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HAZARDOUS WASTE ENFORCEMENT



REPORT

OF THE

SUBCOMMITTEE ON OVERSIGHT AND

INVESTIGATIONS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

U.S. HOUSE OF REPRESENTATIVES



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(II)

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, D.C., December 16, 1982.

To MEMBERS, COMMITTEE ON ENERGY AND COMMERCE.

DEAR COLLEAGUE: The report of the Subcommittee on Oversight and Investigations, "Hazardous Waste Enforcement," covers seven hearings held between September 1980 and April 1982. In it, the Subcommittee reviews: (1) the operations of the New Jersey Inter-Agency Hazardous Waste Strike Force, (2) organized crime's involvement in New Jersey's waste disposal industry, and (3) the policies of the U.S. Environmental Protection Agency's hazardous waste enforcement program.

The deliberate illegal dumping of hazardous substances and the involvement of organized crime in segments of the toxic waste industry continue to threaten the efforts of Federal and State regulators to resolve the critical national problem of hazardous waste disposal through the Resource Conservation and Recovery Act regulations.

In the Subcommittee's judgment, the best weapon to combat improper or illegal activity in the hazardous waste industry is strong, effective law enforcement. A strong enforcement program provides the mechanism both to penalize violators of the law and to deter others. Enforcement is the single tool essential to effective Federal and State regulation of the problem.

Conversely, a weak enforcement program—plagued by indecision, incompetence, indifference and inaction—not only fails to achieve compliance but encourages continuing violations of the law as well.

The New Jersey Inter-Agency Hazardous Waste Strike Force, a Federally-funded program which had its origins in 1978, represented the first coordinated Federal/State effort in the country designed to investigate and prosecute violations of law relating to the disposal of toxic waste. While New Jersey is to be commended for pioneering this program, the Subcommittee's review disclosed serious administrative deficiencies in the operation of the unit up until June 1981 that hampered its effectiveness and thwarted the objectives of the Federal grants. Examples of those deficiencies are set forth in the report and include failures to respond promptly to complaints, inordinate delays in conducting appropriate investigation, cursory and unproductive patterns of investigation that lacked the basic professionalism necessary to achieve effective law enforcement, and breakdowns in communication and coordination resulting in duplicative efforts and mishandled investigations.

Based on the Subcommittee's investigation, and testimony presented at two hearings by Federal and State law enforcement officials and a

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former FBI informant who is in the Federal witness protection program, it is clear that for many years organized crime has controlled the solid waste carting industry in New Jersey. It has been able to do so through a rigid system of property rights enforced by threats and acts of violence, including murder. Now, organized crime has extended its influence into the lucrative area of toxic waste disposal in New Jersey. The report documents organized crime's involvement in New Jersey's waste disposal industry through elements of the Genovese and Gambino crime families of New York, together with the mob-controlled Local 945 of the Teamsters Union in New Jersey.

The Subcommittee's examination of EPA's enforcement program during the first 14 months of the present administration—with emphasis on compliance, policy and activities under both RCRA and Superfund—disclosed that enforcement efforts had come to a virtual halt and had created a widespread perception that the agency lacked a strong enforcement arm.

In 1981, as contrasted with 1980, we have seen a staggering decrease in civil case referrals—a 79 percent decline in cases referred to EPA headquarters from the regional offices and a 69 percent decrease in cases referred to the Department of Justice. In the area of hazardous waste enforcement, the report details the sharp decline in both cases referred and filed under RCRA and Superfund.

The substantial shut-down in EPA's enforcement efforts is basically attributable to two factors: (1) the agency's continual reorganization of its enforcement structure and program from mid-1981 to mid-1982, which resulted in uncertainty and confusion and adversely impacted employee morale and efficiency, and (2) an enforcement philosophy that substitutes "nonconfrontational voluntary compliance" with environmental statutes and regulations for firm enforcement guidance. EPA's poor performance combined mismanagement, disregard, and indifference by top agency officials regarding their enforcement responsibilities.

The EPA's budget for Fiscal Year 1982 (commencing October 1, 1981) provided funds for hiring 25 criminal investigators, four of whom were already employed by the agency. Despite assurances in November 1981 that staffing was underway and the program would be fully operational by March 1982, the investigators were not hired until September 1982, nearly one year after the funds were available. The failure to require the prompt staffing and implementation of this program suggests a cavalier attitude toward criminal enforcement on the part of EPA's top management officials.

