1405, 1407.
25. California Health and Safety Code § 25192 (West Supp. 1992).
26. *People v. Transocean Liners*, Case No. 116633 (Solano County, California Super. Court, December 16, 1991).
27. M. S. Pollock, "Local Prosecution of Environmental Crime," *Environmental Law* 22 (1992), 1405, 1408.

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# Chapter 7

## Training and Education

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Environmental crime investigators come from diverse backgrounds and possess a range of law enforcement skills. Several investigators with the New Jersey Department of Law and Public Safety's Environmental Prosecution Bureau are former street patrol officers whereas others are former EPA and New Jersey Department of Environmental Protection (DEPE) investigators. The bureau also has several chemists on staff.

### Specialized Training and Skills

Law enforcement interviewees who were asked to identify special skills that would assist them in their work put "interview and interrogation of professional people" high on their lists. According to Deputy Sheriff Layne Schultetus and others interviewed for this report, investigators can further the goal of criminal enforcement by being ever mindful of what is needed to make a criminal case. Questioning of company employees can reveal a tremendous amount of information that may be useful to the prosecution. Even straightforward questions such as "How many drums do you have on site?" may elicit an answer that aids a criminal investigation.

Deputy Sheriff Schultetus adds that getting involved in the criminal pursuit of violators can bring up the morale of regulatory personnel: "Lots of regulators are frustrated, and when we come in and seize the equipment of a violator, it makes the regulator happy." Environmental crime investigation and incident-response training is offered through a variety of agencies and organizations. This chapter describes the most commonly suggested courses and programs and is not intended to be an all-inclusive list of available training.

#### National Training Courses

Palm Beach County's deputy sheriffs recommend the various course offerings of the EPA, FLETC, OSHA, and Florida

Department of Law Enforcement training in environmental investigation. OSHA site training is required to visit any RCRA or CERCLA site.<sup>1</sup> The RCRA Personal Protection and Safety Training Course for Hazardous Waste Site Inspectors under the Code of Federal Regulations<sup>2</sup> instructs participants in how to safely respond to an incident on a hazardous waste site. Trainees are instructed on arrival at a hazardous waste site to do the following:

- *From a distance and upwind, use binoculars* to look for placards on vehicles. Be sure no flares or sources of ignition are used at the scene.
- *If you don't know—stay back* (down the road or outside the gate) and check it out slowly and carefully before doing *anything*.
- *If spill or wet areas are seen—stay away* from them. Park uphill from spills.
- *If vapor release is suspected—stay well away* and upwind from it as invisible cloud is usually much larger than visible cloud.
- *Always go in slowly* to avoid getting in too deeply before you realize it.
- *If no release is seen—look at spectators* to spot any people who are ill or unconscious. If people are down—*stay away* until you know what the situation is and can protect yourself.
- *You may have to stop well back from an incident* and wait for two men in full gear and self-contained breathing apparatus (SCBA) to check the situation out. They should go in *slowly*, approach from upwind, use detection and explosion meters, explosion proof lights, no radios, and stay out of observed chemicals.
- *Get information from people on scene* (driver, plant officials, eye witnesses, shipping paper, Material Safety Data Sheets).

- *Establish control points* for egress into incident area for emergence services (and public, if necessary).
- *Establish separate holding areas* for personnel or victims who accidentally become contaminated.
- *Get technical help* with expertise on the hazardous material involved.
- *Remember: You do not carry the equipment and entry suits for all chemicals*, so you cannot deal with all chemicals.
- *Some gases are toxic*—are absorbed through the skin—through standard turnout gear—and have no odor.
- *If you cannot find out what chemical is involved*, treat it as highly toxic, violently reactive, or explosive.
- *Establish command post and staging areas well away* from the area on the upwind side only.<sup>3</sup>

This training requires four hours initially, with eight hours of ongoing education annually.

### *State and Regional Training Courses*

A recent National Institute of Justice report on local prosecution of environmental crime noted that during 1991–1992 the four Regional Environmental Enforcement Associations provided training to 134 local investigators and 207 State investigators.<sup>4</sup> The report also found that California has the most training opportunities for investigators and regulators. In addition to the California District Attorney's Association's Awareness Training for Local Law Enforcement and the University of California's weeklong practice workshop for law enforcement and investigators, the California Specialized Training Institute (CSTI) in San Luis Obispo conducts a course on hazardous materials investigation. The University of California (UC)-Davis and UC-Santa Cruz now have programs similar to an older program in environmental investigation offered at UC-Riverside. The Santa Cruz program is funded through a trust fund set up with the settlement from a Santa Clara County environmental case. San Diego recently established a similar program at UC-San Diego.

In Alameda County, training and information are provided at monthly meetings of the countywide environmental enforcement network, and the prosecutor's office sponsors a training seminar for police, fire, and health officers. The one-day program includes an overview of the local government's role in environmental enforcement and examples of environmental crimes.<sup>5</sup>

In Broward County, law enforcement training is provided by the Southeast Environmental Enforcement Network (SEEN), the Federal Law Enforcement Training Center (FLETC), the Florida Department of Law Enforcement and the League of Environmental Enforcement and Prosecution (LEEP), based in Hillsborough County, Florida (Tampa). According to Broward Sheriff's Office Detective Michael Szish, FLETC recognizes the Florida Department of Law's one-week basic training in basic environmental enforcement as a prerequisite for its course.

In New Jersey, training in environmental response is mandated, and under State law, for reasons of officer safety, an investigator must be accompanied by another law enforcement officer when going onto a site. Middlesex County Sergeant Ken Huber recommends the EPA school in Edison, New Jersey, for the basic investigations course, the basic safety course, and the basic chemicals course. In addition, the county offers one-day seminars for local police officers on responding to an environmental problem. Sergeant Huber's Environmental Crimes/Arson Unit offers training to other investigators on equipment seizures. Middlesex County Prosecutor Robert Gluck is very supportive of the unit and has made a commitment to pay for specialized training for the unit's investigators.

### *County and Local Training*

Deputy Sheriff James Pearsall of the Palm Beach County Sheriff's Office has written an easy-to-use booklet that introduces the law enforcement agency to environmental investigations.<sup>6</sup> In straightforward language, Pearsall's *Local Agency Criminal Enforcement Investigation: A Place to Start* describes (1) why the local agency should be involved, (2) how to develop an initial plan, and (3) logistical considerations. The initial plan's goals include:

- Providing enhanced enforcement of the jurisdiction's environmental laws.
- Developing an informal environmental task force composed of local, county, and State agencies.
- Working to provide education and increased awareness of environmental laws for the general public, law enforcement, regulatory, and private sector agencies.

Contact information for Deputy Sheriff Pearsall is provided in appendix D.

The Broward Sheriff's Office training for environmental investigators in environmental crimes investigations covers the following topics:



- Standard law enforcement techniques.
- Forty-hour basic environmental enforcement (Florida Department of Law Enforcement).
- Forty-hour course in environmental crimes investigation (Southern Environmental Enforcement Network).
- OSHA Hazardous Waste Site and Emergency Response Course and annual updates.
- Federal Law Enforcement Training Center Environmental Crimes Training.

In-service training in Broward County on special topics such as officer safety, report writing, and environmental crime recognition includes:

- Rollcall tapes for the uniformed division.
- Uniformed supervisors training.
- Bulletins and handouts.

Law enforcement training provided to Broward County regulatory agency staff topics include:

- Recognition of environmental crime.
- Evidence—collection and control.
- Report writing.
- Interviewing techniques.
- Personal safety.

