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## Local Environmental Prosecutions: Coordinating Law Enforcement and Regulatory Agency Resources

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# LOCAL ENVIRONMENTAL PROSECUTIONS: COORDINATING LAW ENFORCEMENT AND REGULATORY AGENCY RESOURCES

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## I. INTRODUCTION

Several bags of medical waste<sup>1</sup> are discovered in dumpster located in a residential neighborhood in Nassau County. The County police department<sup>2</sup> is notified and promptly dispatches its Hazardous Materials Unit<sup>3</sup> ("Haz Mat Unit") to the scene. The Haz Mat Unit secures the area with police tape which prevents access to the dumpster. The Haz Mat Unit contacts the County Health Department<sup>4</sup> and the Department of Public Works<sup>5</sup> and requests that each department send personnel trained in the identification of hazardous and medical waste. The County Fire Marshal's Office<sup>6</sup> somehow learns of the medical waste dumping and dispatches its own Hazardous Materials Unit to the scene. Two local Village Police and

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1. In 1989, New York State defined medical waste according to the provisions of N.Y. ENVTL. CONSERV. LAW § 27-1501(1) (McKinney 1984 & Supp. 1996) ("ECL"). In November 23, 1993, section 27-1501(1) of the Environmental Conservation Law was amended so that regulated medical waste would be defined pursuant to N.Y. PUBLIC HEALTH LAW § 1389-aa. N.Y. ENVTL. CONSERV. LAW § 27-1501(1) (McKinney 1984 & Supp. 1996).

2. The Nassau County Police Department has county-wide jurisdiction over issues related to hazardous waste.

3. The Hazardous Materials Unit, or the Emergency Services Unit, is part of the Nassau County Police Department's Highway Patrol Bureau.

4. The Nassau County Department of Health has county-wide jurisdiction over environmental and public health issues.

5. The Nassau County Department of Public Works has county-wide jurisdiction over sewage, drainage, and wastewater treatment facilities.

6. The jurisdiction of the Nassau County Office of the Fire Marshal includes incidents involving flammable liquids and combustible chemicals.

Volunteer Fire Departments<sup>7</sup> respond to the scene. One of the agencies concludes that the discarded medical waste constitutes a spill<sup>8</sup> under State law and consequently notifies New York State's Department of Environmental Conservation Hazardous Materials/Petroleum Spill Unit.<sup>9</sup> The State's Spill Unit responds and, conforming with agency policy, notifies its Law Enforcement Unit. State uniformed and plainclothes police officers<sup>10</sup> arrive at the scene with State hazardous waste technical staff. An unknown individual calls the Federal EPA<sup>11</sup> which results in the presence of several EPA employees at the site. Approximately two hours after the medical waste was discovered, prosecutors from the local District Attorney's Office<sup>12</sup> appear at the scene. The prosecutors observe the army of personnel present but note that everyone is standing outside the police tape engaged in conversation. The prosecutors then question several people at the site and ascertain that none of the responding agencies is clear as to which agency should take the lead in supervising the identification of the medical waste and directing the removal of the medical waste from the scene. Until the question of jurisdiction<sup>13</sup> is resolved, the responding agencies agree that no action will be taken. In the interim, the health and

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7. Local Village Police and Volunteer Fire Departments in Nassau County are independent entities funded by Village residential property taxes.

8. See N.Y. NAV. LAW art. 12 (McKinney 1989).

9. The New York State Department of Environmental Conservation ("DEC") staffs an Oil and Hazardous Materials Response Unit at its Region 1 (Nassau and Suffolk Counties) Office located in Stony Brook, New York. The DEC provides a spill hotline telephone number to report emergency spills.

10. The DEC's Division of Law Enforcement is divided into the Bureau of Environmental Conservation Investigations, commonly known as the BECI Unit, and the uniformed Environmental Conservation Officers, known as ECOs.

11. The Region II Office of the Federal Environmental Protection Agency is located in New York City, New York.

12. Responding to the scene on that date from the Nassau County District Attorney's Office were the author and the Bureau Chief of the Commercial Frauds and Environmental Investigations Bureau. Since that date, the Commercial Frauds Bureau was consolidated into the Special Investigations Bureau and environmental investigations are now handled by the Special Investigations Bureau's Environmental Crime Unit.

