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Stephen D. Gladis, Ph.D.

Managing Editor

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Art Director

John E. Ott

Associate Editors

Andrew DiRosa

Julie R. Linkins

Kimberly J. Waggoner

Staff Assistant

Stephanie L. Lowe

Internet Address:

fbileb@justice.usdoj.gov

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Steve Delaney (EPA)

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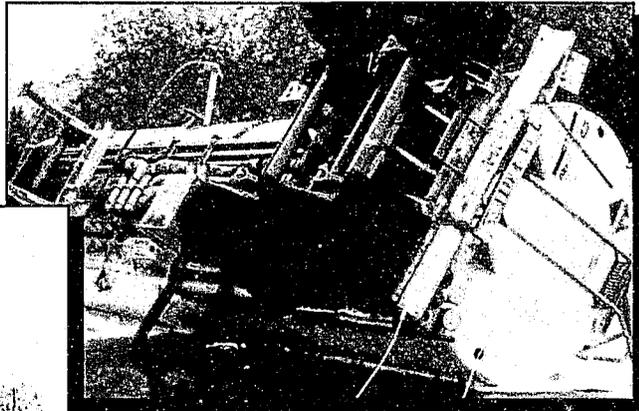
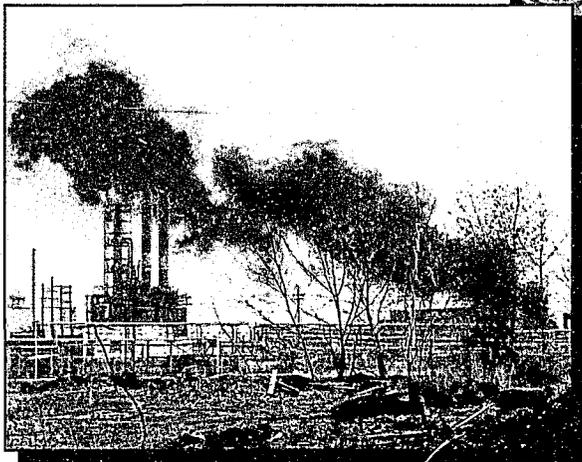
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Traditional Policing and Environmental Enforcement

By
WAYNE BREWER, M.S.



Few police officers would hesitate to volunteer for an assignment investigating a serial murderer who has killed 10 people. But how many would volunteer to investigate a company whose president directed employees to dump hazardous waste illegally into a community's water supply, resulting in 10 deaths over a 20-year period? The serial murderer probably would receive greater media attention, but in each case, 10 lives were lost.

Whether they like it or not, law enforcement officers have one more life-threatening responsibility to add to their duties—environmental

criminal enforcement. By the nature of the job, police officers often are the first public officials to arrive at hazardous materials incidents, environmental crime scenes, or traffic mishaps involving hazardous cargo. Environmental crimes take a great toll on communities by generating serious health risks, expensive cleanup operations, and a degraded environment. As communities become more aware of the severity of these crimes, they demand that all law enforcement agencies become involved in environmental crimes enforcement.

The good news is that local law enforcement agencies do not have

to do it alone. In fact, successful environmental crimes enforcement requires interagency cooperation and coordination.

Local agencies can and should join forces with the State environmental regulatory agency; the State attorney general, district attorney, or county prosecutor; State and local health departments; and State law enforcement agencies to form an "environmental enforcement team." In many States, the environmental regulatory agency contains a division or unit of police officers who specialize in environmental enforcement. Other States have environmental crime specialists assigned to the

State police or the State investigation unit. Working together, members of these agencies can develop a successful team approach to environmental crime enforcement.

WHY CRIMINAL ENFORCEMENT?

Criminal law is a relatively new tool for enforcing environmental laws. A decade ago, only a few States had adopted criminal environmental statutes. As society's awareness and concern about the serious public health and environmental consequences of pollution have increased through the years, criminal law has become the prevalent means of dealing with willful violations of environmental regulations.¹

Historically, civil and administrative enforcement controlled and prevented pollution. In recent years, however, it has become apparent that those enforcement efforts have not been adequate for several reasons.

