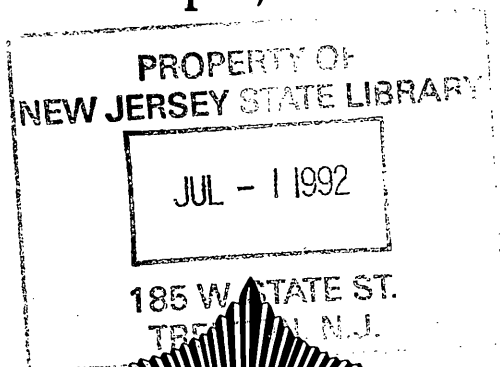


OFFICE OF THE STATE
ENVIRONMENTAL PROSECUTOR

SECOND
ANNUAL REPORT
TO
GOVERNOR JIM FLORIO
April, 1992



DEPARTMENT OF LAW AND PUBLIC SAFETY

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FOREWORD

Established by Executive Order No. 2 of Governor Jim Florio, the Office of the State Environmental Prosecutor is as unique and innovative a concept as it is new. Just completing its second year of operation, the office's experience demonstrates quite clearly that State Government can be more efficient and effective by simply being more resourceful.

The State Environmental Prosecutor's Office is currently comprised of sixteen individuals—only three of whom have been hired from outside of State Government. With the mandate of the Executive Order that all departments and agencies cooperate fully with the State Environmental Prosecutor, the Office has been set up to function as a management core. It operates through, and in coordination with, the numerous State, county and local agencies, divisions and departments involved in the criminal, civil and regulatory environmental enforcement effort. Acting in this fashion, the Prosecutor not only oversees the prosecution of "priority cases," but also works to insure the coordination of initiatives, information exchange, and day to day enforcement activities. The Prosecutor has also overseen the creation of environmental units in County Prosecutors' Offices and works closely with them in enforcement matters. The Prosecutor is not restrained by the arbitrary limitations of the resources or jurisdiction of any given agency, division or department, nor has he any vested interest in highlighting or using the tools or resources of any particular agency, division or department. Herein lies the true uniqueness of the concept of the New Jersey Environmental Prosecutor. Faced with a significant "environmental incident," the Prosecutor has the unfettered discretion to coordinate the nature and timing of the most appropriate, efficient and effective enforcement response. Whether it be criminal, civil or administrative, or any combination thereof, whether it be State, county or local, the Prosecutor is free to exercise his judgment as to the nature and timing of the preferred response or responses. The ability to proceed in this "holistic" fashion avoids duplications of effort, contradictory theories of enforcement, and insures the full and proper utilization of our State Government resources, irrespective of the division or department in which they formally reside.

As described, the New Jersey Environmental Prosecutor is a position unique in the ranks of environmental enforcement.

Robert J. Del Tufo
Attorney General of New Jersey

EXECUTIVE SUMMARY

The establishment of the Office of the State Environmental Prosecutor in 1990 again placed New Jersey in a leadership role. The nation's first Environmental Prosecutor's Office, created by Governor Jim Florio through Executive Order #2, has greatly enhanced the efficiency and effectiveness of New Jersey's environmental enforcement program and done so at virtually no added cost to the State's taxpayers.

The First Annual Report of this Office described the establishment and implementation of the Statewide environmental enforcement network as well as initiatives and programs designed to make more effective and efficient use of the State's existing resources. The expedited handling of long-standing environmental matters and the successes in the highlighted priority cases during the first year of operation clearly demonstrated the critical role the Office was to play in the future of New Jersey's environmental enforcement effort.

This Second Annual Report presents an overview of the comprehensive Statewide environmental enforcement program and accomplishments in all areas of responsibility defined in Executive Order #2. Further, the Report provides details regarding many initiatives and programs undertaken by the Office, as well as its role in the successful handling of priority criminal, civil and administrative cases.

The new programs established and undertaken with the leadership of this Office are having Statewide impact. Each enforcement initiative has been carefully planned and implemented with an eye towards the important need for pollution prevention. One of the initiatives specifically addresses that need through a voluntary audit and compliance program for New Jersey's business and industry community. The program is designed to instigate and promote voluntary responsible environmental practices by requiring criminal prosecutors to favorably consider their existence in the exercise of prosecutorial discretion. Under this program, not only are environmental incidents less likely, but their ramifications tempered to reflect the environmental benefits of broadbased, responsible, environmental practices.

Other initiatives include the Clean Harbors and Rivers Task Force to dedicate a contingent to the exclusive task of investigating and prosecuting criminal clean water cases; Solid Waste Enforcement Initiatives to insure the safe, lawful, and environmentally sound transportation and disposal of solid waste; A-901 Program Coordination to improve the efficiency and effectiveness of the program; Scrap Tire Initiative to inventory the millions of abandoned tires to serve as the basis for a remediation/enforcement strategy; Pinelands Initiative to protect the barrens and the underlying aquifer by intensified enforcement; the Clean Water Enforcement Implementation Initiative designed to insure the proper implementation of the amendments to the Act; the Racetrack Initiative to eliminate the runoff of pollutants from the State's horse racetracks; and the Direct Sewage Discharge Initiative to ferret out and eliminate the dumping of black and grey water into the waterways of the State. Each of these initiatives/programs has been established and operated with the use of existing government resources. Success of these initiatives will result in a cleaner environment, increased permit and regulatory compliance and intensified enforcement, all at no additional cost to the State.

The county components of the Statewide environmental enforcement network have proven to be effective and efficient. As indicated in the various county priority cases highlighted in this Report, the outstanding cooperative efforts of the County Prosecutors, County Health Officers, and various State and local agencies have resulted in expedited and successful enforcement actions.

As part of the coordinated Statewide environmental enforcement program, the Office planned and sponsored specialized environmental training programs this year for over 400 State, county and local representatives of agencies involved in civil, criminal and administrative environmental enforcement. Additional environmental education efforts

were conducted through many lectures and appearances by members of staff at events across the State.

