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Program Focus

Prosecuting Environmental Crime

Los Angeles County



Prosecuting Environmental Crime: Los Angeles County

by Theodore M. Hammett and Joel Epstein

Environmental crime is a serious problem for the United States, even though the immediate consequences of an offense may not be obvious or severe. Environmental crimes do have victims. The cumulative costs in environmental damage and the long-range toll in illness, injury, and death may be considerable.

Criminal prosecution of environmental offenders by local authorities has emerged as an important new strategy for combating environmental crimes. Law enforcement and prosecutorial agencies generally believe that successful criminal prosecution—even just the threat of prosecution—is the best way to punish violators and deter others from committing similar offenses.

In contrast, regulatory agencies tend to focus on achieving compliance with environmental regulations and remedying environmental damage. As a result, they emphasize obtaining the cooperation of the regulated community, as much as is possible. If enforcement action is necessary, they generally favor administrative or civil procedures.

The National Institute of Justice supports the search for new law enforcement strate-

gies. This Program Focus examines one such strategy—the Los Angeles County Environmental Crimes Strike Force. This coordinated approach to investigation and prosecution of environmental crime combines the resources of two groups—regulatory and law enforcement agencies. Although these agencies initially had differing perspectives on the problem, they have been turned into a potent force in the growing struggle against this type of offense. Many aspects of this pioneering program may be relevant to jurisdictions wishing to develop environmental crime units and could help them to develop similarly aggressive approaches to environmental crime.

Michael J. Russell
Acting Director
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The public recognizes the severity of environmental crimes. More than a decade ago, a Bureau of Justice Statistics survey found that Americans believed environmental crimes to be more serious than a number of “traditional” crimes such as burglary or bank robbery.¹ More recently, a 1991 survey revealed that 84 percent of Americans believed that damaging the environment is a serious crime, and 75 percent believed that corporate officials should be held personally responsible for environmental offenses committed by their firms.² But despite increased public concern, pollution still threatens public health and jeopardizes the ecological balance.

The Environmental Regulation Paradox

Over the past 20 years environmental laws covering hazardous waste, toxic substances, and air and water pollution have become more complex and stringent. But paradoxically, the very laws and regulations designed to protect the environment may have contributed in several ways to increasing the incidence of environmental violations.

First, because regulated businesses have found it increasingly expensive to comply with the new statutes, more and more are avoiding these costs, even if it means violating the law. Although there are still numerous instances of “midnight dumping” (randomly dumping hazardous materials or waste by the roadside or in vacant lots), increasing numbers of businesses are consciously and systematically violating environmental laws to save money and increase profit margins.³

Second, environmental offenders and their defense counsel are becoming more sophisticated in their methods. For example, a large number of firms have learned to shield their involvement in illegal activities through the use of intermediaries and dummy corporations, and many environmental defense attorneys are former prosecutors who know the laws and are adept at using procedural techniques to protect their clients.

Such actions show that regulation alone is not always enough to protect the public and the environment. The stigma of criminal indictment and the threat of criminal penalties, including incarceration, are increasingly viewed as necessary deterrents to environmental criminals.

Passage of criminal penalties for environmental offenses has made local prosecutors equal partners with the regulatory agencies that had been primarily responsible for enforcement. And in a handful of jurisdictions, prosecutors, investigators, and environmental regulators have forged innovative and effective strategies for identifying and punishing environmental offenders. One of the first local programs to create a team approach to environmental crime prosecution was the Los Angeles (LA) County Environmental Crimes Strike Force.

Under the leadership of the Office of the District Attorney (DA), the Strike Force has sent a clear message to polluters that their acts will no longer be tolerated and that, unlike much administrative and civil enforcement, criminal prosecution really hurts. As a result of the personal and institutional

relationships fostered by the Strike Force, member regulatory agencies, previously reluctant to refer matters for criminal prosecution, have themselves become strong advocates of criminal enforcement.

Origins and Organization

The Strike Force was first conceived under then Los Angeles City Attorney Ira Reiner in the early 1980's. When

Exhibit 1. Los Angeles County Environmental Crimes Strike Force

County of Los Angeles

1. Los Angeles County District Attorney's Office Environmental Crimes/OSHA Division.
2. Hazardous Materials Control Program of the Los Angeles County Fire Department (formerly in Los Angeles County Department of Health Services).
3. Los Angeles County Department of Public Works.

City of Los Angeles

4. City Attorney's Office, Environmental Protection Section.
5. City Fire Department, Underground Tank Unit.
6. Port of Los Angeles Police.
7. Los Angeles Police Department.
8. City Sanitation Enforcement Division, Industrial Waste Operations.

City of Long Beach

9. Department of Health and Human Services, Hazardous Materials Division.
10. Long Beach Police Department.
11. City Prosecutor.

City of Pomona

12. Fire Department, Fire Prevention Bureau.

City of Santa Monica

13. Industrial Waste Section.

City of Signal Hill

14. Police Department Hazardous Materials Unit.

Regional Agencies

15. Los Angeles County Sanitation Districts.
16. South Coast Air Quality Management District, Enforcement Division.

State of California

17. California Highway Patrol, Environmental Crimes Unit.
18. California State Department of Fish and Game, Wildlife Protection.
19. California State Department of Health Services, Toxic Substances Control Division and Toxic Substances Control Program.