13. "Jurisdiction" in this context refers to concurrent jurisdiction by federal, state, and local agencies over environmental incidents which occur in Nassau County.

safety of the response personnel and nearby residents is potentially compromised and valuable investigative time to gather crime scene evidence is lost.

The above scenario occurred in Nassau County approximately seven years ago.<sup>14</sup> The confusion and chaos which reigned at the scene prompted the realization that local environmental crime-response capability had become necessary. Environmental crime was on the rise,<sup>15</sup> and as the above example illustrates, the County could no longer rely on a timely state or federal response.

This Essay will highlight the development of Nassau County's Environmental Crime Response Team and offer suggestions on how local municipalities can utilize available resources to form their own Environmental Crime Response Teams.

## II. THE UNIQUE NATURE OF ENVIRONMENTAL CRIMES

In most traditional Penal Law crimes<sup>16</sup> individuals are the victims of criminal activity. The victim and his immediate family are often the focal point of the harm inflicted by the accused. Environmental crimes are therefore unique in that the victim is the community where the crime occurred.<sup>17</sup> Society suffers when precious natural resources<sup>18</sup> are temporarily or permanently damaged by the unlawful acts of individuals. If a harmful chemical is dumped onto the ground and later migrates into the water table, the community's drinking water supply could be affected for many years. If a wooded area is used by outsiders as a dumpsite for construction and demolition debris<sup>19</sup> or discarded tires, otherwise natural or pristine

14. March 1989.

15. Statistics from the Nassau County District Attorney's Office show a large increase in the number of investigations and prosecutions handled by the Environmental Crime Unit in 1989 compared to previous years.

16. *See, e.g.*, N.Y. PENAL LAW § 155.05 (larceny), § 160.00 (robbery) (McKinney 1989).

17. *See, People v. Roth*, 503 N.Y.S.2d 627, 628-29, (2nd Dept. 1986) (citing N.Y. ENVTL. CONSERV. LAW § 1-0101(1)).

18. Air, surface water, groundwater and land.

19. Construction and demolition (C&D) debris is defined in N.Y. COMP. CODES R. & REGS. tit. 6, §360-1.2(38) (1985) [hereinafter N.Y.C.R.R.]. N.Y.C.R.R. refers to the Codes, Rules and Regulations of the State of New York. Title 6 is entitled Conservation and includes the regulations of the DEC.

landscape loses value and may potentially leach harmful contaminants to the environment. Similarly, plumes of contaminants emitting from factory smokestacks can adversely impact a community's air quality resulting in increased illnesses for residents, especially the young and elderly.

These scenarios have prompted lawmakers to enact legislation to address these concerns. Environmental criminal statutes<sup>20</sup> have been enacted over the last twenty years to prevent, deter and punish individuals and corporations that victimize society through environmental degradation. Due to the technical nature of environmental laws and the need for courts to defer to administrative agency expertise,<sup>21</sup> legislators have incorporated civil and administrative regulations and provisions into environmental criminal statutes.<sup>22</sup> Additionally, criminal sanctions for violating hazardous waste, water, air, medical waste, solid waste, and fish and wildlife regulations have been created in most jurisdictions. The broad mandate to protect society's natural resources and the public's health and safety in general distinguishes environmental crimes from traditional Penal Law crimes.

### III. LOCAL ENVIRONMENTAL CRIME RESPONSE TEAMS

The initial responders to any natural disaster, calamity or other emergency situation are usually the local police and fire emergency/rescue units which the taxpayer depends upon to quickly respond when the safety of the community is threatened. When hazardous chemicals are leaking into the environment, often the situation in an environmental crime, a fast and effective response is critical in order to minimize damage to the public health and environment. Because local emergency response units are often staffed by community residents who are directly affected by the situation, they can most effectively and efficiently mitigate emergencies which arise.

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20. See N.Y. ENVTL. CONSERV. LAW § 71 (enforcement).