As directed in Executive Order #2, the State Environmental Prosecutor maintains an active relationship with Federal environmental officials and agencies and participates in several national level task forces, committees and planning groups. The State Environmental Prosecutor also assisted in the establishment of the Federal/State Environmental Task Force. Working relationships have also been established with other states on environmental matters of mutual concern.

Priority cases of the Environmental Prosecutor's Office at the State level include successes in criminal, civil and administrative actions throughout the State. Several long-standing enforcement matters were resolved. Over \$81 million in fines, penalties, cleanup costs or restitution were achieved on behalf of the State as a result of priority case activities directed at persistent environmental offenders or those who have violated the State's criminal environmental laws. Sentencing of nine defendants in criminal environmental cases at the State and county levels resulted in more than eighteen years incarceration. Sentences in these and other matters also included more than twenty-nine years probation and nearly 3,000 hours of community service. In addition, twenty-four criminal indictments and/or accusations were returned for violations of the State's environmental statutes.

These enforcement efforts were coupled with an increased emphasis on pollution prevention, permit compliance and even-handed enforcement and penalty assessment. Working closely with all of the agencies involved in environmental enforcement, the Environmental Prosecutor's Office has helped set a new tone of firm, but fair, enforcement of New Jersey's environmental laws. This Report reflects activities of the Office from April 1, 1991 through March 31, 1992.

INTRODUCTION

The State of New Jersey has a significant commitment of manpower and resources within the three primary components of the environmental enforcement effort. These include the administrative enforcement elements within the Departments of Environmental Protection and Energy (DEPE), Health and Labor; the civil enforcement area of the Environmental Protection Section of the Division of Law (DOL); and the criminal investigative section within the Environmental Prosecutions Bureau of the Division of Criminal Justice (DCJ). Additionally, the New Jersey State Police Marine Services Bureau and the Solid and Hazardous Waste Unit each perform responsibilities which overlap primary enforcement components.

Each of these enforcement components utilizes resources of varying degrees of intensity depending on the nature, extent and timing of the appropriate initiative or response. In an effort to maximize the State's utilization of these resources, on January 24, 1990, Governor Jim Florio issued Executive Order #2 establishing the Office of the State Environmental Prosecutor ("OSEP"). OSEP was charged with the responsibility for coordinating the use of these resources in order to maximize their efficiency and effectiveness and to create and to integrate them into a comprehensive Statewide environmental enforcement program. Additionally, it required the State Environmental Prosecutor ("SEP") to personally prosecute those enforcement cases which involve either chronic environmental offenders, or situations which pose a serious threat to public health or the environment and to see that these "priority cases" receive enhanced and expedited handling.

The SEP, Steven J. Madonna, and the Attorney General, Robert J. Del Tufo, organized the OSEP around a management core concept. Rather than attempt to create an additional bureaucracy in the enforcement effort, it was deemed more efficient to establish a management core to supervise and manage the existing resources of State Government in a more effective, coordinated fashion.

Housed in the Hughes Justice Complex, the OSEP, totaling sixteen individuals, is staffed with the SEP, seven Assistant State Environmental Prosecutors, three Investigators, an Executive Assistant and four support personnel. Thirteen of the sixteen staff positions have been filled through reallocation of staff from other State agencies.

COMPREHENSIVE STATEWIDE ENVIRONMENTAL ENFORCEMENT PROGRAM



STATE AGENCY COORDINATION

The first step in creating a comprehensive Statewide environmental enforcement program was establishing a system of coordination of the initiatives, personnel, and resources of the various environmental enforcement Divisions and Departments of State Government. The SEP initiated the appointment of representatives within each of the Divisions and Departments to act as liaisons with the OSEP. Assistant State Environmental Prosecutors were likewise assigned to coordinate and manage the relevant enforcement activities of these various Divisions and Departments. They have also been instrumental in establishing working protocols of operation with their respective liaisons and agencies.

All of the environmental enforcement activities of these Divisions and Departments fall into one of three general categories: criminal enforcement, administrative enforcement, or civil enforcement. The coordination of the use of the resources and personnel within these State agencies by the SEP is designed to maximize the efficiency and effectiveness of the State environmental enforcement program as a whole. At present, over 600 matters are being carried on the OSEP's case list. With referrals between this office and County Prosecutors' Offices, Health Departments, the DCJ, the DOL, the State Police Marine Services Bureau, the DEPE, as well as citizens, this number represents a wide range of OSEP activities and levels of involvement. Approximately 350 of these matters are being reviewed and handled in the County Prosecutors' Offices, with two of the seven Assistant State Environmental Prosecutors devoted exclusively to working with the counties on these cases.

In furtherance of this comprehensive program, coordination and supervision by the OSEP occurs daily in the context of the selection of the appropriate action and agency in a given case and in other non-case oriented initiatives. These include:

Voluntary Audit/ Compliance Program

In an effort to instigate more responsible environmental practices within the State's business and industry community, the SEP has proposed a Voluntary Audit/Compliance Program. Drawing upon

widely accepted environmental principles, the SEP, working with the DCJ, the DOL, the DEPE, and the County Prosecutors, and with comments from various responsible practitioners and members of New Jersey business and industry groups, has drafted a checklist of desirable business practices which experience has shown will have a positive impact on the pollution prevention effort. The program provides that the implementation and responsible operation of these business practices could benefit and assist a business in the event of an unforeseen environmental "incident" which may normally carry criminal ramifications. These business practices are to be incorporated as factors to be promulgated by the SEP, the Attorney General, and the Director of the DCJ, as a Guidance Document to be considered by the State's prosecutors when making decisions on whether or not to charge an environmental crime, the nature of the charges, and the identity of the defendants. Although the program has a parallel in the Department of Justice guidelines issued last year to United States Attorneys for use in conjunction with the exercise of their prosecutorial discretion, the New Jersey Program factors are specifically designed to instigate and promote responsible environmental audit and compliance programs within the State's business and industry community. It is the belief of the SEP that broadbased implementation and operation of such programs are essential components of a successful pollution prevention effort and the protection of our natural resources.

