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Environmental Crimes Prosecution

A Law Enforcement Partnership

By
VINCENT A. MATULEWICH, M.S.

Photo courtesy of Ned Hamara, FBI



On a cold, rainy Sunday, a railroad police patrol discovered a large pile of abandoned drums along a dirt access road near the tracks of a major metropolitan commuter line. Upon closer inspection, the officers noted that many of the drums were leaking and that the air had a chemical odor. Soon, they became lightheaded, but were able to return to their patrol vehicle to call the local municipal police department for assistance.

After arriving on the scene, the local police officers, seeing the condition of the other officers, called in reinforcements. Shortly thereafter, the local health officer, supported by the fire and rescue squads, arrived at the scene. A decision was then made to notify the county and State agencies. Later, the county health department's emergency response unit arrived, followed by the State police's emergency management coordinator and the

State's department of environmental protection/hazardous materials incident team.

By this time, several hundred people, dressed in every conceivable type of protective clothing, were milling around an impromptu command post. As a portion of the contaminated area near the tracks was evacuated, and the decision to shut down the commuter railroad was made, the television news crew arrived. When all was said and

done, it was estimated that the cleanup would cost approximately \$100,000.

Reaction to this hypothetical dumping incident would depend on when it took place. If it occurred prior to Earth Day, April 21, 1970, most likely nothing would have happened. The drums of chemicals would have been allowed to ooze into the ground and contaminate the water supply. If it occurred during the 1970s or early 1980s, someone would pay for the cleanup, and in this case, it would be the railroad, since they owned the property where the drums of chemicals were found. The railroad, after cleaning up the site, would probably pass along the cost to the public in the form of a fare increase.

Today, however, if this incident occurred, the municipal police department would most likely request assistance from one or more law enforcement agencies to process the abandoned drum site as a crime scene before having the hazardous chemicals removed. The involved agencies would also conduct an investigation to determine who was responsible for the act and criminally prosecute the violators.

ENFORCEMENT HISTORY

Today, the United States produces approximately 125 billion pounds of hazardous waste annually.¹ Because many of the environmental crimes prosecuted now were considered environmentally acceptable acts 30 years ago, hazardous waste has become a dangerous legacy that can no longer be overlooked.² Toxic and hazardous waste from approximately 15,000 municipal and 75,000 industrial landfills

has contaminated public and private water supplies throughout the country.³ And, if left undiscovered, this contaminated water can cause cancer, birth defects, and genetic changes, as well as a variety of other disorders.

Eventually, in response to public pressure resulting from events such as the Love Canal, where chemical wastes produced and disposed of during World War II seeped into the homes of local residents, the Federal Government began to attack the problem of improper chemical disposal practices in two ways: 1) Preventing further chemical contamination; and 2) dealing with existing chemical waste.

To prevent new hazardous waste sites from being created, in 1976, Congress enacted the

Resource Conservation and Recovery Act (RCRA). RCRA sought to provide "cradle-to-the-grave" management of newly created hazardous wastes by imposing a set of regulations and a manifest system not only on the generators of hazardous wastes but also on the transporters and disposers of such chemicals. Under this act, treatment, storage, or disposal of hazardous wastes at any other place but an authorized facility is illegal. Violators are subject to civil penalties of \$25,000 per day of continued noncompliance, and persons convicted of violations are subject to criminal penalties of up to \$50,000 for each day of violation and imprisonment for a maximum of 5 years.⁴

To handle existing hazardous waste sites, Congress, in 1980,

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passed the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), commonly known as the "Superfund Act." This act established a \$1.6 billion fund to be used for, among other things, the clean up of abandoned hazardous waste sites.⁵

Also, during the 1980s, various States enacted criminal sanctions for both knowing or reckless conduct involving the illegal disposal or abandonment of toxic or hazardous wastes. Now, in addition to similar fines imposed by the RCRA, States could impose terms of imprisonment for up to 10 years.