First, environmental crimes often involve hazardous wastes and other toxic chemicals, which pose extreme risks to the public and the environment. Civil penalties generally consist only of fines; companies often consider those fines part of the cost of doing business and pass on that cost to consumers. In addition, businesses often pay others to dispose of their waste materials, but those who frequently dispose of it find it more profitable to dump the waste illegally. Finally, improper handling of wastes and pollutants² can have a detrimental effect on both the environment and the public, resulting in terminal illnesses and genetically transmitted diseases.

Courts are more likely to impose criminal penalties on actions that

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Knowledge of the community...gives local law enforcement officers the best vantage point for identifying pollution problems.
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Colonel Brewer is assistant director of the New York State Department of Environmental Conservation in Albany.

have detrimental effects on public welfare. Criminal enforcement enables courts to levy stiff fines and impose significant jail sentences that reflect the seriousness of the crimes and serve as more effective deterrents. Strong criminal enforcement efforts also increase the incentive for businesses to handle and dispose of waste properly.

Environmental criminal liability can occur at any stage in the generation, treatment, transportation, and disposal of wastes or pollutants. Criminal prosecution for these offenses may be brought under Federal, State, or local laws and regulations. Such regulations may stem from specific environmental statutes that carry criminal sanctions; criminal statutes from other laws dealing with public health and welfare; general penal law dealing with false statements, forgery, public corruption, criminal conspiracy, and solicitation; Federal laws dealing with mail fraud and tax evasion; and the Racketeer Influence and Corrupt Organization (RICO) statutes.

CRIMINAL ENVIRONMENTAL STATUTES

The overall strategy for enforcing laws and regulations designed to protect the environment has become criminal—instead of civil—enforcement. However, because of the complexity of many environmental laws, the development and passage of good environmental statutes remain difficult tasks.³ Until such time as clear, comprehensive environmental statutes become standard across the country, local officers will need to research carefully the regulations applicable to their jurisdictions.

Federal law allows each State to implement its own environmental regulatory program, but only if it is as stringent as the Federal program.⁴ Most States have criminal provisions within their environmental regulatory statutes. The language in these statutes is generally very similar from State to State, but not identical.⁵ Law enforcement officers, therefore, should obtain copies of

their State's criminal statutes and become familiar with them.

Copies of criminal environmental statutes may be obtained from State environmental regulatory agencies, local district attorneys or prosecutors, or State attorneys general. In addition, the appropriate Regional Environmental Enforcement Association can provide copies of the laws for States within its purview. These regional associations consist of environmental regulatory agencies, offices of attorneys general, law enforcement agencies, as well as local prosecutors from 47 States, the District of Columbia, the territories of Puerto Rico and the Virgin Islands, and 4 Canadian provinces. The associations provide members with enforcement skills training, valuable information-sharing mechanisms, and professional networking opportunities.

WHO POLLUTES AND WHY?

The Polluters

The list of potential polluters can be surprising. It ranges from large manufacturers and chemical plants to local body shops and the neighbor who dumps old paint, pesticides, and debris along an abandoned road. Generally, individual homeowners are not subject to regulations for common, everyday disposal of household items. However, many small and medium-sized businesses in the local community that produce hazardous and other types of waste are governed by environmental regulations and are liable for proper treatment, storage, and disposal of those waste products.

Large manufacturing companies that make cars, furniture, and textile and chemical industries that produce acids, cyanide, heavy metals, and solvents generate most waste products. Although chemical industries top the list of waste producers, accounting for 71 percent of all hazardous waste produced, they comprise only 17 percent of all waste generators. In fact, most criminal charges are brought against small businesses.⁶

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environmental crimes
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interagency
cooperation and
coordination.**
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Certain generators are exempt from particular regulations, either because they fall into the category of small waste generators (creating less than 220 pounds or 25 gallons per month) or because they store the waste on site for 90 days or less.⁷ State environmental regulatory agencies can provide law enforcement administrators with specifics on such exemptions.

The Motivation

Money usually motivates the polluter, whether it is a company saving thousands of dollars or a neighbor trying to avoid paying landfill fees. The cost of legal disposal of hazardous waste ranges from \$15 to

\$1,000 per 55-gallon drum, depending on the chemical involved.⁸ Legal methods for disposal or treatment of waste include incineration at extremely high temperatures, biological treatment, surface impoundment, and storage in underground wells.