All Palm Beach County Sheriff's patrol deputies and detectives have received a six-hour block of training in basic environmental crime investigation. In addition, Sheriff Richard P. Wille requires all newly hired deputies to take this course while completing initial field training. According to Deputy Sheriff Pearsall, many of the local departments in the county now contact him and Deputy Sheriff Schultetus about providing training to local personnel.<sup>7</sup> Boca Raton and Jupiter, Florida, are two Palm Beach County communities that have designated environmental crime officers. In their training to road patrol officers, Deputies Schultetus and Pearsall seek to provide sufficient training so that road patrol officers know how to recognize environmental crimes and "safely respond to" solid waste incidents or request an investigator in cases of pollutants, hazardous waste, or other matters requiring time-consuming followup. Deputy Pearsall emphasizes that it is important to place limits on the patrol officer's actions to ensure officer safety. Deputy Schultetus adds, "They need to be taught, when a case is beyond their

training, to get help, because simple mistakes in this field can be very costly."<sup>8</sup>

### *Training Key*

The International Association of Chiefs of Police (IACP) has produced a training key titled "Environmental Crime Enforcement." A section of the training key, produced for distribution at police rollcalls, explains that large chemical or manufacturing companies are not the only sources of hazardous waste. For example:

Furniture manufacturing or refinishing companies produce significant quantities of waste solvents, paints and sealers; metal plating or stamping operations use acids, corrosives and cyanide in some heat treatments; autobody and repair shops produce waste paints, solvents, fuels, heavy metals and battery acid; gasoline stations produce waste fuels and oil; building cleaning and maintenance companies may use solvents, waxes, acids, and pesticides; medical laboratories use a variety of chemicals, and medical laboratories produce hazardous medical wastes from needles to infectious body fluids.<sup>9</sup>

Information on obtaining the IACP training key is provided in appendix E.

### *Future Course Offerings*

According to Portland, Maine, Police Lieutenant Mark Dion, "When Portland is done with a major case now under way, FLETC will have a course on how to do a massive investigation of solid waste hauling fraud."<sup>10</sup> Lieutenant Dion believes that only on-the-job training is appropriate for such a massive investigation. The department has offered training to police and traffic enforcement units across Maine to heighten their awareness of environmental crime. "Garbage trucks are these big vehicles that move unnoticed through our communities," says Dion. "Portland's training programs were designed to increase awareness of these vehicles and the illegal transportation of solid waste." Lieutenant Dion believes that Portland is creating an innovative method for responding to environmental crime that should be shared with other communities.

Jefferson County, Kentucky, is a massive chemical manufacturing and transportation center. It is also the site of a five-year Centers for Disease Control and Prevention (CDC) demonstration project to develop an interagency response to HAZMAT incidents. An unusually high incidence of childhood leukemia has been detected among children in the

Rubbertown section of Louisville, and the CDC project has developed prehospital and hospital care protocols.

One topic on which there appears to be a gap in training is the identification of demolition activities that may involve asbestos. Law enforcement officers might be trained both to recognize improper activity and to contact the appropriate enforcement agency to respond to the scene before the material is transported away and illegally dumped.

### *Rollcall Lectures and Tapes*

Rollcall is an ideal time to present short officer-training presentations on environmental crime investigation. A videotape produced by the Broward Sheriff's Office Telecommunications Unit titled "Responding to Environmental Crime" briefs road patrol officers on the Florida Litter Law and other relevant Florida statutes. The tape defines hazardous waste and shows an officer apprehending an unlicensed waste tire dumper caught illegally disposing of waste tires. The tape also depicts the proper response to a hazardous incident and stresses the importance of personal safety. (See appendix D for contact information.)

### *Cross-Training*

Joint training sessions for law enforcement officers and regulatory officials expose professionals to different disciplines within their field. At their best, cross-training sessions offer those attending a chance to get to know one another's working styles. Sergeant Dennis Colasurdo of the Atlantic County (New Jersey) Prosecutor's Office Environmental Crimes Task Force notes that the transition from traditional law enforcement to environmental crime enforcement is not easy:

From a law enforcement career where your work involves locking people up to environmental cases where you need to look at administrative codes, regulations, and to work with regulatory agency people, it's a shock, we're two different cultures. Each side needs to learn the culture of the other, and there is no generic text. Regulatory people talk in a regulatory vernacular and law enforcement people talk law enforcementese.<sup>11</sup>

According to law enforcement investigators, the EPA/FLETC course is probably the best example of cross-training in the environmental enforcement area.<sup>12</sup> Program participants praise the course for its content and for fostering cooperation between law enforcement officers and regulatory personnel who attend. The course format provides for both simulta-

neous and separate training for criminal investigators and regulatory staff. Criminal investigators receive training in standard environmental crime investigation techniques, in determining whether violations should be addressed civilly or criminally, and in environmental regulatory programs and criminal enforcement provisions associated with environmental violations and regulations. Regulatory staff are trained in securing a crime scene, collecting evidence, proper sample collection, preserving physical evidence, and chain of custody procedures. More information on the EPA/FLETC Hazardous Waste Investigations Training Program is included in appendix E. A September 1990 EPA publication titled *Environmental Enforcement: A Law Enforcement Officer's Guide* offers a good summary of the potential role of law enforcement in environmental enforcement.<sup>13</sup> Wider distribution of these materials to police departments might help change the persistent widespread perception of law enforcement agencies that they are not appropriate participants in the war on environmental crime.

A law enforcement officers' training video on environmental criminal enforcement prepared by the Midwest Environmental Enforcement Association (MEEA) makes the point that police, better than anyone, know law enforcement. The officer in this training file declares that in asking officers to be on the lookout for environmental crime, he is really not asking them to do anything they are not already doing, "protecting people and property." "Pay attention to factories discharging substances into neighboring streams and tanker trucks passing along roads and highways through your communities" is the video's message. Furniture refinishers, plating or metalworking shops, automotive body shops, neighborhood service stations, dry cleaners, photo shops, funeral homes, and hospitals are just some of the businesses identified in the film as suspect environmental offenders that most police officers drive or walk past every day. Contact information for obtaining copies of this video may be found in appendix E.

### *Educating the Offender*

Environmental crime cases are well suited to teaching the offender a lesson. Most cases in Palm Beach County are cleared either by arrest or by having the suspect clean up an illegal disposal of solid waste that is not threatening health or safety. According to Deputy Sheriff Pearsall, "We may not want to bust a guy who can't afford the fines. But letting him clean up, explaining to him why what he is doing is criminal, and giving him a documented warning about doing it again may be the solution."<sup>14</sup>

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## Endnotes

1. Interview with Deputy Sheriffs Layne Schultetus and James Pearsall, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993. The length of the outlines for these courses prohibits their reproduction here.
2. 29 CFR § 1910.120 (1993).
3. See Hazardous Waste Operations and Emergency Response, 29. C.F.R. § 1910.120 (1993). Instructions on how to act upon arrival are taken from an officer's course certification card.
4. T. M. Hammett, and J. Epstein, "Local Prosecution of Environmental Crime," *Issues and Practices* (Washington, DC: National Institute of Justice, U.S. Department of Justice, June 1993), p. 58. The four associations are the Midwest Environmental Enforcement Association (MEEA), the Northeast Environmental Enforcement Project (NEEP), the Southern Environmental Enforcement Network (SEEN), and the Western States Hazardous Waste Project. Contact information on the associations is provided in appendix E.
5. The seminar also provides technical information on the substances frequently encountered (including definitions of *hazardous waste* and *hazardous substances*), investigative and interview techniques, sampling strategies, evidence preservation and chain of custody procedures, scene safety, criminal investigation procedures, and issues to be considered in the charging decision. The interplay between public safety and evidence collection is explored, as is the importance of cooperation between the various environmental response agencies involved.
6. J. D. Pearsall, *Local Agency Criminal Enforcement Investigation: A Place to Start* (West Palm Beach, FL: Environmental Crimes Investigations, Palm Beach County, July 1993).
7. Interview with Deputy Sheriff James Pearsall, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.
8. Interview with Deputy Sheriff Layne Schultetus, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.
9. "Environmental Crime Enforcement," training key no. 436 (Alexandria, VA: International Association of Chiefs of Police, 1993), p. 4.
10. Interview with Lieutenant Mark Dion, Portland, Maine, Police Department, Portland, Maine, May 19, 1993.
11. Interview with Sergeant Dennis Colasurdo, Environmental Crimes Task Force, Atlantic County Prosecutor's Office, Northfield, New Jersey, May 27, 1993.
12. T. M. Hammett, and J. Epstein, "Local Prosecution of Environmental Crime," p. 58.
13. See also M. Wright and W. Imfeld, "Environmental Crimes: Investigative Basics," *FBI Law Enforcement Bulletin* (Washington, DC: Federal Bureau of Investigation, April 1991), pp. 2-5.
14. Interview with Deputy Sheriff James Pearsall, Palm Beach County Sheriff's Office, West Palm Beach, Florida, August 3, 1993.