Clean Harbors and Rivers Task Force

The upgrading of offenses relating to crimes impacting on the waters of the State of New Jersey along with the inclusion of the new statutory concept "significant adverse environmental effect," are key components of the recently enacted Clean Water Enforcement Act. With these new tools, the SEP has established a multi-agency task force dedicated solely to coordinated criminal enforcement of New Jersey's clean water statutes. This task force has, as its primary responsibility, the coordinated investigation and prosecution of alleged incidents of criminal water pollution in a manner which will insure the diligent, but reasoned and uniform, use

and interpretation of the new statutory provisions.

Although the task force will investigate waterways pollution incidents State-wide, it has specific staff dedicated to the investigation of incidents occurring at each of the State's two harbor areas, namely the Port of New York/New Jersey and the Port of Philadelphia/Camden. Accordingly, it has been designated the Clean Harbors and Rivers Task Force.

The source of funding for the task force is a portion of the proceeds of the Exxon and Ciba-Geigy criminal penalties, which have been deposited in the Clean Water Enforcement Fund and specifically earmarked for criminal enforcement purposes. Hence this initiative is being funded without any cost to the State Treasury.

The task force of nine full time law enforcement personnel working with the OSEP consists of legal and investigative staff from the Environmental Prosecutions Bureau of the DCJ and experienced investigators from both the DEPE and the New Jersey State Police Marine Services Bureau. The latter two individuals have specific investigative responsibilities, but as importantly, they serve as direct liaisons with their respective agencies to insure a flow of case lead information and the availability of support services for the operation of the task force. Since the unit is intended to have a direct and immediate impact on incidents of perceived criminal water pollution, staff are not involved in other investigations and prosecutions.

The task force freely interacts with the various county environmental enforcement groups through the SEP. This is intended to insure the coordination of the investigation and prosecution of appropriate county-level cases by, or with, the respective County Prosecutors. The SEP coordinates pollution incident referrals to the task force which are reported by citizens and organized environmental groups who are dedicated to clean water protection. Furthermore, the SEP is conducting an outreach effort to citizen environmental volunteers to become involved in waterway audit type programs. It is expected that these groups will be a significant source of case lead information for the task force.

During its first three months of operation, twenty matters have been opened and are under investigation.

Solid Waste Enforcement Initiatives

- The OSEP organized a joint effort by the State Police and DEPE for a one week period in April to pursue forfeiture actions against solid waste transporters hauling solid waste from the Industrial and Commercial Solid Waste Transfer Station in Newark in violation of State licensing laws. During the around-the-clock operation, would be transporters were informed that they were subject to possible vehicle seizure and forfeiture actions, if they hauled the waste in violation of A-901 screening procedures and truck licensing requirements. As a direct result, the gypsy haulers ceased their illegal operations.

- The OSEP continued to coordinate efforts on behalf of the New Jersey State Police Hazardous Materials Unit and the Solid Waste Division of the DEPE to insure the safe, environmentally sound and legal movement of solid waste over the State's highways. Through a continuing series of vehicle checkpoints in different areas of the State, approximately 2,300 violations have been detected. Appropriate citations were issued and approximately 35 solid waste vehicles were placed out of service since the implementation of this initiative in 1990.

- The OSEP and the Pollution Control Financing Authority of Camden County coordinated a solid waste enforcement effort in Burlington, Camden, Gloucester and Salem Counties. Personnel from the New Jersey State Police, the DEPE, as well as investigators from each of the counties, were stationed at seven bridges from the Burlington-Bristol to the Delaware Memorial. At each location, the State Police conducted safety inspections of solid waste haulage vehicles and the various regulatory personnel conducted checks for instances of interstate waste flow violations and other regulatory violations. At the conclusion of the three-day operation, some 300 trucks had been stopped and inspected. Approximately 30 misdirected waste flow violations were discovered. Following notices to the operators that forfeiture actions were possible, all of the trucks were redirected to their legally designated destinations.

A-901 Program Coordination

In 1991, the SEP working in concert with the DEPE Deputy Commissioner,

jointly institutionalized an oversight program to better coordinate the multi-agency resources which constitute the Solid and Hazardous Waste Hauler Licensing Program, commonly known as A-901. Operational procedures within the DEPE, the DOL and the New Jersey State Police were integrated into a more streamlined and efficient system. Resources and workloads were reallocated amongst agencies to address and eliminate historical backlogs. As a result of these efforts, more license applications were processed in 1991 than in all of the prior years combined since the program's inception in 1984. The backlog of older applications has been dramatically reduced and should be eliminated by the end of 1992. It is anticipated that new applications should be processed in a much more expeditious time frame.

Scrap Tire Initiative

The OSEP continues to pursue an initiative designed to address the blight of used tires that are piled up at various sites throughout New Jersey. The impetus for the initiative resulted from a tire fire that raged at a site in Jersey City in 1991, sending acrid smoke into the air for hours and interrupting the flow of traffic on a major north/south interstate highway. Surveying the damage at the site, United States Senator Bill Bradley and the SEP noted the importance of putting into place in New Jersey an effective remedial program to deal with the abandoned tire problem.

DEPE, at the urging of the SEP, has undertaken a survey of the locations, quantities, and site characteristics of the worst tire dumps in the State. To date, eleven sites have been identified and inventoried, accounting for more than 7.5 million tires. The majority of these abandoned tires are located on lands situated over the pristine Cohansey Aquifer of the Pine Barrens. The results of the survey will serve as the basis for the development by the State of an enforcement/remediation strategy with respect to these sites. The OSEP is working with the DOL and the DCJ to review the facts and circumstances which gave rise to the tire site accumulations and to consider enforcement actions against those responsible for creating this menace. Further, the OSEP has notified State and local law enforcement authorities of the potential fire problem inherent in tire site accumulations and of the need for increased vigilance.

Additionally, the OSEP is working with the DEPE and the Federal EPA in tailoring the use of a \$1,000,000 Federal Grant announced by United States Senator Bradley, EPA Regional Administrator Eristoff and the SEP for the implementation of a demonstration tire recycling project in the State.

