

ENVIRONMENTAL ENFORCEMENT: NONTRADITIONAL AND NECESSARY

Article

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In the study of systems theory, it is commonly taught that there exists an interconnectedness in life wherein each and every system, natural or social, is a subsystem of a larger cooperative. Connecting relations between peoples and species may be far too large to imagine, or far too small to see. However, incidences occurring in one subsystem may have meaning, positive or negative, for other subsystems, or for the world as a whole. Accordingly, ramifications of those acts that take place today may range from beneficial to negligible to catastrophic, and their true natures may be immediate or they may not be realized for years to come.

Such is the plight of the Puget Sound area in the state of Washington. Following years of toxic releases by a number of sources, including repeat violations by commercial and governmental agencies, area sea life is suffering from reproductive deficiencies and “some 92,000 acres of mud and sand on the seafloor are considered moderately to highly contaminated.”¹ Usha Varanasi, a federal researcher, states that, “It’s not large companies we can point to so much - -it’s all of us.”²

Often, the subtleties of these systemic relationships are difficult to imagine and to reconcile. Absent a grasp of the relationships to be impacted, one may question the need to stop development upon the discovery of a Snail Darter fish or of a California Clapper Rail bird. To many, these are obscure species of little renown and of little value. To nature, these species represent a portion of the whole, and each plays a unique role in the ecosystem. The true ramifications of their losses may only be realized upon extinction.

Because these offenses are rarely at the forefront of consciousness, they are frequently overlooked by law enforcement personnel. Mired in the traditional role of the

police officer as a keeper of the peace and an enforcer of law, the sometimes obscure criminal actions that negatively impact the ecology are frequently undetected and uninterrupted.

In many instances, there are financial incentives to violate these laws. The Santa Clara County District Attorney's Office has cited the lack of treatment facilities and the ability for a hauling company to save the disposal costs (approximately fourteen cents per gallon) as prime factors. Because of the cost savings, unscrupulous businesses are able to undercut legitimate bids when in competition for lucrative hauling contracts.³

Indicative of a range of local environmental violations, the Santa Clara County District Attorney's Office posted a series of press releases to their web site concerning recent offenses prosecuted by that office.⁴ Violations prosecuted included the washing of caustic wastewater into a storm drain by a steam cleaning service, the illegal sales of abalone in an area restaurant, the unlawful dumping of thousands of gallons of grease into a local waterway and the unlawful storage of hazardous waste, waste specifically hidden from inspectors. Sanctions for these violations included fines ranging from \$13,500 to \$95,000. Some violations required imprisonment for the convicted offender.

Environmental crimes have local impacts. As highlighted by the Santa Clara County District Attorney's Office, ramifications of prosecuted violations included negative impacts to area wildlife through poisoning or black market sales, damage to waterways and threats of hazardous fire from unlawfully stored combustible materials. Similarly, offenses of this nature contribute to the blight and deterioration experienced by the surrounding community.⁵

Environmental offenses are increasing. In 1994, the National Institute of Justice (NIJ) published the results of a survey of local prosecutors in jurisdictions with

populations exceeding 250,000.⁶ The survey determined that prosecutors noted substantial increases in the numbers of environmental violations. The survey identified the dramatic increase in environmental crime prosecutions “between 1990 and the first half of 1992” as being a key issue.⁷ Additionally, in the key findings, the survey reported that “the most common environmental offenses involve illegal waste disposal; the most common substances involved in these offenses are hazardous wastes.”⁸

Of particular importance for local law enforcement was a finding by the NIJ in the 1994 survey indicating that “the most significant factor for rejecting the prosecution of environmental offenses is insufficient evidence or inability to recognize appropriate evidence ...”⁹ Prevention, detection and mitigation of these offenses is not commonly taught to line staff in an urban law enforcement agency. It can be argued that when those agencies normally tasked with environmental responsibilities are capable of error, the poorly-equipped and poorly-trained line officer is also certain to err in this function.

Emphasizing the Need for Local Preparation

While the numbers of numbers of environmental violations are increasing, efforts to combat the issues at the federal level are on the decline. Public Employees for Environmental Responsibility (PEER) conducted an analysis of cases referred by the U.S. Environmental Protection Agency (EPA) in fiscal year 2001.¹⁰ In this analysis, PEER asserts that the number of cases referred by the EPA declined by twenty percent. Additionally, PEER cites 80 percent decreases in violations of the Toxic Substance Control Act, 54 percent decreases in violations of the Clean Air Act and 53 percent declines in violations of the Clean Water Act.¹¹ This analysis was predicated upon a review of statistics compiled by the U.S Department of Justice.