# Glossary

AG:	Attorney General.	DEC:	Department of Environmental Conservation, New York.
BECT:	Broward Environmental Crime Team. Broward County, Florida.	DEP:	Department of Environmental Protection, Florida.
BSO:	Broward Sheriff's Office.	DEPE:	Department of Environmental Protection and Energy, New Jersey.
CAA:	Clean Air Act, 42 U.S.C. §§ 7401-7642 (West 1988, Supp. 1990).	DNR:	Department of Natural Resources, Michigan.
C&D:	Construction and demolition, as in "construction and demolition debris."	DNRP:	Department of Natural Resources Protection, Broward County, Florida.
CDAA:	California District Attorneys Association.	DOT:	United States Department of Transportation.
CDC:	Centers for Disease Control and Prevention, Atlanta, Georgia.	Dredge and fill:	A practice in which property is excavated so that waste may be buried. Typically, the waste is then covered over by a layer of soil.
CERCLA:	Comprehensive Environmental Response, Compensation, and Liability Act, or Superfund, 42 U.S.C. § 9601 <i>et seq.</i> (West 1988).	EPA:	U.S. Environmental Protection Agency.
CHP:	California Highway Patrol.	FBI:	Federal Bureau of Investigation.
Commingled:	Blended or mixed together, as in commingled construction and demolition (C&D) debris.	FDLE:	Florida Department of Law Enforcement.
COPE:	Community Oriented Police Enforcement. Broward County, Florida.	FEMA:	Federal Emergency Management Act.
CSTI:	California Specialized Training Institute.	FIFRA:	Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136-136y (West 1988, Supp. 1990).
Curtilage:	An archaic term for a courtyard, garden, or the grounds surrounding a house. Today the definition has been extended to include any land or building immediately adjacent to a dwelling, usually enclosed in some way by a fence or shrubs.	FLETC:	Federal Law Enforcement Training Center. Glynco, Georgia.
CWA:	(Clean Water Act) Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387 (West 1988, Supp. 1990).	Freon:	A chlorofluorocarbon (a combination of chlorine, fluorine, and carbon) used as a coolant or carrier gas in aerosol cans. If improperly handled, the gas can rise to the upper level of the stratosphere, damaging the ozone layer.
DA:	District Attorney, County Attorney (criminal).	Hazardous material:	Substances that have been identified by the EPA as posing an unreasonable risk to health, safety, or property when transported in commerce. Hazardous materials transportation is governed by the U.S. Department of Transportation.
DCI:	Department of Criminal Investigation, Iowa.		

Hazardous waste:	A waste or combination of wastes that may cause or contribute to an increase in illness or disease, or may pose a threat to human health or the environment if improperly managed.	OSI:	U.S. Air Force Office of Special Investigations.
HAZMAT:	Hazardous materials, as in HAZMAT Unit.	Out of flow:	Solid waste from other than a waste or manufacturing facility's normal waste flow.
IACP:	International Association of Chiefs of Police.	PBB:	Polybrominated biphenyls. Chemical substances the composition of which, without regard to impurities, consists of certain brominated biphenyl molecules.
IDEM:	Indiana Department of Environmental Management.	Perc:	Perchloroethylene, the waste product generated by the dry-cleaning process.
Illegal dumping:	Improperly throwing, discarding, placing, or otherwise disposing of regulated material such as hazardous wastes.	Pollution prevention:	Also known as source reduction. Any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering the waste stream or otherwise released to the environment prior to recycling, treatment, or disposal; and reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants (source: Pollution Prevention Act of 1990, 42 U.S.C. § 13101 <i>et seq.</i> ). Pollution prevention includes such techniques as toxins use reduction, raw materials substitution, process or equipment modification, product redesign, training, improved inventory control, production planning and sequencing, and better management practices. See "1993 Reference Guide to Pollution Prevention Resources" (Washington, D.C.: Office of Pollution Prevention and Toxins, U.S. Environmental Protection Agency, 1993).
LEEP:	League of Environmental Enforcement and Prosecution. Florida.		
Manifests:	Lists of cargo.		
MEEA:	Midwest Environmental Enforcement Network.		
<i>Modus operandi:</i>	A method of operating in criminal law, the term refers to a criminal's "signature," or method of carrying out a crime.		
MOU:	Memorandum of understanding.		
NCJRS:	National Criminal Justice Reference Service.		
NDAA:	National District Attorneys Association.		
NEEP:	Northeast Environmental Enforcement Program.	POTW's:	Publicly owned treatment works.
NETI:	U.S. Environmental Protection Agency National Enforcement Training Institute.	PTI:	Pretrial Intervention Program. Middlesex County, New Jersey.
NIJ:	National Institute of Justice.	Release of product:	An accidental or intentional release of some substance into the environment or atmosphere.
NOV:	Notice of Violation. Generally, a regulatory agency device used to inform a company that it is in violation of the law.	RCRA:	Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k (West 1988, Supp. 1990).
OECA:	U.S. Environmental Protection Agency Office of Enforcement and Compliance Assurance. OECA was formerly known as the Office of Enforcement.	RHA:	Rivers and Harbors Act of 1899, 33 U.S.C. § 407 (West 1988).
OSHA:	U.S. Occupational Safety and Health Administration.	RWA:	Regional Waste Authority.

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SCBA:	Self-contained breathing apparatus.	SWA:	Solid waste authority.
SDWA:	Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26 (West 1988).	TSCA:	Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671 (West 1988, Supp. 1990).
SEEN:	Southern Environmental Enforcement Network.	TSDF:	Treatment, storage, and disposal facility.
Solid waste:	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. The term does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows.	White goods:	A term used to describe kitchen appliances, such as refrigerators, stoves, and dishwashers, that have entered the waste stream.

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The source for a number of these definitions is T. F. P. Sullivan, *Environmental Regulatory Glossary*, 6th ed. (Rockville, MD: Government Institutes, Inc., June 1993).

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# **Appendix A**

## **Characteristics of the Law Enforcement Response to Environmental Crime in 21 Jurisdictions**

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Appendix A is a matrix of characteristics of the law enforcement response to environmental crime in 21 jurisdictions.

### Characteristics of the Law Enforcement Response to Environmental Crime in 21 Jurisdictions

Jurisdiction	Palm Beach County, FL (West Palm Beach)	Broward County, FL (Fort Lauderdale)	Middlesex County, NJ (Edison)	Atlantic County, NJ (Northfield)	Illinois (Springfield)	Iowa (Des Moines)
Unit Name/Location	Environmental Crimes Investigations, Palm Beach County Sheriff's Office, located in County Solid Waste Authority	Department of Special Services, Broward County Sheriff's Office	Environmental Crimes/Arson Unit, Middlesex County Prosecutor's Office	Environmental Crimes Task Force, Atlantic County Prosecutor's Office	Hazardous Materials Transportation Enforcement, Illinois State Police	Environmental Division, Office of the Iowa Attorney General
Unit Type	Law enforcement/solid waste authority-based program	Law enforcement agency-based program	Prosecutor's office-based program	Prosecutor's office-based program	Law enforcement agency-based program	Prosecutor's office-based program
Impetus for Response	Threat to drinking water; lower than expected use of county solid waste facility	Ongoing problem with environmental criminal activity, proactive sheriff	Interest of County Prosecutor	Started with cooperatively worked cases with health department, prosecutor, sheriff	Three major environmental incidents in early 1970's	Acknowledgement of the problem of environmental crime by the Iowa Attorney General
Date Unit Started	1989	1991	Established task force in October 1992	October 1988, physically moved together January 1989	Authorized by legislation enacted in August 1977	Late 1991
Staffing of Unit	2 deputy sheriffs	2 Investigators	1 sergeant, 1 detective, 2 investigators	1 Prosecutor's Office investigator, 1 Sheriff's Department investigator, 1 Health Department investigator	60 hazardous materials officers, 4 hazardous materials investigators	1 full-time investigator; use other Department of Criminal Investigation (DCI) investigators as need arises
Caseload	325 open investigations	15-20 investigations/month	12 major cases now; completed 30 since October 1992	In 1992, unit responded to 130 incidents	20 active cases	12-15 active investigations