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Reiner was elected district attorney in 1984, he took the Strike Force concept with him to the DA's Office. Then consisting of five key agencies, it was known as the Hazardous Waste Strike Force. In 1989 it was renamed the Los Angeles County Environmental Crimes Strike Force to reflect the group's concern with all aspects of the environment.⁴

The Los Angeles County Environmental Crimes Strike Force now includes permanent representatives from almost 20 State and local law enforcement and regulatory agencies (exhibit 1). Four of the five original agencies form its core: the LA County District

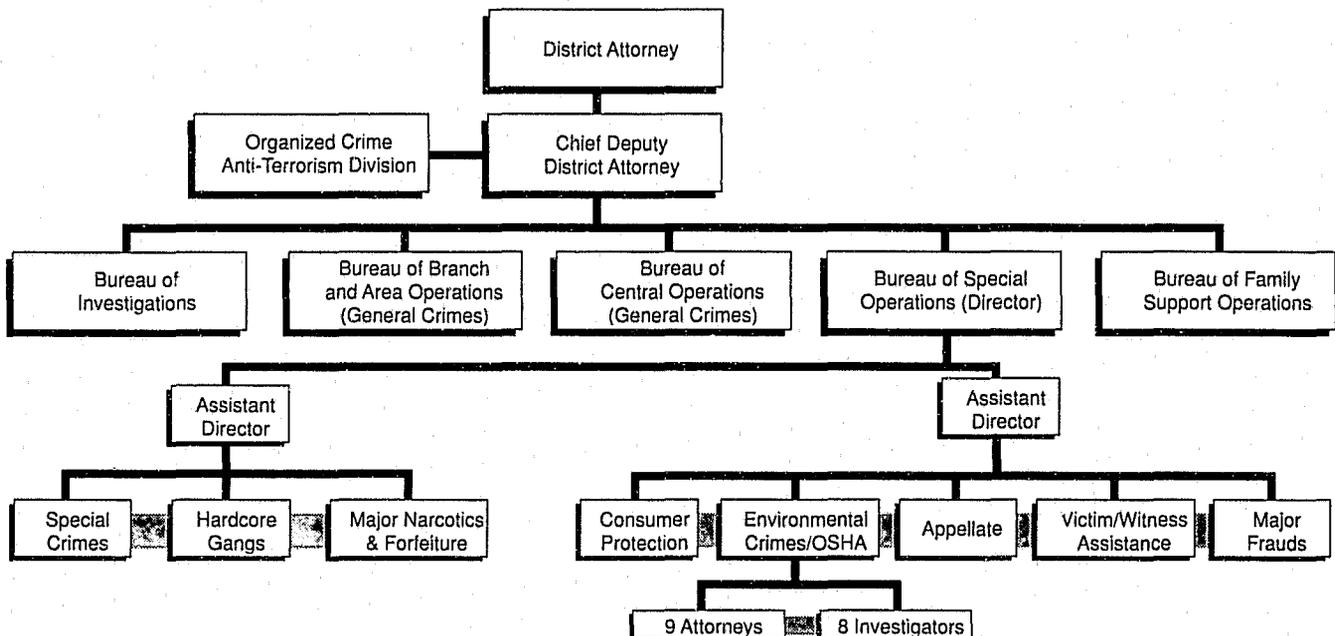
Attorney's Office, the Hazardous Materials Control Program (HMCP) of the LA County Fire Department, the California Highway Patrol (CHP), and the Los Angeles Police Department (LAPD).

The Strike Force is now led by the Environmental Crimes/OSHA (Occupational Safety and Health Administration) Division of the Los Angeles County District Attorney's Office (exhibit 2). Michael Delaney is head deputy of this division (at the time of this research, David Guthman was head deputy). The district attorney continues to provide financial and logistical support to the Strike Force effort.

The "Eyes and Ears" of the Community

Former District Attorney Reiner's commitment to environmental prosecution marked him as a pioneer. Perceived as somewhat risky at first, environmental prosecution was a non-traditional area for local prosecutorial activity, in part because of the challenges posed by environmental cases. At first glance, many environmental offenses may not seem to be crimes at all. The frequent absence of "smoking gun" evidence often requires that prosecutors rely on expert witness testimony and circumstantial evidence to demonstrate the severity of the environmental offense and link the de-

Exhibit 2. Los Angeles County District Attorney's Office Partial Organizational Chart



fendant to the crime. Thus, the Strike Force's emphasis on coordination and use of all available resources has been vital to the success of its prosecutions.

The Strike Force approach allows members to concurrently assess health risks, mobilize regulatory agency involvement, and obtain evidence for criminal prosecution. One deputy district attorney in the Environmental Crimes/OSHA Division identified three elements essential to the Strike Force approach:

- A law enforcement component to conduct criminal investigations.
- A technical component with a capacity to conduct health risk assessments and collect samples at the scene of alleged violations.
- A laboratory component to conduct analyses of samples, maintain the chain of custody of evidence, and provide expert testimony at trial.

The Environmental Crimes/OSHA Division head deputy encourages every public agency with an interest in criminal enforcement to participate in the Strike Force. He believes that even if an agency never generates a case, its demonstrated interest in the work of the Strike Force raises environmental consciousness and multiplies the number of "eyes and ears" in the community. Many Strike Force investigations begin with tips from employees of businesses or other citizens.

Interagency Tensions: Formal Versus Informal Methods of Operating

The policy of the LA County Strike Force has been to rely on informal leadership and interagency cooperation rather than formal designation of one agency as the "lead" agency. However, some members of the Strike Force disagree with this policy. Their thinking is that some cases would move more efficiently if one agency were asked to take charge.

For example, an asbestos case could create problems for the group because it is likely to involve both air pollution and hazardous waste disposal, both of which are addressed by different Strike Force agencies. Critics of the Strike Force's style argue that formalizing roles and relationships through memorandums of understanding or similar documents would make for smoother Strike Force operations on such potentially

contentious cases. They say that the process of hammering out formal agreements would in itself help to resolve internal tensions.

Certain types of cases may be particularly divisive for the Strike Force, but proponents of the current LA approach believe that designating a lead agency could disrupt the cooperation that is the key to Strike Force operations. If formal agreements existed, they say defendants could use "motions for production" as a dilatory tactic at the discovery phase of a prosecution. Creation of such agreements could also be counterproductive. They would necessarily be drafted by committee, a process that might threaten rather than enhance personal and interagency relationships within the Strike Force.



Los Angeles County is still plagued by "midnight dumping"—hazardous materials and waste abandoned in vacant lots or by the side of the road.

Courtesy of the Hazardous Materials Control Program of Los Angeles County.

Commitment and Cooperation

The Strike Force has always relied on the commitment of participants and on informal interagency cooperation, rather than a formalized structure, to enforce group decisions. In the early days, the Strike Force depended on peer pressure to motivate follow-through. If an agency failed to live up to its commitments, it would draw a critical eye from other members. To this day, the Strike Force does not have memorandums of understanding or other written agreements.

