

INTER-GOVERNMENTAL AND INTER-AGENCY COORDINATION: THE OKLAHOMA ENVIRONMENTAL CRIMES TASK FORCE EXAMPLE

Kelly Hunter-Burch and Stephen L. Jantzen

Introduction

Enforcement of environmental statutes and rules in Oklahoma can be exceedingly complex. This complexity is not the result of any one factor, but rather stems from the confluence of many conditions. One such condition is the fractured nature of environmental jurisdiction in the State of Oklahoma. Environmental regulatory jurisdiction is currently divided among at least ten state environmental agencies. Although each agency's jurisdiction is set forth in the Oklahoma Statutes, there are numerous activities with the potential to cause pollution or require permits that fit within more than one state environmental agency's jurisdiction. Thus, although the statutes make it clear that it is illegal to cause water pollution without regard to the source, it is often difficult to determine which agency is responsible for regulating and taking enforcement action against any particular activity.

Making matters even more disjointed is the fact that the federal government, local governments, various tribal governments, counties, and municipalities also exercise authority over certain spheres of environmental regulation. These governmental entities are responsible for enforcing myriad environmental statutes, rules, regulations, and ordinances. For example, there are over 70 federal enactments and over 30 state enactments that exact some effect on environmental matters. When federal regulations, state regulations, municipal ordinances, and tribal enactments are considered together, it becomes readily apparent that these regulatory entities can be more effective if they coordinate actions and share limited resources.

All regulatory agencies have limited funding sources and, without fail, the issues that they face are characterized by complex scientific, technical, economic, political, and legal issues. To combat the effects of these issues in criminal environmental cases, an inter-governmental and inter-agency group was recently formed in the State of Oklahoma. Known as the Oklahoma Environmental Crimes Task Force (hereinafter the "Task Force"), it has successfully worked to facilitate a more aggressive criminal enforcement of environmental laws in Oklahoma.

Hindrances to Investigation and Prosecution of Environmental Crimes in Oklahoma

Before the formation of the Task Force, there was no mechanism or criteria at the state level for identifying those violations of environmental laws that warranted criminal prosecution. Many state environmental agencies were aware of environmental matters that seemed to warrant criminal prosecution, but lacked the manpower, knowledge, training, or equipment to properly investigate these cases. Although criminal sanctions for violations of environmental laws have been in place for many years, every violation of an environmental law was being handled through either administrative notices of violation or administrative penalties or civil enforcement actions.

Traditional law enforcement investigative agencies were not equipped to investigate environmental crimes, in part, because environmental investigations require the use of specialized sampling methodologies and equipment. Recognizing what actions constitute criminal violations of environmental laws is also difficult for law enforcement officers who are not familiar with the regulatory schemes for air pollution, water pollution, and

hazardous waste. These determinations typically involve collecting and interpreting complex scientific information in a manner that requires specialized training.

Investigation of environmental matters generally requires that soil, air, water, or other samples be obtained. Those collecting the samples need protective gear to guard against exposure to hazards that may be associated with the media being sampled. Very often, investigators must obtain samples of an unknown constituent, the identity of which can be revealed only through laboratory analysis. To properly obtain samples, special equipment must be employed by investigators. Certain containers must be used to hold the samples obtained. Similarly, investigators must be knowledgeable as to sampling techniques – not only to protect their health and safety, but also to properly preserve and document potential evidence. Recording and documenting each step of a sampling event – from obtaining the sample through delivery to the laboratory for analysis – is essential. Any irregularities in obtaining, preserving, and documenting samples can quickly undermine both an investigation and a prosecution.

In addition, state environmental agencies are sometimes unable to convince local district attorneys to prosecute environmental crimes. Like state environmental agencies, district attorneys are often understaffed with limited resources. Limited prosecutorial resources necessarily translate into focusing on matters of public and political urgency. Often, the prosecution of environmental crimes has been given low priority because the cases were considered less important than crimes that are more traditional. Many district attorneys also lack specialized knowledge of the complex technical, scientific, and legal issues that characterize the prosecution of environmental crimes.