### Characteristics of Law Enforcement Response to Environmental Crime in 21 Jurisdictions (continued)

Jurisdiction	Palm Beach County, FL (West Palm Beach)	Broward County, FL (Fort Lauderdale)	Middlesex County, NJ (Edison)	Atlantic County, NJ (Northfield)	Illinois (Springfield)	Iowa (Des Moines)
<b>Training</b>	Through Southern Environmental Enforcement Network (SEEN), Federal Law Enforcement Training Center (FLETC), Florida Department of Law Enforcement, Florida Department of Environmental Protection, County Health Unit, County Fire Academy, various private agencies	Through SEEN, Florida Department of Law Enforcement, Palm Beach County Deputies	County Fire Academy, EPA school in Edison, Northeast Environmental Enforcement Project (NEEP)	EPA, FLETC, State environmental and health agencies	FLETC, Midwest Environmental Enforcement Association (MEEA), EPA, in-house for regulations and three week in-house enforcement school for hazardous waste enforcement	FLETC, MEEA
<b>Major Focus of Environmental Unit (e.g., Air, Water)</b>	Hazardous waste, C&D debris, waste tire regs. and illegal disposal, vegetative wastes, special wastes such as used oil	C&D Debris, waste tires	Manufacturing wastes, organic solid waste, C&D debris, used motor oil, hazardous chemicals	Construction and demolition (C&D) debris, illegal tire disposal, asbestos siding disposal	Hazardous waste, hazardous materials, improper permits, illegal waste hauling	Industrial wastes, less than 5% of unit's cases are agricultural
<b>Designated Environmental Prosecutor(s)</b>	1 full-time assistant in Prosecutor's Office	2 assistants are formally trained to prosecute environmental cases	1 assistant is assigned full-time to the unit with her office at the investigation unit	Several assistant prosecutors trained in environmental cases	No designated prosecutors	Designated environmental prosecutor
<b>When Do Prosecutors Get Involved?</b>	At outset of investigation	Varies; depending on case and assistant assigned the case	Involved from the outset	Varies from case to case	Varies from case to case	At outset of investigation
<b>Prosecution Model (e.g., Vertical)</b>	Vertical	Horizontal	Vertical	Vertical	Use either local, county, State's attorney or Illinois Attorney General's Office	Vertical

**Characteristics of Law Enforcement Response  
to Environmental Crime in 21 Jurisdictions (continued)**

<b>Jurisdiction</b>	<b>Palm Beach County, FL (West Palm Beach)</b>	<b>Broward County, FL (Fort Lauderdale)</b>	<b>Middlesex County, NJ (Edison)</b>	<b>Atlantic County, NJ (Northfield)</b>	<b>Illinois (Springfield)</b>	<b>Iowa (Des Moines)</b>
<b>Regulatory Agencies Involved</b>	County agencies include the Solid Waste Authority, Public Health Unit, Code Enforcement, Fire Rescue, Land Management and Environmental Resources Management; other agencies are Florida Department of Environmental Protection, various water management districts	Involved with Florida League of Environmental Enforcement Protection (LEEP), County Department of Natural Resources Protection (DNRP)	Hazardous Materials (HAZMAT) Unit, County Health Department Solid Waste Unit	County Health Department, AG's Office	Illinois EPA, Illinois Department of Transportation, local police departments	Iowa Department of Natural Resources brings potential criminal cases to their attention
<b>Level and Nature of Interagency Coordination</b>	Excellent. Monthly task force meetings held between agency and local law enforcement representatives	Excellent. Strong civil enforcement effort led by county environmental regulatory agency	Excellent. Helped by informal networking between county regulatory agencies and local law enforcement	Excellent, despite disparate professional backgrounds of staff	Cooperative with regulatory personnel and other law enforcement	Good. Need to work with other agencies to demonstrate how to identify environmental crime
<b>Labs Used (e.g., State Crime Lab)</b>	Local Public Health Unit, Environmental Chemistry Lab and Florida Department of Environmental Protection Lab, Tallahassee	Lab of the Department of Natural Resource Protection, the county environmental agency; it is an EPA certified lab	HAZMAT, County Health Department, private lab	Private lab recommended by the AG's office; county crime lab for traditional criminal analysis only	Illinois EPA's own labs or contracted private labs	State crime lab or University of Iowa hygienic lab (another state agency)
<b>Obstacles</b>	Short staffing, need for more trained officers out on the road	With each agency pursuing its own agenda, enforcement efforts have at times been less than optimal; many judges will not allow a case to proceed both criminally and civilly, and judges are reluctant to give jail time to other than serious repeat offenders	Staffing and funding are considered inadequate to meet problem	Inadequate training for local and county regulatory personnel in identification of criminal behavior; need for uniform codification of environmental laws	Inadequate law enforcement staffing, inadequate training in environmental crime, need for specialized equipment	Need to find out about crimes earlier; need more regulators trained to identify crimes and refer them to law enforcement

**Characteristics of Law Enforcement Response  
to Environmental Crime in 21 Jurisdictions (continued)**

Jurisdiction	Jefferson County, KY (Louisville)	Maine (Augusta)	Maryland (Baltimore)	Michigan (Lansing)	New Jersey (Trenton)	New York (New York City)
Unit Name/Location	Jefferson County Police Department	Investigative Unit, Maine Attorney General's Office	Environmental Crime Unit, Office of the Maryland Attorney General	Environmental Investigations Section, Law Enforcement Division, Department of Natural Resources (DNR)	Environmental Prosecutions Bureau, New Jersey Department of Law and Public Safety	Investigation Unit, Public Advocacy Division, New York State Department of Law
Unit Type	Law enforcement agency-based program	Prosecutor's office-based program	Prosecutor's office-based program	Environmental agency-based program	Environmental agency-based program	Prosecutor's office-based program
Impetus for Response	Several hazardous materials incidents in mid-1970's	Interest of Maine Attorney General	Strong State commitment to environmental enforcement	3 major environmental disasters during the 1970's	Massive <i>Chemical Control</i> fire in Elizabeth (early 1980's)	Interest of the Attorney General
Date Unit Started	Fall of 1990	Investigative unit — 1970 Environment branch — 1985	Early 1970's Crimes Unit 1982	1978	1979	1985
Staffing of Unit	1 environmental investigator, others assigned on case-by-case basis	4 part-time Attorney General's Office investigators	4 investigators, 1 technical advisor from the Maryland State Police	15 field investigators assigned around the State	33 State investigators	10 investigators
Caseload	150-200 cases on minor environmental issues; also cooperate with State environmental crimes group in Kentucky on major cases (2-3 per year)	6 open cases	150 referrals/year, which lead to 20-25 indictments	130-150 investigations/year	111 investigations in 1993	20-25 active cases
Training	MEEA, FLETC	NEEP's basic and advanced training	Maryland Department of the Environment, U.S. Occupational Health and Safety Administration (OSHA), NEEP	FLETC, MEEA, EPA, OSHA's 40-hour course	NEEP, FLETC	NEEP, OSHA, New York State Department of Law, FBI white-collar crime course

