

**The Bill Blackwood  
Law Enforcement Management Institute of Texas**

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**Educational Needs for Investigating and Prosecuting  
Environmental Crimes**

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**A Leadership White Paper  
Submitted in Partial Fulfillment  
Required for Graduation from the  
Leadership Command College**

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February 2017**

## **ABSTRACT**

In the state of Texas, formal training for police officers or prosecutors in the field of environmental enforcement is not provided or required by the Texas Commission on Law Enforcement (TCOLE) or law schools. The training in investigating and prosecuting of these crimes would prove to be an invaluable asset to all agencies and communities in Texas. The need for this type of initial training, along with the required training, would be minimal and would provide awareness of violations, benefits for the community, and safety above all. The cases investigated would include air pollution, illegal dumping, water pollution, and environmental hazards. Communities, both large and small, across Texas have an educated, active environmental enforcement staff and have proven to provide a more safe and valuable place to reside.

The education for all practical purposes should be completed in each of the professionals' initial training academy or college degree plan; however in-service training for veteran officers or prosecutors could be obtained as well. The first statement most administrators and managers across Texas make is about the cost for undertaking this type of education process, rightfully so. The answer is that most of the time, the education is free. There are many resources, such as the Texas Commission on Environmental Quality (TCEQ), the departments regional Council of Governments (COG), and Keeping Texas Beautiful (KTB) that will come to a department and teach the course, and provide books, training materials, and guides to assist in investigating and prosecuting these crimes. Many other resources are available to aid in this process, and the benefit to the community is endless.

## TABLE OF CONTENTS

	Page
Abstract	
Introduction . . . . .	1
Position . . . . .	2
Counter Position . . . . .	5
Recommendation . . . . .	8
References . . . . .	13

## INTRODUCTION

This paper will explain the general practice of prosecuting environmental crimes from the beginning to the end. These cases range from Class C misdemeanors to state jail felonies and have a wide range of civil obligations to the violators of environmental crimes. The criminal fines range from \$25 - \$10,000 and have sentences up to 10 years in jail. The civil obligation is dependent upon clean-up, negligence, and liability.

The first step to a successful prosecution in these cases is like any other criminal offense, which is the ability to observe or have knowledge of what a violation is. The definition of an environmental crime is “an illegal act which directly harms the environment” (Definitions.net, n.d., para. 1). According to the Brazos River Authority Environmental Crime Investigation Training Workshop guide, the investigation of these offenses consists of gathering evidence, taking statements, and testing the evidence while maintaining a chain of custody (Brazos River Authority, 2005). This process is sometimes time consuming and can take weeks to complete.

The second step is, again, like any other offense in that sometimes follow-up is necessary; this consists of collaborating any newly learned information, analyzing test results, fielding additional leads, and taking witness statements and officers reports. The presentation of all the evidence and documentation to the prosecuting attorney is the final stage of the officer’s obligation. This step requires a good working relationship with the prosecuting attorney to assist in conveying to the judge or jury a detailed, chronological, and corroborated report of the violation that was committed.

The final step is the judicial process of the case. This step is sometimes the most critical of all. The county or district attorney then weighs out the case, deciding if

the charge meets the criteria of the offense and whether the evidence substantiates beyond a reasonable doubt that this particular law was violated. The case is then either returned to the enforcement agency for more investigation or it is placed on a docket for trial. The Director of the Texas Illegal Dumping Resource Center, Dr. John Ockels stated that these crimes are being discovered and handled by local city and county law enforcement agencies because there is more organized training of officers throughout the state (Ockels, 2003). In this paper, evidence will be provided showing the relationship between the numbers of cases in environmental enforcement being filed to the number of people trained to enforce these laws increase exponentially. Due to this increase in people trained and more cases being filed, is indicative of the need for more trained personnel to pursue and prosecute these cases. The need to educate all enforcement agencies by training all officers and prosecutors to recognize and investigate environmental crimes is crucial in deterring violators (Ockels, 2013).

