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## CRIMINAL ENFORCEMENT ROLE IN ENVIRONMENT

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### GOALS

The session addressed the following issues:

- What kinds of sanctions and other consequences are made available through criminal enforcement, and how effective are they in achieving compliance?
- What is the proper role of criminal authorities and sanctions in environmental enforcement? What should the relationship be between criminal and civil enforcement? For what types of violations is criminal enforcement (rather than civil enforcement) particularly well suited?
- What government entities might be involved in making criminal enforcement successful? How can these different groups be encouraged to work together?
- What training is required to support criminal enforcement, and what training materials are available?

### 1 INTRODUCTION

More than 60 participants discussed, in three separate workshops, the role of criminal enforcement in the environment. Participants represented countries with a broad range of existing programs, including those who currently use criminal sanctions and others who are interested in developing criminal programs.

### 2 PAPERS

Olga Dubovic reported on the protection of ecology in Russia and the importance of fighting ecological crises to protect this.

Gisèle Van Zeben examined the role of the Public Prosecutor's Department in the Netherlands with respect to the enforcement of environmental laws. The main focus is cooperation in the enforcement network and the instruments available in the field of environmental criminal law.

The paper authored by Earl Devaney summarizes the dramatic expansion in the use of criminal enforcement at the United States Environmental Protection Agency. The paper, moreover, addresses the selection of appropriate targets for federal criminal environmental investigation.

In his paper, Jan van der Plas addresses the role of the Inspectorate for the Environment in tracing environmental crime in the Netherlands by way of the Environmental Assistance Team.

### 3 DISCUSSION ISSUES

- 3.1 What kinds of sanctions and other consequences are made available through criminal enforcement, and how effective are they in achieving compliance?

Many countries use some combination of fines, penalties, jail terms, closing the facility, negative publicity, requiring environmental audits and/or injunctive relief as sanctions in criminal cases. Criminal statutes may also allow for the seizure of property related to the crime. Penalties in

environmental crimes are typically higher than administrative penalties and may be assessed on the past profits of a corporation. Environmental crimes may also be prosecuted under other charges such as fraud, racketeering, or lying.

Some countries impose criminal sanctions on the corporation; in other countries, an individual within the corporation may be held personally liable. A recent trend in the United States is to impose both penalties and jail terms on high-level corporate officers for knowing violations' in one country, proposed legislation would make the attorneys who incorporated the organization personally responsible. In one example, Canada ordered a corporation not to reimburse the managers for criminal fines and required that over the next 2 years, the environment had to be on the agenda of the board of directors' meetings.

In some countries, when a citizen brings out information on an environmental crime, part of the fine can go to the individual. Fines go back to the agency, in some cases, or to special funds for environmental uses.

The publicity surrounding high penalties and stiff jail terms seem to provide an effective deterrent against environmental crimes. An effective publicity campaign also heightens public awareness about the environment and environmental degradation. A problem can occur if judges do not give stiff enough sentences, so sentencing guidelines need to be developed.

3.2 What is the proper role of criminal authorities and sanctions in environmental enforcement? What should the relationship be between criminal and civil enforcement? For what types of violations is criminal enforcement (rather than civil enforcement) particularly well suited?

Criminal is considered the toughest response. Environmental crimes are an assault on the entire community, and criminal responses carry a greater stigma. However, criminal enforcement is the most resource intensive, and different levels of proof are required. Criminal actions have to show intent, knowledge or criminal reckless negligence. The theory is that the pay off is greater.

Criminal cases are generally reserved for the most serious crimes. In most countries, the number of administrative cases is much larger than the number of criminal cases. Criminal prosecution is generally reserved for 1) people who knowingly and significantly harm the environment or public health and safety, or 2) cases where there is criminal culpability. Past behavior, including the history of compliance, is taken into consideration as well. Companies that view payment of a fine as part of the cost of doing business and are repeat violators may be liable for criminal sanctions. Guidance should be developed to determine when it is appropriate to use criminal enforcement, and industry should be made aware of what constitutes a criminal offense.

A challenge is to distinguish which type of sanction to bring; criminal or civil. Who determines whether an environmental violation may be prosecuted criminally, and whether the case is brought against an individual or a corporation, varies from country to country. In some countries, this determination is made by the public prosecutor, in other countries, a steering committee or the federal government agency may make this determination.

In some countries, civil and criminal processes may occur in parallel against a firm; the government may sue separately for the damages in a civil court. Other countries do not have this option because cannot prosecute twice for some violation.

In some countries, the current criminal laws cover environmental areas; for example, in Tanzania, pollution of water is criminal. In many places, it is difficult to bring criminal sanctions, however, because of a lack of money and because criminal sanctions are politically unpopular. Some countries have no provisions for environmental crimes.

In Canada, permit exceedence is a regulatory offence and is criminal. Both companies and individuals can be charged. One creative response required a company to put an apology in the paper for the pollution.

3.3 What government entities might be involved in making criminal enforcement successful? How can these different groups be encouraged to work together?

Cooperation between the government environmental agencies, public prosecutors, police and local authorities was seen as essential to the success of a criminal enforcement program. Some countries have established steering committees or commissions to oversee criminal environmental prosecution and, in some cases, these entities are responsible for determining which violations should be prosecuted criminally. These committees may contain representatives from one or more federal government agencies, the public prosecutor's office and local officials.

Countries without inspectors must use police. A problem is often the lack of specialized police who must collect evidence for environmental crimes. Some countries have a special section that works only on environmental crimes, no civil or administrative cases.

Good data collection and sharing of data among the different government entities is important. In the US model where criminal sanctions are used when there is a history of non-compliance, you have to know what the history is. One government agency may have secret information, which can be a problem for the prosecuting agency if they will not share that information.

INTERPOL may provide investigative support for environmental crimes through their criminal information system. They collect and disseminate information, and organize working groups on specific crimes and subjects. Mutual legal assistance treaties among countries can also promote cooperations on criminal matters during the investigative stage and later.

For example, in Malaysia, environmental problems are not a priority in the public's mind. The public complains to local authorities who, often, are not responsive to environmental crimes. The federal government is trying to develop cooperative working relationships with local officials and has recently signed a MOU with the police. The process is new and many cases do not receive high penalties. Slowly, political support is being built to support this.

3.4 What training is required to support criminal enforcement, and what training materials are available?

A common theme was that training is essential for inspectors, police, prosecutors and judges. In many countries, the environmental crimes department is small with few resources, which makes training difficult. In other countries, specially trained investigators, many with police backgrounds, are trained to investigate environmental crimes. Individual criminal investigators can often specialize in environmental violations.

Many corporations are providing increased training for their employees to make them aware of what constitutes a criminal environmental action. They are also improving their technology to try to avoid criminal sanctions whenever possible.

## 4 CONCLUSIONS

Criminal sanctions can play an important role in an environmental enforcement program and send a strong deterrent message to industry. In order for a criminal enforcement program to be effective, cooperation between inspectors, police, prosecutors and judges is essential, and the program should target the most egregious violators. Prosecutors, judges and police also need to be trained to effectively implement a criminal enforcement program.