Reports of environmental crimes were infrequent, if not completely lacking. The wide-open spaces of Oklahoma can foster environmental crime by reducing the availability, or even the likelihood, of witnesses to a particular environmental crime. Sometimes, the public lacks information or understanding as to those activities that constitute an environmental violation. Thus, even though there may be witnesses, an environmental violation may go unreported. Very often, witnesses find it more palatable to ignore a potential violation so that they can avoid getting involved in the process of prosecuting an environmental violation.

It was believed that these problems could be solved, to a large degree, if the jurisdictional agencies developed a mechanism for sharing information, resources, and technical expertise. Each of the agencies possessed specialized knowledge and resources which, when combined, could be used to create a well-defined process for recognizing, investigating, and criminally prosecuting the most egregious violators of environmental laws. Together, the agencies could also educate the public and the traditional law enforcement community about environmental crime and the serious impacts that it has on human health and the environment.

Formation of the Task Force

Recognizing these barriers to effective criminal enforcement of environmental laws and the need for a heightened level of enforcement of environmental criminal provisions, several state environmental agencies, in conjunction with the Oklahoma Attorney General's office, and federal and local agencies involved in the protection of natural resources and the environment, initiated the process of forming the Task Force. The first Task Force meeting was held on February 25, 1997.

The purpose of the first meeting was to determine whether the agencies were committed to developing a coordinated statewide effort in the investigation and prosecution of environmental crimes within the State of Oklahoma. Interest in the Task Force, even at the initial meeting, was considerable.

Numerous state agencies sent representatives to this meeting including the Oklahoma Attorney General, Oklahoma Department of Environmental Quality, the Oklahoma Department of Wildlife Conservation, the Oklahoma Water Resources Board, the Oklahoma Corporation Commission, the Oklahoma Department of Mines, the Oklahoma Scenic River Commission, the Oklahoma State Bureau of Investigation, the Office of Public Safety, and the Oklahoma Highway Patrol. Agencies of the federal government also showed interest in the Task Force by sending representatives from the Criminal Investigation Division of the U.S. Environmental Protection Agency (EPA), the Federal Bureau of Investigation, the Division of Law Enforcement of the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the Office of the Inspector General from the U.S. Department of the Interior, the Defense Criminal Investigation Service, the U.S. Air Force Office of Special Investigation, and the U.S. Attorney's Office. Local agencies were also present, including the Oklahoma City Fire Marshall's Office and the City of Oklahoma City. In general, the representatives of these

governmental units expressed both their desire and recognition of a need for more aggressive enforcement of environmental criminal provisions and a mechanism to coordinate state and federal investigatory and prosecutorial efforts.

The initial meetings of the Task Force focused on organization and developing a case screening process. The Oklahoma Attorney General's Office was chosen to chair the meetings and it was decided that meetings would be held every month. Any state, federal or local agency could bring a potential criminal case to the Task Force for assistance with investigation or advice on the viability of a case. All member agencies agreed to share resources such as investigators, sampling and surveillance equipment, and laboratories. Prosecutors also began to attend the meetings to become familiar with the ongoing investigations and the investigators that would be bringing cases to them. Almost immediately after the first meeting, several agencies initiated the first multi-agency investigation of an environmental crime in the history of the State of Oklahoma.

Operation of the Task Force

On the most fundamental level, the Task Force was established to serve as a forum for coordinating state and federal environmental criminal enforcement efforts. Work groups such as the Task Force have been established in numerous states and have proven to be an extremely successful mechanism to coordinate state and federal investigations and prosecutions of environmental crime. The Task Force was specifically organized and patterned after the Texas Task Force, which had been operating for a few years at the time the Task Force was formed. The EPA was instrumental in the formation of the Oklahoma Environmental Crimes Task Force, as well as the Texas Task Force. In Oklahoma, the EPA has actively participated in the daily operation of the Task Force and has provided grant money to the Oklahoma Attorney General to fund training and joint investigations.

The self-avowed purpose of the Task Force is "[t]o protect human health and the environment through coordinated investigations by federal, state, and local agencies and to ensure that no environmental crime goes unprosecuted because of a single agency's limited legal or logistical resources." To accomplish this mission, the Task Force meets regularly to coordinate ongoing investigations and prosecutions of environmental crimes. Between meetings, the Task Force chairperson takes reports of new investigations and assists the lead agency in contacting other agencies with jurisdiction over the violation. This coordination ensures the effective use of limited federal, state, and local resources in investigating environmental crimes.