21. Legislators and the courts often defer to administrative agency expertise in the application and interpretation of specific ECL provisions due to the complex and technical nature of environmental law. See *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984) (establishing the premise of deference to administrative agency expertise in environmental matters).

22. See N.Y. ENVTL. CONSERV. LAW § 71.

Alternatively, state or federal emergency response teams may cause delays that could exacerbate the crisis. Logically, response personnel who do not reside in the community would take longer to respond to the site of the emergency. State and federal agencies may also have different priorities in their emergency response procedures and follow-up actions. Therefore, a local environmental crime response team is the best insurance for a community against the debilitating effects of a potential environmental disaster.

The creation, in 1989, of the Nassau County Environmental Crime Team resulted from the County's need to be self-sufficient in responding to environmental crime scenes.<sup>23</sup> The scenario described in the introduction illustrates the need for a quick local response to, and control over, an existing environmental crime scene. Confusion over what should be done and who should do it can only make a bad situation worse. Moreover, jurisdictional conflicts and intra-County rivalries are impediments to an effective crime scene response.

Under the direction of the District Attorney's Office, a written protocol agreement was signed by four County agencies in 1989.<sup>24</sup> The Protocol Agreement recognized the need to formalize in writing the coordination of local law enforcement and regulatory resources to form an effective environmental crime team to combat the increasingly complex nature of environmental crimes.

The initial goal of the Protocol Agreement was to provide Nassau County with the ability to effectively respond to chemical waste and infectious waste disposal incidents. In 1989, the major environmental concern of residents in Nassau County, New York City, and New Jersey metropolitan areas, was the wash-up of medical waste onto local beaches and shorelines during the summer of 1988.<sup>25</sup> Newspaper headlines stirred the citizenry into a state of paranoia over the possibility of contracting a disease by coming in contact

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23. Self-sufficiency implies the ability to establish a crime scene, obtain samples under chain-of-custody, and retain the services of a certified laboratory to test and analyze the submitted samples.

24. The actual title of the agreement is "County of Nassau Infectious Waste/Chemical Waste Investigations Protocol." (on file with author) [hereinafter 1989 Protocol Agreement].

25. See NEW YORK STATE DEC REPORT-INVESTIGATION: SOURCES OF BEACH WASHUPS IN 1988 (1988).

with a syringe which had washed-up onto the local beach.<sup>26</sup> Aware of the dangers which medical waste posed for their communities, local agencies began to devote personnel and resources to the observation, collection, and disposal of infectious/medical waste. This climate convinced local agencies to formally commit, as participants, to a County Environmental Crime Team.

The primary forces behind the creation of the Protocol team were the District Attorney and the Police Department. Prior to 1989, the District Attorney's Office assigned an Assistant District Attorney to investigate and prosecute environmental crimes.<sup>27</sup> In 1989, Nassau County was fortunate to have an active and well-trained Emergency Services Bureau in its Police Department. Without the support of the Police Department, it is unlikely that the Protocol Agreement would have been drafted and signed. The initial members of the Nassau County Chemical Waste/Infectious Waste Protocol Team were the District Attorney, the Police Department, the Health Department, and the Department of Public Works.<sup>28</sup> In 1990, the Protocol Agreement was amended to include the County Fire Marshal.<sup>29</sup>

The influence of the Police Department highlights the continuing need for local agencies to cooperate in the fight against environmental crime in their communities. The training and expertise possessed by the Police Department's Emergency Services Bureau formed the cornerstone of the Protocol Agreement. Emergency Services Bureau personnel, known also as the "Haz Mat Unit", are trained in emergency response procedures to cover a variety of situations that could arise in a suburban community.<sup>30</sup> Included among these potential emergency situations are incidents involving chemical spills, hazardous air emissions, and highway accidents resulting in releases of unknown quantities of liquid or solid materi-

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26. *Id.*

27. In fact, Nassau County was one of the first counties in the country to devote resources specifically for the prosecution of environmental crimes after New York State codified its hazardous waste felony provisions in 1981. *See* N.Y. ENVTL. CONSERV. LAW §§ 71-2707 to 71-2717.