Pinelands Initiative

The OSEP has recently joined forces with the Pinelands Commission in an enforcement initiative designed to protect and preserve the natural beauty and resources of the Pinelands. An Assistant State Environmental Prosecutor has been assigned with the primary responsibility to assist the Pinelands Commission in the development and prosecution of civil and criminal environmental cases occurring within their jurisdiction. This Assistant State Environmental Prosecutor will meet on a regular basis with staff of the Pinelands Commission to prioritize enforcement matters and insure that they are given appropriate attention. In furtherance of these efforts, the OSEP is working closely with the county prosecutors and State and local law enforcement authorities in the seven counties in which the Pinelands Reserve is located to prosecute environmental crimes. The OSEP is also serving as a liaison between the Commission and the DCJ and the DOL and will assist in the prosecution of Pinelands cases being handled by these Divisions. Additionally, the OSEP is working with citizens groups interested in the protection of the Pinelands to utilize their eyes and ears in the identification of environmental violations. Finally, the OSEP is working with the Pinelands Commission in seeking the passage of an amendment to the existing State Pinelands Protection Act to provide for enhanced penalties for violations of the Act and its implementing regulations.

Clean Water Enforcement Implementation

The OSEP has been involved with the DEPE and the DOL to insure that proper implementation of the amendments to the New Jersey Clean Water Enforcement Act by the various State agencies involved. Implementation of the Clean Water Enforcement Act required significant coordination in developing policies and regulations on penalty rating, the

definition of serious violations, significant non-compilers, and economic benefit. The OSEP is committed to insure the timely and complete implementation of the numerous environmental protection provisions of this Act.

Racetrack Initiative

As a result of continuing problems with water quality in waterways adjacent to horse racetracks in New Jersey, the OSEP initiated discussions and efforts aimed at instituting interim procedures and permanent solutions regarding race-track manure handling practices. The aim of this process has been to have appropriate temporary and permanent pollution control strategies implemented by the racetracks. This will minimize, if not eliminate, the contamination of the adjacent waters by manure-contaminated runoff. Administrative Consent Orders were entered with Monmouth Park, Garden State Park and Atlantic City Raceway requiring permit applications and the implementation of interim measures. These interim measures have dramatically reduced the pollution load being discharged into the waterways.

Direct Sewage Discharge Initiative

The OSEP continues coordination of the efforts of the Marine Services Bureau of the New Jersey State Police, various County Health Departments and the DEPE to end direct discharges of business and household sewage and waste into various waterways, bays, and shellfish breeding areas of the State of New Jersey. To date, 399 summonses have been issued by the Marine Police to cease such discharges. Efforts are likewise underway to address remediation alternatives with local sewage authorities and county and local health officials.

Direct discharges of black water have been eliminated from over 50 residences in the Grassy Sound area of Cape May County. Further, a system has been designed and is currently under construction, to place all sewerage from these homes into holding tanks which will then be pumped and treated at the county's regional sewerage plant. It is expected that once this system is in place, it will allow shellfish beds in this area to be opened for the first time in memory.

COUNTY COORDINATION

One important component of the SEP's Statewide environmental enforcement program is an increased emphasis on county agency enforcement. The county prosecutors' offices and county health departments have been designated as the core of the county component of this network. They are looked to as the catalyst in each county for the formation of county environmental enforcement task forces, consisting variously of county Hazmat Teams, county sheriff's departments, departments of public works, emergency services departments and the like. As the focal point of county level enforcement activity, they will be the immediate point of contact and coordination with this office.

In 1991, the OSEP completed the training of at least one assistant prosecutor and one investigator from each county and, has since, begun training newly assigned personnel with classroom and field instruction. Although all twenty-one counties have basic environmental enforcement capability, eighteen counties are effectively operating environmental crimes units, twelve coming into existence in the last year. These new units were formed with the assistance and guidance of the OSEP. Most function as County Environmental Enforcement Task Forces with other county and local environmental agencies while the rest, not technically Task Forces, rely on the expertise and personnel of other county environmental agencies. To promote an effective environmental enforcement cooperative effort within the county, the OSEP arranged for two four-day training courses for all health officers in the State as well as select local police officers, accommodating approximately 140 in all.

Two Assistant State Environmental Prosecutors have been assigned to work exclusively on the operation and further development of these county environmental enforcement components. They are responsible for providing the county prosecutors with assistance, including the necessary technical and legal support to properly investigate and prosecute environmental crimes cases; designating and assisting with the investigation and prosecution of county level priority cases; and providing complementary civil and regulatory support when necessary.

In accordance with established protocols, the OSEP is coordinating and providing assistance with over 350 cases currently handled by the county enforcement components. Cases are evaluated by the OSEP in the context of other ongoing criminal, civil or administrative enforcement activity to insure proper handling. Each matter is assessed and, if warranted, identified as a priority matter. The OSEP is working closely with the county prosecutors on eight cases designated as priorities.

Coordinating activities has resulted in successful indictments, accusations, and prosecutions, highlights of which follow:

- In a matter declared a priority case and referred to the Hudson County Prosecutor's Office, the OSEP worked with that office and arranged for technical assistance from both the DCJ and the DEPE. As a result of the cooperative efforts, an indictment was returned by a Hudson County Grand Jury for third and fourth degree water pollution counts against Roc Harbour Corp. This condominium complex in North Bergen had continually allowed its holding tank to overflow resulting in raw sewage flowing into the Hudson River. A pre-trial conference is pending.

- Judge Donald F. Campbell sentenced an Ocean County property owner to five years in New Jersey State Prison and \$25,000 for his conviction of recklessly releasing and abandoning a toxic pollutant, illegal landfilling and illegally operating a solid waste collection business.

- In Atlantic County, the Honorable Robert Neustadter sentenced a county resident to four years in New Jersey State Prison after his guilty plea to releasing or abandoning hazardous waste.

- Fairlawn Industries, Inc., a Bergen County Company, was sentenced by Judge Frederick W. Kuechenmeister to a \$10,000 forfeiture after it entered a guilty plea to a fourth degree water pollution violation.