## **POSITION**

The protection of the earth's natural resources is very important to everyone for many reasons, such as clean water to drink, clean air to breathe, and land to live on that is not polluted. These natural resources are being damaged every day by citizens, corporations, small businesses, and even some local governmental agencies. Violations, such as improper waste disposal, littering, oil spills, destruction of wetlands, burning trash, and dumping into streams, lakes and rivers are violations that are criminal offenses. The Natural Resources Defense Council states that "dirty water is the world's biggest health risk, and continues to threaten both quality of life and public health in the United States" (Natural Resources Defense Council, n.d., para. 2).

Schwartz (2014) stated that “Hundreds of thousands of people suffer from serious health problems from air pollution in the U.S. every year” (para. 4). Illegal dumping into lakes, rivers, and streams causes nearly two billion people to drink contaminated water that could be harmful to their health according to the (National Institute of Environmental Health Sciences, 2015). The protections of these natural resources from being polluted are detrimental maintaining a safe and healthy lifestyle.

The prosecution of environmental crimes is on the rise because some local prosecutors are discovering how to handle these cases. The elected prosecutors are also becoming more popular with the voters due to accepting these cases (Ockels, 2013). In the efforts to clean up the state and stop illegal dumping, it seems that many of the smaller landfills were in violation and forced to close. Ockels (2003) stated “In 1986 there were over 900 landfills in Texas ...now there are under 200” (p. 2). The closing of all these landfills caused some of the public to start dumping illegally. The people in rural areas that were affected by the closing of the landfills started dumping on their own private property. This type of dumping was quickly complained about by neighbors because of the health issues such as increased mosquitos, foul smells, and rats and other rodents. This practice was thought to be the new normal until prosecution of a large number of these illegal dumpers were conducted. The rapid growth of rural areas in Texas is causing more trash to be generated and an increase in illegal dumping. Illegal dumping cases can be filed by any law enforcement officer and prosecuted by city, county, and district attorneys.

The training of law enforcement officers in environmental crimes is non-existent in their respective academies throughout the state; however, this type of training is

considered to be a specialty training and is readily offered in larger communities (Ockels, 2013). The training in environmental crimes can be obtained in most council of governments at a minimum cost. Private companies offer training at the individual departments site, while some larger departments have training classes and invite other agencies. In addition to law enforcement needing the training, prosecuting attorneys need the training as well. In law schools across the nation, environmental law is not taught as a normal course (Ockels, 2013). This training will not gain any type of certification but will teach officers and attorneys the nature of the laws critical in the enforcement of these crimes.

The process of prosecuting environmental cases involves a lot of time, and, in some cases, additional state or federal agencies are needed. The local law enforcement agencies normally handle the criminal investigation aspect of the offense, and state and federal agencies handle the civil aspect. The criminal aspect determines guilt or innocence, with the possibility of fines and jail time.

The civil aspect deals with the clean up costs, civil liability, and fines for the punitive damages to the environment. In some instances, the enforcement officer recognizes the environmental crime, completes a report, collects evidence, interviews witnesses, obtains written statements, and prepares a case. The prosecuting attorney takes the case, is not familiar with environmental law, and does nothing with it, allowing the violation to continue. In the state of Texas, if this happens, a letter from the attorney can be requested stating the reason for not prosecuting the case. The officer can send the letter along with the case and file it with the local county.

In the enforcement of environmental crimes, the objective is to punish the violators with fines or jail time and seek restitution for clean up of punitive damages, thus stopping a violator from committing the same crime. If there is a problem with any part of this process, the violator may not receive a punishment at all, allowing the violator to believe there are no consequences for the crime and promoting a possible repeat offender states ("LEMIT," 2013). The estimated cost for clean up for environmental crimes annually is between \$20-\$40 billion. This cost is shared by a relatively small group of agencies. If these crimes are not prosecuted properly and continue repeatedly by the same individuals, this number will grow dramatically ("LEMIT," 2013). Environmental prosecution does have enhanced fine amounts and/or jail time enhancements for repeat offenders when prosecuted correctly. In some larger businesses, the fines for these crimes are just an added cost for doing business as usual. Scoppe (2013) stated that regulators do not want the fine amount so high that it puts the violator out of business because then the state has to clean up the mess.