In many jurisdictions across the country, regulatory agencies must decide on their own whether a reported violation requires evidence gathering for criminal prosecution or simply followup inspection and administrative action. However, the LA County Strike Force facilitates quick and efficient decisionmaking in such circumstances. For example, if a new investigation is referred to the Strike Force for surveillance, Sanitation District staff may be dispatched to collect samples and have them analyzed. If the analysis is positive, a deputy prosecutor can draft a search warrant, and within a few days the illegal discharge of pollutants can be stopped and evidence gathered for prosecution of the violator. One participating agency, the Hazardous Materials Control Program, uses the following criteria to decide whether an incident should be handled administratively or referred to the District Attorney's Office for prosecution:

- Seriousness of the violation.

- Intent of the violator.
- Amount and toxicity of the substances involved.
- Environmental record of the individual or firm.

Procedures for sharing fines and criminal penalties in hazardous waste cases among participating agencies are defined by statute in California.⁵ Being able to count on realizing revenues from successful prosecutions helps to reassure agencies that might otherwise be reluctant to involve themselves in the investigatory process.

A Potent Weapon

The ability of the Strike Force to coordinate all aspects of enforcement—from detection of a suspected environmental violation to conviction of the offender—makes it a potent weapon against environmental crime. According to former District Attorney Reiner, "The success of the approach is ultimately validated in court with the company fined and responsible corporate officials jailed for their acts."⁶

Prosecution at the Local Level. An example of the Strike Force at work began when the Hazardous Materials Control Program conducted a routine inspection of an equipment rental firm. Underground storage tanks were discovered on the property, and an investigation was initiated. The Department of Public Works (DPW) was called in to search for buried waste with a backhoe. The County Sanitation Districts joined the investigation when it was determined that sewer connections and sewer discharges were involved.

Finally, the county sheriff's department provided aerial photographs of the site. All four agencies worked smoothly together on the investigation. In this case charges were filed and convictions obtained.

Prosecution at the National and International Levels. In some investigations, international as well as interjurisdictional coordination may be required. Today it is not unusual for environmental criminals to transport hazardous waste across State or international borders for disposal in places with less stringent environmental enforcement. Another Strike Force case reveals the lengths to which criminals will go to evade strict environmental enforcement and the multijurisdictional efforts needed to apprehend them.

In May 1990 Raymond Franco and David Torres became the first defendants named in felony indictments under Federal environmental law for the disposal of hazardous waste across international borders. The two men were involved in a scheme to transport hazardous waste from southern California for illegal disposal in Tijuana, Mexico. In what has been hailed as a model Strike Force operation, Federal, State, county, local, and Mexican government officials cooperated in a long, complex inquiry. Investigation and prosecution of the case required the cooperation of the Federal Bureau of Investigation, the Environmental Protection Agency, the Department of Justice, the U.S. Customs Service, the State Department, Los Angeles and Orange County officials, and the Government of Mexico.⁷

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At the time of the Franco indictment, former District Attorney Reiner remarked, "We have to be as diligent in stopping the flow of toxics south of the border as we are diligent about [stopping] the flow of drugs coming north. In both cases it comes back to haunt us."⁸ The case received considerable attention in the press and represents an important example of interjurisdictional cooperation in the fight against environmental crime. It also provided the impetus for enhanced Federal and State multiagency efforts to crack down on the illegal disposal of American hazardous waste in Mexico.

The Los Angeles County district attorney feels that his office's active participation in the Environmental Protection Agency-funded Western States Hazardous Waste Association helps to enhance multijurisdictional cooperation.

Interagency Relationships

When the Strike Force was small, representative held weekly meetings to discuss prespecified cases and assign specific tasks for the upcoming week. At subsequent meetings, agencies were expected to bring the Strike Force up to date on progress with assigned tasks. Soon after his appointment as head deputy of the Environmental Crimes/OSHA Division in 1988, David Guthman decided that the large number of agencies involved made weekly meetings unwieldy. He instituted monthly meetings of the entire Strike Force to discuss general issues and more frequent—sometimes most daily—meetings of small groups of agency representatives to

work on specific cases. The goal was to maintain both the intimacy and the effectiveness of the small weekly meetings.

Environmental Crimes/OSHA Division prosecutors believe that the large monthly meetings serve as a clearinghouse for sharing information and cultivating professional contacts. Participating agencies use the collective resources of the group to identify environmental violations and compile "environmental rap sheets" on suspects. In turn, members can call on the considerable investigative and prosecutorial resources of the Strike Force that can be rapidly mobilized against a violator. However, some Strike Force members think that the dual meeting format has not worked well. Critics believe participants spend too much time talking about minor cases, which should be referred to the DA's general crimes division, and discussing general issues, which are not particularly valuable.⁹

Agency representatives generally agree, though, that the key to the Strike Force's effectiveness has been the development of close, long-standing relationships. Established professional relationships mean that members know whom to call to get help on a case and that they themselves expect to be called for information and assistance.

The Role of Key Agencies

The LA County District Attorney's Office plays perhaps the most prominent role of any member agency in

Strike Force prosecutions. But other agencies—including the Hazardous Materials Control Program, the Los Angeles City Sanitation District, the Los Angeles County Department of Public Works, the Los Angeles County Sanitation Districts, and the South Coast Air Quality Management District (AQMD)—play important roles as well.

Environmental Crimes/OSHA Division

Eight full-time criminal investigators are assigned to the Environmental Crimes/OSHA Division of the District Attorney's Office. Prosecutors in this unit believe that environmental crimes are crimes of violence against the environment and ultimately against the public, which must be punished. Because these prosecutors thoroughly understand the legal requirements for obtaining a conviction, other agencies in the Strike Force naturally turn to the DA's Office for leadership.

The Los Angeles County DA employs a vertical prosecution model in environmental cases. When a new case comes into the unit, an Environmental Crimes/OSHA Division attorney is assigned on the same day the case is received. Barring a rare emergency requiring reassignment, the assigned prosecutor stays with the case all the way through adjudication and final appeal.

Civil Versus Criminal Prosecution.