- On July 31, 1991, an Ocean County company, Beres Industries, was sentenced by the Honorable Barbara Villano to two years probation and a \$25,000 fine following its guilty plea to illegally discharging pollutants.

- In Camden County, the Honorable David G. Eynon sentenced a Camden company owner to a \$5,000 fine after he pleaded guilty to discharging a pollutant

not in conformity with a valid New Jersey Pollutant Discharge Elimination System Permit.

- On April 1, 1991, the Honorable Stephen F. Smith of the Morris County

Superior Court sentenced an individual to one year probation, \$1,500 restitution and \$1,000 fine for the illegal transportation of hazardous waste.

ENVIRONMENTAL TRAINING PROGRAMS



In addition to training courses sponsored for county prosecutors' attorneys and investigators, the OSEP planned and sponsored training programs throughout the year for Marine Police personnel, the then Board of Public Utilities investigators, county health officers, sheriffs officers and local fire, police and health officials. Conducted by staff of the DCJ with the assistance of the OSEP, the training programs have been held in both the northern and southern areas of the State. In addition, DEPE supervisory enforcement personnel were given environmental crimes investigators training to assist them in better recognizing and referring, or responding to environmental criminal activity. OSEP is working with the DCJ in finalizing an environmental crimes curriculum to be presented to the Police Training Commission for inclusion in basic academy training of police recruits. It is expected that this specialized curriculum will become a part of the training programs beginning this fall.

FEDERAL/ INTERSTATE COORDINATION



A Statewide comprehensive environmental enforcement program will invariably have aspects of enforcement that must be coordinated with adjoining states and various federal agencies. In this regard, the SEP was designated by Executive Order #2 to be the State's liaison to other states and federal agencies and accordingly, has routine discussions with the United States Attorney, the EPA Headquarters and Regional Administrator, and representatives of the adjoining states and their representatives in the Northeast Hazardous Waste Project.

The SEP serves as a member of several national level environmental committees and working groups—the EPA Steering Committee on Federal/State Enforcement Relationship, the EPA Advisory Council of the National Enforcement Training Institute and the Environmental Committee of the Council of State Governments. The SEP, working with the United States Attorney and the EPA Regional Administrator, formed the recently announced New Jersey Federal/State Environmental Task Force. This unique project includes representatives from the Federal Bureau of Investigations, the United States Environmental Protection Agency, the United States Coast Guard, and the United States Attorney's Office and New Jersey representatives including the SEP, the DCJ, the DEPE and other State and county support agencies, as needed. It is designed to provide a forum for the coordination and investigation of environmental enforcement cases that have a national or regional significance.

The SEP has also been designated the Project Administrator for the Northeast Hazardous Waste Project, a fourteen-member state program instituted to combat illegal activities in conjunction with the handling of hazardous waste. The Project works to maintain coordination and cooperation among the states through basic and advanced training, information exchange, technical support and joint investigations.

The OSEP and representatives of the DEPE negotiated a solid waste enforcement agreement with officials from the Indiana Department of Environmental Management. The Bi-State compact was signed by Governors Florio and Bayh in August of this year. The agreement provides for the sharing of information, the conduct of joint investigations, and the

coordination of enforcement activities relating to each state's respective solid waste laws.

As a result of information from Indiana officials developed pursuant to the agreement, a series of administrative enforcement orders were issued in New Jersey. This office oversaw the drafting and issuance of Administrative Orders to Show Cause which charged New Jersey facility operators with directing solid waste to Indiana disposal facilities in contravention of State waste flow directives and with operating without appropriate facility permits. In December, a second set of

Administrative Orders were issued to twelve solid waste transporters. These orders charge the twelve operators with transporting solid waste without either a solid waste transporter registration or Certificate of Public Convenience and Necessity.

The OSEP has also established cooperative working relationships with representatives of the environmental enforcement agencies in the States of Ohio, Kentucky, Pennsylvania and West Virginia with regard to matters of mutual interest and concern.

PUBLIC EDUCATION AND OUTREACH



The SEP considers public involvement a critical component of the Comprehensive Statewide Environmental Enforcement Network both in terms of detection and prevention. For this reason, the OSEP has placed a high priority on the need to respond to requests for information and invitations from citizens, community groups and business/professional organizations to participate in various events. Accordingly, in addition to participating in many interviews requested by representatives of newspapers, magazines, trade publications and public interest programs for cable and area television stations, the SEP and representatives of OSEP have travelled throughout the State to address approximately 60 groups. To the extent possible, invitations from grammar and high schools, colleges and universities, local community groups, environmental organizations, business and industry associations, professional organizations, environmental/legal seminars and various other programs and educational events have been accepted.

These events have provided the OSEP with opportunities to promote more responsible personal and business environmental practices and to familiarize individuals and groups with the consequences of irresponsible environmental practices, the need for public involvement in detection and prevention, and the role and strategy of the OSEP in the New Jersey environmental protection effort. Thus informed, the public is better able to contribute in an informed manner to the Statewide environmental protection effort.

The SEP and OSEP staff are also participating as members on various State agency committees: the New Jersey Environmental Education Committee, the Ad Hoc Committee on Asbestos Abatement, the New Jersey Regulated Medical Waste Task Force Committee of the New Jersey Health Care Facilities Financing Authority, the DEPE Economic Benefit Roundtable, the DEPE Solid Waste Enforcement Task Force, the DEPE Working Committee on Revising Water Permit Rules and the DEPE Executive Enforcement Committee.

