

# FOCUS The Environment

## State gets aggressive in prosecuting polluters

by CATHRYN J. PRINCE  
JOURNAL STAFF

Violators of environmental regulations beware: The eco cops are on the lookout.

While criminal prosecution of environmental crime may still be relatively new, enforcement and prosecution is on the upswing in Massachusetts. In fact, in the past four years, the number of defendants prosecuted, convictions won, and fines collected in the state, have exceeded those tallied between 1981 and 1991.

Yet, because the field remains somewhat young and juries and judges are not as well versed in the intricacies of environmental crime as compared with other criminal categories, prosecutors continue to reserve criminal prosecution for the most significant and egregious violations.

"This is still the kind of criminal enforcement that while not in its infancy, it's just beginning to walk," said Martin Levin, assistant attorney general and chief of the environmental criminal bureau in Massachusetts. "Finally, the courts are really beginning to address these cases more and entertain novel dispositions as well. But still, criminal prosecution is reserved for the most significant offenses."

### Greater resources

Noting that most environmental statutes date from 30 years ago and later, Levin said prosecution on a criminal basis began to get more vigorous in Massachusetts in the late 1970s, with a greater allocation of resources and increased public awareness of the seriousness of the crimes.

In the early 1970s, criminal violations of state air and water laws typically brought fines of \$25 to \$75 per offense. From 1980 to 1991 the state prosecuted only 38 individuals and 17 corporations and collected \$900,000 in fines. Then it sentenced 13 defendants convicted of environmental crimes to a total of 20 years.

In contrast, in the three-year period between 1991 and 1994, the state prosecuted 41 individuals and 12 corporations. It won

convictions for 31 individuals and 11 corporations. The state also collected \$2.1 million in fines and handed out 17.75 years in jail for those convicted of environmental crimes.

"Criminal prosecution is definitely on the upswing," Gregor McGregor, a partner in the Boston law firm McGregor and Shea, said of

environmental cases. "There are more criminal fines and jail sentences happening than there were 20 years ago. It's not a myth and it's not a rumor."

But going the criminal prosecution route is not an easy decision in any case. That's because unlike in civil cases, the prosecu-

tors must prove criminal intent.

Prosecutors generally consider a number of factors before bringing a case to criminal court: the significance of the violation; whether it seriously undercut legitimate business or posed a harm to public health;

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whether the defendant had a prior record and whether the violation was accidental or intentional. And if it was accidental, they must weigh whether the defendant failed to report the violation, which is itself a violation.

Of course one of the best ways for a business to catch the eye of the Attorney General's office is to repeatedly ignore calls to reach environmental compliance.

Such was the case with two former Brimfield companies, Trant Equipment and Scrap Iron Inc., and their president Carl Trant. Trant was sentenced in 1993 to two years in jail time for the illegal operation of a waste tire collection and disposal business. Trant had failed to comply with an order issued by the Department of Environmental Protection in December 1989, prior to his arrest and sentencing in 1993.

## Challenge in court

In addition, state prosecutors say it can be a challenge for prosecutors to convince a jury that illegal storage of junk tires is as serious as other crimes, such as assault and battery, and to persuade a judge to hand down a substantial sentence if a guilty verdict is reached.

"When we send prosecutors in, we're asking them to compete for time and jail space, and maybe jail for someone with no criminal record who looks like me, who wears a tie and a white collar and has pictures in his office his kids drew," Levin said.

Other states have also indicated the same difficulties.

For example, the experiences of district attorneys' offices for Jefferson and Gilpin Counties, Colo., and Alameda County, Calif. have found that juries often view CEOs indicted of environmental crimes as upstanding community leaders and their companies as providing needed employment in the community. "In light of these sentiments, a jury's reluctance to convict may be understandable," wrote Theodore M. Hammett and Joel Epstein in a U.S. Department of Justice publication, "Local Prosecution of Environmental Crime."

Once the decision is made to go criminal, the last thing the prosecutor wants is to have the jury think the attorney general got someone on a technicality, said Levin. It could ruin a case to have the defendant show a thick regulation book and say: "This is what they're getting me on, this little line out of thousands," he said.

So there are some who want to teach the courts the complexity of environmental regulations.

"We need to help the judiciary understand the seriousness of environmental crime," Anne Kelly, director of the state's Environmental Strike Force, said. "We need to help them understand that these are not victimless crimes. You may not have a body, but there are victims."

To remedy the situation, Kelly is planning a program that will bring superior court judges, district court judges, and other members of the judicial field together to learn about the implications of environmental vio-

lations.

But even so, sometimes the government only has to prove violations in paperwork filed, pointed out McGregor of McGregor and Shea.

"The government doesn't have to prove pollution got out, it just has to prove paperwork violations. The government doesn't have to prove pollution is bad for the environment. The rules presume that," McGregor said.

For example, many environmental violations arise in the context of a business transaction.

A waste hauler may charge a customer a price reflecting the cost of proper disposal of the waste, and then dispose of the waste illegally, pocketing the cost of proper disposal as additional profit to the hauler.

The story of Joseph Lepera, of Cambridge, illustrates this rather well. In 1993 he was sentenced to six to 10 years in state prison for a widespread scam involving the illegal dumping of tires in six cities and towns. Lepera had held himself out to be in the tire recycling business and rented space in warehouses and trailers. He would then let the rent fall into arrears and leave the warehouses and trailers filled with junk tires. Junk tires are difficult and costly to dispose of and pose a risk of fire, which can result in air and water pollution.

"We're pretty lucky in this state to have a strike force where various agencies are working together," said Massachusetts Environmental Police Lt. Gail Larson. "The difficulty lies in that we need more resources to do our job better. Like more vehicles. When you're going undercover in a typical police vehicle, it doesn't work. And some members of the strike force don't have a vehicle, so they have to car pool."

The state Environmental Police is under the supervision of the Executive Office of Environmental Affairs.

Aside from the state's 120 environmental police officers, local police officers can also uncover environmental crimes during routine investigations. When searching a suspected drug lab for example, illegal storage containers of hazardous chemicals may turn up.

Because of this, the strike force may bring charges under more traditional criminal categories including larceny, conspiracy, willful and wanton destruction of property, commercial bribery, and assault and battery. These all can draw substantial prison terms.

Other states with fairly aggressive environmental prosecution policies and have established good records of success include Arizona, New Jersey, Ohio, and California, according to the Department of Justice report.

In 1984 the Attorney General's office in Arizona instituted an environmental program largely in response to incipient organized crime involvement in the state's hazardous waste industry. The program centers on a team approach involving a number of regulatory and investigative agencies at federal, state and local levels.

And in New Jersey, the Attorney General's office has an environmental unit and asked each county in the state to designate an assistant prosecutor and a county investigator who would become well versed in environmental statutes. □