**Characteristics of Law Enforcement Response  
to Environmental Crime in 21 Jurisdictions (continued)**

<b>Jurisdiction</b>	<b>Jefferson County, KY (Louisville)</b>	<b>Maine (Augusta)</b>	<b>Maryland (Baltimore)</b>	<b>Michigan (Lansing)</b>	<b>New Jersey (Trenton)</b>	<b>New York (New York City)</b>
<b>Major Focus of Environmental Unit (e.g., Air, Water)</b>	Air pollution, hazardous materials (Louisville is a major chemical manufacturing and transportation center)	No focus on particular environmental media; unit investigates cases that are referred	Office shifts its focus periodically to new media; now lead abatement cases are receiving attention; prior focus on electroplating shops	All media, growing focus on Superfund-type cases and problems with old oil and gas wells	All media	All media, including sludge, midnight dumping, medical waste, and cases referred by Department of Environmental Conservation (DEC)
<b>Designated Environmental Prosecutor(s)</b>	No designated prosecutor	No designated prosecutor	Designated environmental prosecutors	Designated environmental prosecutors	Designated environmental prosecutors	4 Assistant Attorneys General from the Environmental Crime unit of the Environmental Protection Bureau (entire bureau has approx. 25 attorneys)
<b>When Do Prosecutors Get Involved?</b>	Varies	At outset of investigation	At outset of investigation	Varies, at outset of investigation for complex cases	At outset of investigation	Early in investigation
<b>Prosecution Model (e.g., Vertical)</b>	Vertical	Vertical	Vertical	Vertical	Vertical (experimented with both)	Vertical
<b>Regulatory Agencies Involved</b>	Centers for Disease Control and Prevention (CDC)-funded demonstration project to develop HAZMAT response, County Health Department, FBI	State Department of Environmental Protection (DEP), local law enforcement	State Health Department, Department of the Environment	FBI, U.S. Attorney's Office	State Environmental Prosecutor, Department of Environmental Protection and Energy (DEPE), EPA	DEC, local law enforcement

**Characteristics of Law Enforcement Response  
to Environmental Crime in 21 Jurisdictions (continued)**

<b>Jurisdiction</b>	<b>Jefferson County, KY (Louisville)</b>	<b>Maine (Augusta)</b>	<b>Maryland (Baltimore)</b>	<b>Michigan (Lansing)</b>	<b>New Jersey (Trenton)</b>	<b>New York (New York City)</b>
<b>Level and Nature of Interagency Coordination</b>	Excellent. Built on CDC-funded health work and strong interagency approach	Good relationship with prosecutors from AG's Natural Resources Division, regulatory personnel, strong public support	Strong. Letter of Agreement between the AG and the State Health Department; strong support from Department of the Environment	Good. No formal mechanism/task force; normal police/prosecutor relationship; handled like other law violations	Excellent. One of earliest states to create mechanism for interagency coordination	Good. NYC Dept. works with the NY State Department of Environmental Conservation, FBI, and Federal EPA; northwest part of state has task force
<b>Labs Used (e.g., State Crime Lab)</b>	State crime lab, public health lab, private labs (Environmental Consultants, MetroServices labs) through contract or working arrangement	Most work done by private lab contracted by State Department of Environmental Protection; State crime lab also	Maryland Department of the Environment's Hazardous Waste Lab for hazardous waste sample testing	Uses its own lab	Uses DEPE and private labs. Shares fund with DEPE to do proper sampling	Uses DEC labs
<b>Obstacles</b>	Tension between environmental enforcement goal and perception that strict enforcement may drive industry from the state	Lack of funding, budgetary cutbacks	Sensitivity of judges at the State level to the real problem of environmental issues	Generic business opposition and "a tendency to see environmental regulation as the boogie man which causes business problems"	Interagency turf issues can be a problem where more than one bureau or department gets involved	Environmental laws are hard to apply and outdated

**Characteristics of Law Enforcement Response  
to Environmental Crime in 21 Jurisdictions (continued)**

<b>Jurisdiction</b>	<b>Ocean County, NJ (Toms River)</b>	<b>Portland, Maine</b>	<b>San Diego County, CA (San Diego)</b>	<b>Suffolk County, NY (Yaphank)</b>	<b>Sussex County, NJ (Newton)</b>	<b>Boston, Massachusetts</b>
<b>Unit Name/Location</b>	Environmental Crime/Arson Unit, Ocean County Prosecutor's Office	Portland Police Department	Environmental Unit, San Diego County District Attorney's Office	Environmental Crime Unit, Suffolk County Police Department located within Suffolk County District Attorney's Office	Sussex County Prosecutor's Office	Boston Environmental Strike Team, Environment Department, Room 805, Boston City Hall
<b>Unit Type</b>	Prosecutor's office-based program	Law enforcement agency-based program	Prosecutor's office-based program	Prosecutor's office-based program	Prosecutor's Office-based program	Environmental agency-based program
<b>Impetus for Response</b>	Response to environmental incident in neighboring Monmouth County that spread to Ocean County	Investigation of suspected shortfall in amount of solid waste being sent to regional co-generation facility	Case involving disposal of over 100 55-gallon drums in the southern part of San Diego County	Businesses not complying with regulatory agency consent orders; as a result of tougher regulatory supervision, there was an increase in off-site dumping of hazardous waste	Concern with illegal environmental activity	Coordinate environmental regulations and enforcement with several different departments
<b>Date Unit Started</b>	May 1989	Solid waste case began in January 1992	1980	May 1984	1991	February 1993
<b>Staffing of Unit</b>	1 sergeant, 4 investigators	1 lieutenant, 2 investigators (deputized Special Agents for the A.G.), 3 paralegals, 24 other officers available on case-by-case basis	2 investigators, 1 prosecutor	1 lieutenant, 2 detectives, 1 investigative aide (police officer), 2 prosecutors	1 supervisor, 2 investigators, 1 assistant prosecutor	Team of key members from different agencies
<b>Caseload</b>	Varies; 1 to several investigations per week	1 major solid waste case dominates the office's workload	Varies, but approximately 20	Over 200 investigations handled since 1984	4-5 environmental at any given time	3 in court; 3-4 investigations

### Characteristics of Law Enforcement Response to Environmental Crime in 21 Jurisdictions (continued)

Jurisdiction	Ocean County, NJ (Toms River)	Portland, Maine	San Diego County, CA (San Diego)	Suffolk County, NY (Yaphank)	Sussex County, NJ (Newton)	Boston, Massachusetts
<b>Training</b>	FLETC, OSHA	On-the-job criminal investigation training	Hazardous Materials Investigators Association, California Specialized Training Institute, University of California, San Diego	Mostly in-service, National Fire Academy (Emmitsburg, Md), HAZMAT	New Jersey Police Training Commission, EPA sampling and groundwater course, NEEP	FEMA, EPA, OSHA, UMass/Lowell, Harvard School of Public Health, and in-house training videos
<b>Major Focus of Environmental Unit (e.g., Air, Water)</b>	Range of media including hazardous waste, large illegal dumping cases, and some water cases; has yet to do air case	Improper solid waste disposal	International Hazardous Waste cases; air, water, occasional wetlands case	As a result of threat to fragile drinking water supply, focus on illegal hazardous waste dumping	Illegal disposal of solid and hazardous waste	Multimedia (air, water, hazardous waste, etc.)
<b>Designated Environmental Prosecutor(s)</b>	Designated assistant prosecutor	Prosecutors in Attorney General's Office	Designated assistant county prosecutor	2 designated prosecutors within unit	Designated assistant prosecutor	Designated prosecutor within law department
<b>When Do Prosecutors Get Involved?</b>	At outset of investigation	At outset of this investigation	At outset of investigation	At start of the investigation	At start of the investigation	After initial inspection
<b>Prosecution Model (e.g., Vertical)</b>	Vertical	Vertical	Vertical	Vertical	Vertical	Vertical
<b>Regulatory Agencies Involved</b>	County Health Department, local code enforcement, several local police departments, County Road Departments, County Sheriff's Department, County Engineering Department	Regional Waste Authority, neighboring local law enforcement	FBI, U.S. Air Force's Office of Special Investigation (OSI), U.S. Navy's Office of Criminal Investigations	Suffolk County Health Department, Suffolk County police	County Health Department, local health departments, Federal authorities	Inspection service, environmental, law, police, fire, health and hospitals, Boston water and sewer
<b>Level and Nature of Interagency Coordination</b>	Very good. Memorandum of understanding (MOU) defines relationship	Excellent, though there is no formal memorandum of understanding	Excellent. Formal task force focuses on military contractors	Excellent. Formal task force for environmental crime scenes	Good. An informal understanding with the DEP and Health Department	Excellent. Interagency coordination is the basis of the program