EPA has not maintained an effective program to enforce the civil and criminal sanctions that Congress provided when it enacted RCRA and Superfund. Those laws cannot protect the public health and environment, as they were intended to do, without a strong enforcement program to back them up. Without an aggressive enforcement policy, no one can reasonably believe that EPA's rhetoric urging "voluntary compliance" will cause many generations, haulers and disposers of hazardous waste to adhere to the law. Instead, the improper landfilling and indiscriminate disposal of hazardous waste will continue to threaten our neighborhoods and contaminate our water supplies.

Sincerely,

JOHN D. DINGELL, *Chairman.*

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ABBREVIATIONS

EPA	—U.S. Environmental Protection Agency
FBI	—Federal Bureau of Investigation
IRS	—Internal Revenue Service
LEAA	—Law Enforcement Assistance Administration
MTC	—Modern Transportation Company
NJDEP	—New Jersey Department of Environmental Protection
OMB	—Office of Management and Budget
RCRA	—Resource Conservation and Recovery Act
SCA	—SCA Services, Inc.
SCP	—Scientific Chemical Processing, Inc.

HAZARDOUS WASTE ENFORCEMENT

I. INTRODUCTION

Over the last four years of its investigation of hazardous waste matters, the Subcommittee has uncovered numerous instances of improper as well as illegal dumping.

It is disturbing enough when disposers of toxic substances, through inadvertence or ignorance, recklessly poison the environment and endanger the public health. But it is considerably more appalling when generators, haulers and disposers engage in the insidious business of illicit dumping for profit or to avoid the cost of legitimate disposal.

Even more alarming was the information developed during the Subcommittee's inquiries linking organized crime to the illegal disposal of hazardous waste. Yet, this came as no surprise. In fact, it was predictable, given the lucrative nature of this activity.

The deliberate and wanton dumping of hazardous waste illegally and the involvement of organized crime in segments of the toxic waste industry pose a continuing threat to undermine the efforts of Federal and State regulators to resolve the national problem of hazardous waste disposal through the Resource Conservation and Recovery Act (RCRA) regulations.

It is the Subcommittee's judgment that the best weapon to combat improper or illegal activity in the toxic waste industry is strong, effective law enforcement. A strong enforcement program provides the mechanism both to penalize violators of the law and to deter others. Enforcement is the backbone of Federal and State regulation. It is the single tool essential to effective regulation.

Conversely, a weak enforcement program, plagued by indecision, incompetence, indifference and inaction, not only fails to achieve compliance but encourages continuing violations of the law as well.

The Subcommittee recognizes that the task of enforcing hazardous waste laws and regulations is not an easy one, especially in criminal cases. Obtaining the evidence necessary to sustain convictions against illegal disposers is often difficult—short of catching them in the act. Investigative activities range from record checks and mobile surveillances to executing search warrants and conducting chemical analyses of questionable waste samples. It is also essential, as in any law enforcement endeavor, to develop reliable informants and sources of information within the toxic waste industry.

In short, illegal dumpers present a formidable challenge to law enforcement agencies. As new and devious and more sophisticated methods of illicit disposal are devised by the criminal element, it becomes increasingly incumbent on enforcement officers to respond with imaginative and innovative investigative techniques—within the legal framework—to meet this challenge successfully.

In this report the Subcommittee covers seven hearings held between September 1980 and April 1982 relating, entirely or in part, to hazardous waste enforcement matters. In those hearings we examined the operations of the New Jersey Inter-Agency Hazardous Waste Strike Force, organized crime's involvement in the waste disposal industry, enforcement issues involving several New Jersey disposal facilities, and the policies of the U.S. Environmental Protection Agency's (EPA) enforcement program in its administration of RCRA and Superfund. The seven hearings are:

- September 24, 1980, "Disposal of Hazardous Waste" (Executive Session).
- December 16, 1980, "Organized Crime and Hazardous Waste Disposal" 96th Congress, 2nd Session, Serial No. 96-239.
- May 28, 1981, "Organized Crime Links to the Waste Disposal Industry" 97th Congress, 1st Session, Serial No. 97-32.
- June 9, 1981, "Hazardous Waste Matters: A Case Study of Land-fill Sites" 97th Congress, 1st Session, Serial No. 97-43.
- November 16 and 18, 1981 and April 2, 1982, "EPA Enforcement and Administration of Superfund" 97th Congress, Serial No. 97-123.

