

Environmental Law Enforcement: Meeting the Challenge

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Abstract

In the late 1980s officers of the Florida Game and Fresh Water Fish Commission noticed a dramatic increase in criminal environmental violations, including illegal dumping, dredge and fill, and other forms of pollution. At that time no state law enforcement agency was actively conducting criminal investigations of environmental crimes. Instead, violations were handled through the civil process by regulatory agencies.

In October 1989 the Commission's Division of Law Enforcement dedicated 39 sworn officers to establish an Environmental Enforcement Section (EES). These positions were existing positions, not new positions appropriated by the Legislature. The Division restructured the supervisory level and removed the Sergeant position from the chain of command. This Sergeant position was redirected toward full-time criminal environmental investigations. This redirection actually increased productivity in traditional resource enforcement within the Division, as well as the EES, averaging 1,000 cases per year since implementation.

Introduction

The Florida Game and Fresh Water Fish Commission has been fighting the battle against illegal dumping, dredge and fill, and pollution, for years. The 1988 Florida Litter Law, coupled with increasing illegal activity, provided the impetus for forming an Environmental Enforcement Section in October of 1989.

"When we hear the word 'crime' we tend to get a mental image of the offender, victim and nature of the offense. For example, we might immediately think of murder, robbery, youth gangs and drugs, among other popularized visions of crime" (Reasons, 1991). When the word "environmental" is heard, prior teaching automatically provides images of air, water, and land. Until just recently, the two terms were not used together.

Today the United States produces approximately 125 billion pounds of hazardous waste annually (Matulewich, 1991). Toxic and hazardous waste from approximately 15,000 municipal and 75,000 industrial landfills have contaminated public and private water supplies throughout the country (Matulewich, 1991). Thus, crimes against the environment seriously endanger the health of society. In addition, environmental crime has a devastating impact on the nation's fish and wildlife habitats.

Because of the high cost of proper disposal, hazardous waste is a "target rich environment" for the environmental criminal. Since 1976 the legal disposal of hazardous waste has increased by more than 100 percent (Matulewich, 1991). Primarily, the increase is due to tougher disposal guidelines dictated by the Resource Conservation and Recovery Act (Matulewich, 1991). Although disposal standards are more stringent, criminal enforcement of this act is limited. Several extensive reports from government hearings clearly suggest that huge profit possibilities from illicit disposal of hazardous waste attract high ranking members of the organized crime community (U.S. House of Representatives, 1988).

In the early 1980s only six states -- Louisiana, Maryland, Michigan, New Jersey, New York, and Pennsylvania -- realized the scope of the problem and employed specialized units to combat environmental crime. By 1988, the ever-increasing problem of illegal disposal of solid and hazardous waste so directly threatened Florida's fragile ecosystem that the Florida Legislature passed the "Florida Litter Law," providing third-degree felony charges for the illegal disposal of solid waste. This paper is designed to assist other agencies (local, state or federal) in the development and implementation of environmental crime enforcement programs, and to point out pitfalls to avoid.

Environmental Enforcement in Florida

To ensure the continued survival of Florida's many and varied wildlife and fisheries resources, a concerted effort toward environmental protection is vital. The State's unprecedented growth has resulted in a serious decline in both quality and quantity of fish and wildlife habitat. The habitat that remains is constantly threatened with various forms of pollution by illegal activities. These activities are negatively impacting our fish and wildlife and are destroying areas required for breeding and propagation.

Public access to Florida's waters and woodlands is being limited and restricted continually because of abuse. Landowners are no longer willing to tolerate illegal dumping. In fact, in many cases, they are the ones who are liable for the restoration of damage to their lands and waterways, although they are not responsible for degradation. Therefore, many times they feel they have no choice but to deny access to their property. This is causing the public to lose present and potential management areas and seriously affects the state's outdoor recreationalists. If the abuse is not stopped, additional public and private outdoor recreational lands will be sealed off and closed to public access.

Historically, environmental criminals caught dumping illegally in Florida faced civil litigation from regulatory agencies, but not criminal penalties. Companies passed civil fines on to the consumer as a cost of doing business, while company executives were protected from individual charges by the cloak of the corporate umbrella.