SCOPE OF THE PROBLEM

Historically, private industry has not played a leadership role in protecting the environment and is still reluctant to take environmental precautions unless it views over-

ardous chemicals, this cost could be in excess of \$1,500 per drum. Larger corporations simply pass this added cost onto the consumer, but smaller, marginal companies often-times may need to cut corners to save money. As a result, it is usually marginally competitive, smaller companies, or facilities hired by them, that illegally dump hazardous waste.⁶

LAW ENFORCEMENT'S ROLE

In the early 1980s, only Louisiana, Maryland, Michigan, New Jersey, New York, and Pennsylvania employed specialized units to deal with environmental crimes on a full-time basis. In all, this amounted to a few dozen over-worked criminal investigators who were charged with developing investigative methods and procedures

the State law enforcement level.⁸ In addition, over 1,000 police officers and investigators have attended investigative training programs.⁹ This remarkable improvement in such a short time is directly attributed to law enforcement's perceived necessity of such teams and to public pressure.

The Municipal Police Department

By nature, most municipal police departments do not have the resources to devote themselves exclusively to investigating environmental crimes. However, municipal departments acknowledge that the public it is charged to protect is acutely aware of the dangers associated with hazardous chemicals. As a result, many have provided their patrol officers with problem awareness training so that they may properly secure hazardous areas from the public, and if possible, preserve the crime scene.

In most cases, for a municipal police department, dealing with hazardous chemicals means calling on agencies that have the capability and resources to control the situation. Chemicals found at any given site must be considered unknowns, and as such, must only be approached by trained personnel. Even so, municipal departments can act as invaluable resources to criminal investigators by providing informant information and by "working" the community for suspect leads.

The County District Attorney's or Prosecutor's Office

Due to limited resources, most county investigative departments

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...through problem awareness and investigative methods training, 29 States now have environmental crimes units at the State law enforcement level.

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whelming scientific evidence that demonstrates that the expenditure of funds is necessary. Despite this reluctance, most large corporations operate according to environmental regulations; however, there are others willing to break the law in order to save or make money.

Prior to the RCRA, the cost of disposing a 55-gallon drum of hazardous waste cost \$3 to \$5. Today, disposing legally that same waste costs \$300 to \$500. For some haz-

where none previously existed. To make matters more complicated, these investigators were "forced to work with," and at times rely upon, non-law enforcement agencies as their evidence collection teams and for records of those who generated, transported, and/or disposed of hazardous waste.⁷

Today, through problem awareness and investigative methods training, 29 States now have environmental crimes units at

also do not actively investigate environmental crimes. However, some counties consider hazardous waste a major public safety issue and actively pursue criminal violators. In some States, the local district attorney's or State attorney's office is the only agency with the statutory authority to prosecute criminal violations.¹⁰ This is especially true for counties that have a large industry-based economy and a high incidence of midnight dumping.

The State Police or State Attorney General's Office

Most environmental crimes units that are attached to the State police or the State attorney general's office are usually better equipped logistically to deal with the mobile nature of environmental violators who cross municipal and county lines.¹¹ In addition, State agencies are also better able to conduct long-term investigations leading to successful criminal prosecutions.¹²

Typically, State law enforcement agencies investigate and prosecute violations, such as fraud within the hazardous waste industry, illegal operation of hazardous waste facilities, and the illegal storage and disposal of hazardous wastes. In addition to environmental crime laws, State agencies also implement white-collar provisions of criminal codes and other violations of the law, such as theft by deception, falsifying or tampering with records, deceptive business practices, maintaining a nuisance, official misconduct, obstruction of justice, conspiracy, and manslaughter.¹³

State Regulatory Agencies

Although State regulatory agencies are not considered law enforcement agencies, they are an integral component to the successful criminal investigation of environmental crimes. These agencies maintain the "cradle-to-the-grave" manifest system required for all transactions involving the generation, transportation, and/or disposal of hazardous wastes. In addition, these agencies license and routinely inspect all facilities associated with

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the generation and disposal of hazardous waste. Furthermore, as a component of their emergency response duties, they also maintain specialized units that are dispatched to collect sample evidence at the scene of midnight dumpings or other situations where hazardous waste may affect the public health.