Although the DA's Office has both civil and criminal jurisdiction, deputy prosecutors use civil proceedings only when criminal remedies are unavailable. Environmental Crimes/OSHA

Obstacles to Prosecution

Prosecutors who wish to expand their role in environmental crime prosecution will most likely have to overcome some rather formidable attitudinal obstacles and misconceptions. The experiences of the LA Strike Force may help prosecutors in other jurisdictions chart a path through this complex legal territory.

■ Some prosecutors feel unprepared to tackle environmental cases, which are perceived as hopelessly complicated and impossible to win. The Environmental Crimes/OSHA Division addressed this obstacle by offering special training in this nontraditional area and by hiring attorneys who expressed a serious commitment to working on environmental prosecutions.

■ Many corporate defendants regard civil penalties and one-time cleanup costs as part of the cost of doing business. The LA Strike Force addressed this obstacle by instituting a policy of using civil proceedings only when criminal remedies are not available and by refusing to accept defense attorneys' requests for a civil settlement in exchange for a more serious criminal charge.

Division attorneys emphasize that criminal prosecution is more effective as a deterrent than administrative or civil proceedings. Former head deputy Guthman adds that if the desired outcome is to obtain cleanup or remediation of an environmental problem, the prosecutor can use the threat of a prison sentence to motivate a defendant to act—a strategy not available in civil proceedings.

Los Angeles deputy DA's also note that criminal prosecution in the county is generally faster than the civil route.

■ Some judges are not well versed in environmental laws or sensitive to the seriousness of environmental crimes. They may also believe that environmental cases are more appropriately handled by civil or administrative means than by criminal prosecution. In California, judges' more positive attitudes toward environmental prosecutions may have been influenced by several factors, including the high visibility and potential political impact of some cases, the LA district attorney's commitment to prosecute environmental cases, and the potential for reelection challenges or recall petitions that may result when a judge ignores issues of public concern.

■ Individual juries may be reluctant to convict a community's business leaders and significant employers if the alleged environmental damage does not have an immediate deleterious effect. The LA Strike Force seeks to raise public consciousness by emphasizing the serious consequences of the offenses it investigates and prosecutes.

Moreover, in many cases the fines and penalties obtainable through criminal prosecution are as large or larger than the available civil remedies.

Prosecutors in Los Angeles County have crafted criminal penalties that make cleanup of a site or remediation of an environmental problem a condition of probation. Although defense attorneys frequently propose a civil settlement to avoid a criminal case against their clients, the policy of the DA's Office is to turn down such offers. By doing so, prosecutors refuse

to bargain away the deterrent value of a criminal proceeding.

City Versus County Versus State Jurisdiction. Jurisdiction over environmental matters in Los Angeles County is complex. City attorneys have jurisdiction over criminal misdemeanors committed within the Los Angeles city limits and in eight other cities in Los Angeles County. However, the county district attorney has felony indictment authority throughout the county. The county DA's authority extends to misdemeanors as well outside these nine cities.

This complicated division between the county and its municipalities often requires that criminal investigation findings be shared across jurisdictional lines. For example, in many cases what begins as a suspected misdemeanor may turn out to merit a felony indictment. Therefore, the various prosecutorial authorities must stay in close contact.

The county district attorney's relationship with the California Attorney General is considerably more limited than with city attorneys because the State Attorney General has no original criminal jurisdiction. His office may prosecute cases declined by the DA or from which the DA has recused himself.

Hazardous Materials Control Program (HMCP)

Because of its mandate to regulate generators of hazardous waste in Los Angeles County, HMCP has been the regulatory agency most heavily involved in the Environmental Crimes

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Strike Force.¹⁰ Unlike other regulatory agencies, which focus on *compliance* through administrative and civil procedures, HMCP is not reluctant to pursue criminal prosecution for the *punishment* of offenders. HMCP's permanent Strike Force representative Bill Jones has been involved since the very beginning.

Each month HMCP responds to 130 to 140 incidents (about 1,500 per year) involving hazardous materials or hazardous waste. In 1990 HMCP investigative section referred 360 criminal complaints for prosecution. Its investigators may conduct both the criminal and the technical aspects of an investigation. They also make their own determination as to whether criminal investigation of a complaint is warranted.

In 1990 HMCP referred 53 incidents for prosecution. This represented almost double the number of cases (28) referred in 1989. Moreover, in 1990 the agency participated in the execution of 18 felony search warrants and was involved in hazardous waste prosecutions that netted \$2.5 million in fines. The agency's aggressive support of criminal prosecution has led to some "turf" battles with the LA County DA's Office over responsibility for followup criminal investigations.¹¹

HMCP's authority covers hazardous waste *generators* within Los Angeles County, but the California Department of Health Services has responsibility for regulating the State's *transportation, storage, and disposal facilities*. Simple in principle, the distinction is

often not clear or fully implementable in practice. Ambiguity occurs when cases involve both generation of hazardous waste and its transportation, storage, and disposal—as they often do—and the various aspects of the investigation are not easily separable. The following cases illustrate why HMCP can become involved in all stages of an environmental action.

Chlorine Toxic Cloud. This case, involving the manufacture of chlorine tablets for swimming pools, originated when HMCP responded to an emergency involving toxic clouds. In fact the problem started long before, during the manufacturing process, when chlorine tablets broke and pieces fell to the floor. Company employees swept them up with sawdust and grease and stored the waste on the premises in barrels and deteriorating cardboard containers. Because the containers were in poor condition, moisture got into the mixture, causing it to combust. The resulting fire created toxic clouds requiring some 28,000 residents to evacuate the area. South Coast Air Quality Management District investigators joined HMCP in the investigation.¹²

Although the incident involved disposal of hazardous waste into the air, the Strike Force decided to prosecute the company under a California hazardous waste law intended to address land disposal. The prosecutor relied on the creative theory of "disposal by emission" to persuade the court of the defendants' culpability. Company executives received 6-month prison terms and were fined \$659,000, of which \$259,000 was to be used as a

scholarship fund for students from the high school serving the evacuated area.