II. NEW JERSEY INTER-AGENCY HAZARDOUS WASTE STRIKE FORCE

A. BACKGROUND

New Jersey is a highly industrialized state with a concentration in the manufacture of organic and inorganic chemicals, refining, and pharmaceutical research which collectively generates more toxic and hazardous material than any other state.¹ The New Jersey Department of Environmental Protection (NJDEP) estimated that in 1977, approximately 15,000 generators in the state produced some 1.2 billion gallons of liquid toxic waste and 350,000 tons of semisolid chemical sludge.

The problem of disposing of waste in this magnitude is compounded because New Jersey is situated on a land mass which is not conducive to the maintenance of environmentally safe landfills for the disposal of toxic material.² In 1976, due to severe adverse environmental impacts, the NJDEP closed the last remaining commercial landfill accepting hazardous substances—Kin-Buc. It has earned national recognition as the country's largest chemical dump.

Prior to the mid-1970's, few people in this country were aware of the problem of indiscriminate or improper disposal of hazardous waste and its effect on public health and the environment. It simply was not a matter of public concern.

Following the closure of Kin-Buc landfill in 1976, the Division of Criminal Justice of the New Jersey Department of Law and Public Safety began to receive scattered reports from local law enforcement agencies that toxic waste was being indiscriminately dumped in their localities. Based on this information, the Division of Criminal Justice

¹ New Jersey Proposal for EPA Funding of Inter-Agency Hazardous Waste Strike Force (Phase II), May 9, 1980.

² *Ibid.* A legitimate question can be raised as to whether landfills can ever be environmentally safe with respect to some toxic wastes.

began to examine the problem, even though no specific criminal statute then existed upon which a criminal prosecution could be based.³

Criminal Justice determined from its inquiries that the problem of illegal toxic waste disposal was not confined to haulers, as originally suspected, but included licensed recycling facilities on an even larger scale. During this period, chemical firms were hardpressed to dispose of their waste, and, in addition to having a disproportionate number of such companies, New Jersey became the recipient of out-of-state waste as well.

Illegal disposal provides the potential for enormous profits. The charge for legitimate disposal of toxic substances could run as much as \$50 to \$100 for a single 55-gallon drum and thousands of dollars for an 8,000-gallon tanker trailer. It was not surprising that Criminal Justice began to develop information that toxic liquids were being disposed of in a variety of illegal ways—mixed with solid waste and buried in sanitary landfills, emptied into ditches that leaked into waterways, drained from tanker trailers on highways during rain storms, dumped into municipal sewer systems at night, mixed with recycled fuel oil—at virtually no cost to the disposer and resulting in substantial illegal profits.⁴

In 1978, the Division of Criminal Justice, recognizing that law enforcement had a key role to play in combating the problem of illegal disposal, pioneered a program specifically designed to investigate and prosecute violations of toxic waste disposal. Funded in large part by Federal grants from the Law Enforcement Assistance Administration (LEAA) initially, and later by grants from both LEAA and EPA totaling approximately \$1.5 million over a three-year period (1978–1981), the program evolved from a Toxic Waste Investigation/Prosecution Unit with one attorney and three investigators into an Inter-Agency Hazardous Waste Strike Force comprised of four attorneys, nine investigators, several State Police personnel, and a technical and clerical support staff.

In addition to the Division of Criminal Justice and the State Police, both within the New Jersey Department of Law and Public Safety, other members of the Strike Force included the NJDEP, EPA, and the U.S. Attorney's office for the District of New Jersey. Two State Police detectives and an intelligence analyst were assigned to the project to determine the role of organized crime in the industry. Deputy Attorney General Gregory Sakowicz, who became involved in toxic waste investigations in May 1978, was placed in charge of the Strike Force unit within the Division of Criminal Justice.

The Strike Force represented the first coordinated Federal/State program in the country designed to investigate and prosecute violations of law relating to the illegal disposal of toxic waste. Since this pioneer pilot program could serve as a model for other states, the Subcommittee reviewed its effectiveness under the Federal grants and the results that have been achieved. This review was the subject, in part, of the Subcommittee's December 16, 1980 and June 9, 1981 hearings, in addition to an exchange of correspondence with the then-Attorney General of New Jersey, John Degnan, following the December 1980 hearing.⁵

³ Dec. 16, 1980 hearing at 97–98.

