



Third International Conference on Environmental Enforcement

Proceedings Volume 1

**April 25-28, 1994
Oaxaca, México**

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These proceedings, Volume 1, include papers prepared by speakers, topic experts, and several participants and other interested parties for the Third International Conference on Environmental Enforcement on April 25-28, 1994, in Oaxaca, México. Volume II is scheduled for publication following the Conference and will include remarks of the opening speakers, additional papers, summaries of workshop discussions, selected exhibit materials, and the Conference evaluations.

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Preface

These Conference Proceedings contain papers solicited of the speakers and topic experts at the Third International Conference on Environmental Enforcement. Several additional papers are also included from participants and other interested parties invited to contribute papers on related topics. Papers that were not available at the time of printing will be included in a second Volume of these Proceedings which will be published in early summer 1994 and will be sent to the participants' mailing addresses. The Proceedings also will be widely disseminated to country environmental officials and NGOs throughout the world.

The Third International Conference is part of an ongoing international collaboration to develop domestic environmental enforcement programs in different settings that can effectively achieve widespread compliance with each nation's environmental requirements. The Conference builds on the first International Enforcement Workshop held in Utrecht, The Netherlands, in May 1990, and the second International Conference on Environmental Enforcement held in Budapest, Hungary, in September 1992.

This third Conference focuses on building institutional capacity for environmental enforcement either to enhance existing domestic environmental enforcement programs or to develop new ones—a challenge for all nations. The Conference builds on the frameworks and resource materials developed at the previous Conferences. It differs in format from previous Conferences in its emphasis on hands-on workshops and special staffed exhibits. These new features offer practical applications in fundamental principles of environmental enforcement and in designing enforcement and compliance programs. The Conference further contributes to the growing body of literature on environmental enforcement by focusing on several new themes and special topics, around which papers have been solicited from experts in the field. Results of workshop sessions, which will reflect current thinking on these topics, will be summarized in Volume II.

The Executive Planning Committee for the Conference devoted much time and effort to design a Conference that offers the greatest opportunity for useful exchange and practical information for individuals both within and outside government who can influence the successful design and implementation of enforcement programs. We look forward to a successful Conference. Additional information about the Conference and resource materials may be obtained by contacting the Staff or members of the Executive Planning Committee.

On behalf of the Executive Planning Committee, we look forward to your participation and to a productive and enjoyable Conference.

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Conference Workshops

Principles of Environmental Enforcement Workshops

These workshops provide hands-on experience for participants in applying the principles of environmental enforcement to develop a management approach, establish enforceable requirements where appropriate, and create effective compliance and enforcement strategies for environmental problems, including mining, deforestation, petrochemicals/petroleum refining, tourism, and residential and industrial waste disposal. The workshop participants also will attempt to resolve enforcement problems involving tough economic and social issues using role playing and negotiation. An executive summary of the text "Principles of Environmental Enforcement" is included in Proceedings Volume I. Participants received case study materials on the selected subject matter in advance to prepare for the workshops. Technical support packages on the nature of the environmental problem and pollution control or prevention options will be available at the Conference and published in Volume II of the Proceedings.

UNEP Workshops: Institution-Building for Enforcing Regulations Related to Industrial Activities

(For these workshops an Advisory Group has been formed to assist in developing the workshop materials. Advisory Group members who assisted in the development of UNEP, IE/PAC training materials, "Building Institutional Capacity to Ensure Industry Compliance," include Dr. René Altamirano, SEDESOL, México; Dr. Ossama El-Kholy, Egypt; Mme. Odile Gauthier Natta, Ministère de L'Environnement, France; Mr. Jo Gerardu, VROM, The Netherlands; Mr. Rob Glaser, VROM, The Netherlands; Mr. Zbigniew Kamienski, State Inspectorate for Environmental Protection, Poland; Mrs. Jacqueline Aloisi de Larderel, UNEP, IE/PAC; Mr. Sun Li, Environmental Law Institute/PAC; and Ms. Cheryl Wasserman, U.S. EPA.)

A draft workshop text, case studies, and discussion guide will be available for participants to use at the Conference UNEP workshops and to review for further improvement before they are finalized. The workshop discussions will explore the applicability of the specific case studies, design issues, and options for organizing an enforcement program for regulations related to industrial activities; implementing a compliance monitoring and inspection program; developing human, information, and financial resources; and processing permits.

Special Topic Workshops

Expert papers have been solicited on the following topics and issues, and will be addressed during facilitated discussion at the workshops.

Export/Import of Illegal Shipments of Hazardous Waste, Toxic Chemicals, or Contaminated Products

This topic addresses the following issues:

- How are nations ensuring they know of shipments with potential environmental hazards?
- How well understood are procedures and other requirements?
- How are illegal activities identified?
- What responses have been taken and why, and how effective have they been?
- What types of international cooperation have been useful?
- What are particular problem areas in enforcing these types of requirements, and how can they be overcome?

Field Citations as an Approach to Enforcement

This topic addresses the following issues:

- What are field citation programs? They are generally understood to include enforcement actions that may be undertaken by an administrative agency--rather than the court or judicial system--that can legally impose a sanction or fine in the field, much as police issue traffic tickets for automobile-related violations. A proposed definition was discussed, reviewed, and amended during the discussion. For example, what are the definitions of traffic tickets? Would the definition include in-field notices of violations? Issued by an inspector, by other?
- For what kinds of violations are field citations useful? For what kinds of violations might they be inappropriate or ineffective?
- What are the program design elements and different approaches to organizing a field citation program (e.g., who issues field citations)? What authorities are needed?
- What factors are important to successful implementation? For example, what is the importance of training? What kind of follow-up is needed in the issuance of a field citation?
- What kind of training materials are available for field citation programs? Are different communication skills needed for inspectors who issue field citations to avoid or handle potential conflict?