In October 1989, armed with specific authority under the "Florida Litter Law," the Commission formed its Environmental Enforcement Section. As a result of the accomplishments of this specialized unit, the Commission has been officially recognized as the state's lead agency in the enforcement of environmental crime.

Thirty-nine law enforcement supervisors were reclassified and used to staff the enforcement section. This removed an entire level of direct line supervision and freed them from the associated administrative functions; wildlife officers could devote more time to "traditional" resource enforcement since they would no longer be tied up with lengthy environmental investigations. Using experienced officers in these positions was advantageous because of the lengthy and often specialized investigations that are required in environmental cases.

Authority to establish this section came from several sources. Article IV, Section 9, of the Florida Constitution charges the Commission with managing and protecting Florida's fish and wildlife, a responsibility that extends well beyond setting and enforcing limits, seasons, and methods of harvest. Environmental violations can have more severe and longer lasting effects than the proverbial "poacher's bullet." You cannot protect a species without protecting its environment and protecting it from the direct

effect of harmful substances contained in the environment.

Section 403.413, F.S., the "Florida Litter Law," is the primary tool for environmental enforcement because the Game and Fresh Water Fish Commission (GFC) is charged with enforcing the provisions of the Statute.

Finally, under §372.07, F.S., wildlife officers are designated as fully constituted police officers with the authority and responsibility to enforce all of the state's criminal laws, including the criminal environmental statutes. It is appropriate for EES officers to enforce criminal environmental laws because it is the only enforcement agency that routinely patrols the state's woods and inland waterways. Many violations occur in remote areas where people feel it is easier to conceal their illegal activities. Also, unlike other law enforcement agencies, GFC's primary interest is how human activity affects the fish and wildlife it is entrusted to protect.

Environmental Enforcement Section members still perform general fish and wildlife, and boating safety patrol activities. Initial concerns that the commitment to environmental enforcement could detract from GFC's more "traditional" role of resource and boating safety enforcement did not materialize. In fact, in 1990, the first full year of the Environmental Enforcement Section's existence, total resource and boating arrests increased by nine percent. During this period environmental investigators issued 400 resource-related citations, plus 966 citations for environmental violations, including 154 felonies. This represents a fairly significant increase in environmental citations; however, even prior to the creation of the EES, GFC officers were issuing over 400 environmental citations a year.

Specific Examples of Environmental Violations

The main goal of the EES is to ensure compliance with the environmental regulations so no further damage occurs to the environment. The primary emphasis of this section is to protect the fish and wildlife resources of the state and enforce the applicable laws and regulations. They prioritize their activities and investigations based on the potential effects the particular activity may have on the state's environmental resources:

Litter enforcement, from felony dumping through infractions, with the highest priority placed on felony violations. All littering is a priority because of the negative effects it can have on the habitat and the potential for loss of available lands for public use. This category includes the illegal disposal of waste tires.

Illegal solid waste disposal (dumping) degrades fish and wildlife habitats. The materials dumped often release harmful chemicals, including lead, acids, and oils into groundwater and the soil. The piles become breeding grounds for noxious insects, rats, and other vermin. This type of activity has also resulted in the loss of many acres of land that had been available for public use. These areas become a fire hazard as the materials accumulate.

Illegal dumping and disposal of heavy metals affects water quality and organisms throughout the food chain. It tends to accumulate in the tissue of the upper level consumers. e.g., largemouth bass throughout the state; and Florida panthers and alligators in the Everglades. Mercury poisoning has been identified as the cause of death of at least one endangered Florida panther.

The illegal dumping and disposal of dead chickens or other farm animals presents a health hazard to people and can spread disease among wildlife populations, especially turkey and quail populations.

Hazardous waste, primarily as it relates to the illegal disposal of such materials. By its very nature and definition the illegal disposal of these materials can have long-term, far-reaching effects. If not properly disposed of, these materials can show up in the soil, plant materials, water, and living organisms. We have investigated several sites where drums of such material were illegally buried.

Septage/sewage disposal, in particular the illegal activities that result in its groundwater or surface water deterioration. increased bacteria counts, eutrophication, and reduced oxygen levels. The water becomes unfit for habitation by fish, mammals, and aquatic organisms, as well as posing a health threat to humans.