⁴ *Ibid.* at 63–64 and 98–101.

⁵ *Ibid.* at 185–203 and 211–213.

B. ADMINISTRATIVE DEFICIENCIES IN STRIKE FORCE OPERATIONS

While New Jersey is to be commended for its initiative in establishing the nation's first Federal/State Strike Force to combat illegal dumping, the Subcommittee's review disclosed serious administrative deficiencies in the operation of the unit that hampered its effectiveness and thwarted the objectives of the Federal grants. Basically, the problem was one of mismanagement, resulting in the following areas of deficiency:

- instances of failure to respond promptly to initial complaints coupled with inordinate delay in conducting appropriate investigation
- cursory and unproductive patterns of investigation that lacked the basic professionalism necessary to achieve effective law enforcement
- breakdowns in communication and coordination resulting in duplicative efforts and mishandled investigations
- misleading data contained in quarterly reports submitted to LEAA and EPA that misrepresented actual case loads, priorities, and investigative activities

Examples of these deficiencies are contained in summaries of Division of Criminal Justice cases set forth on pages 185–193, together with former Attorney General John Degnan's comments on pages 194–203, of the appendix to the Subcommittee's hearing record of December 16, 1980. Similar problem areas were further examined during the hearing of June 9, 1981. The following cases are representative of the deficiencies disclosed during the Subcommittee's review and illustrate the seriousness of the mismanagement evident in New Jersey's toxic waste enforcement program during the period from mid-1978 to mid-1981.

(1) *Case Study Orange*⁶

In May 1978, a NJDEP official advised Criminal Justice of the alleged illegal disposal of chemicals into a sewer by a certain New Jersey company. The company reportedly backed tankers up to their building, connected into a pipe, and discharged directly into the sewer. A local building inspector allegedly knew of this activity and was paid to keep quiet. The NJDEP received this information from a former employee of the company who indicated a willingness to testify, if necessary. This individual's name and telephone number were furnished to Criminal Justice.

In July 1979, 14 months later, Deputy Attorney General Gregory Sakowicz stated in a memorandum: "Due to other matters being investigated by the Toxic Waste Unit, this matter . . . has not received active investigative activities." He recommended checking certain records, conducting sporadic surveillances of the company for a week, and interviewing the former employee.

According to the case file, surveillances of the company were conducted on portions of three days during the last week of July 1979. No further investigative activity was reflected in the file, including any interview with the former employee; yet, this was listed as a

⁶ Ibid. at 186 and 197.

pending case in quarterly reports filed with LEAA and EPA. The case was closed without enforcement action in July 1980, over two years after it was opened.

The Subcommittee asked Attorney General Degnan: (1) Why was the former employee never interviewed since he had alleged two crimes—illegal chemical dumping and bribery—and had indicated a willingness to testify? and (2) Why was the case listed as a pending matter in quarterly reports submitted to LEAA and EPA during the period from July 1979 to July 1980, when no active investigation was being conducted?⁷

Mr. Degnan advised that the case could not be pursued for a considerable period after it was received because of insufficient manpower. He said that no activity of a suspicious nature was observed during the surveillances conducted during the last week of July 1979. He said an attempt was made to locate the former employee of the company, but he could not be found. Mr. Degnan did not respond to the second question.⁸

This case demonstrates an unprofessional approach to law enforcement. It is inconceivable to the Subcommittee that a law enforcement agency, charged with the responsibility to investigate and prosecute violations of law, could not find the time—regardless of manpower considerations—to interview the former employee shortly after the complaint was received. Instead, at least 15 months elapsed before any attempt was made to contact the individual, and by that time he could not be located.

This was not the innocuous complaint of an anonymous source. It was specific information alleging the commission of two criminal acts, furnished to another state agency by a former employee of the company who backed his allegations with a willingness to testify. What more does a law enforcement agency need to institute prompt investigation? Mr. Degnan said there was insufficient manpower in the toxic waste unit at the time. Is that valid reason to permit alleged criminal activity to continue unchecked? We think not, given the substantial investigative resources available to the Attorney General in New Jersey. Criminal Justice could have obtained temporary manpower assistance from elsewhere in the Division, or from the State Police, or even the county prosecutor's office. The point is, something should, and could, have been done following receipt of the complaint. Unfortunately, no action was taken for over a year, and then it was too late.