28. *See* 1989 Protocol Agreement, *supra* note 24.

29. *See* 1990 Amendment to 1989 Protocol Agreement.

30. *See* Nassau County Police Department's Emergency Services Bureau Standard Operating Procedures for Hazardous Materials Incidents.

als.<sup>31</sup> This response capability not only diminishes the potential harm to the community and the environment, but also serves as the starting point for the commencement of a criminal investigation. A criminal prosecution commences as the scene of the emergency is secured, safety issues are addressed, and evidence is collected and identified. Under the Protocol Agreement, the ability of the Police Department to simultaneously wear the two hats of emergency response and crime scene initiation carries with it a distinct advantage in the investigation of environmental crime.

Another advantage gained by the involvement of the local Police Department in the Protocol Agreement is the ability to utilize all Police Department resources.<sup>32</sup> For example, the Crime Scene Search Unit could be notified by Haz Mat response personnel present at the crime scene.<sup>33</sup> The Crime Scene Unit's prompt response ensures that timely photographs/videotapes of the crime scene will be taken and relevant evidence, such as fingerprints and vehicle tracks will be collected. Uniformed officers and plainclothes detectives could be dispatched to assist in the securing of the crime scene, the collection of evidence and the interviewing of any relevant witnesses present. Moreover, the interest and dedication of the responding officers are fueled not only by professional pride and training, but also by a personal stake in the health and safety of their local community and its natural resources.<sup>34</sup>

In addition to the Police Department, the participation of other County agencies is essential to the success of the County Environmental Crime Team. The Health Department provides sampling capability, laboratory facilities, and technical guidance.<sup>35</sup> Under the County Health Ordinance, the Health Department is authorized to inspect facilities that store or handle hazardous materials.<sup>36</sup> If a facility satisfies the criteria for the proper storage and handling of hazardous materials, then the Health Department can issue a permit

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31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. See 1989 Protocol Agreement, *supra* note 24.

36. NASSAU COUNTY, N.Y., PUBLIC HEALTH ORDINANCE ART. XI (Toxic and Hazardous Materials Storage, Handling and Control).

to that facility.<sup>37</sup> To perform these functions, Health Department personnel are required to receive training in the identification of hazardous materials and the industries that generate these hazardous materials.<sup>38</sup> Examples of regulated industries under the County Health Ordinance are dry cleaners, hospitals, medical and health laboratories, electroplating companies, photo processors and air-emitting facilities. Inspections of these regulated industries sometimes require that samples of hazardous material be taken and delivered to the Health Department laboratory for testing and analysis.<sup>39</sup> Consequently, the Health Department has developed an expertise in the acquisition and identification of hazardous material samples. The Health Department laboratory has developed a similar expertise in the testing and analysis of the hazardous material samples submitted by field inspectors, providing great benefits to the County Environmental Crime Team at environmental crime scenes.

The Department of Public Works ("DPW") has also been an integral component of the County Environmental Crime Team since its inception.<sup>40</sup> DPW's Hazardous Waste Services Unit ("Unit") inspects county property where hazardous waste/substances may have been released into the environment.<sup>41</sup> In addition, the Unit responds to intentional and accidental discharges of hazardous waste/substances or industrial pollutants into county storm drains and drywells.<sup>42</sup> The Unit's personnel receives training in hazardous materials emergency response, site safety, sampling, and the use of protective clothing and breathing apparatus. The Unit also maintains an equipped response vehicle and specialized equipment such as ground penetrating radar.

The training, equipment, and expertise offered by DPW enable the County Environmental Crime Team to perform its technical functions in a safe and professional manner. DPW operates a mod-

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37. *Id.* § 6.

38. *Id.* § 9-11.

39. The Nassau County Department of Health operates a laboratory for a variety of county environmental and health testing functions.

40. *See* 1989 Protocol Agreement, *supra* note 24.

41. *See* Nassau County Department of Public Works' Operating Procedures for the Division of Sanitation & Water Supply, Hazardous Waste Services Unit.