Contamination of state waters by such materials as ammonia, sulfuric acid, battery acid, pesticides, and herbicides. The release of foreign and harmful chemicals into a water system causes fish and wildlife kills, reduces oxygen supplies, and kills lower-level aquatic organisms. Fish in the lower St. Johns River are afflicted with lesions, a condition known as "Ulcerated Disease Syndrome," apparently due to the introduction of harmful chemicals into an aquatic environment. Alligators have declined catastrophically on Lake Apopka. Adult alligators have died, eggs do not hatch, and embryos are severely deformed. The prevailing view is that an unknown poison has been introduced into the Lake.

ESS is currently conducting several investigations in south Florida involving the use of Diuron and Diurex. Derivatives of prohibited insecticides have been discovered in the tissues of flightless juvenile waterfowl in the Everglades agricultural area. This implies that prohibited chemicals (DDT, Dieldrin), deleterious to people as well as wildlife, are still being used.

Oil/fuel spills that degrade water quality, kill aquatic organisms and fish, and have long-term negative effects on the ecosystem. Oil settles to the bottom, coats bedding areas, and releases toxins into the affected water systems for years. It also kills mammals and birds that come in contact with the oil or fuel.

Upland habitat destruction directly affects wildlife by destroying their breeding, feeding, and escape areas. It forces them into marginal areas where they are more susceptible to mortality. It disrupts food chains and delicate natural balances.

Wetland habitat destruction, especially illegal dredge and fill violations in state waters. This (in state waters) can negatively impact aquatic vegetation, water quality (turbidity), aquatic habitat, and the production of aquatic species. It can affect spawning and rearing areas for fish and prey species. Such endangered species as the wood stork can be affected by such activities.

Mangrove destruction.

Open burning, especially those substances that when burned, release toxic chemicals into the air, soil, and water, e.g., tires, shingles, and insulated wire. The illegal burning of certain materials releases toxins into the air, soil, and water. The burning of such materials as tires, shingles, and insulated wire contributes to acid rain which affects ecosystems at all levels. It also releases pollutants into the soil and groundwater supplies which directly degrade the habitat. These substances include oil, heavy metals, benzene, arsenic, and asbestos.

Other environmentally oriented illegal activities are considered on a single event or recurring basis depending on their potential impact on our fish and wildlife resources.

Other state agencies were not aggressively enforcing the state's criminal environmental laws; therefore, many of our natural resources were not adequately protected. It is essential to realize that intentional violations of these laws can have extremely serious consequences for many years and are crimes against the people of the State of Florida. As Attorney General Robert Butterworth pointed out in a recent article in the Florida Environmental Newsletter, "I think people are finally beginning to realize that this is real crime and the victim is a whole lot of people. But, for a long time, it was almost like consumer law -- people did not really think of it as being a real crime, but it is."

EES Activities

EES generally detects or becomes aware of violations in one of three ways:

- Wildlife officers personally witness the violations as part of their patrol activities or discover evidence that leads to the violator. This is especially true in the major dumping situations. The investigators often build cases from small amounts of evidence found at the site. These investigations can be tedious and time consuming.
- Concerned citizens offer information and citizens publicly complain. Wildlife Alert hotlines receive much of this information.
- State, local, and county agencies refer problems or concerns. Many times these agencies call EES when they encounter a problem in which compliance cannot be achieved by administrative action, or if they feel the GFC is the appropriate agency to handle a particular situation.

An environmental enforcement officer must determine that a violation has been committed and collect the facts surrounding the violation (including previous dealings with regulatory agencies) to assess the severity of the violation. After examining these issues, the officer determines the proper course of action, including: educating and informing the individuals involved about the law; referring the information to the regulatory agencies; issuing written warnings; and, finally, issuing a citation. In some instances, administrative penalties and sanctions are effective, but in others they are not. EES is constantly reminded of the inability of the administrative process to bring flagrant violators into compliance. Criminal proceedings, or a well-coordinated effort that

creates parallel proceedings of civil and criminal actions, is often the most effective strategy.

Some municipal governments and county agencies have environmental officers who function on a limited basis in specialized areas. The Department of Environmental Protection (DEP), and the Department of Health and Rehabilitative Services (HRS) are concerned with certain aspects of environmental enforcement. DEP and HRS are staffed for permitting, carrying out civil investigations, and filing civil penalties against major environmental violators. However, they are not sufficiently staffed to pursue common violations or criminal prosecutions at the field level. Such "routine" violations are causing significant damage to the state through their cumulative effect.