PCB's and Asbestos. This case involved close coordination of the sheriff's department and HMCP. After HMCP conducted an initial investigation, multiple search warrants were obtained for the property of the defendant, whose two companies were suspected of unlawful disposal of PCB's and asbestos. The sheriff's department provided a helicopter for aerial photography of the site. Successful indictment and conviction of this offender hinged on the coordinated efforts of the Strike Force.¹³

Corrosives in a Pit. This case began with a tip that a company had been dumping degreasing solvents and corrosives into a pit on its property for 15 or 20 years. A search warrant was obtained, and samples taken from the site revealed the presence of hazardous waste. In addition, aerial photography showed dead vegetation surrounding the pit. The company was convicted of illegal disposal of hazardous waste and failure to comply with manifesting procedures.¹⁴

Re-Use of Contaminated Containers. This case involved a refuse transfer facility that accepted asbestos. The containers used by the company to collect asbestos were not supposed to be opened once the materials were collected. Because of the volume of work, however, the facility was regularly re-using the containers after employees had dumped the asbestos-contaminated waste elsewhere at the facility. HMCP gathered evidence of

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the practice by taking samples of the dumped material and photographs of the transfer facility. The defendant was fined \$250,000.¹⁵ Recently a new action has been filed against the company and certain of its officers.

Dumping Waste From Paint Products. This case grew out of an HMCP investigation of a suspect who rented Ryder trucks, loaded them with hazardous waste from paint products, and then abandoned the trucks. The investigation was simplified by the fact that the suspect rented the trucks in his own name. He was convicted and sentenced to a 32-month prison term. The DA also sought indictments against businesses that hired the suspect because of evidence that these companies knew—or should have known—that he planned to dispose of the hazardous wastes illegally.¹⁶

Unlicensed Transporters Sting. This case involved a “sting” operation of an unlicensed transporter who offered businesses cheap—and illegal—disposal of their hazardous waste. The transporter came to the attention of the Strike Force after a series of emergency incidents to which HMCP responded. Using an abandoned business location, HMCP and DA investigators concocted some marginally hazardous waste and then contacted the suspect, who came out and offered his services. After the suspect’s bid was accepted, investigators surreptitiously videotaped him loading the waste and hauling it away. The suspect’s truck was followed, and he was apprehended preparing to mix the waste with other waste for illegal disposal. He was later indicted and convicted.

Until recently, HMCP investigators routinely searched, without a warrant, the premises of firms suspected of environmental offenses. However, a State court put an end to this practice when it ruled that such searches violated the fourth amendment prohibition against unreasonable search and seizure. In a decision potentially affecting all regulatory agencies, the court ruled that the fourth amendment’s search and seizure provisions *do* apply to health officers. Now health officers must obtain either the party’s consent or a standard search warrant before conducting a search. This decision seemingly removes the advantage previously held by health and other regulatory agencies over law enforcement agencies in criminal investigations.¹⁷

Los Angeles City Sanitation District

The Los Angeles City Sanitation District is responsible for investigating illegal discharges into the city’s sewers. Monitoring of a company’s sewer discharges may be triggered by a tip from a disgruntled employee or concerned citizen or may be routine, based on a pattern of prior problems or notices of violation. The businesses that most commonly violate city sewer laws appear to be electroplaters and metal finishers.

The City Sanitation District decides how to proceed after determining whether an incident seems to be a one-time or accidental discharge or part of a deliberate pattern of illegal activity. If the agency determines that a discharge is a one-time or accidental incident, the agency generally handles

the matter through administrative procedures. On the other hand, if the agency believes the discharge is part of a pattern of deliberate illegal activity, the case is referred for criminal prosecution.

The City Sanitation District monitors many sewer discharges by LA businesses during graveyard shifts. Investigators typically “bracket” the target company by monitoring water quality both upstream and downstream of the suspect facility. This technique makes it possible to identify pollutants being discharged by the bracketed firm.

On a regular basis, roughly half of the City Sanitation District night crew’s time is devoted to enforcement and Strike Force work.¹⁸ When possible, City Sanitation District investigators also use the so-called “grab sample” method of collection. This method involves collecting the entire discharge sample within a 15-minute period. The agency has found that combining the bracketing and grab sample methods is most likely to generate samples and laboratory analyses that support the prosecutor’s case.

On its own the City Sanitation District does not conduct criminal investigations. Instead, the agency notifies the Los Angeles County District Attorney’s Office and the Los Angeles Police Department of any suspected criminal activities for followup.

Los Angeles County Department of Public Works

The Los Angeles County Department of Public Works (DPW) is responsible for two aspects of hazardous waste control:

■ Regulating industrial waste through sewer and water treatment facilities. The agency's jurisdiction for waste covers all of the unincorporated areas in Los Angeles County plus 40 of the 88 cities.

■ Overseeing the removal, upgrading, and replacement of underground storage tanks. The agency's jurisdiction for storage tanks covers all of the unincorporated areas in Los Angeles County plus 79 of the county's 88 cities.

DPW operates a small number of water treatment plants of its own and shares joint authority over numerous other sewer operations with Los Angeles City and County Sanitation Districts.

A computerized program triggers routine inspections, but the department also acts on complaints from individual citizens. In addition, DPW responds to suspect activity reported by its own divisions, such as those concerned with roads and flood control.

At any given time, DPW staff are typically involved in 10 to 15 intensive investigations. Nineteen staff inspectors handle a caseload of approximately 1,000 open notices of violation. Although the primary goal of the agency is to obtain compliance, DPW staff believe that unrepentant "bad guys" should be criminally prosecuted. As a result, they do not hesitate to refer cases to the DA's Office. In addition, DPW regularly participates in Strike Force investigations by providing backhoes and other heavy equipment to excavate sites.

Los Angeles County Sanitation Districts

The Los Angeles County Sanitation Districts are independent agencies that are not part of county government. They are responsible for monitoring industrial discharges into sewers in most of Los Angeles County, exclusive of the city of Los Angeles. The County Sanitation Districts also operate a small number of sanitary landfills.