**Characteristics of Law Enforcement Response  
to Environmental Crime in 21 Jurisdictions (continued)**

<b>Jurisdiction</b>	<b>Ocean County, NJ (Toms River)</b>	<b>Portland, Maine</b>	<b>San Diego County, CA (San Diego)</b>	<b>Suffolk County, NY (Yaphank)</b>	<b>Sussex County, NJ (Newton)</b>	<b>Boston, Massachusetts</b>
<b>Labs Used (e.g., State Crime Lab)</b>	Number of different certified private labs.	State labs	Private labs	Fully equipped county environmental lab	Private labs	State labs
<b>Obstacles</b>	Law enforcement personnel are not well informed about applying environmental laws	Environmental regulations and laws are difficult to interpret and are found in a variety of places	Sometimes environmental laws are seen as antibusiness; regulator training is lacking and regulators are not trained to act as law enforcement	Lack of funding and resistance from some in business community who view environmental enforcement as threatening to their livelihood	Inadequate funding and staffing, need to simplify and clarify the law	Inadequate full-time staff; all staff hold regular positions in their respective agencies; it is no one's full time job; more work/fewer people



**Characteristics of Law Enforcement Response  
to Environmental Crime in 21 Jurisdictions (continued)**

Jurisdiction	Indiana (Indianapolis)	California (Orange County)	California (Statewide)
<b>Unit Name/Location</b>	Office of Environmental Investigations, Indiana Department of Environmental Management (IDEM)	Orange County District Attorney's Office, Environmental Protection Unit	California Highway Patrol Environmental Crimes Unit Southern Division/Coastal Division, Los Angeles Area and Central Coast Area
<b>Unit Type</b>	Environmental agency-based program	Prosecutor's office-based program	State law enforcement agency-based program. Environmental crimes enforcement focusing on the illegal transportation and disposal of hazardous wastes; investigating both State and Federal statutes
<b>Impetus for Response</b>	The Office of Environmental Management began the same year as the inception of IDEM	Heightened awareness of environmental matters and laws	As a result of increasing illegal transportation and disposal of hazardous wastes from differing jurisdictions; the necessity of Statewide coordination of investigative efforts
<b>Date Unit Started</b>	1986	1983	April 1985
<b>Staffing of Unit</b>	1 director, 5 criminal investigators, 1 investigative assistant, and 1 secretary	Part of consumers protection unit, which has 5 attorneys, also 2 deputies	California is divided into 8 geographical divisions; the environmental crimes investigator programs are not applied equally in all divisions: Southern Division Unit maintains 1 sergeant and 2 investigators; Coastal Division Unit has 1 investigator; Central Division Unit has 1 part-time investigator; Inland Division Unit has 1 investigator; Golden Gate Division has 1 investigator. As of 1993 the sergeants were functional supervisors and have other investigative type assignments.
<b>Caseload</b>	100 cases	25 active cases (criminal and civil); 5-10 investigations	Caseloads of the various units throughout the State vary. Southern California (Los Angeles Area) has the largest caseload; approximately 100 to 200 cases are opened each year on a statewide basis

**Characteristics of Law Enforcement Response  
to Environmental Crime in 21 Jurisdictions (continued)**

<b>Jurisdiction</b>	<b>Indiana (Indianapolis)</b>	<b>California (Orange County)</b>	<b>California (Statewide)</b>
<b>Training</b>	The 5 criminal investigators are all retired police officers; they attended a 2-week hazardous waste investigations training course	Training by CDAA (California DA's Association) Senior Deputy, who is currently helping write a manual for National Enforcement for the EPA	All sergeants and investigators assigned to the Environmental Crimes Unit attend and complete a 1-week Environmental Investigations course jointly developed by prosecutors and law enforcement personnel. The course is similar to the FLETC course, but focuses on the enforcement of California environmental laws.  The class takes a student through a hands-on investigation from start to finish and gives the student a feel for the way an investigation should flow and the steps necessary for a successful prosecution.
<b>Major Focus of Environmental Unit (e.g., Air, Water)</b>	A variety of environmental media	Hazardous Waste Violations (RCRA)	The safe and legal transportation of hazardous wastes; in 1985 it became a felony to illegally transport hazardous wastes in California
<b>Designated Environmental Prosecutor(s)</b>	Criminal prosecutions can be originated only by prosecutors from the county in which the crime occurred; there are 90 prosecutors in Indiana	2 designated environmental prosecutors	The bulk of prosecution is performed by the county prosecutor having jurisdiction over the area in which the violation occurred; the CHP has prosecuted cases on all levels, including city attorneys, county district attorneys, the state attorney general, and U.S. Attorney's Office
<b>When Do Prosecutors Get Involved?</b>	At the outset of the investigation	At the outset of the investigation	If the case is of major consequence and may pose a danger to the health and safety of the community, prosecutors are brought in at the outset
<b>Prosecution Model (e.g., Vertical)</b>	Vertical	Vertical	Vertical

### Characteristics of Law Enforcement Response to Environmental Crime in 21 Jurisdictions (continued)

Jurisdiction	Indiana (Indianapolis)	California (Orange County)	California (Statewide)
<b>Regulatory Agencies Involved</b>	Task force members: U.S. Attorney, FBI, State Police, Department of Natural Resources, EPA, IDEM, Indianapolis Police Department (Marion County), and a member of the Prosecutor's Office from Marion County; the county health department is also involved with IDEM but is not a member of the task force	Federal—Naval Investigative Services, FBI, EPA, and IRS. State—CAL EPA, Local Air Quality Management District, Dept. of Fish and Game, California Highway Patrol. Local—Health care agency, environmental management agency, integrated waste, multiple fire depts., 4 police depts., local sanitation districts	City and County Health Departments, Sanitation Departments, Regional Water Quality Water Boards, Air Pollution Control Boards, Agricultural Inspectors, U.S. EPA, and State EPA
<b>Level and Nature of Interagency Coordination</b>	Good. Task Force that meets monthly and consists of the agencies listed above. Previously there was an environmental coordinator at the Indiana State Police who was responsible for receiving information from the public or other officers and passing the information to IDEM; this position is now vacant.	Excellent. Strike force that meets monthly; great participation and credit sharing; all agencies involved have full access to all investigations	Overall, good in metropolitan areas, excellent in rural areas. Over the years the level of coordination has risen, with some exceptions. As agencies become more experienced in their field, the level of coordination has increased. Most metropolitan regulatory agencies are now trained in scene preservation and the collection of evidence. Many rural agencies are also beginning to realize the importance of criminal investigation as a tool for compliance.
<b>Labs Used (e.g., State Crime Lab)</b>	State crime lab and private labs	County lab and private lab	The CHP has used several laboratories. If a case is a "strike force case," the county provides analytical services. The Southern Division Unit has contracted with a private laboratory to provide lab services. The rural divisions rely on both State- and federally funded laboratories for the processing of their evidentiary samples.
<b>Obstacles</b>	Lack of resources and lack of law enforcement authority (their office does not have police powers)	Limited resources; industrial perception that enforcement will not catch them	Inadequate staffing and funding. Over the years the CHP has lost several positions through State budget cuts. One of the largest loses was in the Border Division (San Diego area), where the CHP was forced to abolish the unit. The unit was very important because of its proximity to the Mexican border. The area is the scene of considerable environmental crime. Convoluted environmental regulations on all levels are also an obstacle.

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# Appendix B

## Cases Cited

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*Broward County Department of Natural Resources Protection v. Restoration Clinic*, Citation Nos. 22016, 22017, Before the Hearing Examiner for the Broward County Department of Natural Resources Protection (July 26, 1993).

*Camara v. Municipal Court*, 387 U.S. 523 (1967).

*Commonwealth v. Blosneski Disposal Service*, 566 A. 2d 845 (Pa. 1989).

*Connecticut Building Wrecking Company* (Connecticut), *New York Times*, August 5, 1993, p. B7.

*Falgi Carting Company*, Unreported case (Middlesex County [New Jersey] 1993)

*Florida v. Riley*, 488 U.S. 445, 109 S.Ct. 693 (1989).

*General Marine, Inc.* (New Jersey), *New York Times*, July 2, 1993, p. B7.

*Los Angeles Chemical v. Superior Court*, 226 Cal. App. 3d 703 (December 1990).

*Morris v. Florida*, 622 So.2d 67 (4th D.C.A. 1993).

*Newman v. Stringfellow* (California), *California Lawyer*, May 1993, p. 26.

*New York v. Burger*, 482 U.S. 691 (1987).