The Commission does not perceive any conflicts between these agencies' roles and EES. A sincere and dedicated effort is going to be required by all agencies at all levels to protect our fragile and precious natural resources. Not only will the fish and wildlife benefit, but so too will the human population.

Following are some brief descriptions of a few situations encountered since the formation of the ESS section, and some of the remedies taken as a result of a violation:

Violations.

1. In Baker County two individuals were charged with felony littering for the dumping of dead chickens in a wildlife management area. These poultry farmers were using the site to dispose of thousands of dead, dying, and diseased chickens. This activity posed a direct and real threat to our native turkey and quail populations.

2. In Marion County the owner of a waste oil company was charged with felony commercial dumping after one of his tank trucks was observed driving down State Road 19 with the drain valve open and waste oil pouring out onto the shoulder of the road. In this location the road goes right through the Ocala National Forest. Waste oil contains heavy metals that can pollute surface and groundwater supplies.

3. In Leon County two individuals were charged with felony dumping after illegally disposing of over 3,000 waste tires in a two-week period in an isolated area south of Tallahassee. These tires pose a very real fire danger, become breeding grounds for mosquitos and vermin, and release toxins as they degrade.

4. In Palm Beach County two individuals were charged after they abandoned a semitrailer loaded with excess pesticides and acids at the edge of the J. W. Corbett Wildlife Management Area.

5. An investigation in the environmentally sensitive Florida Keys revealed an illegal dump site that contained batteries, tires, used motor oil, and some chemicals. The corporation and some of its employees were charged with operating an illegal landfill and felony dumping. The water in this dump site was affected by the tide and the contaminants would have found their way into the adjoining bay.

6. In one instance, DEP was monitoring a firm in Brevard County as a hazardous waste generator. An EES investigation discovered that prior to inspections, employees

removed barrels of hazardous waste from the premises to unknown locations. Hundreds of gallons of phosphoric acid were being drained into a holding tank. Unknown to DEP, the tank had a convenient hole in the bottom. Disgruntled employees described how the acid solution constantly drained into the tank, but it never filled up. The extent of this contamination has not yet been fully determined. However, this company was operating under a consent order that resulted from another hazardous waste discharge. That discharge contaminated neighborhood drinking wells and was detected in the Indian River. The Indian River is a Class II waterway designated for shellfish propagation. So far, the investigation has resulted in the highest ever DEP penalty assessment for a hazardous waste violation. Penalties recommended total \$425,000. The investigation is continuing.

Case Dispositions. In general, the courts have recognized the seriousness and criminal nature of these violations. GFC considers a case successful if the individuals or corporations are found or plead guilty; if a pretrial intervention agreement is reached; if adjudication is withheld, but the violator is placed on probation and has to pay court and/or investigative costs; or if remedial action is ordered to restore the site.

Statewide, GFC is averaging a 90 percent successful disposition rate. In the Central Region, which is a high-activity area, it has a 98 percent success rate. For example:

- A corporation was charged with felony dumping and having an illegal landfill. It was fined \$10,000, and its officers ordered to serve 100 hours of community service, with one year of probation.
- A junkyard in Key West was charged with five counts of felony polluting. The owner was put on probation until the cleanup is completed. Cleanup is estimated to cost \$200,000.
- In a charge of depositing solid waste in water and disposal of solid waste without a permit, the subject was fined \$10,000, given one year of probation, and was required to clean up the area.
- A subject was charged with operation of an illegal landfill. This area was primarily used as a disposal site for waste shingles. The subject has forfeited a \$10,000 bond and spent approximately 45 days in jail. The case is set for trial.
- A subject was found guilty of felony littering of waste tires in Richloam Wildlife Management Area and on private property. Subject was given 24 months of community control, 12 months of probation, served 67 days in jail, paid a \$470 fine and court costs, and must attend 20 hours of class dealing with environmental issues.
- A subject was charged with 11 counts of commercial littering--solid waste disposal. A company entered into a deferred prosecution agreement whereby they paid \$30,000 to DEP and \$10,000 the State Attorney's Office. In addition, they paid

\$30,000 to the Commission's Law Enforcement Trust Fund and agreed to fully and legally clean up the sites.

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