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New Jersey Department of Law & Public Safety

**FIRST ANNUAL REPORT
TO
GOVERNOR JIM FLORIO**

Office of the Environmental Prosecutor

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Creation and Establishment

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 regulatory enforcement cadres within the Department of Environmental Protection, the Department of Health, the Board of Public Utilities, and the Department of Labor; the civil enforcement cadre within the Environmental Protection Section of the Division of Law; and the criminal investigative cadre within the Environmental Prosecutions Bureau of the Division of Criminal Justice. Additionally, the New Jersey State Police Marine Services Bureau and the Solid and Hazardous Waste Unit each perform responsibilities which overlap two or more of these primary enforcement components.

Each of these facets of enforcement can bring to bear resources of varying degrees of intensity depending on the nature, extent and timing of the appropriate initiative or response. Unfortunately, lacking a central command, the State has been unable to maximize the potential benefits from the committed resources. The wrong resource at the wrong time or place can be both inefficient, ineffective and at times counter-productive. For this reason and in this context, on January 24, 1990, Governor Jim Florio issued Executive Order #2 establishing the Office of the State Environmental Prosecutor ("OSEP") and charging it with the responsibility to coordinate 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 take from the wealth of enforcement activity in those State agencies with environmental responsibilities those cases which involve either chronic environmental offenders, or situations which pose a serious threat to public health or the environment and see that these "priority cases" receive expedited and enhanced handling.

On February 20, 1990, Steven J. Madonna, regional counsel to a national waste specialty corporation and former Chief of the New Jersey Division of Criminal Justice Environmental Prosecutions Section, was sworn in as SEP by the Governor, with the rank of Assistant Attorney General. The SEP serves at the pleasure of the Governor and under the day-to-day supervision of Attorney General Robert Del Tufo.

The Attorney General and the SEP conceptualized the new Office around a management core concept. Rather than attempt to create an additional bureaucracy in the enforcement effort, it was deemed more efficient to establish this management core to supervise and manage in a coordinated fashion all of the existing resources of State government that are components of the environmental enforcement program.

Housed in the Hughes Justice Complex, the OSEP is staffed with the SEP, six Assistant State Environmental Prosecutors, two Investigators, an Executive Assistant and four support personnel. Staffing of the office occurred at the rate of approximately one per month with the full complement on board by February 1991. It should be noted that twelve of the thirteen staff positions have been filled through reallocation of staff from other State agencies.

***COMPREHENSIVE
STATEWIDE
ENFORCEMENT***

State Agency Coordination

A prerequisite to the establishment of a comprehensive Statewide environmental enforcement program is the institutionalization of a system of coordination of the initiatives, manpower, and resources of the various Divisions and Departments of State Government involved in the environmental enforcement effort. Early in the effort 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 enforcement activities of these various Divisions and Departments and they have been instrumental in establishing working protocols of operation with their respective liaisons and agencies. They have been formal and written in the case of the Division of Criminal Justice and the Division of Law, but informal with the other Divisions and Departments, including the Department of Environmental Protection and the Board of Public Utilities, each of which is undergoing reorganization.

All of the environmental enforcement activities of these Divisions and Departments fall into one of three general categories: criminal enforcement, regulatory enforcement, or civil enforcement. The coordination of the use of the resources and manpower of these State agencies by the SEP is designed to maximize the efficiency and effectiveness of the State environmental enforcement program as a whole.

This coordination and supervision occurs daily in the context of the selection of the appropriate remedy and agency to proceed in a given fact situation and in

other non-case oriented initiatives. These include:

- An initiative of the SEP to work with the Department of Environmental Protection to remediate eleven of the worse illegal tire dumps in the State, containing approximately 7-10 million discarded tires. The effects of a major fire at any one of these sites could potentially have a significant adverse effect on health and the environment. DEP and this office are currently completing a cleanup feasibility study and an enforcement strategy to ensure that those responsible for the disposal of the tires are held accountable.
- An initiative of the SEP to coordinate the efforts on the part of the New Jersey State Police, the Solid Waste Divisions of the Board of Public Utilities and the Department of Environmental Protection to insure the safe and legal movement of solid waste over the highways through a recurring series of highway checkpoints resulting in the detection of 1,727 violations.
- The preparation and coordination with the Division of Criminal Justice, the Department of Labor, the Department of Health and the Governor's Office, in the formal notification to hundreds of customers of a New Jersey asbestos company advising that asbestos removal services may have been ineffective or otherwise not performed in com-

pliance with health and safety regulations.