In the law enforcement profession, it is difficult enough to develop sources of information and informants without ignoring those citizens who volunteer information and are willing to testify in court. It is doubtful that this individual will volunteer information again. It is possible, of course, that even if the complaint had been investigated promptly, the case might not have developed into a successful prosecution. That, however, is something we will never know. And for all anyone knows, the company is still dumping chemicals into the sewer and is still paying off the building inspector, as alleged four years ago.

⁷ Ibid. at 186.

⁸ Ibid. at 197.

(2) *Case Study Yellow*⁹

In July 1978, a railroad police officer observed a tanker emptying into a public sewer in a New Jersey city. He saw the driver remove a manhole cover, empty the tanker into the sewer, replace the manhole cover, and then cover it with debris. He obtained the license number and name on the tractor and notified Criminal Justice.

In July 1979, one year later, Deputy Attorney General Sakowicz noted in a memorandum: "Due to other priority matters, this matter has not received active investigative activities. However, preliminary work has been done to establish that (the company) does exist and the identity of several of their trucks has been established. This particular matter seems to involve the illegal activities of one isolated individual."

According to the case file, there was no indication of any activity by Criminal Justice since July 1979. At the time of the Subcommittee's hearing in December 1980, the case was then 2½ years old and was still being carried as a pending matter in quarterly reports submitted to LEAA and EPA.

The Subcommittee inquired concerning the dates and description of all investigative activity conducted in the case. Attorney General Degnan replied that when the complaint was originally received by Mr. Sakowicz from the railroad police officer, a determination was made to permit that officer to continue making observations in an attempt to determine whether the conduct was isolated or repetitive. In addition, during a training course conducted by Criminal Justice, other railroad police officers were alerted to this situation and asked to report anything of a similar nature. Criminal Justice determined that the company was a small-scale hauler operating one or two trucks. Mr. Degnan advised that since no further reports were received, and because of the small size of the company and the manpower and caseload factors in the unit, this complaint received no further active investigation. He said that the case had not been closed, however, because of the reliability of the initial information received.

The handling of this case suggests an amateurish approach to law enforcement. The toxic waste unit could hardly have received a more positive indication of illegal activity than that furnished by the railroad police officer, not only reliable, but a professional source, who saw the driver empty the tanker into a sewer and cover the manhole with debris, and who obtained the license number of the tractor.

This complaint should have received immediate investigative attention. Instead, it was decided to rely on the railroad police officer to determine the frequency of the activity. That decision entailed obvious problems. First, it presupposed that the company emptied tankers only in the sewer at that particular location. Second, it ignored the fact that the police officer had other duties which were his primary responsibility, and moreover, that he was not on duty around the clock.

No attempt was made to resolve even the most fundamental investigative questions: What was the nature of the company's business? Who were its customers? Where did its vehicles go, what did they haul, where was it disposed? A prompt mobile surveillance of the company's vehicles would have provided that information. And again,

⁹ Ibid. at 188 and 198.

if manpower were a problem, other resources in the Division of Criminal Justice, or the State Police, or the county prosecutor's office, or even the local police could have provided the necessary assistance.

No interviews were ever conducted with company personnel to determine why the driver was on railroad property emptying the tanker into a sewer. And the Subcommittee fails to understand what difference it makes that this is a small-scale company operating only one or two trucks. A fast-buck "midnight dumper" with one tanker is perfectly capable of inflicting serious environmental damage by disposing a substantial volume of liquid waste over a period of time.

In short, the toxic waste unit did absolutely nothing with this complaint over a period of 2½ years except to verify the existence of the company and identify several of its trucks! It is discouraging to see a case, with obvious and valid investigative leads, mishandled as badly as this one was—to say nothing of misrepresenting it as a pending matter, thereby implying that it was receiving active investigative attention.

Attorney General Degnan criticized the Subcommittee staff for the manner in which it reviewed the operations of the Strike Force, claiming that the "focusing upon a few cases out of hundreds we have handled" demonstrated a "clear bias" and that the "staff still persists in its efforts to distort our record." He stated this "has the potential for undermining this State's efforts to combat the illegal disposal of toxic waste."¹⁰

Contrary to Mr. Degnan's accusations, Case Studies Orange and Yellow, which are representative of the types of deficiencies found in nine of 40 cases reviewed by the Subcommittee staff, illustrate the caliber of the "State's efforts to combat the illegal disposal of toxic waste."