In addition to the reductions in offenses referred for investigation already experienced, there are a number of proposed budget cuts that may negatively impact federal environmental enforcement and inspection capabilities. In an analysis of the proposed EPA budget for fiscal year 2003, the League of Conservation Voters identifies the proposed reduction of the EPA enforcement staff by over 100 positions.¹² In addition, this report cites the recommendation that \$15 million dollars be distributed amongst the states in the form of grants for enforcement purposes. Likewise, PEER cites the redirection of resources to the “State and Tribal Assistance Grant appropriation to support the Agency’s efforts to redirect enforcement responsibilities to the states.”¹³ In effect, the provision of block grants to regional governing bodies will require that local agencies undertake responsibilities previously addressed by federal authorities.

As with cuts in federal positions, the proposed budget for the state of California includes recommendations to eliminate thirty-one vacant positions in the Department of Fish and Game.¹⁴ It can be argued that local law enforcement may be required to assume these duties.

Acknowledging the Issue

In recognizing the need to undertake these nontraditional responsibilities, some agencies have established specialized investigative units devoted to the investigation of environmental crime. The Los Angeles Police Department has established the Hazardous Materials/Environmental Crimes Unit.¹⁵ This unit is responsible for the investigation of environmental crimes, enforcement of hazardous materials regulations and for assisting federal investigative agencies with regard to related forms of terrorism. The Philadelphia Police Department has established the Environmental Response Unit to address similar

ecological concerns.¹⁶ The state of Massachusetts has established the State Office of the Massachusetts Environmental Police, whose officers undertake the responsibility for environmental enforcement on a statewide basis. These agencies are representative of those jurisdictions that have acknowledged that local law enforcement plays a key role in the protection of the local environment.¹⁷

Considering the Alternatives

After accepting that the nontraditional role of environmental enforcement is a responsibility borne by local law enforcement, the agency is challenged to respond. In order to develop a comprehensive strategy that is appropriate for a specific jurisdiction, alternatives should always be considered prior to action. Accordingly, the following five alternative strategies are suggested for review. It should be noted that the last four of the five following strategies have been used effectively in other areas of law enforcement.

Alternative Strategy I: No change

It is entirely conceivable that an agency could choose not to take action regarding environmental crime. Committing to a course of action is to commit to an expenditure of resources, a commitment that may impact other areas of the department. Management could rest upon the belief that there are other agencies specifically trained and responsible to address individual environmental issues and that patrol and investigative resources should be retained for traditional law enforcement duties. Taking no action in this instance is akin to denial. Law enforcement agencies possess resources that routinely surpass those of the other regulatory agencies. The availability of personnel to detect or to respond to these events in the early moments gives the local law enforcement agency a greater chance of mitigation and apprehension. Inaction, or simple referral to on-call or

understaffed agencies, does nothing to prevent these events from occurring or from becoming aggravated.

Alternative Strategy II: The Specialized Unit

Large, urban law enforcement agencies often times have the ability to create specialized units to address specific crime problems. While these units are capable of developing vast amounts of expertise and intelligence, they require commitments of sworn personnel, support staff, equipment, office space and training. For low frequency events such as unlawful chemical disposal or the sabotage of a natural resource, it may be difficult to justify the expenditures required to establish a unit for this purpose.

Alternative Strategy III: The Task Force

Another technique frequently used in law enforcement to address specific crime problems, while sharing resources with like-minded agencies, is to commit to participation in a regional task force. Assigning personnel to a task force requires less commitments of resources than does the establishment of a specialized unit, however the expertise is often restricted to an extremely small number of investigators (if not just one) and often this expertise is off-site. Membership in a task force does require a financial commitment and the availability of assistance can be dependent upon the task force's ability to respond to competing demands for service.

Alternative Strategy IV: Preparation of Personnel

Providing a basic level of instruction to sworn personnel, and continuing to do so, better prepares the patrol force to detect these offenses as they occur and to make reasoned judgments of their significance and potential impacts soon after occurrence.

Providing sworn personnel with understandings of the types and scopes of offenses, potential environmental impacts, common violators and areas likely to experience criminal activity arms a large number of resources with the ability to identify and thwart these crimes. Establishing contacts at other associated agencies provides staff with points of reference for obtaining information and direction when required.

Alternative Strategy V: A Combined Approach

An alternative to addressing local environmental offenses is to utilize a combination of different tools. Membership in a task force, in combination with the creation of a specialized unit or the training of line personnel, broadens the agency's ability to detect and to prevent these crimes. Similarly, a specialized unit can be augmented by training line staff to handle these offenses during off-hours. Ultimately, the agency must weigh the strengths and weaknesses of each tactic and ascertain if the combination of two programs will be cost effective. Additionally, the agency must consider program oversight and whether or not the use of multiple resources, found in varying chains of command, is manageable.