CFC Control Program Enforcement: Implementing the Montreal Protocol Workshop

This topic addresses the following issues:

- What are the goals of chlorofluorohydrocarbons (CFC) reduction, and what particular challenges do control and reduction of CFCs in the marketplace pose to domestic programs, given the nature of the market and regulated community?
- What types of programs have countries adopted to control CFCs in the marketplace?
- How effective have these programs been in achieving compliance? What successes and problems have resulted?
- What lessons can be learned for the design of requirements to ensure enforceability, promotion of compliance, compliance monitoring and inspection activities, enforcement response, and levels of government involvement?

Criminal Enforcement Role in Environment

This topic addresses the following issues:

- What kinds of sanctions and other consequences are made available through criminal enforcement, and how effective are they in achieving compliance?
- What is the proper role of criminal authorities and sanctions in environmental enforcement? What should the relationship be between criminal and civil enforcement? For what types of violations is criminal enforcement (rather than civil enforcement) particularly well suited?
- What government entities might be involved in making criminal enforcement successful? How can these different groups be encouraged to work together?
- What training is required to support criminal enforcement, and what training materials are available?

Enforcement at Government-Owned or -Operated Facilities

This topic addresses the following issues:

- How are governments made accountable for environmental requirements?
- What enforcement responses are effective in achieving compliance?
- What enforcement instruments/authorities are particularly effective?
- Intergovernmental relationships: How important is the independence of the enforcement official? What relationships and organizational linkages are useful for success?

Enforcement of Economic Instruments

This topic addresses the following issues:

- What are economic instruments and how are they defined (e.g., emission taxes, marketable permits)?
- What are the particular challenges or problems posed by designing effective compliance strategies and enforcement responses?

- What institutional requirements and design requirements for the program would help in enforcement?
- What particular training or inspection approaches are most useful in trying to detect violations and compliance problems?
- How might those challenges be overcome?

Promoting Voluntary Compliance: Environmental Auditing, Outreach, and Incentive Programs

This topic addresses the following issues:

- What is the role of compliance promotion in an enforcement program? What is success for a program to promote compliance? What should its goals be?
- What successes have programs designed to promote compliance had in achieving compliance independently and in relation to inspection and enforcement response?
- What is the proper relationship between technical assistance, inspections, and enforcement response?
- How might enforcement response policies be designed to promote compliance as well as deter violations?

Role of Police

This topic addresses the following issues:

- What roles can police play in environmental enforcement?
- Why might police be called upon to play those roles?
- What contributes to the success of having police carry out that role?
- What are particular challenges and problems in calling upon police to assist in environmental enforcement?
- How can these challenges be overcome?

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THE ROLE OF LOCAL, COUNTY, AND STATE POLICE OFFICERS IN NEW JERSEY IN ENVIRONMENTAL ENFORCEMENT

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SUMMARY

This article explores the work of local, county, and state law enforcement officers in New Jersey to complement and enhance the state's civil enforcement effort. Special attention is given to the investigative activities of the Environmental Crimes Bureau (ECB), part of the Division of Criminal Justice (DCJ) in the New Jersey Attorney General's Office, and how the ECB relates to its regulatory counterpart, the Department of Environmental Protection and Energy (DEPE).

1 INTRODUCTION

The preeminent goal of environmental laws, both civil and criminal enforcement statutes, is protection of the health and safety of the public, as well as the quality of the environment. Thus, full compliance with all environmental requirements established by permit, regulation, or law, which is achieved through rigorous enforcement, is critical. To this extent, the philosophical underpinnings of civil and criminal environmental enforcement are identical.

To accomplish the penultimate objective of full compliance, potential violators must comprehend that the cost of non-compliance will always be significantly higher than the cost of compliance. Civil and administrative financial penalties drive this fundamental point home and provide incentives to comply. However, the stigma of conviction and criminal penalties, especially incarceration, which represents society's sternest sanctions for deterring environmental non-compliance, must be used in order to deter those who view civil penalties as a cost of doing business.

Generally, the distinction between civil and criminal enforcement schemes is based upon the level of punishment and proof requirements. While a violator may face civil and administrative penalties regardless of fault, generally only a violator who possesses mens rea will be criminally liable. Therefore, criminal enforcement is an appropriate and effective response in cases of intentional or persistent non-compliance.

In New Jersey, the DEPE has responsibility for civil and administrative enforcement. It deploys approximately 400 enforcement inspectors throughout the state to monitor solid waste and hazardous waste permit holders, as well as air pollution and water pollution sources, and to ensure that the state's natural resources are protected. The DEPE has aggressively implemented its civil/administrative enforcement program collecting more than \$40 million in penalties during calendar years 1991 and 1992 (the last two calendar years for which numbers are available).

2 STRUCTURE FOR LAW ENFORCEMENT IN NEW JERSEY

The New Jersey Attorney General is the chief law enforcement officer of the state and is charged with the responsibility to direct the detection, enforcement, and prosecution of the criminal business of the state so as to secure the benefits of a uniform and efficient enforcement and administration of the criminal laws throughout the state. The functions and powers of the Attorney General relating to these responsibilities are exercised through the DCJ pursuant to the Criminal Justice Act of 1970. The DCJ has the original jurisdiction of the Attorney General to investigate and

prosecute criminal offenses of statewide significance, Prosecutor's Office supersession matters, and all criminal appellate matters of statewide significance. The DCJ also maintains primary statewide responsibility for the investigation and prosecution of organized crime, corruption, and criminal environmental cases, as well as insurance fraud, Medicaid fraud, securities fraud, and tax fraud.

The Attorney General handles environmental cases, both civil and criminal, through the Office of the Environmental Prosecutor (OEP), the Division of Law, and the DCJ. Pursuant to an Executive Order issued by the Governor, the OEP was created in 1990, as part of the Attorney General's Office, to coordinate environmental enforcement policy—civil, criminal, and administrative—in New Jersey and to oversee the prosecution of enforcement actions in priority cases. State-level criminal prosecutions under environmental statutes and the New Jersey Code of Criminal Justice are implemented by the DCJ through the ECB. During calendar years 1991 through 1993, the ECB prosecuted cases that resulted in sentences totaling 60 years imprisonment for 15 defendants and the imposition of more than \$23 million in criminal fines and restitution.