42. *See* NASSAU COUNTY, N.Y., SEWER USE ORDINANCE, ORDINANCE NO. 266-1985 (1995).

ern laboratory at one of the county's wastewater treatment facilities<sup>43</sup> under a program whose regulation is delegated to the County by the EPA under the Federal Clean Water Act.<sup>44</sup> At the DPW laboratory samples of wastewater discharged into the County sewer system by facilities regulated under the County's Industrial Wastewater Pretreatment Program are tested. Often, the Environmental Crime Team will utilize the technical expertise and guidance of the laboratory's chief chemist. Additionally, the laboratory has proven invaluable in the detection of crimes committed by facilities discharging harmful chemicals or pollutants into the sewer system.<sup>45</sup> A large discharge into the county sewer system has the potential to cause a breakdown in the treatment plant, resulting in a direct discharge of harmful chemicals from the sewer system into the ocean.

If DPW's laboratories do not have the equipment or expertise to perform a specific test, the sample is sent to an outside contractor laboratory retained by DPW.<sup>46</sup> This arrangement provides the Environmental Crime Team with the necessary flexibility to obtain a variety of samples knowing that there is a strong possibility that a certified laboratory will test the samples. However, because DPW's budget does not cover these costs, paying outside contractors raises concerns about laboratory costs. In the past, either the District Attorney has paid the costs or DPW has absorbed the costs with the hope of recovering this amount as part of a criminal or civil cost recovery award.

Under the County's Fire Prevention Ordinance, the Nassau County Fire Marshall has jurisdiction where there has been a fire, explosion or release of a flammable liquid.<sup>47</sup> As a member of the

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43. The Nassau County Department of Public Works operates the County's Cedar Creek Sewage Treatment Plant. This facility maintains a modern laboratory that performs tests on sewer wastewater samples.

44. 33 U.S.C. §§ 1251-1387 (1994); *see* NASSAU COUNTY, N.Y., SEWER USE ORDINANCE § 1 (1996).

45. The State of New York has made it a Class E felony for "[a]ny person who knowingly . . . introduces into a sewer system or publicly owned treatment works any pollutant or hazardous substance." N.Y. ENVTL. CONSERV. LAW § 71-1933(4)(b) (McKinney 1984 & Supp. 1996).

46. An outside contractor laboratory must be fully certified and have participated in a formal bidding process.

47. NASSAU COUNTY, N.Y., FIRE PREVENTION ORDINANCE, ART. III,

County Environmental Crime Team since 1990, the Fire Marshal can respond and secure an emergency scene under its jurisdiction and then refer the matter to the Environmental Crime Team for investigation. The Fire Marshal officers, who receive extensive training in hazardous/flammable materials at the County Fire Academy,<sup>48</sup> have the ability to draw upon the resources of local volunteer fire departments to assist in a response when necessary. They also maintain a fully-equipped and mobile hazardous materials response vehicle.

Moreover, routine inspections performed by the Office of the Fire Marshal, under the Fire Prevention Ordinance, are a source of case referrals for the District Attorney's Environmental Unit.<sup>49</sup> Such a referral can occur, for example, when an inspection reveals leakage of petroleum products from an underground storage tank and the site owner was aware of the discharge but failed to act.<sup>50</sup>

Local resources available in the investigation and prosecution of environmental crime can also be found on the city, town, and village level. Although the state or local health agency may have limited laboratory capabilities, their equipment and technical staff enable the local health agency to at least store samples under chain-of-custody. Proper storage of samples provides the municipality with additional time to locate funding to pay the costs of a certified laboratory.

Other available resources include sanitation departments<sup>51</sup> and building and code inspectors. If properly trained, sanitation workers can identify illegal discharges of regulated waste and promptly notify local emergency response units.<sup>52</sup> Residential, commercial

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FLAMMABLE AND COMBUSTIBLE LIQUIDS: ORDINANCE NO. 56-1962 (1986).

48. The Nassau County Fire Academy is a training facility for the staff of the County Fire Marshal and for local village volunteer firefighters.