- A coordination of the efforts of the Marine Services Bureau of the New Jersey State Police, various County Health Departments and the New Jersey Department of Environmental Protection to end the direct discharge of business and household sewage and waste into the bay and shellfish breeding areas of the State of New Jersey and to address remediation alternatives with local officials. To date, 216 summonses have been issued in nine counties to cease such discharges, and our efforts have resulted in one local MUA applying for a low interest loan from DEP to construct a sewer line which will bring over 50 violators into compliance.
- A coordination of the Department of Environmental Protection, Division of Criminal Justice, New Jersey State Police and the Department of Health in the preparation and implementation of a revised Statewide protocol for the proper handling and disposition of wash-ups along the New Jersey shoreline.
- The development of a cross-sensitivity training program for investigators from the Board of Public Utilities and the DEP Solid Waste Section to promote the effective

consolidation of these resources.

- The creation of a training program for the New Jersey State Police Marine Police Bureau to increase their sensitivity to the signs of environmental crimes.
- The review and revision of the A-901 procedures within the Division of Law, the DEP and the New Jersey State Police to increase the operational efficiency of the program.
- Assistance to the Division of Law in their assimilation of the former DEP Regulatory Officers to insure a smooth and effective transition.
- Oversight of the implementation of the amendments to the New Jersey Clean Water Enforcement Act by the various State agencies involved to insure proper implementation of this Act.
- The review and coordination of the role of the Marine Services Bureau in the regulatory scheme of the new Marine Oil Spill regulations.
- The initiation of a project to provide for computer linking and data access between the various State Divisions and Departments to facilitate coordination and the exchange of information.

County Component

Simultaneous with the development of the protocols of operation between the State Divisions and Departments, the SEP has been structuring and establishing the balance of the comprehensive Statewide environmental enforcement program. It envisions the structuring and establishment of State, county, and local components into a comprehensive Statewide program together with the integration of citizen involvement at each level. The county prosecutors' offices and county health departments have been designed to be the core of the county component of this network, and 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.

The SEP has arranged for Assistant Prosecutors and County Prosecutors' detectives from each of the twenty-one county prosecutors' offices to be given both classroom and field training to enable them to initiate environmental crimes investigations and prosecutions in their respective counties. A formal written protocol of operation has been entered into between the SEP and the twenty-one counties through the County Prosecutor's Association setting forth the details of their respective roles. It envisions immediate notice to the OSEP upon receipt of environmental crime lead information by a county prosecutor. The SEP, as the network hub, will evaluate the case informa-

tion in the context of other ongoing civil, criminal or administrative activity and insure the proper allocation of the matter to the appropriate state, county or local agency for civil, criminal or administrative action. Nearly 150 notifications of environmental case lead information have been received by this Office from the county prosecutor's offices, with yet only six offices having implemented formal enforcement programs.

An Assistant State Environmental Prosecutor has been assigned to work exclusively on the further development and refinement of these county environmental enforcement components. Her duties, in addition to identifying county level priority cases, include providing the county prosecutors with assistance including the necessary technical and legal support to properly investigate and prosecute environmental crimes cases.

Simultaneous with efforts to institutionalize an environmental crimes component in each county, the SEP met with the representatives of the County Health Officers Association to solicit their participation as the prosecutors regulatory counterpart on the county enforcement level. The result was that most, if not all, of the county health officers are now working with their respective county prosecutors in the establishment of county environmental enforcement task forces. The SEP, working with the Environmental Prosecutions Bureau, has arranged for a four day County Health Inspectors training course to begin on April 22, 1991, to sensitize these individuals to the relevant procedures and operations of the criminal justice system, and the signs and symptoms of criminal conduct. The SEP has

instigated the formation of an Environmental Committee within the County Health Officers and the County Prosecutors Associations to work with him on the enhancement of county environmental enforcement.