*People v. Boyce Campbell*, Superior Court, No. BA025490 (Los Angeles County).

*People v. Hooker Chemical and Plastics*, No. 79-22878-CE (Ingham County Circuit Court [Michigan], October 30, 1979).

*People v. Transocean Liners*, Case No. 116633 (Solano County, Cal. Super. Ct., December 16, 1991).

*U.S. v. Dunn*, 480 U.S. 294, 107 S.Ct. 1134 (1987).

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# Appendix C

## Statutes Cited

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| California Health & Safety Code § 25185 (West Supp. 1992).   | Hazardous Materials Transportation Act, 49 App. § 1801 et seq. (West Supp. 1994).                 |
| California Health & Safety Code § 25192 (West Supp. 1992).   | Hazardous Waste Operations and Emergency Response, 29 C.F.R. § 1910.120 (1993).                   |
| California Health & Safety Code § 25289 (West Supp. 1992).   | Pollution Prevention Act of 1990, 42 U.S.C. § 13101 et seq. (West 1994).                          |
| California Health & Safety Code § 25508 (West Supp. 1992).   | Resource Conservation and Recovery Act, 42 U.S.C. § 6901–6992k (West 1988, Supp. 1990).           |
| Clean Air Act, § 42 U.S.C. §§ 7401–7642 (West 1988, Supp. 1990).   | Rivers and Harbors Act of 1899, 33 U.S.C. § 407 (West 1988).                                      |
| Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. (West 1988). | Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j–26 (West 1988).                                |
| Federal Water Pollution Control Act, 33 U.S.C. § 1251–1387 (West 1988, Supp. 1990).                          | Toxic Substances Control Act, 15 U.S.C. §§ 2601–2671 (West 1988, Supp. 1990).                     |
| Florida Administrative Code § 17–711.520, Waste Tire Collector Requirements.                                 | Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136–136y (West 1988, Supp. 1990). |
| Florida Litter Law, FSS § 403.161.   |   |

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## Appendix D

# Programs Visited and Telephone Interviewees

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Site visits to Broward and Palm Beach Counties, Florida, and Middlesex County, New Jersey, were conducted for this research.

### *Palm Beach County*

Deputy Sheriff L. E. Schultetus  
Environmental Crimes  
Palm Beach County Sheriff's Office  
3228 Gun Club Road  
West Palm Beach, FL 33406-3001  
(407) 640-4000, ext. 620

#### Other interviewees:

Deputy Sheriff James Pearsall  
Environmental Crimes  
Palm Beach County Sheriff's Office  
West Palm Beach, FL

Lieutenant Bill K. Brown  
Palm Beach County Sheriff's Office  
West Palm Beach, FL

Douglas Leifert, Chief  
Environmental Crimes Unit  
Office of the State Attorney, Fifteenth Judicial District  
West Palm Beach, FL

Ken Berg, Special Programs Coordinator  
Solid Waste Authority of Palm Beach County  
West Palm Beach, FL

John O'Malley, Environmental Supervisor  
Solid and Hazardous Waste Control  
Division of Environmental Science and Engineering  
Palm Beach County Public Health Unit  
West Palm Beach, FL

Gary Winterstein  
Boca Raton Police Department  
Boca Raton, FL

### *Broward County*

Detective Michael Szish  
Broward Sheriff's Office  
P.O. Box 9507  
Fort Lauderdale, FL 33310  
(305) 321-5000  
Fax: (305) 797-0900

#### Other interviewees:

Lieutenant Richard Hedlund  
Broward Sheriff's Office  
Fort Lauderdale, FL

Sergeant Philip Lindsley  
Broward Sheriff's Office  
Fort Lauderdale, FL

Anita Allen  
Supervisor, Enforcement Unit  
Broward County Department of Natural Resources Protection  
Fort Lauderdale, FL

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### *Middlesex County*

Sergeant Ken Huber, County Investigator  
Environmental Crimes/Arson Unit  
Middlesex County Prosecutor's Office  
37 Oakwood Avenue  
Edison, NJ 08817  
(908) 494-6801  
Fax: (908) 494-6883

Other interviewees:

Middlesex County Prosecutor Robert Gluck  
New Brunswick, NJ

Robin Stacy, Assistant Prosecutor  
Environmental Crimes/Arson Unit  
Middlesex County Prosecutor's Office  
Edison, NJ

Raymond Durski, County Investigator  
Environmental Crimes/Arson Unit  
Edison, NJ

George Szamba, County Detective  
Environmental Crimes/Arson Unit  
Middlesex County Prosecutor's Office  
Edison, NJ

Richard Hills, Director  
Middlesex County Department of Environmental Health  
North Brunswick, NJ

Dennis Malinowski, Program Coordinator  
Middlesex County Department of Environmental Health  
North Brunswick, NJ

Richard Kozub, Program Coordinator  
County Emergency Services Center  
Sayreville, NJ

Telephone interviews were conducted with the following individuals:

Richard Searl, Investigator  
Environmental Division  
Office of the Iowa Attorney General  
1223 East Court Avenue  
Executive Hills East  
Des Moines, IA 50319  
(515) 281-6709  
Fax: (515) 242-6072

Officer Bill Wetter  
Jefferson County Police Department  
Southfield Training Center  
1700 Flat Rock Road  
Louisville, KY 40245  
(502) 245-5122

Clark Bledsoe, Director of Environmental Health Services  
Jefferson County Health Department  
P.O. Box 1704  
Louisville, KY 40201-1704  
(502) 625-6621  
Fax: (502) 574-5734

Sergeant Steve Moyer  
Environmental Crime Unit  
Office of the Maryland Attorney General  
2500 Broening Highway  
Baltimore, MD 21224  
(410) 631-3025  
Fax: (410) 631-3943

Lieutenant Mark Dion  
Portland Police Department  
109 Middle Street  
Portland, ME 04101  
(207) 871-9740  
Fax: (207) 871-9159

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Donna Blake, Criminal Investigator  
San Diego County District Attorney's Office  
101 West Broadway, 7th Fl.  
San Diego, CA 92112  
(619) 531-3605  
Fax: (619) 531-4481

Brian MacMaster, Director of Investigations  
Maine Attorney General's Office  
State House Station 6  
Augusta, ME 04333  
(207) 626-8520  
Fax: (207) 287-3120

Sergeant Heinz Mueller  
Hazardous Materials Transportation Enforcement  
Illinois State Police  
201 E. Adams, Suite 200  
Springfield, IL 62706  
(217) 782-6527  
Fax: (217) 524-2391

John DeRosa, Director of Investigations  
Investigations Unit  
Public Advocacy Division  
New York State Department of Law  
120 Broadway  
New York, NY 10271  
(212) 416-8775  
Fax: (212) 416-8773

Owen Kelley, Supervising Investigator  
Investigations Unit  
New York State Department of Law  
Albany, NY 12224  
(518) 474-8096  
Fax: (518) 473-2534

Detective John Flynn  
Detective Lieutenant Steve Drielak, Senior Detective  
Investigator  
Environmental Crime  
Suffolk County Police Department  
Police Headquarters Building  
Yaphank Avenue  
Yaphank, NY 11980  
(516) 853-5230  
Fax: (516) 853-4770

Steve Ogulin, County Investigator  
Sussex County Prosecutor's Office  
19-21 High Street  
Newton, NJ 07860  
(201) 383-1570  
Fax: (201) 383-4929

Sergeant Dennis Colasurdo  
Environmental Crimes Task Force  
Atlantic County Prosecutor's Office  
25 Dolphin Avenue  
Northfield, NJ 08225  
(609) 645-5970  
Fax: (609) 645-5897

John Stutski, Investigator  
Environmental Crimes Arson Unit  
Ocean County Prosecutor's Office  
100 Hooper Avenue  
Toms River, NJ 08754  
(908) 929-2027  
Fax: (908) 929-2145

Captain William Murphy  
Environmental Investigations Section  
Law Enforcement Division  
Department of Natural Resources (DNR)  
P.O. Box 30028  
Lansing, MI 48909  
(517) 335-3430  
Fax: (517) 373-6816

Deputy Wally Stafford  
Environmental Prosecutions Bureau  
New Jersey Department of Law and Public Safety  
Division of Criminal Justice  
25 Market Street, CN 085  
Trenton, NJ 08625  
(609) 984-4470, 4471  
Fax: (609) 984-4496

Sergeant Lance M. Erickson  
Sergeant Gary Hanson, Environmental Crimes Unit  
California Highway Patrol/Coastal Division  
4115 Broad Street, Suite B-10  
San Luis Obispo, CA 93401  
(805) 549-3261  
Fax: (805) 546-9176



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# Appendix E

## Resources for Environmental Crime Investigators

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### *Federal Bureau of Investigation*

The Federal Bureau of Investigation (FBI) should be contacted if an environmental case appears to involve Federal criminal laws or if the resources of the Bureau are required to assist with a major investigation. Reflecting the FBI's enhanced interest and involvement in environmental crime, the April 1991 *FBI Law Enforcement Bulletin* is devoted to environmental crimes. It includes articles such as "Environmental Crimes: Investigative Basics," "The Environmental Protection Forum," and "Environmental Crimes Prosecution." The bulletin is published monthly and can be obtained from the Bureau.