49. See NASSAU COUNTY, N.Y., FIRE PREVENTION ORDINANCE §3.10 (1986).

50. *Id.*

51. Nassau County is divided into three Towns (Hempstead, North Hempstead and Oyster Bay) and two Cities (Glen Cove and Long Beach). The Towns maintain their own Sanitation Departments and Districts. The Towns also contain independent Villages that may staff their own Sanitation Department or Public Works Department.

52. Regulated waste refers to waste material regulated under the ECL and DEC regulations.

and industrial waste streams may contain illegal waste material that will be landfilled or incinerated unless a trained eye observes and identifies the regulated material. Thankfully, municipal building and code inspectors are able to observe potentially unlawful activity ranging from abandoned fifty-five gallon drums in empty warehouses, to ongoing discharges of industrial wastewater from building floor drains and municipal sewers. In addition, local highway and road maintenance crews can identify drums or piles of debris dumped along the road and prohibit entry into an area until the proper emergency response personnel arrive.

For municipalities located next to waterways, river or harbor patrol units can detect chemical and petroleum spills and unusual floating debris that may indicate an unlawful release of regulated waste.<sup>53</sup> Other local resources, such as volunteer or auxiliary police and fire departments, can assist a municipality in the detection and investigation of potential environmental crimes occurring in the community.

Utilization of the local resources stated above depends upon the municipality's ability to obtain samples of the regulated material and have laboratory testing performed on those samples. However, the reality is that sampling and testing cost money which small communities may not have. While self-sufficiency with respect to the investigation and prosecution of environmental crimes should be the goal of any municipality, if adequate resources are not available, local government has no choice but to seek the assistance of the state and federal governments. Yet even in those cases, local government can still be an active participant in the crime scene response by securing the crime scene until outside help arrives. Additionally, local manpower and equipment can be offered to supplement the state or federal response effort.<sup>54</sup> The best use of local resources, however, may simply be the identification of community residents having information regarding the target of the

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53. Petroleum spills occurring in the navigable waters of New York State are responded to pursuant to the provisions of Article 12 of the Navigation Law. N.Y. NAV. LAW §§ 170-97 (McKinney 1989 & Supp. 1996).

54. Examples of such local manpower and equipment are auxiliary police, volunteer firefighters, highway maintenance, and machinery such as bulldozers, payloaders, and backhoes.

investigation.<sup>55</sup>

#### IV. INVESTIGATION AND PROSECUTION

An environmental crime team is an important asset to a local prosecutor. In addition to responding to crime scenes, the team can be used to organize and execute search warrants.<sup>56</sup> Case examples illustrate the multi-dimensional functions which a local environmental crime team can offer to the community.

Search warrants are an essential component in the environmental prosecutor's arsenal. In cases where evidence of an environmental crime is located on private property, a search warrant is required in order to enter the property and collect the evidence. An exception to this rule applies when consent to enter the property and obtain samples is received from the property owner. However, because preparation and execution of an environmental search warrant can be a complicated and time-consuming process, if time permits, a pre-search warrant meeting is recommended to organize and plan the execution of the warrant.<sup>57</sup> At this meeting, team members should be assigned roles according to their respective abilities. Law enforcement personnel will attempt to serve the warrant, enter the facility, and secure the areas to be searched. Thereafter, a survey team of law enforcement and technical personnel should conduct a walk-through of the facility to ascertain whether there are ongoing releases of contaminants that could affect the safety of the team. Sampling locations could then be targeted and employees segregated for possible interviews. Sampling teams would proceed with the collection of evidence under the supervision of the team field leader and site safety officer. The evidence collected should be placed into pre-marked containers to be transported offsite under chain-of-custody and delivered to a certified laboratory for testing and analysis.

The preceding overview outlines the considerations which an

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55. For example, past or current employees of the target facility often possess knowledge about policy violations. These employees can identify waste streams, disposal locations and the corporate chain-of-command.

56. Search warrants are authorized pursuant to N.Y. CRIM. PROC. LAW § 690 (McKinney 1995).

57. The Nassau County Environmental Crime Team is also used to plan and execute search warrants. See 1989 Protocol Agreement, *supra* note 24.

environmental crime team must account for in the preparation and execution of a search warrant. A well-trained and experienced team provides a local prosecutor with an advantage in the successful execution of an environmental search warrant. A case example illustrates this point.