The ECB has been in operation since 1980. Presently, the bureau comprises 33 State law enforcement officers—25 State Investigators and 8 Deputy Attorneys General. The Deputy Attorneys General assigned to the Environmental Crimes Bureau provide assistance during the course of an investigation with regard to search warrant and wiretap applications. They also present evidence uncovered during an investigation to State Grand Juries and prosecute cases at trial. State Investigators are authorized by law to assist the Attorney General in the detection, apprehension, arrest, and conviction of offenders. In short, they are police officers empowered to investigate any criminal matter. State investigators assigned to the ECB receive specialized training and develop unique expertise that is dedicated to combating environmental crime. These environmental policemen supplement the civil enforcement role of regulatory inspectors by responding to environmental crime scenes throughout New Jersey and by investigating allegations of environmental and other types of crime. In performing this function, they are the backbone of New Jersey's environmental crime-fighting network.

In New Jersey the following environmental statutes authorize civil, administrative, and criminal action: the Clean Water Enforcement Act, the Solid Waste Management Act, the Air Pollution Control Act, the Freshwater Wetlands Protection Act, the Comprehensive Regulated Medical Waste Act, and the Spill Compensation and Control Act. Thus, a violation of any one of these laws can result in civil and criminal penalties. In addition, there are many other environmental statutes in New Jersey that provide for civil and administrative enforcement remedies, and the Code of Criminal Justice includes environmental and traditional crimes, such as racketeering, bribery, theft, forgery and fraudulent practices, tax evasion, corporate misconduct, official misconduct, and murder.

Since law enforcement resources devoted to environmental enforcement are limited, police personnel must be used in a way that complements the work of regulators. Indeed, after years of experience, the ECB has developed so that the key focus of its decision-making with respect to the assignment of law enforcement resources is the enhancement of the full compliance goal. In this regard, the ECB's mission has grown beyond the reactive mode of merely responding to reports of environmental incidents. Now the ECB concentrates on proactive investigations aimed at ferreting out and exposing sophisticated and complex criminal environmental violations. Of course, in order to do justice to this objective, ECB cops must proceed with an eye toward establishing environmental and traditional crimes. Additionally, they must rely on the cooperative efforts of county and local police.

New Jersey comprises 21 county government entities and 567 municipalities, each with its own duly constituted law enforcement group. Because of its small size and large population, New Jersey is the most densely populated state in the nation. Its two major industries are chemical/pharmaceutical and tourism; therefore, its economy is based upon industry and natural resources to a significant extent. These factors demand a serious approach to environmental enforcement in New Jersey.

3 ROLE OF LOCAL AND COUNTY POLICE

3.1 Local police

The local law enforcement function includes traffic duty, patrol work, providing general public assistance, and responding to specific calls for service. Each of these obligations makes local patrol officers uniquely qualified to detect environmental crimes, provided that they have received sufficient training to recognize these events. For that reason, an environmental offenses training course for New Jersey police officers was established by the OEP working with the ECB. The course of instruction has been mandated by the State Police Training Commission as required material for basic recruit training. Similar training is being considered for use as an in-service instruction module for all New Jersey police officers.

The purpose of this course is to acquaint local police with hazardous, medical, and solid waste offenses—including manifest and other paperwork violations—and water and air pollution offenses. Additionally, the course provides guidance regarding how to handle an ongoing environmental incident.

First, if possible with due regard to his or her own safety, a police officer should effectuate the cessation of an ongoing discharge. Second, that officer will immediately notify the fire department or Hazardous Materials Unit, the DEPE emergency response hotline, and, when necessary, criminal investigators (local, county, or state), thus bringing indispensable expertise to bear on an environmental incident. Third, the officer will be aware of the need for crime-scene preservation, identification of witnesses, and arrest when there is probable cause to believe that a crime is being committed in the officer's presence.

Proper handling of an environmental crime incident is a complex task. Integral to environmental crime-scene processing is taking samples; however, the various investigative steps typically undertaken at all crime scenes to recover physical evidence and to speak with witnesses are equally important. This investigative work cannot, however, take primacy over the regulator's effort to abate the threat to public health or natural resources posed by an environmental event.

A local officer who has undergone this training will more ably recognize an environmental incident and respond with heightened caution and sensitivity. By preventing or mitigating the environmental impact of a release, the safety of the public will be ensured. The first officer to receive this training in virtually every municipality was the police department's environmental liaison officer.

The New Jersey Chiefs of Police Association and the Association's Advisory Board voted to support the request of the OEP for the designation of an experienced police officer to be the environmental liaison officer in each municipality to act with the health officer as the focal point on the local level for environmental enforcement activities. It is not the intention to train these officers for hands-on involvement with environmental crime scenes, but rather to equip them to coordinate local criminal issues with county prosecutor representatives and state officials with the DEPE or ECB, if and when the need arises.

It is the patrol function aspect of municipal law enforcement in particular that places local police officers on the front line of environmental crime fighting. From that vantage point, a more highly trained police officer can serve as the eyes and ears of both regulatory enforcement personnel and criminal prosecutors.

3.2 County police

Each of New Jersey's 21 County Prosecutors serve as the chief law enforcement officer in his or her respective county. A County Prosecutor is vested with the same powers within county geographic borders as the Attorney General possesses statewide with respect to the detection, arrest, indictment, and conviction of lawbreakers. Each County Prosecutor's Office is composed of attorneys, assistant prosecutors, police, and county detectives and investigators.

Since 1982, the DCJ has conducted training programs to develop the expertise of county detectives and prosecutors in environmental criminal law, regulations, crime scene processing, sampling procedures, and surveillance. Additionally, county detectives have been temporarily assigned to the ECB in order to acquire firsthand experience in environmental crime investigations.

Since environmental cases are resource intensive, a county's commitment to pursue environmental crimes depends upon the availability of funds. Therefore, the interaction between county and state law enforcement personnel in prosecuting environmental cases takes on added significance. In New Jersey, counties seek bang for their buck; the state seeks to devote its resources to environmental violations having a statewide impact.