Contact: Every major metropolitan area has an office.

Address: Federal Bureau of Investigation  
9th and Pennsylvania Avenue, NW  
Washington, DC 20535

(202) 324-4260

Fax: (202) 324-4705

### *Federal Law Enforcement Training Center*

The Federal Law Enforcement Training Center (FLETC) is an interagency law enforcement training facility with responsibility for training personnel from State and local law enforcement agencies in advanced topic areas designed to develop specialized law enforcement skills. Twice each year FLETC offers the excellent Hazardous Waste Investigations Training Program. Classes offer training in effective response to hazardous waste crime. The program stresses a

multidisciplinary team approach to criminal environmental enforcement and emphasizes the importance of a good working relationship between criminal investigators and regulatory personnel. This emphasis on cross-training gives program participants an enhanced understanding of the roles and needs of personnel from other fields.

For acceptance into the program, applicants must be full-time investigators in public regulatory or law enforcement agencies assigned to hazardous waste investigations. Because the program encourages a team approach, jurisdictions registering teams of investigators and regulatory personnel are given priority. The program is offered free of charge.

Contact: Phil Andrew, EPA Representative

Address: Federal Law Enforcement Training Center  
Glynco, Georgia 31524

(912) 267-2345

### *International Association of Chiefs of Police*

The IACP has produced a training key on environmental crime enforcement (training key no. 436). Two other training keys, "Evaluating Hazardous Materials Emergencies" (training key no. 203) and "Handling Hazardous Materials Emergencies" (training key no. 204), contain useful information for law enforcement officers. The recently formed Environmental Crimes Committee met twice during 1993: in Denver in June, and again in October in Saint Louis. The objective of the committee is to raise new police officers' awareness of environmental crime, through rollicall and other professional training.

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Contact: Commissioner Anthony J. Schembri, Chair  
Environmental Crimes Committee

Roy Kime, Legislative Counsel

Address: International Association of Chiefs of Police  
515 North Washington Street  
Alexandria, VA 22314-2357

(703) 836-6767

Fax: (703) 836-4543

Cable Address: IACPOLICE

Contact: Cabell Cropper, Director of Management and  
Administration

Address: National Environmental Crime Prosecution  
Center  
American Prosecutors Research Institute  
Suite 51099  
Canal Center Plaza  
Alexandria, VA 22314

(703) 549-4253

Fax: (703) 836-3195

### *National Criminal Justice Reference Service*

The National Criminal Justice Reference Service (NCJRS), a project of the National Institute of Justice (NIJ), was created to provide research findings to criminal justice professionals, prosecutors, and criminal justice researchers. *Local Prosecution of Environmental Crime*, Issues and Practices, and *Prosecuting Environmental Crime—Los Angeles County*, Program Focus, two recent NIJ publications, are available free of charge from NCJRS.

Address: National Criminal Justice Reference Service  
P.O. Box 6000  
Rockville, MD 20850

(800) 851-3420

(301) 251-5500, in Maryland and the  
Washington, D.C. area

### *National Environmental Crime Prosecution Center*

In May 1994 the National Environmental Crime Prosecution Center of the American Prosecutors Research Institute and the National College of District Attorneys presented the National Conference on the Prosecution of Environmental Crime, a Multi-Disciplinary Program. The conference, open to judges, prosecutors, law enforcement, public safety, health, and regulatory personnel, was designed to inform participants of new strategies to combat environmental crime. The center has published several booklets on local prosecution of environmental crime and is a useful resource for law enforcement professionals working in the environmental field.

### *Pollution Prevention Information Clearinghouse*

The Pollution Prevention Information Clearinghouse, a project of the U.S. Environmental Protection Agency, is a multimedia clearinghouse of technical, policy, program, legislative, and financial information dedicated to promoting pollution prevention through efficient information transfer. The clearinghouse is operated by the EPA's Office of Pollution Prevention and Toxics, and the Office of Research and Development. Copies of the *1993 Reference Guide to Pollution Prevention Resource* are available free of charge from the clearinghouse.

Address: Pollution Prevention Information Clearinghouse  
U.S. Environmental Protection Agency  
PM-211A  
401 M Street, SW  
Washington, DC 20460

(202) 260-1023

Fax: (202) 260-0178

### *U.S. Environmental Protection Agency: Office of Criminal Enforcement*

The Office of Criminal Enforcement is the criminal component of the EPA's enforcement efforts. The Office of Criminal Enforcement maintains a staff of trained criminal investigators located throughout the country, where they work closely with the Regional Counsel's office and the U.S. Attorney's Office in pursuing environmental offenders.

Contact: Earl E. Devaney, Director

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Address: Office of Criminal Enforcement  
U.S. Environmental Protection Agency  
401 M Street, SW, 2231  
Washington, DC 20460

(202) 260-4539  
Fax: (202) 260-6848

*U.S. Environmental Protection Agency:  
National Enforcement Training Institute*

The National Enforcement Training Institute will provide training to criminal investigators, prosecutors, and government attorneys who handle civil cases, and civil inspectors from the Federal, State, and local levels.

Contact: Winston Haythe  
Senior Attorney Advisor

Address: National Enforcement Training Institute  
U.S. Environmental Protection Agency  
401 M Street, SW, 2221  
Washington, DC 20460

(202) 260-8783  
Fax: (202) 260-7839

*Regional Environmental  
Enforcement Associations*

The U.S. Environmental Protection Agency has funded four regional environmental enforcement associations. These associations provide training, networking, informational resources, and customized research services to State and local prosecutors. In recent years, through these regional organizations, the EPA, as the Nation's environmental regulatory body, has encouraged the expanded use of criminal prosecution of environmental offenders. *Environmental Criminal Enforcement: A Law Enforcement Officer's Guide*, a 1990 EPA publication, emphasizes the role of law enforcement in effective environmental monitoring. Another important EPA publication deals with the public's role in environmental enforcement.

The Midwest Environmental Enforcement Association (MEEA) has prepared an excellent training video entitled *Environmental Awareness for Local Law Enforcement*. MEAA is also producing a video to heighten public awareness of environmental crime.

*Midwest Environmental  
Enforcement Association*

Contact: Thomas Fahey, Director

Address: Midwest Environmental Enforcement  
Association  
595 South State Street  
Elgin, IL 60123

(708) 742-1249  
Fax: (708) 742-1478

*Northeast Environmental Enforcement Project*

Contact: Carmen Hutchison, Director

Address: Northeast Environmental Enforcement Project  
Richard J. Hughes Justice Complex  
25 Market Street, CN 085  
Trenton, NJ 08625

(609) 292-0987  
Fax: (609) 984-4473

*Southern Environmental Enforcement Network*

Contact: A. Geary Allen, Director

Address: Southern Environmental Enforcement Network  
Office of the Attorney General  
State of Alabama  
11 South Union Street  
Montgomery, AL 36130

(205) 242-7369  
Fax: (205) 242-7458

*Western States Hazardous Waste Project*

Contact: Roger L. Hartzog, Director

Address: Western States Hazardous Waste Project  
1275 West Washington  
Phoenix, AZ 85007

(602) 542-3881  
Fax: (602) 542-3522

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