Even when businesses that generate waste pay the cost of legitimate disposal at treatment, storage, and disposal facilities, transporters do not always dispose of the waste properly, opting instead to dump it illegally and make an enormous profit. Illegal dumping of waste material usually takes place in secluded areas under cover of darkness, hence the term “midnight dumping.” Such midnight dumping makes illegal disposal difficult to detect.

RECOGNIZING VIOLATIONS

The pollution that threatens the environment and the health of the community can occur in several ways. In addition to illegal disposal of hazardous wastes, other forms of pollution include the illegal dumping of used oil, asbestos, medical waste, industrial waste, and other forms of solid waste; the unauthorized discharge of pollutants into both surface and ground waters; and the release of chemicals into the air.

Clues that Signal Problems

Pollution cannot always be identified easily without sophisticated detection equipment. However, law enforcement officers can use certain clues to help recognize pollution or potential violations. Such clues include smoke or colored plumes in the air; chemical odors; unusual truck activity at disposal sites or on abandoned roads; stained

or discolored water; large fish kills; and leaking tank trucks.

Officers also should look for stressed or dead vegetation along creeks, channels, and other drainage areas flowing from manufacturing, chemical, or other businesses; factory pipes running into overflows or other water courses; and filling and dredging of wetlands. In addition, officers may detect altered, incomplete, or discrepant information on manifests,⁹ shipping papers,¹⁰ and labels in the course of routine stops or other investigations.

Guidelines for Detection

Knowledge of the community, its businesses, and their normal patterns of operation gives local law enforcement officers the best vantage point for identifying pollution problems. Several indicators can serve as general guides for officers to use in detecting such violations. While these guidelines will not expose every violation, they will indicate many potential problems. They should help officers become more aware of local environmental enforcement problems.

If officers are uncertain of whether a violation is occurring, they should contact the State or local environmental regulatory agency to report their observations and to seek assistance. The initial observations and referral made by local law enforcement officers may be the keys to the subsequent successful investigation and prosecution of the offenders.

Abnormal Activity

One of the biggest indicators of a problem is a change in normal patterns of activity. Is something

Regional Environmental Enforcement Associations

These associations include environmental regulatory agencies, attorneys general offices, law enforcement agencies, and local prosecutor associations from 47 States, the District of Columbia, the territories of Puerto Rico and the Virgin Islands, and 4 Canadian provinces. They provide members of the environmental enforcement team with enforcement skills training, professional networking opportunities, and valuable information-sharing mechanisms.

Midwest Environmental Enforcement Association

(IL, IN, IO, KY, MI, MN, MO, NE, ND, OH,
OK, SD, WI, Ontario)
595 South State Street, Suite 210
Elgin, Illinois 60123
Phone: 708/742-1249
Fax: 708/742-1478

Northeast Environmental Enforcement Project

(CT, DE, DC, ME, MD, MA, NH, NJ, NY, OH,
PA, RI, VA, VT, WV, Quebec)
CN101
Trenton, New Jersey 08625
Phone: 609/292-0987
Fax: 609/984-7688

Southern Environmental Enforcement Network

(AL, AR, FL, GA, KY, LA, MS, NC, SC, TN, TX,
Puerto Rico, Virgin Islands)
560 South McDonough Street
Montgomery, Alabama 36130-0158
Phone: 205/242-7369
Fax: 205/240-3455

Western States Hazardous Waste Project

(AK, AZ, CA, CO, HI, ID, NV, NM, OR, UT, WA,
Alberta, British Columbia)
1275 West Washington Street
Phoenix, Arizona 85007
Phone: 602/542-3881
Fax: 602/542-3522

different from how it used to look or work? Has the department received complaints about an unusual amount of nighttime truck activity in an area where several abandoned warehouses or other storage buildings are located? Or, have tank trucks been seen parking at the end of a lot, pumping material from one truck to another?

Offensive Odor

Strong, unpleasant smells often indicate the presence of hazardous materials. Has the police department received reports about an odor that has not been reported before or has gotten stronger? If officers encounter a smell that burns their eyes, mouth, nose, and skin, they should leave the area immediately, contact local public health officials or State environmental regulatory personnel, and seek medical attention, particularly if the burning sensation continues. The scene should be evacuated and a perimeter established.