Straightforward cases, such as "drum dumps" involving individuals and small business, can be adroitly handled at the county level. Where needed, the ECB provides technical assistance to county prosecuting agencies in this type of case by making specialized surveillance equipment and personnel available to assist in the investigation, execution of search warrants, and collection of samples. Nonetheless, the county remains the lead agency responsible for the investigation.

More difficult cases require a cooperative investigation. This entails joint dedication of resources by state and county law enforcement agencies. In these cases, the agencies work together equally as one unit. This pooling of resources is exceptionally beneficial in investigations that require both a detailed knowledge of street sources of information and an understanding of environmental business and financial practices.

One example of a joint state-county investigation involved a large-scale drum dump in the southern New Jersey Pinelands. Investigators from both the ECB and the Atlantic County Prosecutor's Office responded to the site where someone had dumped approximately 60 drums and containers of hazardous waste. Working the case jointly, state and county investigators were able to identify and locate the individual who had transported the hazardous waste from a northern New Jersey county to the Pinelands where he illegally dumped it. The ECB successfully prosecuted this "midnight dumper" and he was sentenced to jail.

Finally, cases of statewide impact involving complex, sophisticated schemes of criminality are handled by the ECB. Exhaustive investigative action is required to uncover and break into these schemes. County Prosecutor Offices relieve state prosecutors of a large burden when they investigate environmental crimes that have a localized effect. This in turn frees state prosecutors to pursue their cases in a well-focused and thorough manner and ensures that no cases fall through the cracks. Moreover, the strategic use of law enforcement resources at the county and state level results in a more efficient criminal enforcement program.

Recently, the DCJ reinstated its environmental liaison program whereby the ECB assigns one attorney and one State Investigator to serve as liaisons with each County Prosecutor's Office. The liaisons act as conduits for exchange of intelligence, case information, and technical updates. Additionally, the liaisons foster a cohesive state-county working relationship. OEP staff are also available to provide legal advice and complementary civil and regulatory support to county prosecutors, when necessary. In an era of diminishing resources, a productive working relationship between county and state law enforcement agencies is the keystone to a vigorous attack on environmental crime.

4 THE ROLE OF STATE INVESTIGATORS

4.1 Interaction between DEPE and ECB

The ECB is the lead state law enforcement entity charged with the responsibility of investigating and prosecuting environmental crimes in New Jersey. However, based upon its expansive responsibility, knowledge of New Jersey industries, and large compliment of enforcement inspectors, the DEPE possesses incomparable data pertinent to environmental enforcement. Therefore, the ECB

works closely with the DEPE in order to tap into its insight of the bigger picture so that the ECB may define those areas that warrant intensive scrutiny. This is done through informal and formal referrals.

Informal referrals are forwarded by the DEPE on a daily basis. They include copies of DEPE regulatory enforcement documents (orders, notices of violation, notices of civil administrative penalty action). Last year 2,500 of these documents were reviewed by an attorney at the ECB for possible criminal investigative follow-up. The benefits of this process extend beyond individual cases, however. It allows the ECB to identify developing trends with respect to violations and non-compliance. In turn, these discoveries become very helpful when selecting investigative strategies and targets.

The DEPE also formally requests that the ECB conduct criminal investigations into specific matters. These referrals typically involve intentional or unpermitted discharges, the unlawful abandonment, treatment, transportation or disposal of hazardous waste, or the concealment, falsification or destruction of records required to be filed with the DEPE.

Additionally, the Emergency Response Unit at the DEPE notifies the ECB duty officer, a Supervising State Investigator, on a 24-hour basis of any emergent environmental incident that may have criminal implications. These matters, which again often include intentional or unpermitted discharges and abandoned or released hazardous waste, are responded to by ECB investigators for the purpose of gathering criminal evidence prior to clean-up or other disturbance of a crime scene. Furthermore, these responses provide an opportunity for a hands-on view of evolving problems and consequently become a critical component of deliberations that lead to broad investigative targeting and the selection of specific investigative strategies.

4.2 Crime scene response and surveillance

4.2.1 Training and sample collection

The heart of a potent environmental crime fighting unit is training. Every ECB investigator receives and maintains Occupational Safety and Health Act certification for working in areas where contact with hazardous materials or hazardous waste is likely. In addition, each investigator assigned to respond to an environmental crime scene has been thoroughly trained in the use of proper sampling techniques.

Therefore, even though the ECB can utilize regulators for environmental evidence collection, the ECB maintains technical capability to secure its own sample evidence. ECB does this to facilitate the search for answers to questions intrinsic to every criminal prosecution—"Was there a crime committed and "Who dunnit." ECB investigators are also trained in criminal procedure and gather evidence critical to proof of the crime in a manner that precludes suppression, chain of custody, or other legal challenges related to collection and documentation of evidence. Furthermore, in maintaining an independent capability to acquire sample evidence, the ECB can avail itself of sample collection under court authorized surreptitious search warrants and thereby safeguard the strict confidential nature of on-going covert investigations.

ECB samplers have also developed field testing procedures that are utilized to screen potential samples. When a State Investigator departs from a crime scene or a search warrant site, he or she can be confident that the sample has the potential to exhibit a characteristic of hazardous waste, unless the field test indicated otherwise. Thus, the investigator will not confront a laboratory report in five or six weeks that fails to support a necessary element of an environmental crime.

At some crime scenes, the ECB will depend upon the regulators to take samples for use in the criminal investigation. In those cases, the DEPE and ECB employ a task force approach to crime-scene processing. However, the ECB normally opts to rely upon its own technical ability to take samples at a site in order to speed up its work in solving the crime and to keep regulators unencumbered of criminal investigative duties and totally focused on regulatory responsibilities.

4.2.2 Multi-purpose vehicle

An efficacious response to an environmental crime scene requires greater capability than is provided by undercover or four-wheel drive vehicles. In analyzing its needs in this regard, the ECB determined that the following vehicle requirements were necessary: transportation to crime-scene and search warrant sites with all necessary safety and evidence gathering equipment; a command-and-control function for coordinating large-scale operations; and an ability to fit into urban industrial locations in a way that allows mobile and stationary surveillance to be conducted unobtrusively.