The County Sanitation Districts have authority to undertake their own criminal enforcement of misdemeanors. However, if they uncover evidence of a felony, the districts notify the Los Angeles County District Attorney's Office, and Strike Force activity is triggered. In 1990 the County Sanitation Districts referred 17 cases to the Los Angeles County district attorney for criminal prosecution. All but one were prosecuted.

Detection of levels of discharge violating State hazardous waste regulations is usually based on observation by inspectors or the monitoring of sewers. The County Sanitation Districts often work closely with HMCP, the California Highway Patrol, and the City Sanitation District.

Illegal Sewer Discharge. In one case the County Sanitation Districts were able to obtain samples that revealed a radiator shop was both pumping hazardous waste into a sewer and shipping it to an unlicensed disposal facility. As part of a joint operation, the CHP followed a truck from the company to the disposal facility and arrested the transporter.

Toxic Tickets

In the future regulatory agencies may be able to expand their criminal enforcement activities in new directions. For example, the "toxic ticket" is a local innovation that should be soon in place. The toxic ticket will enable health officers to issue the equivalent of a traffic ticket for minor hazardous waste and other environmental violations. During spring 1993, under a State pilot program, eight California counties will begin using toxic tickets to charge violators with lesser environmental offenses.

Nickel Contamination. In another case, an informant called HMCP to report an alleged illegal discharge into a sewer. County Sanitation District investigators were asked to take samples that revealed a felony-level concentration of soluble nickel. A search not only confirmed that the suspected company was discharging the soluble nickel into the sewer, but also found that the firm had been disposing of the same waste into the ground. Investigators also discovered a memorandum to the company's president stating that legal disposal of this material was becoming prohibitively expensive and urging the company to find a cheaper method of disposal. The government's strong case prompted the company to plead guilty and pay a \$500,000 fine.¹⁹

Creative Penalties. In an early case, brought by the city attorney's Strike Force before it changed its name and moved to the County DA's Office, a number of agencies, including the Los Angeles County Sanitation Districts, investigated the discharge of wastes through multiple sewer connections.

The case, against a plating firm, was one of the first in which a "creative penalty" was used. As part of its sentence, the defendant company was required to place a notice in the *Wall Street Journal* admitting that it had violated the law.²⁰ "Toxic tickets" (see box on page 11) may become another creative punishment.

South Coast Air Quality Management District

In most parts of the country, Federal agencies take the lead in air pollution cases. However, because of southern California's severe smog problem, Los Angeles County has undertaken criminal enforcement of air pollution laws. With a staff of 14 investigators plus an air pollution prosecutor, the South Coast Air Quality Management District monitors air pollution levels in LA County.

AQMD refers all criminal cases to the Los Angeles County DA's Office, reserving civil and administrative matters for its own prosecuting attorney. In each case AQMD's chief prosecutor makes the decision as to whether to proceed civilly or criminally. Cases declined by the DA may be sent back to AQMD or to another regulatory agency for civil action.

Most of the Strike Force incidents in which AQMD has been involved have been asbestos cases, and many of these cases began with AQMD air pollution monitoring activity. For example, in Los Angeles County, a permit is required for any demolition that risks releasing "fugitive dust" into the air. If asbestos or any other hazardous material is involved, the Air Quality Man-

agement District must monitor the activity.

Role of Other Law Enforcement Agencies

To ensure that all criminal and scientific aspects of an investigation are covered, prosecuting attorneys from the Environmental Crimes/OSHA Division are often teamed with investigators from other law enforcement and investigative agencies. Among them are the California Highway Patrol's Hazardous Materials Investigation Unit, the Los Angeles Police Department, and the Los Angeles County Sheriff's Department.

California Highway Patrol

The California Highway Patrol's Hazardous Materials Investigation Unit has been a key contributor to numerous Strike Force cases. The CHP Unit's Southern Division, based in Los Angeles, consists of one sergeant and two investigators. This group has investigated more than 300 cases since 1985, including 42 in 1990 and 73 in 1989.

California law prohibits the unlicensed transport of hazardous waste over California's highways and the delivery of hazardous waste to unauthorized storage or disposal facilities. Although the focus of CHP investigations is on illegal transportation, the unit is also involved in Strike Force cases with disposal as well as transportation elements. With jurisdiction over the State's highways, the CHP becomes involved because of cross-jurisdictional issues. As one CHP officer commented, "the bad guys"

are often involved in activities that cross city and county lines.

The CHP's Hazardous Materials Investigation Unit has a proactive enforcement strategy of identifying and apprehending violators before they "successfully" dispose of hazardous wastes. Proactive enforcement means identifying likely violators and catching them in the act of transporting hazardous waste for illegal disposal. Stopping illegal dumping before the waste hits the ground, enters the sewer system, or contaminates some other sensitive environment saves taxpayers significant cleanup costs and spares the environment possibly severe, irreversible harm.

The Franco Case. The 1990 indictment of Raymond Franco and David Torres for conspiracy, illegal transportation, illegal disposal, and illegal export (discussed on page 6) demonstrates the important role the CHP plays in the Los Angeles Strike Force. As part of its criminal investigation, the CHP conducted surveillance of Franco's California plant as well as his Mexican-registered trucks. The break in the investigation came when CHP officers were staking out the plant. They observed Franco and others loading and concealing 55-gallon drums on the Mexican-registered trucks. Subsequently, the trucks, driven by Mexican nationals, including David Torres, were followed as they headed toward the Mexican border. One of the trucks was stopped just short of the border, and the driver was arrested. Laboratory analyses of samples taken from drums found on the seized truck showed the presence of hazardous waste.

On the basis of the CHP's work, Federal officials joined the team. After obtaining permission from the Mexican Government to conduct a search of a warehouse owned by Torres in Tijuana, the FBI discovered additional incriminating evidence: drums of highly volatile hazardous waste that Franco had contracted to transport and dispose of for another California company.

LA County Sheriff's Department and LA Police Department

Over the years investigators from several other municipal and county law enforcement agencies have been active in the LA County Strike Force. At first the Los Angeles County Sheriff's Department was heavily involved in many aspects of Strike Force cases, though it has reduced its primary role to providing helicopters for aerial photography of specific sites.

The Los Angeles Police Department (LAPD) has established an environmental crimes unit as well as a hazardous materials response unit. Both units have been involved periodically in Strike Force cases, as have police departments from other cities in the county.