(3) *Lone Pine Landfill*¹¹

An even more egregious example of the administrative bungling that plagued the toxic waste unit/Strike Force was the mishandling of a criminal investigation involving the illegal disposal of toxic waste at Lone Pine Landfill. This case also involved regulatory ineptness by the NJDEP in the area of civil enforcement. The Lone Pine matter initially came to the Subcommittee's attention in the spring of 1981, through the investigative efforts of Herb Jaffe, a reporter for the Newark Star-Ledger, who wrote several pieces about the landfill in May 1981.¹²

Lone Pine Landfill is situated in Monmouth County, New Jersey, at the headquarters of the Manasquan River, which flows some 25 miles to the Atlantic Ocean. Since 1971, the NJDEP has been aware that toxic chemical waste is leaching from the landfill and polluting the Manasquan River.

The willful and systematic poisoning of any river is appalling; in the case of the Manasquan, it has potential far-reaching consequences for the water supply for several counties. Development of the \$40 million Manasquan River Reservoir project began in the mid-1960's. This master water supply plan for Monmouth and Ocean Counties will involve the utilization of the Mansaquan River as a potable water supply

¹⁰ Ibid. at 194 and 211-213.

¹¹ June 9, 1981 hearing.

¹² Ibid. at 188-194.

source for two future reservoirs. Completion of the project is scheduled for 1990. This vital water supply project is being jeopardized by the continual pollution of the Manasquan headwaters caused by chemical waste leachate from Lone Pine Landfill.

Over the years, enforcement actions by the NJDEP to remedy the leachate problem at Lone Pine have been inadequate and ineffective. The NJDEP first cited Lone Pine for illegally disposing of chemical waste in 1976. In all, from 1976 to 1979, the NPDEP issued Notices of Prosecution against Lone Pine for over 30 violations, ranging from windblown litter to chemical waste. Despite maximum penalties ranging from \$1,000 to \$3,000 per day for each violation, plus injunctive action, the NJDEP in each instance withheld prosecutive action and offered to "amicably compromise" its claims through token monetary settlements. The total of actual fines imposed during 1976-1979 was \$23,600. Yet, incredibly, records of the NJDEP reflect that only \$1,000 of this amount, or 4.2 percent, was ever paid by Lone Pine.¹³ Obviously, this kind of "enforcement" will not get the job done. It neither penalizes nor deters violators.

Between 1971-1979, the NJDEP had numerous contacts and meetings with Lone Pine representatives in unsuccessful attempts to correct deficiencies in the engineering design of the landfill relative to the leachate problem. However, it was not until April 1979 that the NJDEP finally rejected the engineering design as being inadequate, and the landfill was closed down by the court order in December 1979.

On June 23, 1978, a substantial chemical fire occurred at Lone Pine. When the fire was finally extinguished on the second day, approximately 50 drums of chemical waste were found in the main fire area. A NJDEP inspector interviewed persons at the scene and learned from a bulldozer operator and a local official the identity of two companies that had transported drums to the landfill for burial. One of the companies was Taylor Pumping Service. Although Lone Pine was not permitted to accept chemical waste and had been cited for chemical waste violations as early as 1976, the NJDEP did not notify the Division of Criminal Justice of the information obtained by the inspector at the time of the fire.

During his testimony before the Subcommittee on June 9, 1981,¹⁴ Deputy Attorney General Sakowicz advised that he did not become aware of the chemical fire at Lone Pine until November 1978. He stated that in July 1978 (several weeks after the fire), the toxic waste unit executed criminal search warrants on Scientific Chemical Processing, Inc. (SCP), in connection with a covert investigation into the company's disposal practices. That investigation developed information that approximately 50,000 drums of chemical waste, at \$5 per drum, allegedly had been removed from SCP and were believed to have been transported to an unknown landfill in southern New Jersey and buried. It was further alleged that on occasion, when the drums were being shipped, telephone calls were made from SCP to the landfill for the purpose of determining whether any inspectors were at the landfill at the time or requesting that the landfill remain open until the truckload of drums arrived.