Unusual Appearance

Pollution usually affects the environment in obvious ways. Does the suspected pollution look unusual? Is it foul and offensive? Is there a discharge of discolored water coming from a pipe draining into a clear stream? Is smoke too dark to see through being emitted from a stack? Is a pipe leading from a plant to a body of water discharging visible solids or leaving a sheen on the water?

Mysterious Movement

As with most criminals, polluters try to disguise their actions. Is there something secretive or

suspicious about the pollution-causing activity? Is a bulldozer operating at night in a marsh or wetland? Is a truck pouring waste water into a sewer on the side of a road? Is someone dumping garbage into a ravine? If the answer to one or more of these questions is yes, officers likely have discovered pollution and possible violations of environmental statutes or regulations.

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...in any incident requiring the rescue of an injured person, the officers must not become victims themselves.

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RESPONDING TO ENVIRONMENTAL CRIME SCENES

The same basic investigative techniques that apply to all other crimes also pertain to the relatively new and unfamiliar realm of environmental law enforcement, just with an added environmental twist. Even agencies without standard operating procedures for responding to environmental crime scenes can follow certain procedures to guide their investigations.

Make Safety a Top Priority

Officers must approach all potential hazardous waste sites and hazardous materials spills with caution. Individuals without proper training in dealing with hazardous

waste should never enter a site. Officers responding to a hazardous materials spill should take special precautionary measures, which include 1) staying upwind and uphill from the spill; 2) using binoculars to observe the scene; 3) isolating the area; and 4) relaying information to Federal, State, or local regulatory agencies.¹¹

In addition, officers must recognize that in any incident requiring the rescue of an injured person, the officers must not become victims themselves. Personnel on the scene who lack either the training or the equipment necessary to effect a safe rescue should not take action until properly trained and equipped rescuers arrive.

Secure the Crime Scene

Police commanders must enforce strict control over access to the hazardous materials site by the public, reporters, and other curious law enforcement personnel. Persons exposed to the hazardous substances should not be allowed to leave the scene or to make contact with other individuals. Officers should segregate exposed persons in an area upwind and a safe distance from the hazardous materials until they have received treatment or have been transported to a medical facility. This will help limit the spread of any contamination.

Look for Physical Evidence

Investigators should search the scene for evidence, such as tire impressions, footprints, mail with names, addresses on boxes in the debris pile, lot numbers on drums, and all types of traditional evidence

normally collected at any crime scene. When responding to environmental incidents suspected to be criminal acts, officers should keep in mind that printed warnings, labels, markings on drums, and information on shipping papers should not be relied on for accuracy. Individuals involved in the illegal disposal or transportation of waste will omit the proper information or falsify it to conceal the illegal act. Perpetrators might place the hazardous waste in old drums with the original (and now incorrect) labels, markings, and placards still attached.

In the search for physical evidence, officers should not take deep breaths to determine what the chemicals smell like and should avoid physical contact with the hazardous substances. Care should be taken not to move drums or containers, which might have deteriorated and could crumble if disturbed.

Take Photographs

Photographs of all aspects of the crime scene—including damage to the surrounding area, any evidence found, vehicles present, tire tracks, the equipment used by the offenders, and if possible, the suspect(s)—play a key role in the investigation and prosecution of environmental crimes. A good rule of thumb is, "When in doubt, photograph."

Interview Witnesses

Area residents often can provide valuable information about suspicious behavior or unusual activity around a crime scene. Often, these individuals witness the illegal acts. In illegal dumping cases, investigators also should locate the property

owner, who could be a prime suspect or, at the very least, a victim.

Identify and Interview All Suspects

If possible, investigators should take taped statements. If other law enforcement agencies are assisting,

police administrators may want to detain all suspects until the other officers arrive to conduct further questioning. When interviewing company officials and employees, it is important for officers to remember that company personnel may become suspects later.