Cyanide in the Sewers. This case involved a company's systematic discharge of cyanide into Los Angeles sewers during early morning hours when inspectors were not on duty. LAPD brought in a surveillance van and the suspects were photographed leaving the company's building carrying hoses used to discharge wastes into the sewer. HMCP and the City

Sanitation District were also involved in this case. In November 1989 the defendants were found guilty, fined \$25,000, and placed on probation for 3 years.²¹

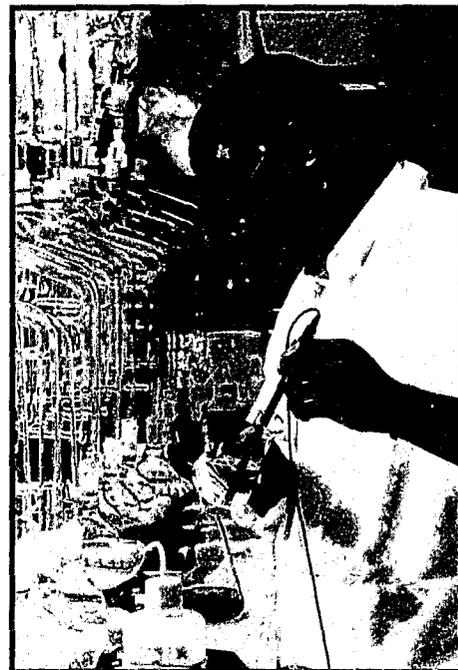
Laboratory Resources

Most Strike Force laboratory work is done by the laboratory of the Los Angeles County Sanitation Districts. Although primarily a water quality laboratory, it agreed to conduct other work for the Strike Force and committed one full-time technician to analyze materials for Strike Force cases.

Other available laboratory resources include the city of Los Angeles laboratory (in cases developed by the City Sanitation District), the California Department of Health Services laboratory, and the Air Quality Management District laboratory (for air quality cases). In addition, the Strike Force turns to private laboratories if the public laboratories are backlogged or unable to provide the services needed. According to Strike Force members, laboratory resources are sufficient, and service is timely. There have been very few, if any, problems with slow response time or the loss of samples.

Upping the Ante

Both the American public and the Nation's environment have suffered and will continue to suffer serious harm from the acts of polluters. Innovative initiatives such as the Los Angeles County Environmental Crimes Strike Force have significantly advanced the use of criminal sanctions



Courtesy of Axel Koster.

The Los Angeles County Sanitation Districts' laboratory has committed one full-time technician to work on Strike Force cases. Strike Force members are pleased with the quality of service provided.

against environmental offenders. By adding indictment and prison sentences to the range of enforcement actions, in effect "upping the ante," prosecutors send a message that environmental violations are no longer a cost of doing business that can be passed along to consumers.

The prosecutions described in this Program Focus demonstrate the largely untapped potential of coordinated multiagency action and criminal prosecution in response to environmental crime. In fact, the LA Strike Force has been remarkably successful:

- About one-third of all matters referred to the Environmental Crimes/OSHA Division were formally investigated, and approximately one-third of

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Exhibit 3. Los Angeles County District Attorney, Environmental Crimes/OSHA Division: Disposition of Cases, 1987-1992

| Year | Criminal Cases Filed | Defendants With Jail Sentence | Total Days Jail Time | Average Sentence | Total Fines |
|-------|----------------------|-------------------------------|----------------------|------------------|-------------|
| 1987 | 53 | 5 | 357 | 71 days | \$1,200,000 |
| 1988 | 45 | 6 | 630 | 105 days | 1,400,000 |
| 1989 | 50 | 7 | 1,170 | 169 days | 1,500,000 |
| 1990 | 72 | 5 | 690 | 139 days | 3,916,000 |
| 1991 | 38 | 13 | 3,043 | 234 days | 1,718,395 |
| 1992* | 23 | 5 | 1,940 | 388 days | 789,415 |

*January through June.

those investigations resulted in criminal charges.

■ In 1990 the Division filed criminal charges against 107 defendants in 72 criminal cases (many of these defendants were charged in multiple-defendant cases). Of those, 80 defendants (75 percent) were convicted; the majority were fined and not incarcerated (exhibit 3).

■ As of 1991, more than 250 criminal convictions had been won for violations of environmental laws.

■ As of April 1991, the Environmental Crimes/OSHA Division had approximately 600 open matters (referrals), 150 open formal investigations, and 1,300 closed cases.

The Strike Force experience shifted the focus of regulators from the sole pursuit of administrative and civil proceedings to a greater emphasis on criminal enforcement of environmental violations. A climate of cooperation and shared purpose stimu-

lated prosecutors, investigators, and regulatory agency representatives to contribute their knowledge and ideas freely. Their combined actions have helped to increase local corporate accountability.

No One Is Above the Law

Some members of the business community, however, have complained that LA's aggressive program of environmental enforcement has driven some companies—and employers—out of the county, but former head deputy Guthman disagrees. In fact, in Guthman's view the effectiveness of a particular enforcement strategy is closely related to the furor it creates in the target population.

Guthman emphasizes that the opinions of business are—and should be—irrelevant to a prosecutor's decision about whether to pursue a particular indictment. In a similar vein, the Environmental Crimes/OSHA Division former head deputy wonders if law enforcement would be swayed by a

drug kingpin's arguments against a campaign to drive drug dealers out of a community.

A Possible Model for Other Jurisdictions

As the number of local jurisdictions developing criminal environmental enforcement programs of their own increases, the experience gained by Los Angeles County could be useful. However, the LA Strike Force is unusual because of the number of agencies involved, the aggressive posture of many of its members, and the amount of financial and political backing it receives. Therefore, the Strike Force model of Los Angeles County may need to be modified to fit other jurisdictions.