Given these requirements and a climate of fiscal responsibility, a multi-purpose vehicle was proposed. It took the ECB approximately five years to design, secure funding for, and acquire the vehicle built. The vehicle has proven to be an invaluable asset for the response function. This is true for short-term responses as well as extended stays, which have been as long as two weeks.

The vehicle is equipped with an air cascade system that can be utilized both for filling self-contained breathing apparatus (SCBA) bottles, as well as for supplied air needed during prolonged periods. Protective clothing carried on board provides outfitting and support for qualified individuals up to and including level B protection. For crime-scene processing, the vehicle carries both still and video cameras and is equipped with a pan tilt and focus unit for remote documentation.

The vehicle's command function is supplied by an onboard cellular telephone, as well as other radio systems that allow communication with other bureau members, local and county police, State Police, and the DEPE. There is adequate room onboard for conducting meetings and witness interviews, as well as writing stations for several individuals. The vehicle is often used at a crime scene or a search warrant site for meetings with DEPE and ECB personnel.

In reference to the surveillance function, the vehicle has been successfully utilized in a number of covert operations. The vehicle has several ports that can be opened where cameras, both video and still, can be utilized to document the targeted activity. The vehicle also has a periscope which can be utilized for both video and still photography. On board is a dedicated video system, as well as a date-time recorder and a video recorder. The video recording system includes an audio component for use when agents or investigators are wearing on-body recording and transmitting devices. The vehicle has proven to be invaluable from a surveillance standpoint in documenting transportation-related environmental crimes and fraud-type offenses.

4.2.3 Marine surveillance vessel

For six months in 1988, after receiving a tip from an informant, the ECB conducted a comprehensive investigation into the illegal sludge dumping activities of General Marine Transport Corporation. General Marine Transport had contracts with New York and New Jersey sewer authorities to transport sewage sludge to the U.S. Environmental Protection Agency's designated 106-mile dump site in the Atlantic Ocean. On numerous occasions, General Marine barges dumped sludge in the New York/New Jersey Harbor or in the ocean well short of the 106-mile dump site in order to save time and money.

The investigation required round-the-clock surveillance of General Marine's barge movements, as well as the monitoring of company radio communications with barges and tugs. This surveillance was conducted from discreet locations on land and on water. After a subsequent five month grand jury investigation, a State Grand Jury returned an indictment against General Marine Transport Corp., its president, and several company employees for discharging toxic pollutants. The ECB prosecuted the case and obtained a \$1 million penalty against the corporation and a jail sentence for one of the company officers.

Based upon this experience and the fact that 75% of New Jersey is surrounded by water (rivers, bays, and ocean), the ECB determined that a marine surveillance vessel was needed to provide adequate protection to the state's marine and coastal environment. The DCJ allocated a

funding source from its forfeiture account (monies seized because they are derived from criminal activity) and a marine surveillance vessel was designed.

The boat was configured so that it could present various undercover silhouettes, such as a commercial fishing vessel, a sport recreational vessel, or a commercial diving boat. The vessel was outfitted with the latest electronic navigation devices and it has the capability of mounting the bureau's thermal imaging equipment, which can be used regardless of visibility—i.e., during fog conditions, at low light, or at night. The vessel can also be utilized for underwater activity as it can accommodate the ECB's dive team.

The vessel has been used to successfully follow barges in an undercover capacity, to observe onshore disposal activities that impact New Jersey waterways, and to provide backup to a law enforcement officer wearing an authorized body recorder and on-body transmitter. For example, one case involved a location that made the water the only point from which the ECB could monitor a conversation and activities and, simultaneously, provide safety and security for an undercover cop.

The vessel is used for other critical enforcement activities. For example, it has been used to gather evidence in a civil water pollution case and to collect firsthand data for use in a government report. Also, during eight months of the year, the vessel is routinely used in a patrol fashion to uncover unpermitted discharges to the state's major waterways. This information is shared with the DEPE.

One State Investigator has, over a two-year period, undertaken and fulfilled the requirements for obtaining his Captain's license and is now a Master of Inland Waters. Both he and another state investigator have completed on-the-job training with the United States Coast Guard.

The State Police Marine Bureau patrols New Jersey waterways on a 24-hour-a-day basis. The bureau is composed of waterborne safety officers who are typically the first responders to any environmental spills into or on the state's waterways by virtue of their ready status. They are authorized to subject those who pollute state waters to a summary civil enforcement proceeding. They are also trained to recognize water pollution crimes, in which case they immediately notify the ECB.

4.2.4 Electronic surveillance and thermal imaging equipment

Since 1989, criminal prosecutors have had a new weapon at their disposal in the fight against environmental crimes. That year, New Jersey's Wiretapping and Electronic Surveillance Control Act was broadened to cover organized criminal activity involving the unlawful transportation, storage, disposal, discharge, release, or abandonment of hazardous, toxic, or polluting substances. The term electronic surveillance covers a variety of law enforcement methods that monitor the discussions or activity of targeted individuals. This evidence is often damning.

The methods include, but are not limited to, the use of wiretaps, room and vehicle bugs, body wires, night-vision/light intensification devices, fax and data transmission intercepts, and counter measures to detect any of these procedures.

Some ECB investigators have an extensive background in electronic surveillance from prior experience with narcotics and organized crime investigations conducted by the DCJ. Additionally, the ECB has successfully implemented several of these techniques in past environmental investigations. Also, one State Investigator assigned to the ECB possesses the qualifications and skill necessary to operate all of the equipment involved in these methods of electronic surveillance.

The use of the thermal imaging equipment allows the ECB to view containers and, if conditions are right, make a judgment as to whether the container is full of liquid, partially full, or empty. These containers range in size from individual 55-gallon drums to one-million-gallon aboveground storage tanks.