The Federal Government

In 1984, the U.S. Justice Department granted law enforcement powers to 23 agents of the U.S. Environmental Protection Agency (USEPA). The agents are attached to USEPA's National Enforcement Investigations Center (NEIC)/Of-

fice of Criminal Investigation in Denver, Colorado, and operate out of USEPA regional offices located throughout the country. Currently, NEIC has 55 agents.

With the passage of the "Pollution Prosecution Act of 1990," Congress has mandated that the number of criminal investigators be no fewer than 200 by October 1, 1995. Additionally, the USEPA has centralized the administration of their special agents in Washington, D.C., within the Office of Enforcement. Even so, this number is far too low to respond to emergencies or to conduct extended surveillance on suspected dumpers. Therefore, the USEPA is primarily directed toward major, long-term investigations of national significance, assisting local or State environmental crimes units with technical support, and filling the void where no coverage is provided at the local or State level.¹⁴

The FBI has assisted the USEPA since 1981, and in 1986, 35 Special Agents from the FBI's White-Collar Crimes Section were given the additional responsibility for investigating Federal environmental crimes.¹⁵ Currently, the FBI is investigating over 300 environmental crimes cases.

THE PARTNERSHIP

Background

In 1980, in response to media and public pressure regarding hazardous waste, the Attorneys General of the Northeastern United States initiated the Northeast Hazardous Waste Coordination Committee. Originally comprised of 11 Northeastern States, the committee later



Photo courtesy of Steve Delaney, EPA

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changed its name to the Northeast Hazardous Waste Coordination Project (NEHWP) and expanded its membership to 14 States.

The primary purpose of the NEHWP is to: 1) Promote and coordinate investigations among member States; 2) provide technical assistance; 3) provide an information bank for all public record information with respect to the various components of the hazardous waste industry; and 4) develop the law enforcement partnership and provide annual training on environmental crimes investigations to all levels of government. Because of the unique relationship that must be maintained with the State regulatory agencies, the project's membership is composed both of representatives from State law enforcement and

regulatory agencies. The project is funded by the participating States and the USEPA/National Enforcement Investigations Center (NEIC).¹⁶

To meet national goals, the NEIC used the NEHWP as a model to establish three other regional groups—The Midwest Environmental Enforcement Association (previously known as the Midwestern Hazardous Waste Association), the Western States Hazardous Waste Enforcement Network and the Southern Environmental Enforcement Network (previously known as the Southern Hazardous Waste Project). Today, 46 States and the Province of Ontario, Canada, are members of these regional groups. The only States not participating in a regional group are

Kansas, Montana, Texas, and Wyoming. The regional groups changed their names to reflect the USEPA's shift from simply hazardous waste enforcement to a multimedia approach to environmental enforcement dealing with surface water, ground water, pesticides, and air pollution.¹⁷

Training

However, in order to maintain successful environmental crimes programs, proper training is essential and must focus on two specific groups: 1) Law enforcement agencies that require only a subject awareness; and 2) law enforcement agencies that are actively involved in environmental crimes investigations. For the first group, training is limited to what environmental crimes are and which agencies actively investigate such crimes. Training for this group, which consists of representatives from municipal or county police departments and health, fire, and code inspectors, is usually limited to a 4- to 8-hour block of instruction. Such basic awareness programs, conducted by the regional groups or the State's environmental crimes unit, have enjoyed success throughout the Nation. These regional groups have the combined capability to train approximately 1,000 individuals per year in various topics.¹⁸