Local Component

Local agency involvement in the overall environmental enforcement effort is critical to its success. It is the everyday responsibilities of the local police officer, fire inspector, code and health enforcement officers that provide the opportunities to observe the signs and symptoms of unlawful environmental practices. In order to identify the proper agencies to make up the local enforcement component, the SEP has been and continues to meet with various agencies of local government, as well as organizations such as the Association of New Jersey Environ-

mental Commissions, North Bergen Volunteer Health Officers, the Passaic River Coalition, the Statewide Association of County Health Officers, the Morris County Safe Neighborhood Group and the New Jersey Environmental Federation to review and evaluate the possible options.

A program has been initiated by the OSEP with the Police Training Commission and the Division of Criminal Justice to incorporate an environmental crimes component within the police training academies.

Citizen Involvement

Citizen involvement in the environmental enforcement effort at every level is important to its ultimate success. To promote this, the OSEP has engaged in informal outreach and educational programs through appearances, informal remarks, and question and answer sessions with members of the regulated community, civic and environmental organizations, industry associations, business and legal organizations, and at governmental seminars and school visits. An initiative of the Passaic River Coalition to police and report to the SEP on conditions along the length of the Passaic River resulted in ten

State, county or local enforcement actions, including the stopping of a chemical discharge into the River and initiation of clean-up.

To facilitate formal citizen involvement and to underscore its importance, the Governor and the Environmental Prosecutor announced on September 19, 1990 the implementation of the Information Awards Program designed to make a cash award to citizens for information that results in fines or penalties concerning illegal solid, medical, hazardous, or low-level radioactive waste disposal or ocean dumping. In the first six months of the

program, the OSEP has responded to more than one hundred and ten inquiries, processed twelve formal applications and presented one award. The formal applications have resulted in two criminal search

warrants and the receipt of information regarding buried drums containing hazardous and toxic pollutants; the latter has led to a massive clean-up and probable criminal prosecution.

Legislation

The development and implementation of the comprehensive Statewide environmental enforcement program by necessity requires a legislative element. In this regard, the OSEP has reviewed and com-

mented on virtually every significant piece of environmental enforcement legislation, and has taken the lead in developing a comprehensive environmental crimes legislation package.

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 has initiated discussions with the U.S. Attorney, the E.P.A. Regional Administrator, and the U.S. Coast Guard regarding the formalization and

future coordination of enforcement efforts. The SEP has been designated the Project Administrator for the Northeast Hazardous Waste Project, a fourteen-member-state program to combat illegal activities in conjunction with the handling of hazardous waste. The Project works to maintain coordination and cooperation between the states.

***PRIORITY MATTERS -
SUCCESS STORIES***

The other primary responsibility of the SEP is the identification, investigation and prosecution of priority cases. Whether identified on the State, county or local level, priority cases by definition, are those which have the inherent potential to grossly impact 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 insure the commitment of manpower and resources to exact an expeditious and conclusive resolution of these matters.

Criminal Priority Cases

The SEP's involvement in priority criminal cases has included involvement in ongoing matters, including appeals, sentences, trials, and indictments, and the initiation of new matters at the earliest investigative stages. These have included:

- Coordination by the SEP of the global resolution of the criminal and outstanding civil issues involving the January 1, 1990 Exxon inter-refinery pipeline rupture. Culminating a 12-month criminal investigation by the SEP with the Division of Criminal Justice, Exxon, the world's largest corporation, pled guilty to a criminal negligence violation of the Federal Clean Water Act on March 20, 1991. Concurrently, a civil agreement was reached, also culminating the lengthy mediation process by the SEP and the Division of Law. The direct efforts of the SEP working with the Divisions of Criminal Justice and Law resulted in the payment of an additional \$15 million in criminal and civil fines and penalties, and natural resource damages to the States of New Jersey and New York and the Federal Government (\$5 million in criminal fines and penalties and approximately \$10 million to natural resource damage). This was in addition to the prior recoupment of \$18 million for containment and spill cleanup costs, \$25 million for a Marine Operation Study and the costs of the implementation of the preventive recommendations and \$661,000 for a preliminary natural resource damage study bringing the entire resolution package to \$59 million. Additionally, the agreement imposed strict controls over the reopening and reuse of the pipeline and required training and procedures incident thereto.
- In April 1990, this Office learned of potentially catastrophic conditions at the facilities of White Chemical Co. in Newark, including the presence of approximately 8,000 rusting drums of hazardous chemicals on site. The execution of search warrants in May 1990 developed evidence which resulted in the State Grand Jury returning a five count indictment in December charging White Chemical Corporation and its president and owner, James W. White, each with crimes of the second, third and fourth degree. The case is currently pending trial.

As a result of information gathered at the scene, the SEP was able to expedite the issuance by the DEP of a Spill Fund Directive which allowed the State to begin the immediate stabilization of the most dangerous threats at the site. During the next five months, DEP removed, repacked and/or segregated significant quantities of the most dangerous substances. DEP's actions taken pursuant to the initiative of this Office resulted in a substantial reduction in the risk posed by conditions at the site. EPA has taken over final remediation of the site.

- The OSEP, operating with the Division of Criminal Justice, returned a 19 count criminal indictment charging Hub Recycling, Inc. of Newark and its operators and affiliated companies with a range of environmental and financial crimes arising from the operation of an illegal dump at the Hub site in Newark. Purporting to be a recycling facility, Hub allegedly accumulated over 105,000 tons of debris under Interstate 78; this debris ignited in a fire which raged through the materials, resulting in the intense heat warping the girders of the overpass. A civil suit to recoup money damages was subsequently initiated by the OSEP with the Division of Law.

Working with and through the Division of Criminal Justice, the following sentences of incarceration were meted out in criminal environmental cases:

- On September 13, 1990, the Honorable David G. Eynon sentenced the

owner of an auto body shop to nine months in the Camden County Jail for his role in the illegal transportation and disposal of hazardous waste, and sentenced his employee to six months in jail.

- In Essex County an unlicensed hauler was sentenced by Judge Coburn to five years in New Jersey State Prison on January 22, 1991 after being convicted of the unlawful transportation and disposal of hazardous waste.
- On June 29, 1990, Judge Donald Palese sentenced a Camden County company owner to a year less a day in the Camden County Jail for the illegal transportation and disposal of hazardous waste.
- The Honorable Robert J. Passero on January 25, 1991, sentenced the President and an employee of a Paterson graphics company to a year less a day and 6 months in the county jail, respectively, for their roles in abandoning drums of hazardous waste in adjacent counties.
- On February 12, 1991, the Honorable Dennis J. Braithwaite sentenced an individual to 5 months in the Atlantic County jail for his role in the abandonment of hazardous waste and toxic pollutants.
- The owner of a Middlesex County company was sentenced February 25, 1991, by Judge Hoffman to a year less a day in the Middlesex County Jail on his conviction for illegally transporting and disposing of hazardous waste.

Civil/Administrative Priority Cases

The SEP's involvement in priority civil/regulatory cases has resulted in administrative enforcement actions, civil actions, Court orders and penalty assessments as follows:

- Administrative enforcement actions on behalf of the Department of Environmental Protection have resulted in the collection in the year 1990 of a record \$15.73 million in fines in the areas of hazardous waste, water, environmental quality and solid waste.
- 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. Discovered in 1974, remediation was not ordered by the Court until 1981. Since then, a myriad of legal maneuvering and technical delays had frustrated any attempts to start remediation, allowing the pollution to spread posing a clear and present danger to the Perth Amboy water supply. The SEP, within six months of his involvement, in an effort to protect Perth Amboy's water supply, was able to remove the significant roadblocks and establish the necessary means and methods to implement the first phase of this cleanup in January 1991.
- A series of illegal connections to the Secaucus Municipal Utilities Authority ("SMUA") made by a variety of high-usage commercial develop-