This capability was used in conjunction with land-based surveillance during the investigation of a tank storage farm. The thermal imager was utilized to identify tanks that were full. Surveillance then focused on these targeted tanks and tracked the material in these tanks as it was piped onto a barge and transported from one location to another. This procedure allowed the ECB to maximize resources for marine surveillance at the exact moment of material transport. Thermal imaging has

also been employed by the ECB on mobile containers, such as barges, and air pollution control devices, such as stacks with scrubbers.

The ECB was able to acquire this thermal imaging equipment because of its success in a major case. As part of a settlement of a multi-state, federal water pollution case, Exxon was required to pay civil and criminal penalties. Additionally, money was set aside for natural resource restoration and a dedicated equipment fund was set up under New Jersey's Clean Water Enforcement Fund.

4.2.5 Dive team

Although a relatively recent addition to the ECB, the dive team has been utilized in bureau investigations. The dive team has been used to recover items associated with near-shore dumping of hazardous materials and to obtain samples of bottom sediments. It has also been called upon to assist other law enforcement agencies in criminal investigations.

Starting with a qualified master diver, the ECB now has 7 State Investigators who possess dive certification. Dedicated equipment monies in the Clean Water Enforcement Fund were used to make the initial acquisition of equipment for the dive team.

5 **ILLEGAL ENVIRONMENTAL ENTERPRISES**

Individuals acting alone, either for themselves or on behalf of a company, usually commit environmental crimes to save money—that is, it costs less to dispose of waste illegally. Others form complex and sophisticated conspiracies and commit environmental crimes for financial gain—that is, there is money to be made in enterprises involving the illegal disposition of waste. Unlike the first category of environmental crimes, these conspiracies often center around disposition methods that are misrepresented as being in accordance with permit, regulation, and law. In other words, the conspirators utilize a legitimate system to perpetrate environmental crimes and coverup their activity with forgery and fraudulent practices.

The ECB has employed a variety of techniques to investigate these intricate cases. Following the paper trail is as important as developing leads provided by informants. Moreover, it is often necessary to create an undercover operation designed to infiltrate the conspiratorial scheme. Where warranted, the ECB has established business relationships with conspirators by setting up dummy corporations and having State Investigators pose as corporate officials. Through participation in the scheme, the ECB gains the trust of the conspirators, thereby learning each layer of the illegal enterprise, verifying it through vehicular and marine surveillance and photographic documentation, and recording the inculpatory statements of conspirators.

For example, the DEPE asked the ECB to investigate actionable conduct in the waste oil industry that was believed to involve prohibited mislabeling and sale of waste oil and hazardous waste oil. Through review of the paper trail, undercover activity aimed at developing a business relationship and various types of surveillance undertaken over an 18-month period, the ECB discovered that licensed hazardous waste treatment facilities were passing material on without treatment, that a licensed laboratory produced false test results for waste oil, and that untreated waste oil was illegally shipped out of state.

Such lawlessness threatens the regulatory system at its core because permits are self-monitoring. The agency must be confident that it is receiving accurate and complete information from a permittee for its decisions to be meaningful. Moreover, false filings or concealment of facts required to be reported ultimately erode public confidence in the regulatory program. Therefore, criminal prosecutors must set priorities and allocate resources committed to ensuring the integrity of the regulatory agency's mission.

Since these illegal enterprises encompass far more than pure environmental crime, a successful investigation requires concerted action to uncover and prove the complete pattern of racketeering activity. Indeed, the ECB seeks to establish traditional crimes because they often carry

more significant jail terms than environmental crimes. Furthermore, the ECB has used evidence of traditional crimes to lay the predicate for a racketeering charge, which entitles the state to forfeit a defendant's assets upon conviction.

The only certain way to decapitate an illegal enterprise that purports to be a legitimate business operation is to seize money and property acquired through a pattern of racketeering activity. Unfortunately, when persons involved in these enterprises are imprisoned, there are always individuals who are willing to risk apprehension in order to keep the lucrative operation going. Forfeiture of the assets of the enterprise and of property devoted to the illegal activity slows that "takeover" process down.

The first successful DCJ prosecution under the New Jersey Racketeering Act emanated from the ECB. It involved illicit landfilling activity and the unlawful disposal of voluminous quantities of solid waste. Public officials were paid cash bribes to protect the enterprise, which consisted of many individuals and waste hauling companies. Due to the nature of the illegality, an undercover operation was deemed inappropriate. Therefore, the investigation centered on surveillance, both physical and electronic. After conviction at trial in 1990, one high-ranking town official received a 20-year sentence and a deputy police chief was sentenced to 15 years in state prison.

A 1992 investigation by the ECB culminated in an indictment charging public works officials and private contractors with racketeering and theft for either accepting or paying cash bribes for the illegal dumping of commercial solid waste. The dumping occurred at a transfer station authorized by the DEPE to accept municipal waste only. Under the scheme, the municipality was saddled with the responsibility of paying for the ultimate disposal of the waste.

This investigation was worked jointly by county and state law enforcement officials. Its integral components included surveillance and the use of an undercover cop who obtained access to the transfer station by posing as a contractor. The case is scheduled for trial in 1994.

As these cases demonstrate, conspirators who prey on the public and pollute the environment by perverting the regulatory system are an obvious menace to society. The complexity of the business enterprises they form and their ability to use or corrupt legitimate businesses and public officials present a real challenge for law enforcement officers and prosecutors. The menace and challenge justify, indeed demand, a comprehensive and creative law enforcement response.

CONCLUSION

Local, county and state environmental law enforcement efforts, like civil enforcement action, must be directed toward achieving full compliance with the limitations established by permit, regulation, and law. Police at each of these levels in New Jersey make significant, though different, contributions in this endeavor.

Local police can ensure that regulators and criminal prosecutors receive immediate notification of environmental incidents or potential environmental events and thereby mitigate or prevent public harm and natural resource damage. County detectives can appropriately investigate intra-county environmental crimes and assist State Investigators in cases where a joint investigation will be more efficacious, such as in inter-county crimes cases. In either instance, the county law enforcement effort against environmental crime provides ECB cops with the freedom to tackle complicated criminal schemes.

