

SUMMARY OF WORKSHOP 2E: CRIMINAL LAW AND ENVIRONMENT: PROSECUTORS, INSPECTORS, POLICE, AND NONGOVERNMENTAL ORGANIZATIONS

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GOALS

- To discuss the roles of prosecutors and inspectors in enforcement and how the public and nongovernmental organizations (NGOs) can play a role in the process
- To generate a list of principles and best practices for cooperation and coordination among investigators, prosecutors, and other environmental and enforcement officials

1 INTRODUCTION

The first part of the session focused on key foundation issues to be addressed in establishing an environmental criminal enforcement program. The second half of the workshop focused on the key components of an effective environmental criminal enforcement program.

2 DISCUSSION SUMMARY

2.1 Key Foundation Issues

The first part of the session focused on key foundation issues that must be addressed in establishing an environmental criminal enforcement program. The workshop participants did not discuss individual opinions on how best to answer each issue. It was very instructive to step back from specific case work and apply a macro view to the fundamental issues of environmental criminal enforcement. The foundation issues that must be addressed in developing an environmental criminal enforcement program include:

- 1) The nature of the criminal offense – Is the relevant statute aimed at protecting human health or does it also include the environment?

- 2) Issues of scienter – What is the standard for mental state: knowing, negligence, strict liability, etc.?
- 3) Who is liable? – Does this include corporations, responsible corporate officers, etc.?
- 4) Standing to prosecute – What is the role of victims and NGOs? In some countries, victims and others with standing, possibly NGOs, can initiate a criminal prosecution, or require the government prosecutor to pursue an environmental violation by criminal process.
- 5) Penalties – What are the appropriate penalties? They may include imprisonment, fines, restitution, compliance orders, etc.
- 6) Statute of limitations – Should there be one? If so, should it start from the point of discovery by the governmental authority or the point when the violation is committed?

2.2 Key Components

The second part of the workshop addressed the key components of an effective environmental criminal enforcement program. The discussion was very lively and all members participated. The group

decided that the essential components that need to be present in order to have a successful program include:

- 1) Will – Underlying all of the components, there must be the will on the part of the political establishment and the executors to provide the energy and resources to do the job.
- 2) Statutory framework – There should be a clearly articulated statutory base complemented by an effective regulatory program.
- 3) Capacity building – Regulators, investigators, prosecutors, and judges all need training to perform their duties.
- 4) Effective communication – There needs to be trust and open communication among all members of the team, such as between investigators, regulators, prosecutors, and other stakeholders.
- 5) Case selection criteria – Investigative and prosecutorial decisions should be based on clearly articulated criteria and priorities.
- 6) Outreach and publicity – There needs to be outreach in order to inform the public of case accomplishments and initiatives. This is the only way to accomplish the objective of general deterrence.
- 7) International cooperation – There needs to be open communication with international organizations and counterparts. This could assist domestic programs in creating the necessary political will.
- 8) Truly integrated system – A goal to attain is an environmental criminal enforcement program that is truly integrated with all levels of government: federal, state or provincial, and local. Also, the criminal program should be integrated with administrative and civil enforcement programs if they exist. It was agreed that this is more accurately considered a goal than a component, and one that should be continuously sought.