A telephone call from a local police department to the County Police Department detailed that vagrants were living in an abandoned ore producing facility. Although this call appeared routine, the County Police Department dispatched its Haz Mat Unit to the scene on the possibility that mineral wastes might be present. An inspection of the facility by Haz Mat officers revealed the presence of large volumes of liquid and solid hazardous wastes stored in a variety of corroding drums, tanks, and containers. The District Attorney's Office was notified and the County Environmental Crime Team met to organize and prepare for the execution of a search warrant. Information regarding production, raw materials and storage areas was obtained from former employees and local residents. The search warrant was executed over a three day period. An initial survey with personnel, equipped with protective clothing and full breathing apparatus,<sup>58</sup> targeted sampling locations and dangerous hot spots<sup>59</sup> that required immediate attention. The County Police, Health and Public Works Departments participated in the search supported by local police, fire and rescue services. Boxes of records were seized and samples from many waste sources were obtained.<sup>60</sup>

Although a search of this magnitude is rare, the existence of an Environmental Crime Team enabled the County to respond quickly and safely to a potential disaster. The threat to the community and the environment was mitigated and an environmental criminal investigation was initiated from the execution of the search warrant. In fact, the damage to the environment, as a result of the abandonment of hazardous substances at the facility, resulted in the site being placed on the federal Superfund list.<sup>61</sup>

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58. Otherwise known as a self-contained breathing apparatus.

59. A hot spot is the area immediately surrounding the sampling source, for example, leaking drums that could pose a danger or threat to the health and safety of the community or response personnel.

60. 1989 investigation of the Li Tungsten Facility, Glen Cove, New York.

61. See National Priorities List (NPL) for the federal Superfund listing of the

In environmental prosecutions the deterrent element is critical. Hence, criminal prosecutions are designed to punish violators and deter future violators. Local prosecutors can utilize environmental crime teams for proactive investigations and stings. Since damage to natural resources such as air, water, and land is involved, proactive investigations target specific industries that are suspected of illegally storing, transporting, or disposing of their regulated wastes.

In Nassau County, one such proactive investigation focused on companies that were suspected of disposing industrial pollutants into the County sewer system in quantities which exceeded their permit limitations.<sup>62</sup> Sewer monitors were placed at selected locations to obtain samples of discharges from targeted companies. Laboratory analysis of the submitted samples indicated that several companies were violating the conditions of their permits. All but one of these cases were referred for administrative enforcement and the most egregious case was prosecuted criminally resulting in the conviction of the company and its president.<sup>63</sup> In addition, fines and restitution were assessed in the amount of \$150,000.00. Dry cleaners, electroplaters, auto body shops, medical laboratories, and solid waste transfer stations, to name a few, are some likely candidates for proactive investigations in communities where these industries are located.

Stings have also become an increasingly popular tool in the fight against environmental crime. Covert operations in which undercover operatives attempt to catch individuals or corporations committing environmental crimes, are appealing to the media and local municipalities. Communities are generally supportive of stings due to the perceived creative use of tax dollars to capture individuals who may have otherwise eluded the local law enforcement net. The fact that local officials benefit politically from the coverage can also

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Li Tungsten site.

62. Pollutants that are also classified as hazardous wastes must be pretreated before being discharged into the sewer system. *See* NASSAU COUNTY, N.Y., SEWER USE ORDINANCE, §6 (1995). DPW regulates the Industrial Pretreatment Program whereby Significant Industrial Users are issued permits to discharge volumes and concentrations of individual pollutants to the sewer system. Violations occur when discharge volumes or concentrations exceed permit limitations.

63. *People v. Great Neck Saw Mfg., Inc.* (unreported decision), Nassau County Court, May 9, 1994.

prove advantageous for the local environmental crime team. However, prosecutors must still consider possible entrapment issues when selecting targets who are predisposed to environmental crimes.<sup>64</sup>

In addition, the deterrent value of a successful and publicized sting operation is inestimable. Individuals contemplating the commission of an environmental crime in a particular community may change their minds and look elsewhere if they fear that their contacts are undercover police officers and that their activities are being videotaped.