Investigations of illegal enterprises are resource intensive and time consuming. A major investigative commitment is required to uncover and conclusively establish a pattern of criminal activity. This includes various types of surveillance, a complete review of the paper trail, and undercover activity. Dedication of resources of this magnitude has paid off in New Jersey because the DCJ has ensured that its State investigators are highly trained to handle these cases and because of county environmental prosecutors.

The work of state environmental crime fighters must also be closely allied to the mission of their regulatory counterparts. Informal and formal referrals from the DEPE and emergency response

notifications furnish the ECB with information vital, not only to individual cases but also, to strategic targeting. When the ECB sets its case priorities, it selects proactive investigations that are supportive of the DEPE, and special attention is given to illicit schemes that present a grave danger to the environment or threaten the integrity of the regulatory process.

Each level of law enforcement in New Jersey has a distinct role to play in fighting environmental crime. Yet, by maintaining a focus on the goal of full compliance, local, county, and state efforts blend together in a way that makes the work of the whole law enforcement community greater than the sum of the parts.

THE TASK OF THE POLICE

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SUMMARY

In the Netherlands it has become obvious that the police can play an important role in enforcing laws pertaining to the protection of the environment. Besides having a criminal investigative function, the police also hold a key position with regard to the execution of policies; furthermore, the police may be expected to set an example and to regard environmental awareness as one of their responsibilities.

In order for the police to be able to perform this relatively new task with regard to the environment, the relevant infrastructure must first be created. Particular attention must be paid to the specific tasks associated with this, to education and training, to computerization, and to participation in the general enforcement of environmental laws.

1 INTRODUCTION

The enforcement of environmental laws is a relatively new task for the police. Until the end of the 1980s the Dutch police paid hardly any attention to detecting environmental crimes, giving priority to combating other forms of crime. During the past few years, however, society has become more aware of environmental issues, and violations of environmental standards are seen more as violations of essential and basic behavioural norms. This has been accompanied by an increase in the importance of criminal law enforcement.

These developments have caused the police to reconsider their task, role, and position in relation to environmental law enforcement. At present, the police are very much involved in determining the form and content of their role in relation to environmental legislation. In May 1990 the Co-ordinating Police Council (in which all police forces in the Netherlands are represented) drew up an environmental policy plan entitled "Handhaven of verliezen" ("Maintain or lose"). The funds that became available through the National Environmental Policy Plan (NMP), the so-called NMP police funds, have enabled the police to initiate a great number of activities.

2 THE TASK OF THE POLICE

The answer to the question whether the police might be of importance in enforcing environmental laws must be "yes" in view of the fact that:

- The police are available 24 hours a day, 7 days a week, which means they are well placed to observe.
- The organization is equipped to trace crimes.
- As regards criminal investigation, the police are already accustomed to operating under the auspices of the Department of Public Prosecution.
- The police are regarded as objective and independent.
- The police are well advanced in, and acquainted with, the areas in which they operate in, and they have access to many sources of information.

A description of the various aspects of the role of the police in enforcing environmental legislation is given below, followed by a discussion of the choices that have to be made with regard to the implementation of the relevant policies.

2.1 Various aspects of the task of the police

What exactly is the task of the police where the enforcement of environmental laws is concerned? The environmental policy plan of the Co-ordinating Police Council states that their task is threefold: criminal investigation, supporting the execution of relevant policies, and increasing environmental awareness within the various police forces in the Netherlands.

Criminal investigation should be both repressive and preventive; it can vary from simply observing and monitoring to a full-scale criminal inquiry. The crimes with which the police are confronted may be classified as follows:

- Less-serious environmental crimes committed in residential areas (for example, street litter, noise pollution, car wrecks on housing estates).
- Serious environmental crimes committed by certain companies through negligence or intentionally (for example, the occasional illegal dumping of waste in surface water or the illegal dumping of refuse).
- Very serious environmental crimes involving important social and economic interests and complex fraudulent activities (for example, the systematic dumping of chemical waste).

The supportive tasks of the police include assisting in the exercise of authority, visiting and accompanying security personnel who work as surveillants at industrial sites, supervision with regard to the execution of administrative sanctions (in particular checks at "unusual" times), recording and passing on complaints about environmental issues, and providing general information on the environment.

Accompanying surveillance personnel at industrial sites is often a tricky issue, both for the police and the surveillants. The Economic Offences Act (*Wet Economische Delicten*) permits the police to make checks even in cases where there is (as yet) no suspect.

Besides enforcing environmental laws, the police should also set an example with regard to what goes on within their own organization and develop a certain degree of environmental awareness. In order to realize this, various processes that go on within the police organization (supply of energy, waste disposal, means of surveillance, shooting range) have to be analysed, then standards need to be set and maintained.

2.2 The tasks: policy choices

Whether the police make use of the authority they have been given (for example, deciding at what point to assist in industrial checks) depends on the policy to be followed; the policy in its turn is largely determined by what has been agreed upon in the various consultative bodies. In general the police should not, in principle, take the initiative and supervise and perform checks. These tasks are to be carried out by surveillants and specialized criminal services and detectives. The most important task of the police is to trace crimes, a task which has both preventive and repressive aspects.

It is frequently thought that the role of the police is merely a repressive one. This is not true, however; a police organization with its roots firmly in society has different roles, depending on the circumstances. This is the case too with the environment. The effectiveness of various police activities, namely solving or preventing problems, is what should be most important. When the police are asked to participate only at a very late stage (for example, in a fourth industrial check), the only sanction they can apply is to institute a criminal investigation, and the environmental damage will already have been done. The effectiveness, subsidiarity, and proportionality of the means are no longer subject to

discussion. However, just as with other police tasks, the police should have the opportunity to choose from a wide range of alternative sanctions to enforce environmental legislation. It is important that their partners in the field of law enforcement be aware of this.

3 INTERNAL STRUCTURE OF THE ORGANIZATION

In this section, the internal structure of the police is discussed. First, the infrastructure of the police organization is considered, and then the cultural aspects that play a role in the implementation by the police of their task as environmental law enforcers are discussed.