The Task Force utilizes a case-screening committee. Each agency participating in the Task Force is represented on the case-screening committee by an individual with the authority to commit investigatory and technical resources. It is the job of the case-screening committee to receive case referrals submitted by various federal, state, and local agencies, but only after such referrals have been through the screening process internal to the referring agency. The case-screening committee reviews the facts of the referred case to determine its merits, to determine whether the referred case warrants criminal investigation, and to determine the likelihood of a successful prosecution. If the case is deemed appropriate for criminal investigation, the case-screening committee determines which agency will take the lead investigatory role. As part of this determination, the committee also determines which agencies have resources and personnel available to assist the lead investigating agency. Lastly, the case-screening committee determines whether the prosecution should be referred to a state or federal prosecutor. Several agencies have provided the Task Force with the expertise of in-house staff attorneys that have specialized knowledge of environmental laws. These attorneys are available to assist both state and federal prosecutors both before and during trial with complex issues that are specific to environmental prosecutions.

The Task Force is also actively involved in seeking and providing training opportunities for investigators, technical staff, and prosecutors. In August and September of 1999, the Task Force conducted two training seminars for local law enforcement officers across the state. The focus of the training was to inform these officers about how to recognize environmental crimes, react safely when they encounter them, and report the crimes to the proper agencies. The Task Force plans to conduct seminars for local regulatory personnel and municipal inspectors which will be designed to provide them with guidance on how to recognize when a violation is criminal and deal with parallel criminal and administrative proceedings.

Criminal Environmental Enforcement Efforts

Reports of potential environmental crimes are now surfacing at both the state and the federal level more frequently than before the formation of the Task Force. This result is partially because Task Force investigations have led to a number of high profile prosecutions of environmental crimes. Reports are also increasing because the Task Force has created a procedure for handling reports from citizens, law enforcement, local governments, and administrative agencies. Each complaint received by the Task Force is tracked, investigated, and referred either for prosecution or administrative action. Member agencies are now sharing information with other agencies that may have jurisdiction over the alleged criminal activity and the Task Force is providing them with a forum in which to openly discuss potential cases. Investigators also have better access to prosecutors that are willing to bring these cases despite the fact that the cases typically involve complex scientific and legal issues. The discussion that follows includes two examples of successful cases that utilized the resources and expertise of Task Force member agencies to investigate and prosecute environmental crimes.

Allied Environmental Services, Inc.

The Oklahoma Corporation Commission referred this case to the Oklahoma Department of Environmental Quality for investigation. The Oklahoma Department of Environmental Quality initiated a joint investigation with the EPA - Criminal Investigation Division and the Defense Criminal Investigation Service.

The facts of this case reveal that a Kansas corporation, Allied Environmental Services, Inc. (hereinafter, "Allied"), agreed to remove petroleum-impacted wastewater from storage tanks at military facilities in Kansas and Missouri. By agreement, Allied was to properly treat and dispose of petroleum-impacted wastewater and be paid by the government for proper treatment and disposal. Allied retained Overholt Trucking Co. to haul untreated petroleum-impacted wastewater to Oklahoma, where it was dumped into saltwater disposal wells. Allied collected payment from the government for proper treatment and disposal. EPA remediated a tank farm near Drumright, Oklahoma that Overholt Trucking Co. used for the illegal disposal of waste and which was contaminated with chlorinated solvents, costing taxpayers \$1.5 million.

On November 5, 1998, three individual defendants and a corporation were indicted for conspiracy to violate the Safe Drinking Water Act through the illegal disposal of wastewater, transportation of hazardous waste without a manifest, wire fraud, and obstruction during the period of August 1994 through March 1996. Other charges included violations of the Clean Water Act, the Resource Conservation and Recovery Act, federal mail fraud provisions, and making false statements to investigators. The indictment alleged that over 300,000 gallons of wastewater from facilities in Kansas and Missouri had been transported into Oklahoma and disposed in various salt-water disposal wells. The indictment also alleged that about 6,200 gallons of wastewater were dumped into a tributary feeding Lake Keystone near Tulsa.