STATE PRIORITY CASES



One of the primary responsibilities of the SEP is the identification, investigation and prosecution of civil, criminal and administrative priority cases. Whether identified on the State, county or local level, priority cases by definition, are those which have an unusually great potential to impact in an adverse manner on the health and safety of our State's citizens, and on the quality of our environment. For this reason, the SEP is charged with the responsibility to handle, or oversee the handling of, these priority matters and to insure that there is the necessary commitment of personnel and resources to exact an expeditious and conclusive resolution. Working with and through the DCJ, the DOL, and the DEPE, the OSEP's efforts have resulted in indictments, convictions, sentences, administrative enforcement actions, civil actions, Court orders, penalties, fines, assessments, and debarments, the highlights of which follow:

Ciba Geigy—Ocean County

After more than seven years of litigation, the SEP successfully coordinated a record breaking global resolution of the Ciba-Geigy litigation, highlighted by criminal pleas to violations of the New Jersey Clean Water Enforcement Act by the corporation and the two indicted middle-level managers. This criminal/civil/administrative resolution package of not less than \$63.5 million could easily become a \$75 million package over the next ten years. Resolving the indictment, civil penalty action, and other issues involving the disposal of hazardous/chemical wastes in Cell 2 of their lined landfill, Ciba-Geigy will pay a \$5.5 million civil fine, \$3.5 million criminal fine, \$2.5 million contribution to purchase wetlands in the Toms River basin, reimbursement of the State's expenses in excess of \$2 million, and the establishment of a \$50 million cleanup fund. In what are yet unliquidated costs to the company, Ciba-Geigy has agreed to install a state-of-the-art cap on Cell 1 to reduce leachate production to a virtual zero; increase the monitoring wells and testing at Cell 1; remove and dispose of the Cell 2 liner as a hazardous waste, and close Cell 2; continue pumping, treating, and re-injecting the Cardinal Drive pollution plume in perpetuity or until the pollution is removed; all of this to be accomplished under the paid oversight of the DEPE. This resolution represents a landmark coordinated criminal, civil, and ad-

ministrative environmental enforcement package.

Hagaman Site—Ocean County

After more than five years of futile litigation by Lakewood Township municipal enforcement authorities attempting to halt and to remediate hazardous accumulations of solid waste at the Hagaman site, this case was declared a priority by the SEP in 1991. The SEP promptly obtained an initial injunction in the Ocean County Superior Court prohibiting Hagaman from operating at the site and allowing the DEPE exclusive possession of the site for the purpose of conducting site stabilization and a clean-up. During this time, the DEPE removed the accelerants, cleared fire paths, stabilized the waste piles, prepared and administered a sampling plan, characterized the waste and prepared cleanup contracts. The SEP has continued the matter as a priority case successfully litigating and obtaining additional Court Orders retaining exclusive control over the site.

Warren County Garage

Information referred by the OSEP to the DCJ and Warren County Prosecutor's Office resulted in the initiation of an investigation into allegations that 55 gallon drums of hazardous waste were buried by county employees at the Warren County Garage. The SEP designated the matter as a priority and coordinated the joint agency investigation.

Personnel from the Prosecutor's Office and the DCJ joined together to supervise the excavation of the contaminated area and to obtain samples for analysis. The OSEP continued to coordinate the joint investigation of this matter with the Warren County Grand Jury, which culminated with the return of an indictment against a supervisor in the Warren County Road Department on March 12, 1992, charging him with Release and Abandonment of Hazardous Waste and Toxic Pollutants. The same Grand Jury also prepared and released a presentment which reflected the general principle that government should set the example for private industry in the environmental protection effort. It expounded the simple but innovative recommendation that county government would establish the position of "Environmental Compliance Officer"

the primary responsibility of which should be to insure that county government facilities, operations and personnel are functioning in rigid compliance with all applicable environmental statutes and regulations. It also noted that a first responsibility of this new officer should be to conduct a county-wide environmental audit, including an inventorying of the historic and present environmental compliance status of all facilities, equipment, operations, and employee practices for purposes of remediation and budgeting.

Significant Ongoing Criminal Investigations

The OSEP has committed very significant time and resources working in concert with the DCJ on several in-depth criminal investigations expected to be resolved during our next year of operation.

Criminal Sentences

- On July 19, 1991, the Honorable Paul Murphy, Superior Court, Somerset County, sentenced two brothers, one the president and the other vice-president of a New York international trading company to three years each in State Prison for the illegal storage and abandonment of hazardous waste in a Newark warehouse.

- On August 12, 1991, the Honorable R. Winter, Superior Court, Middlesex County sentenced an employee of a Middlesex County Diagnostic Laboratory to thirty days in the county jail and three years probation for the abandonment of bags and boxes of medical waste. Additionally, the company was sentenced to the maximum fine of \$7,500 as well as \$7,500 in penalties for restitution to DEPE.

- On June 17, 1991, the Honorable G. Nicola, Superior Court, Middlesex County, sentenced an executive with a Middlesex County company to two hundred days in the county jail and three years probation for the unlawful discharge of pollutants, oil based products containing PCBs, which could have flowed into the State's waters.

- On May 26, 1991, Judge Kevin Callahan, Superior Court, Hudson County, sentenced the proprietor of a medical testing laboratory to two years probation, 200 hours of community service and a \$2,500 fine for the unlawful storage and disposal

of regulated medical waste which was mingled with eight bags of solid waste.

- On August 30, 1991, two individuals, owners of a Camden County surplus supply company, were found guilty by a Camden County jury for their roles in the release, abandonment and storage of hazardous wastes (toluene, ethyl, benzene, mercury, lead, chromium, etc.) at a Gloucester Township location along with creating the risk of widespread injury. On November 4, 1991, Judge Joseph Greene sentenced one of the subjects to three years probation and a \$5,400 fine. On January 30, 1992, Judge Greene imposed a sentence on the second subject of 180 days in the county jail, five years probation and \$15,000 fine. Additionally, the corporation was fined \$10,000.

- On April 19, 1991, Judge Kevin Callahan sentenced the owners of a Hudson County auto salvage company to 300 days and 150 days in the county jail, respectively, for their roles in the dismantling of an oil tanker containing petroleum residue and other pollutants which were discharged into the ground. Additionally, a fine of \$2,500 and two years probation was imposed on each.

- On October 10, 1991, the Honorable Paul Kramer sentenced the proprietor of a Burlington County construction company to 26 weekends of community service for directing his employees to demolish underground storage tanks resulting in the discharge of pollutants and the filling of wetlands. Additionally, the company was fined \$10,000.