3.1 Infrastructure

In order for the police to be able to perform their relatively new task of environmental law enforcement, a new infrastructure has to be developed.

3.1.1 Budget

Since 1990 the NMP has made funds available to the police. In 1991, during a Co-ordinating Police Council conference on the role of the police with regard to the environment, the heads of the regional police forces in the Netherlands recommended that 4% of the total budget be allocated to environmental law enforcement by 1995.

3.1.2 Training

An important aspect of the measures relating to the infrastructure of the police is the introduction of training courses. At the national level, courses for specific groups have been set up by the National Police Training Institute.

During the 1991 conference mentioned above, the heads of the regional police forces recommended that by 1996 all police officers should have undergone either a general or specialist training in environment issues.

3.1.3 Computerization

A second aspect is the need for computerization. A national study into the availability of information on environmental issues has led to the development of an environmental "dictionary". Every police force has been given the opportunity to implement and consult this data collection.

3.1.4 Position in the organization as a whole

Practically all police forces see the enforcement of environmental legislation as a fundamental task of the police. In all police regions the funds allocated to the police under the NMP have been used to create regional environmental bureaus to see to it that measures are taken and to co-ordinate activities in the field of the environment.

The activities of these bureaus include, for example, setting up training courses, participating in law enforcement activities, and executing measures to improve the environment (such as removing car wrecks, taking away manure, closing down garages or illegal rubbish dumps, preventing illegal refuse dumping and the dumping of chemical waste).

The recent reorganization of the Dutch police force has led to the fact that in almost all police regions de-specialization seems to take the place of specialization, which is logical since in the past new tasks were often implemented in the same way. The new tasks facing the police can only be

successfully integrated into the basic functions of the police if the specialism currently available is supportive in nature and not independent.

3.1.5 Criminal Intelligence Service

In 1991 a pilot project was started in which four criminal intelligence services and the National Criminal Intelligence Service participated. The objective of the project was to improve the supply of information on the environment. The project's interim report concluded that new methods and techniques for gathering information should be developed. The methods and techniques that currently exist and which are particularly suited to combating traditional forms of crime (such as narcotics-related crimes) are only partly suitable for gathering information on environmental issues. One of the reasons for this is that these particular (traditional) forms of crime are closely interwoven with the so-called upper world of private enterprise and governmental institutions.

3.1.6 International

Studies conducted by the National Criminal Intelligence Service show that environmental crimes are increasingly international in nature. Since cross-border waste transports and dumpings occur quite frequently, it is important that international networks are created and maintained. In Europe, members of TREVI (an association of countries in the field of law enforcement) have agreed to draw up a checklist (the so-called Eco form) and institute training courses on this very subject.

An Interpol environmental crime working group has been established, as have more specialized working groups on specific issues (such as cross-border waste transport and the illegal transport of endangered species).

When these international police networks function properly, they will have to be linked to international networks in which the Public Prosecutor's Department and the government participate.

3.1.7 Participation in the law enforcement network

When the infrastructure needed to enable the police to effect their duties in enforcing environmental legislation is devised, attention will also have to be paid to adapting the internal structure of the police so that the latter can participate in the law enforcement network.

3.2 Cultural aspects

In the above discussion, various aspects have been mentioned which need to be taken into account when an infrastructure is devised for the implementation of the police's environmental task. The cultural aspects related to this are no less important. The idea that implementation of environmental legislation by the police is just mere hobbyism needs to be changed. Like officers involved in narcotics cases, the police should feel the need to "score", and do their utmost to prosecute cases in which chemical waste is illegally dumped. It is questionable which of these illegal activities is the more harmful to public health.

However, less-serious forms of environmental crime, such as the occasional dumping of waste in surface water, can easily compete with other, more frequent, forms of crime (such as burglaries) in terms of their effect on society as a whole.

Besides creating a feeling that activities aimed at preserving the environment are part of the tasks of the police, and that performing these is pleasurable, attention has to be paid to the results of these activities. Traditionally, the emphasis of police work has been on criminal investigation; drawing up statements is still the most widely used means of criminal investigation used by the police. This might be different in the case of environmental law enforcement because what is most important is using the most effective means. In many cases—for example those which involve illegally dumped waste or the frequent dumping of dangerous substances in surface water—administrative law may

offer better opportunities to successfully combat these kinds of crime. Here, the most important aspect is removing the waste and preventing future illegal dumpings. The police will have to learn not to resort automatically to the use of statements, but to consult competent authorities and try to work out what the most effective solution to the environmental problem in question is.

4 EXPERIENCES OF THE POLICE IN THE LAW ENFORCEMENT NETWORK

In the meantime, the police have gained some experience in enforcing environmental laws. The following conclusions can be drawn from these experiences.

Even when co-operating with other bodies, the police should perform their task of criminal investigation "independently". Because the police participate in all kinds of consultative bodies, the other participants in these bodies might mistakenly begin to believe that the responsibilities and authority of the police in the field of criminal intelligence work are also subjects for discussion. This makes it necessary for the police to make clear its right to reserve the questioning of its criminal intelligence work (though this obviously must continue to be the responsibility of the Department of Public Prosecutions).

The above consideration also influences the way information is supplied. With regard to information on administrative measures, for instance, there might be a two-way exchange, but with regard to criminal intelligence this is virtually impossible (with the exception of certain matters dealt with by the stringent conditions imposed by the Police Registers Act [Wet Politierregisters]). This restriction largely determines the nature of the co-operation between those involved in environmental law enforcement.

The role of the police is interpreted in a different way in each of the governmental regions. The idea that there is hardly any role for the police in the field of environmental law enforcement is one still held by their law enforcement partners, who associate the task of the police with repressive actions in response to very serious environmental crimes. That this does not do justice to the effectiveness of the work of the police has been clarified in Section 2.2.

Furthermore, when the police participate in consultative bodies like the ones described above, they will have to make clear that they—in contrast to other specialist bodies—have tasks other than the enforcement of environmental laws which also demand personnel and equipment. This, however, should not deter the police from entering into agreements with their law enforcement partners and accepting certain commitments.

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