## **COUNTER POSITION**

The training of all law enforcement officers in the enforcement of environmental crimes can be a difficult task to fulfill in some agencies. In most departments, this means pulling an officer from his shift, providing a vehicle to travel to and from training, food, lodging, possibly compensatory time or overtime, and scheduling an officer to replace the missing officer while he/she is absent. Another dilemma agencies face is that the investigation of environmental crimes takes time out of the officer's shift and adds to his workload. Ockels (2013) stated that "we're all moving toward the same goal of "local control" by cities and counties in these matters, and the truth is that learning



this new field takes time” (p. 2). Due to all of these factors, sooner or later, the administrators of the department are going to feel the need for more manpower (Ockels, 2013). Houston Police Department, San Antonio Police Department, and Dallas Police Department have a specialized environmental enforcement unit within their law enforcement agencies. This practice is great if the quantity of cases can support the need for a structured department such as this. Another is that many agencies across the state already need more manpower for their department without the added responsibility of enforcing these laws. The issue of not having enough manpower in law enforcement in general has introduced more streamlined ways and ideas to do the duties that are done today. In the field of environmental enforcement, there are many ways to circumvent these additional needs for manpower.

There are many options to choose from to solve the manpower issues, such as contacting the local health department for help, networking with other local agencies, city and county, local code enforcement, contacting the local Council of Governments (COG), Texas Parks and Wildlife (TPWD), Texas Railroad Commission, Texas Environmental Law Enforcement Association (TELEA), and Texas Commission on Environmental Quality (TCEQ) (Ockels, 2013). In addition, there is assistance out there and available if needed, but a majority of the time, the reporting agency can take care of the entire case without the need for additional manpower in the local jurisdiction. Some of the agencies mentioned do not have the same powers as law enforcement in filing criminal cases but can give assistance in other ways, such as testing equipment, locations of laboratories, networking resources, and other avenues of approach. There are state and federal agencies that have grants available for the purpose of

environmental enforcement and education (EPA, 2016). There are also grants through TCEQ for the funding of programs involving municipal solid waste, clean rivers program, air quality research and planning, Texas emissions reduction plan, and water pollution control to name a few of the grants. These grants can help departments in obtaining funding, property, or other financial assistance (TCEQ, 2013).

The need for education to enforce environmental cases is necessary to be efficient in the investigation of these cases, but it is not mandatory to have prior to working these cases (Ockels, 2003). There are a multitude of books to read and associate oneself with environmental enforcement without any type of formal training, such as Clifford's book on *Environmental Crime: Enforcement, Policy, and Social Responsibility*. This book discusses a detailed chain of events and according to Clifford the strict liability standard is "a person who commits an act is responsible for the act whether he or she intended to cause harm or whether the act was legal at the time it was committed" (Clifford, 1998, p. 18). This type of formal training can be expensive and most training budgets for departments are just for achieving the mandated courses for maintaining the peace officer's license. Another way around this obstacle is if an officer sees an environmental crime being committed, the officer can look it up in the penal code, file a report, get a warrant, and make the arrest. The officer can also just call the local health department if he sees a violation.

The credibility of an officer investigating crimes is essential to have in any type of investigations. The prosecuting attorney's job is much easier when credibility of the officer is established through education and training, and the training process for investigating environmental crime can be done for little or no cost to the agency in many

cases, like simply contacting the local COG. There are 24 COG's in the state of Texas, all of which provide environmental training to officers in their region. The Law Enforcement Management Institute of Texas (LEMIT) offers online courses in many aspects of investigating environmental crimes at little or no cost to the department, and the officer never has to leave the department ("LEMIT," 2013).

One contention with enforcing environmental crimes is the illegal dumping on one's own property. The owner of the property has paid for it and thinks that they can do what they want on their own property. Some land owner's state that "my daddy and his daddy before him dumped into this ravine on our ranch and I'll do the same" (Ockels, 2003, p. 154). This type of activity happens frequently in rural areas and will continue because of generations doing the same thing and suffering no repercussions from it. Ockels (2003) stated that "all criminal laws in Texas apply to public and private property alike" (p.154). The farmer or rancher dumping on their own property is in violation of environmental laws and can be prosecuted. There is one thing to keep in mind and that is that it will have to be cleaned up at some time. The grandsons or great grandsons will have to clean it up, and the cost will be very expensive.