- On September 27, 1991, Judge J. Miniskin, Bergen County Court, sentenced a Bergen County solid waste hauler to a \$15,000 fine and \$66,000 restitution for theft by deception. The company had falsely represented that solid waste removed from certain premises would be dumped at the county transfer station, when in fact it was transported and dumped at an Essex County location.

- On February 27, 1992, the Honorable Peter B. Cooper, Essex County Superior Court, sentenced the manager of a metal plating company to five years probation, 1,200 hours of community service and a \$50,000 fine. The company was also sentenced and fined \$100,000 for the ille-

gal discharging of toxic pollutants into the sewer system.

National Waste Disposal—Mercer County

In a case that resulted in the largest penalty awarded after an Office of Administrative Law hearing, the OSEP took the lead in prosecuting four administrative complaints by the DEPE against National Waste Disposal, Inc., a solid waste and hazardous waste collector based in Mercer County. The claims against National Waste involved operation of several illegal solid waste facilities, unlawful storage and transfer of asbestos, violation of State waste flow directives, and failure to transport hazardous waste to the appropriate disposal facilities.

Following thirty-one days of evidentiary hearings in the Office of Administrative Law, Administrative Law Judge Joseph Fidler found that National Waste violated the Solid Waste Management Act on over three hundred occasions. Judge Fidler recommended an assessment of \$6,000,000 in penalties against National Waste, a revocation of National Waste's licenses to collect solid and hazardous wastes, and a debarment of the owner from future operations in the solid and hazardous waste industries.

Northeastern Recycling—Bergen County

In response to numerous complaints from the Borough of Hillsdale in Bergen County regarding an unlicensed solid waste facility operating under the guise of a recycler, the OSEP in cooperation with the DOL, drafted and coordinated the issuance of an Administrative Order by the DEPE against Northeastern Recycling Co. assessing \$3,750,000 in penalties and ordering cessation of operations.

When Northeastern ignored the Administrative Order, the OSEP filed a complaint in the Superior Court which resulted in the entry of a judicial consent order, which permanently barred the defendants' operation of the unlicensed facility. The Order further provided that the DEPE could continue to prosecute in the Office of Administrative Law the claim for penalties for the unlicensed solid waste facility operation.

Pompton Lakes MUA— Passaic County

The Pompton Lakes Municipal Utilities Authority ("MUA"), which provides sewer service for residents of Pompton Lakes, has over the course of the last several years, consistently operated the plant in violation of the conditions of its DEPE permit. The OSEP, working with the DEPE, has negotiated an Administrative Consent Order, which includes a \$250,000 civil penalty and requires the implementation of corrective measures at the plant to ensure that the types of violations that have occurred in the past are not repeated.

Roc Harbour Condominium Development—Bergen County

The Roc Harbour Corporation is the owner of a 70 unit residential condominium project in the Township of North Bergen, Hudson County. It has continually allowed its waste water holding tank to overflow resulting in the discharge of untreated sewage into the Hudson River. The OSEP obtained an injunction from the Superior Court ordering both the corporation and its owner to correct the problems causing the discharge of untreated sewage. The OSEP has prepared and will seek implementation of a Court Order which will, in part, require that the defendants conduct a study of the sewage collection and distribution system at the condominium, propose a solution to the problems discovered, and implement a remedial project approved by the DEPE.

United Wood Recycling— Hudson County

United Wood Recycling of Jersey City was a sham wood recycling operation, which accumulated a mountain of wood and other ignitable wastes stretching approximately 900 feet long, 100–125 feet wide by 20–25 feet high. The local fire officials had declared it an imminent fire hazard and tried unsuccessfully on numerous occasions to shut down the operation and stabilize the fire hazard. The OSEP, noting the futility of the State and local administrative enforcement efforts, declared the matter a priority case and, working in cooperation with the DOL, initiated a civil injunction action in the Hudson County Superior Court. The Hon-

orable Robert Tarleton ordered the facility closed and the operators and property owner to take immediate steps to stabilize the site and remove the accumulated waste material. The waste materials at the site have since been removed to authorized facilities and the operation has been permanently shut down. In a separate administrative proceeding, the DEPE in conjunction with the OSEP, issued an Administrative Order and Notice of Civil Penalty Assessment wherein United Wood was assessed a civil administrative penalty of \$140,000. This matter will be prosecuted in the Office of Administrative Law.

Tidewater Baling Scrap Metal Facility—Essex County

The Tidewater Baling Corporation operates a scrap metal recovery facility in the Ironbound section of Newark which has, over the years, been the subject of numerous State administrative enforcement actions directed at the unpermitted discharge of petroleum and other hazardous substances at the site. The OSEP has worked with the DEPE to formulate an enforcement strategy for the investigation and remediation of environmental concerns at the site. Working in coordination with the OSEP, the DEPE issued a Spill Act Directive to Tidewater Baling directing that Tidewater pay the State for the initiation of a soil and groundwater testing program at the site. In response to the Directive, Tidewater came to the State and proposed to undertake a full study of the environmental condition of the site. The substance of the proposal was embodied in an Administrative Consent Order pursuant to which Tidewater will undertake a comprehensive remedial investigation of the site and implement the cleanup alternative that is chosen by the State. Tidewater has also agreed to reimburse the State for all oversight costs associated with the State's response at the site. Most importantly, the Consent Order further provides that continued use of the site will be done in such a manner as to eliminate further hazardous substance discharges.

Diamond Hills Estates Sewage Treatment—Warren County

The OSEP received information that the Diamond Hills Estates sewage treatment plant located in the Township of

Mansfield consistently discharge pollutants into the Hance's Brook in violation of the terms and conditions of its permit. The OSEP working with the DEPE, not only initiated enforcement actions seeking a total of \$1,657,062 in penalties from the corporate operator, but has also initiated a search for a viable alternative to the continued operation of the plant by this corporation.

Debarments—Solid Waste and Recycling Industry

Six principles and three employees of five New Jersey solid waste carting firms were debarred, and in most cases permanently, from engaging in the solid waste collection/disposal and recycling industries in New Jersey as a result of settlement agreements finalized in conjunction with the OSEP. Concluding some seven years of litigation in this restraint of trade prosecution originally initiated by the Board of Public Utilities, this resolution of the case underscores the commitment of the SEP to remove undesirable elements from the State's waste/recycling industry.