Possible Polluters

Relatively small businesses (fewer than 50 employees) receive the most criminal charges. Some of the small and medium-sized businesses that generate hazardous waste or that can be sources of pollution include:

- Automotive shops that do repairs and body work
- Canning and food processing plants
- Car washes
- Chemical and petroleum storage facilities and transporters
- Contract building cleaners
- Dairy plants
- Dry cleaners
- Funeral homes
- Furniture builders and refinishers
- Gas stations
- Hospitals
- Metal shops that do plating or stamping work
- Pesticide dealers
- Photo shops
- Power plants
- Research laboratories
- Tanneries

Seize Paperwork

All paperwork or items—such as invoices, proposals, checks, and business cards—that are found in any involved vehicle should be seized. Police departments commonly execute search warrants during environmental crime investigations to retrieve records, invoices, and other documents from the company's files and computer systems.

Satisfy All Elements of the Violation

Investigators should try to satisfy as many elements of the violation as possible using familiar police investigative techniques. However, unless they are trained and equipped to sample the waste or pollution, officers should leave that up to the experts. Police administrators should not hesitate to request assistance from other members of the environmental enforcement team to complete investigations.

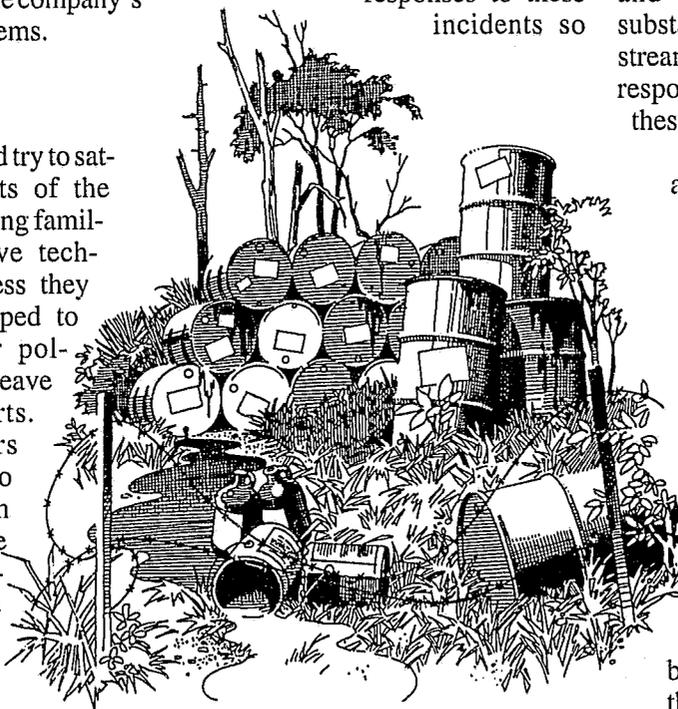
Check for Self-Contamination

Officers must not leave a hazardous substance incident or crime scene without being checked for possible contamination. If contaminated, officers should notify personnel from the fire department, rescue squad, hazardous materials team, or paramedics or other trained response personnel for proper treatment.

SAFETY AND TRAINING

Police officers are trained to respond to calls for assistance by

taking immediate, decisive action. Indeed, action becomes the reflexive response. Contrary to that reflex, at incidents involving spills, leaks, releases, or illegal discharges involving hazardous substances, the correct action often is no action at all. Officers must receive training to learn the proper responses to these incidents so



they may avoid possible exposure to hazardous substances. In fact, the Federal Occupational Safety and Health Administration (OSHA) and similar State agencies require specific levels of training, based on the officers' roles and activities at hazardous substance incidents.

Hazardous substances present particular dangers because they can enter the body in four ways: Inhalation, ingestion, absorption, and injection. Inhalation provides the most rapid route for substances to

enter the body. Ingestion results from hand-to-mouth contact, including eating and drinking contaminated food and water. Absorption occurs with certain substances that can pass directly through the skin into the bloodstream. Injection happens when cuts and puncture wounds from contaminated jagged metal and broken glass introduce the substance directly into the bloodstream. Officers must be trained to respond safely and effectively to these risks.