Creative use of available resources can be a cost-effective method for local prosecutors in organizing and developing an environmental sting. Municipally-owned warehouses, garages, trucks, and wooded areas are just a few examples of resources which local environmental crime teams may use in lieu of available commercial property. Expensive rental costs are thereby avoided and factors such as privacy and access to the property become less of an issue with public rather than private property.

For a sting, simulated hazardous waste, medical waste, and asbestos can be formulated by local chemists, laboratory personnel, and fire inspectors. Personnel from an existing environmental crime team can perform the roles required in a sting. If necessary, additional undercover personnel can be obtained from local agencies such as the volunteer fire department, health agency, and sanitation department. The involvement of local agencies other than the prosecutor and police department in environmental stings creates a sense of community teamwork and cooperation.

A recent environmental sting in Nassau County targeted the unlawful transportation and disposal of hazardous waste.<sup>65</sup> A former county vehicle maintenance garage complex that was for sale was used in the operation. A fictitious real estate management company was created with undercover officers posing as agents. Company stationery and business cards were printed and a telephone with a recording device and caller identification was set up. Empty fifty-five gallon drums were obtained from the County Department of Public Works. Due to safety and liability concerns these drums

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64. See N.Y. PENAL LAW § 40 (McKinney 1995).

65. Nassau County District Attorney, Environmental Sting (CF# 191/93).

were then filled with a simulated hazardous waste mixture formulated by a county chemist.<sup>66</sup> The liquid was made to look and smell like a chemical waste. Each drum was labeled with large yellow hazardous waste labels and was marked with the prosecutor's case number for identification purposes. A video surveillance camera was placed inside the garage to record the pick-up and another camera was placed inside the pursuit vehicle which was parked outside the garage. The undercover investigator carried an audio recording device to record conversations with the targets.

Once the preceding preparations were made, targets were selected from local consumer publications.<sup>67</sup> Companies or individuals offering waste or rubbish removal services were contacted and each telephone conversation was recorded. The undercover investigator informed the targets that he was employed by a real estate management company which represented the owner of a commercial garage facility. The investigator stated that the owner wanted to sell the property but a former tenant left behind some drums with liquid in them which the owner wanted removed. The targets were invited to visit the garage and give an estimate for the removal of the drums. Most of the companies contacted refused to consider the job once they found out that the drums were fifty-five gallon drums with yellow hazardous waste labels containing an unknown liquid. However, two targets did respond and agreed to remove the drums from the garage. Conversations were recorded in which the targets stated that they intended to illegally dispose of the contents of the drums. The pick-up of the drums and the disposal of the contents were recorded on videotape. After several months, these targets were contacted by a different undercover investigator at another new garage facility. The targets once again agreed to perform the job and were recorded on videotape illegally transporting and disposing of what they believed to be hazardous waste. The targets were eventually arrested and prosecuted.

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66. The use of fake hazardous waste reduced the charge to an attempted crime. See N.Y. PENAL LAW, § 110 (McKinney 1985).

67. Examples of local consumer publications in Nassau County are the PENNYSAYER and the SHOPPER'S GUIDE.

## V. CONCLUSION

Coordinating law enforcement and regulatory agency resources is essential in the investigation and prosecution of environmental crimes. Due to the unique nature of environmental crimes, environmental criminal statutes must incorporate and refer to administrative regulatory provisions for technical guidance. Consequently, local prosecutors must identify and utilize available administrative and technical resources in order to be self-sufficient in the investigation of environmental crimes. A local environmental crime team can be created with the assistance of the police department, fire department, health agency, public works department, building and code inspectors, and volunteer emergency and rescue units. The environmental crime team can be used by a local prosecutor to respond to environmental crime scenes and to perform search warrants, proactive investigations, and stings. The ability to promptly and safely respond to an environmental emergency requires local communities to depend upon local, rather than state or federal, resources. Thus, the more creative use of resources at the local level, the more effective the enforcement of environmental laws.