Jersey Carting—Bergen County

The OSEP declared as a priority and successfully litigated in the OAL an administrative prosecution initiated by the former Board of Public Utilities against Jersey Carting and its principal. Administrative Law Judge Diana Sukovich issued an Initial Decision in this matter recommending that the owners of Jersey Carting be debarred from the solid waste industry and pay a civil penalty of more than \$100,000, and that their license to haul solid waste be revoked. Judge Sukovich's decision was based on Jersey Carting's repeated violations of State solid waste flow directives requiring certain billing disclosures to customers. The Initial Decision has been forwarded to the DEPE Commissioner for Final Decision.

Interstate Recycling, Inc.— Union County

In October 1990, the OSEP, working with the DOL, successfully secured from State Superior Court Judge Frederick C. Kentz, Jr., a permanent injunction closing down a solid waste facility in Hillside, operating as a sham recycling center. Dur-

ing the latter part of 1991, the OSEP litigated the penalty portion of the proceeding for nine days in the Superior Court of New Jersey, Chancery Division and successfully secured the award of a \$175,000 penalty to the DEPE for the illegal operation.

Standard Tank Barge Cleaners—Hudson County

Over the past several years, Standard Tank of Bayonne had gained notoriety as a persistent and recalcitrant polluter of the State's waterways. In actions initiated by the OSEP with the DOL in the New Jersey Superior Court last year, Standard Tank was enjoined from further violations of its NJPDES permit and from illegally storing millions of gallons of contaminated wastewater in four barges at Standard Tank's Bayonne facilities. In June 1991, under the direction of the OSEP, the DEPE issued to Standard Tank a final termination notice of its water discharge permit and a denial of air permits for boilers used to incinerate hazardous waste. These additional steps further solidify the position of the OSEP and the DEPE that this formerly blatant polluter will not be allowed to continue to operate in New Jersey in disregard of the environmental laws. As a result of these enforcement initiatives, Standard Tank is currently operating under severe restrictions, which prevent it from discharging anything into the waterways.

Engineered Precision Casting Company—Monmouth County

The OSEP became involved in a matter in which Engineered Precision Casting Company and its two principals were assessed \$4,450,000 in an Administrative Order by the DEPE for numerous violations of the company's water discharge (NJPDES) permit. This matter is of significance in that it is the first action brought by the DEPE seeking to hold responsible corporate officials liable for the violations of the company. Working with the DOL, the OSEP was successful in arguments to the Administrative Law Judge, later confirmed by the DEPE Commissioner, that the Water Pollution Control Act allows for responsible company individuals to be held liable for the environmental misdeeds of the company.

CPS and Madison Industries — Middlesex County

Longstanding industrial activities by CPS Chemical Company and Madison Industries in Old Bridge Township resulted in pollution of the aquifer underlying the Runyon Watershed, ultimately threatening the Perth Amboy water supply wells. As we reported last year, the SEP, within six months of his involvement, was able to end ten years of maneuvering and technical delays and secure the implementation of the first phase of the cleanup—the initiation of pumping. Throughout 1991, the OSEP, the DEPE, and the City of Perth Amboy have continued their concerted efforts, this time aimed at preserving valuable water supplies by the implementation of a groundwater recharge program. At the same time, their efforts have been directed at the companies to undertake soil studies designed to identify any lingering sources of contamination and the ultimate remediation of the condition.

Noble Oil —Burlington County

Noble Oil Corporation, located within the Pine Barrens of Tabernacle Township, is a waste oil processor with significant illegal discharges, on-site contamination and ongoing operational problems. Enforcement efforts against this company have been undertaken by the State, in various forums and without significant success for over a decade. Designated a priority case of the OSEP, a joint State/local enforcement action brought in the New Jersey Superior Court against this waste oil dealer resulted in a judicial liability determination and an interim injunction against the use of certain facilities, and a Court Order requiring the company to pay for a cleanup study. A temporary shutdown of the facility was ordered by the Court pending Noble's posting of a bond to pay for an investigation of pollution at the site. The study and litigation continue.

Texas Eastern Transmission Pipeline Company—Various Counties

The OSEP working with the DEPE, brought to a successful resolution a cleanup/penalty action initiated against

Texas Eastern Transmission Pipeline Company with respect to PCB contamination at its three compressor stations in New Jersey (located in Hanover, Linden and Lambertville). The penalty action was resolved in September 1991 for \$1 million dollars (\$850,000 in penalties and \$150,000 in administrative costs) payable in three installments over two years. Likewise, the clean up of the contamination was undertaken by Texas Eastern at its expense pursuant to an ECRA Administrative Consent Order.

Cardile Property — Cape May County

In the Spring of 1991, the OSEP learned that numerous enforcement actions taken over the past three years by no less than three separate Divisions within DEPE had failed to deter a chronic offender from continuing illegal solid waste dumping and coastal wetland filling activities in an area directly adjacent to the Grassy Sound in Cape May County. The OSEP quickly brought the various enforcement staffs together, consolidated all the violations and obtained a permanent injunction in the Superior Court, not only restraining this offender from further violations, but also requiring the defendant to develop a plan of remediation and to implement the terms of the plan at his expense. Penalty aspects are pending.

Saudi Diriyah —Cumberland

The OSEP was notified by the State Police Marine Bureau that they had retrieved a plastic bag of solid waste from the Delaware Bay, which was directly traceable to a Saudi Arabian registered vessel which had recently passed through that area. After researching the best legal sanction for this type of violation, the OSEP contacted the Coast Guard and proposed a cooperative prosecution under the MARPOL Protocol which implements the "International Convention for the Prevention of Pollution from Ships." On the basis of the evidence secured by the State Police Marine Bureau, the Coast Guard was able to assess the maximum civil penalty of \$25,000 against the owner of the vessel—the first such MARPOL prosecution undertaken by the Coast Guard operating out of the Philadelphia Port.