On October 20, 1999, two of the three individuals and the corporation were convicted in the U.S. District Court for the Northern District of Oklahoma. One defendant was subsequently sentenced to seven years and three months in prison for conspiracy and violations of the Safe Drinking Water Act, the Clean Water Act, the Resource Conservation and Recovery Act, mail fraud, and making false statements. The remaining defendant was sentenced to four years and seven months in prison for conspiracy and mail fraud. Both individuals and the corporation were ordered to share in paying more than \$1.2 million to cover the costs of remediation.

H & J Auto

In January 1997, a confidential caller to the Oklahoma Department of Environmental Quality claimed that an auto salvage business in Madill, Oklahoma was improperly storing 34 drums of paint waste. Shortly thereafter, an inspector for the Oklahoma Department of Environmental Quality visited the site and informed the owner, Carl Eugene Hines, that the paint waste was stored illegally and that it was his responsibility to properly dispose of the hazardous waste. Approximately one week later, an Oklahoma Department of Environmental Quality investigator returned to H & J Auto to discover that all of the drums of paint waste had been moved. Mr. Hines had no explanation for the disappearance.

In April of 1997, a municipal police officer called the Oklahoma Department of Environmental Quality and reported that an H & J Auto employee, Daniel Martin, was storing the drums at his home. When investigators from the Federal Bureau of Investigation and Oklahoma Department of Environmental Quality arrived at

Martin's house, they found only one drum in a carport but a neighbor they questioned admitted that Martin had hired him to get rid of the other drums. The neighbor was suspicious and believed that there could have been a body in one of the drums. On his information, the investigators located 27 additional drums abandoned in an open field just two blocks away.

During the course of their investigation of these hazardous waste violations, however, investigators from the Federal Bureau of Investigation, EPA, and Oklahoma Department of Environmental Quality uncovered a major drug conspiracy case. Marshall County Sheriff Deco DeWayne Baxter initially promised to assist with the investigation but later the investigators discovered that he was involved with Carl Hines in a multi-county southern Oklahoma drug manufacturing and distribution enterprise known as "Live for the Family." Rather than assisting with the investigation, Baxter admitted in court that he provided security for drug manufacturing labs and had warned Hines about the presence of the investigators. Because of these agencies' efforts, Baxter pled guilty on December 17, 1997, to conspiracy to manufacture and distribute methamphetamine, witness intimidation, aiding and abetting the possession of a firearm by a felon, possession of methamphetamine, and conspiracy to illegally transport hazardous waste. He was sentenced to eight and a half years in federal prison. Baxter also testified in the trials of Martin and Hines in which they were convicted of conspiring to manufacture, possessing with intent to distribute, and distributing methamphetamine. They were also convicted of illegally storing and transporting hazardous waste. Hines was sentenced to 35 years in federal prison and Martin was sentenced to 20 years.

Conclusion

Mitigating institutional and resource barriers to investigating and prosecuting environmental crime in the State of Oklahoma, one of the principal goals of the Task Force, is one that is likely to require time to fully-achieve. The initial experience of the Task Force, however, has been one of success; agency representatives have participated enthusiastically. The initial success has also served to elevate public awareness of environmental crime. To date, the Task Force has been effective in initiating several investigations that have led to the prosecution and conviction of environmental violators that disregard the damage that their actions have caused to Oklahoma's public health, safety, welfare, and environment. In the short time since its formation in 1997, the Task Force has coordinated 41 investigations. Of these investigations, 13 cases have been referred for prosecution. Individual felony indictments number 52 and there have been 12 felony indictments of corporations. Two individuals have been indicted for misdemeanors. Some 32 individuals and two corporations have been convicted of felonies and two individuals have been convicted of misdemeanors. Eleven of the cases referred for prosecution have been referred to the administrative agencies for resolution. While the initial experience of the Task Force has been a successful one, environmental criminal activity in the State of Oklahoma remains an issue that requires, and indeed deserves, more attention.¹

¹ The views expressed herein are not necessarily those of the State of Oklahoma or the Office of the Oklahoma Attorney General.