For those law enforcement and regulatory agencies involved actively in environmental crimes investigations, training is more in-depth and includes instruction in specific technical skills. For example, the NEHWP uses a two-step program that includes 1 week of classroom

instruction followed by a 3-day practical exercise that details an environmental crimes case from the initial response to the execution of a search warrant. This practical exercise helps to expose the criminal investigators and regulatory inspectors to each other's duties and responsibilities.¹⁹

In 1985, the USEPA perceived the need to develop a national training program regarding hazardous waste investigations. In conjunction with the National Center for State and Local Law Enforcement Training at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia, the NEHWP, and other State agencies, the USEPA developed a 2-week program that addresses criminal violations with regard to the handling, transportation, and disposal of hazardous waste. The program was developed for investigative and regulatory personnel and stresses the multidisciplinary approach to the investigation and prosecution of violations.²⁰

The passage of the "Pollution Prevention Act of 1990" required the USEPA to create a National Enforcement Training Institute. The emphasis of the institute will be to conduct comprehensive criminal and civil environmental enforcement training for Federal, State, and local personnel.

CONCLUSION

Despite the efforts to increase awareness and to educate law enforcement and related personnel to the significance and dangers of environmental crimes, there are still municipal departments and county and State agencies that have not ad-

ressed the issue of environmental crimes. Therefore, to increase awareness among these groups, the FLETC and NEIC have brought together the heads of State agencies that have long-standing enforcement programs with their counterparts in those States that have not adequately addressed the problem. Even so, more specialized training programs are needed for those environmental crimes investigators currently working in the field.

As law enforcement becomes more effective in dealing with environmental offenders, offenders

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have become more adept at avoiding detection. To help meet this need, the regional groups have developed investigative training courses that deal specifically with the sophisticated dumper. It is hoped that through training and continued vigilance, law enforcement, together with its partner agencies, can successfully rid the Nation of those individuals who blatantly disregard the importance of a safe, clean environment.

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Footnotes

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² S. Wolf, "Hazardous Waste Trials and Tribulations," *Environmental Law*, vol. 13, No. 2, Winter 1983.

³ *Supra* note 1.

⁴ M. Leepson, "Toxic Substances Control," in *Environmental Issues: Prospects and Problems* (Washington, DC: Editorial Research Reports, 1982), pp. 99-115.

⁵ *Ibid.*

⁶ A. Block and F. Scarpitti, *Poisoning for Profit: The Mafia and Toxic Waste in America* (New York: William Morrow and Co., 1985).

⁷ D. Rebovich, *Understanding Hazardous Waste Crime*, the Northeast Hazardous Waste Project and the New Jersey Division of Criminal Justice, June 1986, p. 70, and the National Association of Attorneys General, *State Attorneys General Guide to Environmental Law*, Washington, DC, 1990, p. 174.

⁸ *Ibid.*

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¹⁰ "L.A. Sheriff Expanding Unique Hazardous Materials Unit," *Crime Control Digest*, September 1, 1986, p. 10, and personal communication with R. Honnicker, Assistant Prosecutor, Monmouth County Prosecutor's Office.

¹¹ *Supra* note 7.

¹² *Supra* note 7.

¹³ *Supra* note 7 and New Jersey Department of Law and Public Safety, "Division of Criminal Justice Annual Activities," 1986, p. 27.

¹⁴ Third Conference of State Environmental Enforcement Organization, National Association of Attorneys General and NEIC. Denver Federal Center, Denver, Colorado, January 23 and 24, 1991.

¹⁵ Personal communication with Special Agent J. Molton, Federal Bureau of Investigation.

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¹⁷ C.G. Wills and C.W. Murray, Jr., "State Environmental Organizations," *National Environmental Enforcement Journal*, vol. 4, No. 7, 1989, pp. 3-8.

¹⁸ Personal communication with M. Staub, Training Chair for the Northeast Hazardous Waste Project.

¹⁹ *Ibid.*

²⁰ J. Miller, "Hazardous Waste Investigative Training Program Feasibility Conference Notes," Federal Law Enforcement Training Center, Glynco, Georgia, 1985.