The illegal dumping on private property will eventually spread onto other property by way of wind, flooding, or smell and a complaint will be launched. If this criminal activity has been going on for several years, the clean up will be very expensive, thus the inheritance of the land may become more of an expense than a windfall. In the future, the land could possibly be sold, and this would cause the owner to have to clean it up prior to the sale.

## **RECOMMENDATION**

The agencies involved in the investigation and prosecution of environmental crimes should educate and train all staff in environmental law within their respective positions. This type of education and training would assist in both departments being able to work together as a team to detect, investigate, prosecute, and deter future environmental crimes. Environmental enforcement training is available in many locations across the state and can be completed on the internet. This training can also be conducted within the department at no cost.

The protection of natural resources is vital to living in a healthy, clean environment. The land everybody lives on, the water they drink, and the air they breathe are valuable assets that need protection. Through the prosecution of environmental crimes elected officials gain in two ways, by becoming more popular with voters and by illustrating their efforts to clean up the environment. The effects of ignoring environmental crimes can result in constituents' attitude of not caring because the government does not care.

The enforcement of these laws at the local level are very important, and many resources are available to aid in this such as networking with surrounding cities and counties, calling the local COG, TPWD, RRC to name a few. Local enforcement should always be the first step; however, if these avenues do not succeed, there are state and federal agencies such as TCEQ, EPA, and TELEA that can help also. The local and some state agencies handle the criminal side of these violations and the state and federal agencies handle the civil side. These cases are filed like any other criminal case along with supporting evidence, reports, photos, and statements to the appropriate

prosecuting attorney. The attorney examines the case, sends it back if additional evidence is needed, sets it for trial, or denies the case. The denial of the case does leave one last resort, obtaining a letter from the prosecutor giving the reason for the denial and then filing the case Travis County.

There are enhanced penalties for repeat offenders. Some businesses consider the cost of fines as part of doing business, but regulators do not want the fines so high that it puts them out of businesses. If these businesses close, then the state has to clean up the mess.

The training of all officers in environmental enforcement can cause hardships on departments because of the lack of manpower and money for training. Local departments can get assistance in enforcing environmental laws by contacting and networking with other agencies, at both the local and state levels. Some agencies can only file civil cases but can assist in the investigation process on the criminal cases.

There are many different types of grants, property, and equipment available to aid in investigating these crimes. The grants can also be used for training and to offset financial hardships due to the loss of manpower. If the officer sees a possible violation, the health department could be called for assistance and file a civil case.

The prosecuting attorney can establish credibility in an officer through the officers' education and training. The necessary training and education that an officer needs in order to be efficient in filing environmental cases can be obtained at little or no cost to the department. The officer can also obtain the training through online courses.

Landowners think that it is acceptable to dump on their own property and have been doing so for generations. Environmental enforcement is not aware of these cases

until a formal complaint is made. These violations will continue because there have not been any repercussions for the violation over generations. These landowners are unaware that all criminal laws apply to public and private property. This type of violation will eventually spread by way of wind or flooding and cause neighbors to launch a complaint. When the landowner is prosecuted for the violation, the land will have to be cleaned up, and this will be a very expensive process.

This training could impact communities across the state if implemented into state and local police academies. The officers who graduate from academies could implement their knowledge, skills, and ideas into their respective departments if an established program is not already in place. Trained officers could see these violations being committed on their first day on the job. The veteran officers should have a mandatory environmental enforcement class introduced into their TCOLE cycle of mandatory continuing education courses.

To implement environmental enforcement training into the department would be very simple and inexpensive by contacting the corresponding counsel of government in the area and requesting this training. There are several associations that will come to the department and teach the course such as Keeping Texas Beautiful, TCEQ, and TPWD (KAST) Kills and Spills Team. The administrative department within law enforcement agencies should also attend these courses by taking internet courses online or various classroom settings that are offered throughout the state. This training would assist the agencies to understand the importance and effects on the community and assist in gaining internal support. The administrative level of the department can track progress and support future needs for enforcement training with before and after

statistics on improvements. The ultimate goal is having the ability to actively pursue violators by prosecuting them and cleaning up the community, while deterring others from committing the same or similar offenses.

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