ers and improperly sanctioned by the SMUA were brought to the attention of this office. The OSEP expended significant hands-on efforts to resolve the matter in an expedited fashion. This resulted, on August 31, 1990, in the entry of a consent judgment by Judge D'Italia, Hudson County, settling the matter. Fines in the amount of \$1.52 million (the largest penalty ever collected in a single action under the New Jersey Water Pollution Control Act) were assessed against the MUA for allowing illegal connections and against the illegal connections. The fines are scheduled to be paid over the next three years. In addition, sewage system improvements in the \$400,000 range will be performed by Hartz Mountain, Inc. as a result of the settlement. This case highlights the effectiveness of the SEP concept. By being able to marshall all of the appropriate information and devote a significant amount of time to a case over a short period of time, a very large penalty was obtained. Furthermore, the resources of the NJDEP and the Division of Law, while used extensively during the negotiations of the settlement, will not be required in lengthy litigation.

- The OSEP initiated a project that will inventory and make recommendations regarding compliance problems at State facilities. This project will include the distribution of a request for information to all agency heads to inventory known environ-

mental problems along with proposed solutions. The resultant information will provide the basis for a complete analysis of the scope of this problem. With this information available, it is expected that the Administration will be in a position to define the measures necessary to result in the State becoming a model of environmental compliance.

- OSEP became involved in the CP Chemical Company case due to numerous and long-standing violations of a DEP water discharge permit. Through expedited actions, OSEP and DEP negotiated a global consent order with CP Chemical Company which will result in (1) the clean-up of the hazardous contamination of the site, (2) elimination of the company's discharge to Woodbridge Creek, being replaced with a pre-treatment system and discharge of waste to Middlesex County Utilities Authority and (3) payment of penalties to the State in the amount of \$2.2 million.
- In May 1990, the OSEP working with the Division of Law, filed a verified complaint and order to show cause against Standard Tank to secure abatement of the numerous violations of its water discharge (NJPDES) permit, and penalties for 195 separate violations. The Court granted an injunction against further unlawful discharges. A hearing on DEP's \$9 million penalty claim is scheduled to begin in July.

During the course of these proceedings, it was discovered that Standard Tank was illegally storing millions of gallons of contaminated wastewater in four barges

docked at Standard Tank's Bayonne facilities. This Office, with the Division of Law, immediately filed another order to show cause, and obtained an injunction requiring Standard Tank and its officers to remove the material from the barges. The Office is also seeking penalties for the illegal storage of this waste.

Finally, in light of the history of Standard Tank's operations, DEP, at the instigation of this Office, on December 10, 1990 issued a Notice of Intent to Revoke Standard Tank's NJPDES permit. That proceeding is now being moved through the administrative process.

- The OSEP, after learning that the Town of Lakewood had engaged in extended litigation with Alfred Glen Hagaman for over five years in a vain attempt to force a shutdown of an illegal dump (operating under the guise of a recycling and salvage business), filed a verified complaint and order to show cause on April 25, 1990. The Court, on April 27, 1990, enjoined Hagaman from further operations at the site, and gave exclusive possession of the site to DEP for investigation and remediation. DEP expects to issue contracts shortly for remediation of the site. Thereafter, a hearing will be held to establish the amount of penalties and damages to be assessed against Hagaman.
- In the early summer of 1990, the OSEP learned of the existence of an illegal tire dump in Jersey City which, to that date, had caught fire on five separate occasions. The fires threatened health and property in the residential neighborhoods and,

on at least two occasions, created massive traffic jams and serious traffic hazards on Routes 1 and 9, caused by the thick black smoke issuing from the site.

Upon learning this, the OSEP initiated proceedings which resulted in the Court issuance of an order on July 6, 1990, enjoining further accumulation of tires on site; requiring immediate removal of waste material on site; and requiring submission of a sampling and remediation plan to deal with possible groundwater contamination caused by the fires on site. The matter was set down for a later penalty hearing. The site has now been cleaned up, and a remedial investigation should begin this spring.