Effective training programs address skill levels consistent with an officer's particular job function and expected degree of involvement with hazardous substances. The Los Angeles Police Department (LAPD) designed its course material to accomplish the following general objectives for all officers who may be first responders at hazardous materials incidents:

- 1) Create an awareness of the potential threat presented by hazardous substances and the circumstances under which they might be encountered
- 2) Provide an understanding of the tactics and sources of information available to minimize the risk of injury to department personnel, the public, and the environment
- 3) Ensure that appropriate hazardous materials exposure records are maintained, and where necessary, medical monitoring is arranged.¹²

The more specialized a police officer becomes in environmental crimes enforcement, the more specialized the training needed. In addition to the awareness training described above, an environmental criminal investigator would be required to pass the 40-hour LAPD Personal Protection and Safety Course. The course provides indepth coverage of such topics as hazard identification and assessment, personal protection equipment, safety precautions, evacuation and isolation considerations, command post operations and staffing, decontamination procedures, legal considerations, and the investigative process applied to environmental crimes and incidents.

Various agencies can provide this important training for police officers. In addition to State environmental regulatory agencies, Federal and State departments of transportation, State emergency management offices, fire departments, and the U.S. Environmental Protection Agency, some private consulting firms and colleges will develop special training programs to meet the needs of a particular police department.

CONCLUSION

Increased awareness of the detrimental effects of pollution on the community and the environment has engendered a new area of responsibility for law enforcement officers nationwide. As the first responders to hazardous material incidents and as investigators of environmental crimes, police personnel must be trained and ready to deal with the unique dangers

involved. The public demands protection from both accidental and intentional exposure to hazardous waste materials.

Working with regulatory agencies, prosecutors, transportation departments, and other law enforcement agencies, local police departments can play a vital role on the environmental enforcement team. Together, team members can use their collective experience, training, and assistance to ferret out the offenders and to keep their communities safe from harm. ♦

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The public demands protection from both accidental and intentional exposure to hazardous waste materials.

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Endnotes

¹ *Sample Criminal Environmental Enforcement Statutes* (Washington, DC: National Association of Attorneys General, 1991), Preface.

² Possible pollutants include dredged soil; solid waste; incinerator residue; sewage (except from ships); garbage; sewage sludge; munitions; chemical wastes; biological or radioactive materials; heat; wrecked or discarded equipment; rock, sand, and cellar dirt; and industrial, municipal, and agricultural waste discharged into water.

³ *Supra* note 1.

⁴ Specific Federal regulations governing environmental crimes and defining hazardous materials include: Resource Conservation and Recovery Act of 1976 (RCRA); Comprehensive Environmental Response, Compensation and

Liability Act of 1980 (CERCLA—also known as “Superfund”); Superfund Amendments and Reauthorization Act of 1986 (SARA); Transportation of Hazardous Materials Regulations (49 CFR 172-177); National Pollution Discharge Elimination System (NPDES) of the Federal Water Pollution Control Act, and the Clean Water Act of 1977.

⁵ *Supra* note 1. See also, *Introduction to Environmental Crime Enforcement: A Guide for Local Law Enforcement* (Washington, DC: Northeast Environmental Enforcement Project, U.S. Environmental Protection Agency, 1994), 2.

⁶ *Supra* note 1, 1.

⁷ *Guide to New York State Environmental Conservation Laws Related to Hazardous, Medical and Solid Waste* (Albany: New York State Division of Criminal Justice Services, 1991), 130.

⁸ *Supra* note 5, *Introduction to Environmental Crime Enforcement*, 2.

⁹ Manifests must designate the facility to which the waste is being shipped, an alternate site, the name of the transporter, all identification numbers, and signatures of all parties responsible for the waste during the course of shipment.

¹⁰ For each hazardous material, shipping papers must include proper shipping names, proper hazard class (e.g., flammable, corrosive, etc.), correct identification number, and total quantity.

¹¹ *The Emergency Response Guidebook*, published by the U.S. Department of Transportation, contains specific information on dealing with hazardous materials, chemicals, and waste. The Chemical Transportation Emergency Center (CHEMTREC), at 1-800-434-9300, also provides assistance and information on chemicals and hazardous materials and usually can provide immediate hazard information, warnings, and guidance when given the *identification number or name of the product and the nature of the problem*.

¹² D.F. Gates and B.J. Pearson, “Hazardous Materials: Accident Response Training for Law Enforcement,” *The Police Chief*, September 1991, 15.

For further information on environmental crime, readers may contact the author at the New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, phone: 518-457-1002.