Committing to a Course of Action

Harm that is done to the local environment impacts a community in many ways. The appearance, health and economic viability of the local jurisdiction depend upon the sanctity of air, land and water. Unfortunately, there are some who would seek, for personal or economic reasons, to commit acts that negatively impact environmental health. Agencies that typically address these violations often lack the resources to detect and to prevent them, routinely responding after the violation has occurred.

The enforcement of environmental laws is not one that is traditional to law enforcement personnel. The prevention, detection and mitigation of environmental crimes are tasks not routinely portrayed as a local law enforcement function. Unlike the prevention and detection of violent crime, this very important function is not glamorized or publicized. Nonetheless, law enforcement agencies cannot become complacent in this arena. The health of the community rests upon the health of its environment.

Depletion of funding for traditional environmental agencies may force many of these duties upon local residents and local government. Law enforcement agencies that fail to plan to assume, or to at least participate in, these duties will be placed into a reactive mode. Reaction to an environmental offense of significant magnitude, with little training or equipment, is not a position in which responsible management should be placed. Law enforcement management should anticipate that this role transition will occur, at least in part, and should plan accordingly.

By and large, the community is deeply concerned about the health of the environment. Aggressive environmental enforcement is popular with politicians, community-based organizations and residents alike. Obtaining support for an environmental enforcement program will not be problematic. Failure to foresee these issues, and to plan accordingly, may only serve to damage a law enforcement agency's relationship with its constituency.

Law enforcement management has a myriad of options to address environmental crime. With proper planning, relationships with traditional environmental agencies can be established and intelligence can be gained. With sufficient staffing, law enforcement management can opt to staff a specialized environmental enforcement unit or to participate in a regional environmental task force. Because the patrol staff is most likely

to encounter environmental violations, management can arrange to provide training in prevention, mitigation and enforcement. At a minimum, resource directories can be provided which provide contact information for other governmental environmental agencies. Line staff should be educated as to the types, and costs, of environmental offenses that are occurring in their jurisdiction. Many of these efforts can be coordinated through a liaison officer. Finally, law enforcement management can draw on community and business support to provide eyes, ears, training and resources in addressing a crime with such wide-ranging impacts.

Recommendations

It is imperative that agencies not wait for the detrimental effects of environmental offenses to become local realities. Implementing a program of this sort requires that an organization understand that actual impacts may not be seen or understood for years and that the benefits of preventing certain violations may never become quantifiable.

Nonetheless, inaction is not an acceptable alternative in addressing these concerns. Law enforcement management must accept that officers have a role in preventing these acts. Management must adopt an action plan to prevent, detect and mitigate these offenses.

Acknowledging that the prevention, detection and mitigation of environmental crime are roles borne by local law enforcement are positive first steps for management. Advertising the need for undertaking these efforts to staff, city management and to the community will begin a discussion as to what will constitute an appropriate response to these issues for an individual jurisdiction.

Law enforcement management should seek out an employee with a particular interest in this field and introduce that person to members of local environmental regulatory agencies. Management should actively foster relationships that will make this program successful. Drawing upon community input, management should determine the scope of an environmental enforcement program that is appropriate and should assign this interested employee to facilitate planning and implementation. Taking these preliminary measures can greatly assist in developing a program at minimal cost to the organization. Ultimately, the creation of an aggressive environmental enforcement program will result in the preservation of a community that is healthy, vibrant and free from blight.

It is recommended that managers interested in undertaking this responsibility actively seek out information as to the types of industries that can be found in the community. Identifying hazards associated with specific businesses, and learning of environmental requirements, can educate managers as to potential violations that may be encountered by staff. Managers should seek out information as to past violations, their ramifications and their resolutions. Managers should become well-versed in the types of environmental agencies, and community-based environmental organizations, that operate within their jurisdictions. Understanding the scope of the problem and the availability of assistance and resources will provide a firm foundation upon which to build a successful program.

ENDNOTES

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² Ibid.

³ Banducci, Elise. (2003, January 15). Grease haulers penalized in illegal dumping cases. *San Jose Mercury News*. 8b.

⁴ Santa Clara County District Attorneys Office Website, *Press Releases* (n.d) [Online]; available from [Hhttp://santaclara-da.org/news-releases.html](http://santaclara-da.org/news-releases.html);H accessed on September 10, 2002.

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⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Public Employees for Environmental Responsibility. (January 10, 2002). *Press Release*. [Online]; available from [Hhttp://peer.org/press/203.html](http://peer.org/press/203.html);H accessed on October 21, 2002.

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¹⁷ State of Massachusetts. (n.d.). *Massachusetts Environmental Police*. [Online]; available from <http://www.state.ma.us/dfwele/dle/Welcome.htm>; accessed on December 24, 2002.

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