- A scheme to abuse the State's recycling laws was intercepted and terminated in an injunctive action initiated by the OSEP working with the Division of Law. The facility in Hillside, New Jersey, hailed itself as a recycling operation, when in reality it was a transfer station for solid waste. In October 1990, after a swift and decisive court action, the facility was permanently enjoined from operation.
- Responding to a series of accidents involving trucks shipping solid waste from New Jersey to out-of-state landfills, including a fatality, the SEP called for immediate safety inspections of all trucks shipping trash from the Pen Pac transfer stations in Passaic County. The Board of Public Utilities ordered the appointment of a special master to monitor the safety of the haulage equipment used by truckers transporting waste from Pen Pac.

- In mid-1990, the DEP notified the SEP of the poor compliance record of Mitchell Environmental, a solid waste transporter under contract with the Bergen County Utilities Authority. Based on Mitchell's history of non-compliance and a determination that certain of the company's principals lacked the requisite qualifications required of persons engaged in the solid waste industry, the DEP, working with the SEP, moved to revoke the company's temporary license. The OSEP is overseeing the administrative license revocation proceeding.

- The OSEP has taken the lead in the prosecution of three administrative complaints by the DEP against National Waste, a solid waste collector based in Mercer County, alleging the illegal operation of solid waste facilities, the unlawful storage and transfer of asbestos, and repeated violations of State waste flow directives.

Hearings on these charges will conclude at the end of April 1991 after thirty days of evidentiary hearings. The relief sought includes the revocation of National Waste's solid waste collector license, debarment from the industry and \$6.5 million in fines.

- The OSEP became involved in a matter which involved the repeated discharge of untreated sewage from a holding tank at a Hudson County condominium complex into storm drains which flow into the Hudson River. As a result of the SEP's county prosecutor's enforcement initiative and the establishment of an Environmental Unit in the Hudson County Prosecutor's Office,

the matter was referred there for action. The OSEP assisted in the preparation and execution of search warrants and coordinated technical assistance provided by DCJ and DEP. Simultaneously, the OSEP working with the Division of Law obtained a temporary restraining order in Superior Court, Hudson County, requiring that the complex immediately comply with its DEP treatment works approval, cease the discharge, and clean out the sewage holding tanks on a daily basis. Grand Jury action is currently pending.

- In November 1990, this office was notified by the Mayor of Riverdale of the illegal dumping of large amounts of fill material in the floodway of the Pequannock River in the Borough of Riverdale, Morris County. The illegal fill covered an area 240 feet in length by 90 feet in width and up to 15 feet high in the floodway in violation of the Flood Hazard Area Control Act. In an expedited enforcement effort with the DEP, the SEP secured the

removal by the responsible party of 450 truck loads of illegal fill, as well as restoration and regrading of the affected area.

- The OSEP played a major role in initiating and coordinating negotiations between Monmouth County health officials, Monmouth County Prosecutor's Office, DEP representatives, and the New Jersey Sports and Exposition Authority with regard to manure handling practices at the Monmouth County Racetrack which presented a potential significant health hazard. Storm water run-off and excess water from cleaning the race horses was flowing through uncovered manure piles resulting in inordinately high coliform counts in the Branchburg Creek and Shrewsbury River. An agreement was reached which included measures to minimize the problem for the balance of last season and permanent measures, to be approved by the DEP, to correct the problem during this year's racing season.

CONCLUSION AND OUTLOOK

A review of the accomplishments in the area of priority case enforcement illustrates the benefits available through the complementary use of the OEP with existing enforcement resources. Strides taken toward the establishment of a comprehensive Statewide enforcement network, made up of well-trained individuals representing all levels of the community and government, will be invaluable as we move

forward in this effort.

A significant commitment of time and effort on the part of the SEP has been dedicated to start-up and administrative matters. With a significant portion of the program complete, it is expected that this will greatly facilitate the overall effectiveness and efficiency of the State's environmental enforcement effort.