For example, some jurisdictions may find the informality of the LA Strike Force to be effective in the initial phase of an environmental enforcement program, but less so over time. In such instances, formal memorandums of understanding in which the responsibilities of member agencies are clearly defined may help prevent territorial battles from developing among participants competing for the lead agency position. The environmental prosecution program in Alameda County, California, has adopted such an interagency agreement.²²

Other jurisdictions may decide that the primary purpose of an environmental crimes task force is to provide interagency training and foster interagency relationships, which could be accomplished through temporary arrangements. Then, after training has been provided and relationships have been

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established, relevant staff could work informally as needed on specific cases without formal meetings with the larger group. This approach was adopted in central Florida by the Environmental Protection Forum established by the State attorney.²³

Support and leadership from the top of the prosecutorial agency can be extremely helpful in the establishment and growth of an environmental enforcement team. With commitment from the top, member regulatory agencies, traditionally reluctant to refer matters for criminal prosecution, can become strong advocates of criminal enforcement. Los Angeles County benefited from the pioneering efforts of its district attorney, and with a spirit of working for the public good, representatives from city, county, and State agencies created a foundation of personal and institutional relationships. They continue to build on their successful multiagency approach to combating environmental crime.

About This Study

This Program Focus was written by Theodore M. Hammett, vice president, and Joel Epstein, analyst, at Abt Associates Inc. The report is based on a larger study of five district attorneys' offices that have made the prosecution of environmental crimes a priority. The authors conducted site visits during which they interviewed prosecutors, investigators, regulatory agency staff, and other key actors. Their findings will be published in *Local Prosecution of Environmental Crime*, an NIJ Issues and Practices report.

For further information about the Los Angeles County Environmental Crimes Strike Force, contact the following: Michael Delaney, Esq., Head Deputy, Environmental Crimes/OSHA Division, Los Angeles County District Attorney's Office, Hall of Records, 320 West Temple Street, Room 345, Los Angeles, CA 90012, (213) 974-5901; William Jones, Chief, Investigative Section Enforcement/Site Mitigation Units, Hazardous Materials Control Program, Los Angeles County Fire Department, 5825 Rickenbacker Road, City of Commerce, CA 90040, (213) 890-4063; or Sgt. Lance Erickson, California Highway Patrol, Southern Division, Investigation Unit, 437 North Vermont Avenue, Los Angeles, CA 90004, (213) 664-0695.

Notes

1. Celebrezze, A.J., et al. "Criminal Enforcement of State Environmental Laws: The Ohio Solution." *Harvard Environmental Law Review* 14 (1990):217, 218. See also Bureau of Justice Statistics "The Severity of Crime" *Bulletin*. Washington, D.C.: U.S. Department of Justice, 1984.
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. DeCicco, J., and E. Bonanno. "A Comparative Analysis of the Criminal Environmental Laws of the 50 States: The Need for Statutory Uniformity as a Catalyst for Effective Enforcement of Existing and Proposed Laws." *Florida State University Journal of Land Use and Environmental Law* 5:1 (Summer 1989).
4. Despite the name change, the majority of Strike Force cases still deal with illegal transportation and disposal of hazardous waste.

5. California Health & Safety Code § 25192.

6. Reiner, Ira. "Fighting Toxic Crime: A New Approach." *Prosecutor's Brief* (1986):1.

7. *United States v. Franco and Torres*. U.S. District Court, Central District, California, No. 90-3520-TJH.

8. Statement made by former Los Angeles County District Attorney Ira Reiner at a news conference at the U.S. District Court for the County of Los Angeles on May 10, 1990.

9. A few members believe that the increased size may have reduced the collective spirit and focus of the smaller group. In addition, several agency representatives feel that if they talk freely about open cases, they risk having their investigations "blown," and some believe that the Strike Force no longer prioritizes cases or moves them along as quickly as it once did. In its early years, the Strike Force focused on major "impact cases." Today, according to some members, the group is inundated with all kinds of cases, some of which may not be worth the attention of the Strike Force. These critics feel that many of the minor or simple cases should be referred to the DA's general crimes division.

10. Until the fall of 1991 when it moved to the County Fire Department, the Hazardous Materials Control Program was located in the Los Angeles County Department of Health Services. Strike Force representative Bill Jones reports that the move to the Fire Department had no effect on HMCP's day-to-day operations.

11. When a case is referred to the DA's Office, a District Attorney's Office investigator usually works as a team with the HMCP investigator, with the former paying particular attention to the case's criminal investigative aspects and the latter to the technical and scientific requirements. Although this system usually works quite well, some conflicts have arisen when

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HMCP's investigators wished to take the lead in a criminal investigation, but the DA's Office (or another law enforcement agency) believed that HMCP should be limited to a technical support role. HMCP investigators do not have peace officer status, although they would like to be so designated.

12. *People v. Grow Group, J. Lange, and Leslie Wilde*. Superior Court, #A979956.

13. *People v. California Industrial Salvage, Industrial Movers, and Stanley Steves*. Municipal Court, #A790399.

14. *People v. Valve Services*. Superior Court, #BA009280.

15. *People v. National Environmental Corporation*. Superior Court, #BA036604.

16. *People v. Boyce Campbell*. Superior Court, #BA025490.

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

18. Technical issues are complicated, and the sampling and monitoring of sewer discharges must follow the instructions contained in Environmental Protection Agency (EPA) Publication SW846.

19. *People v. Transducers, Inc.* Superior Court, #BA013480.

20. *People of the State of California v. Precision Specialty Metals, Inc., Plessy Precision Metals, Inc., C. Edwin Brady, et al.* Municipal Court, #31271386.

21. *People v. All-American Plating and Joe Pantilat*. Superior Court, #A990862.

22. Copies of Alameda County's inter-agency agreement, "Guidance Document on Hazardous Materials Incident Investigation," may be obtained from Gilbert A. Jensen, Esq., Consumer and Environmental Protection Division, Alameda County District Attorney's Office, Oakland, CA 94612.

23. O'Brien, Michael A. "The Environmental Protection Forum," *FBI Law Enforcement Bulletin* (April 1991): 9-12.

Cover photo courtesy of the Hazardous Materials Control Program of the County of Los Angeles. Pictured are Strike Force workers responding to a report of a leaking underground storage tank. With protective clothing and heavy excavation equipment, the team searches for buried waste.

Opinions or points of view expressed in this document are those of the authors and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

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