¹³ Ibid. at 90 and 148.

¹⁴ Ibid. at 56-63 and 101-107.

Based on this information, the toxic waste unit subpoenaed SCP's telephone toll records which disclosed that several calls had been placed to Lone Pine Landfill. Surveillances of the landfill were conducted over several days in November 1978. On November 21 Mr. Sakowicz contacted the NJDEP for more specific information concerning Lone Pine. At that time he learned of the fire and that it was of a chemical nature. The Department further advised him in December 1978 that at the time of the fire in June, the landfill was illegally accepting chemical waste and that the owner of the landfill placed all the blame and responsibility on the landfill's manager, George Borden, Jr., who allegedly had fled to Florida.

The toxic waste unit conducted surveillances over several days of the two carters who had been identified by the bulldozer operator and the local official, without significant results. Mr. Sakowicz stated that since there was no indication in early 1979 that the landfill was then accepting chemical waste, the toxic waste unit directed its efforts to other investigations. The Lone Pine file was kept open for further development as time allowed.

In quarterly reports subsequently submitted to LEAA and EPA, the toxic waste unit/Strike Force listed Lone Pine as a pending case and described it as follows:

(Lone Pine) involves a non-chemical landfill believed to contain in excess of 50,000 drums (approximately 2,750,000 gallons) of assorted chemical waste. While conducting another chemical investigation, it was learned that this landfill was utilized as an illegal disposal site. The danger of this situation was brought to light when a chemical fire occurred within the past year.

Mr. Sakowicz testified that the Lone Pine case was closed on March 6, 1980, "based upon existing priorities and the likelihood, or lack thereof, of retroactively building a criminal case against the Lone Pine Landfill."

The Subcommittee questioned Mr. Sakowicz at length about his handling of the Lone Pine investigation.¹⁵ He testified that he did not interview any of the employees at the landfill or any of the NJDEP officials who were at the fire and observed the drums; he did not subpoena records from any of the companies identified as having dumped at the site nor excavate any of the drums for the purpose of tracing them back to the hauler or the generator; he did not attempt to interview George Borden, Jr., the landfill manager who reportedly had fled to Florida. He stated that he did not have the resources to conduct the investigation because of other pending investigations.

Congressman Gore commented: "I think it is important for people in this country to understand that this State, which has moved more quickly than any other into the area of hazardous waste, is incapable of coming up with the time and resources to investigate a hazardous waste dump site estimated to contain 50,000 barrels, leaking out a stream of poison into a river where a reservoir for drinking water is under construction at great expense. Nobody is held responsible for it."¹⁶ He further noted that the closure order to clean up the site was not enforced and that throughout the eight or nine years prior to the closing, state regulation was unable to prevent the continued dumping of toxic chemicals at the site.

¹⁵ Ibid. at 101-107.

¹⁶ Ibid. at 107.

There is marked contrast between the manner in which the toxic waste unit/Strike Force under the supervision of Mr. Sakowicz mis-handled the Lone Pine investigation in 1978-1979, and the action that has been taken by the U.S. Attorney's office in Newark since May 1981. The background is as follows:

As a result of the investigation conducted in April 1981 by Herb Jaffe of the Newark Star-Ledger, the staff visited Lone Pine in early May 1981, reviewed records, and interviewed persons knowledgeable about the landfill, including several former employees. Based on those inquiries, the Subcommittee developed information identifying individuals and companies allegedly involved in illegal dumping at Lone Pine, including information that Taylor Pumping Service was an active participant in a scheme to illegally dump chemical waste at the site during 1977-78. The Subcommittee also acquired documents relating to Lone Pine which were pertinent in identifying generators and haulers of toxic wastes accepted by the landfill.

By letter dated May 11, 1981, the Subcommittee referred this information to the U.S. Attorney in Newark, and also to the Division of Criminal Justice, offering its cooperation and urging an investigation into the Lone Pine matter. On May 14th, a representative of the U.S. Attorney's office reviewed the Subcommittee's files and conferred with the staff. On May 15th, the U.S. Attorney instituted a Federal grand jury investigation into the Lone Pine matter, which has resulted, thus far, in the following prosecutive action:

On July 17, 1981, the grand jury returned a 13-count indictment charging Henry Heflich, his wife, and Francis Perno with obstruction of justice, conspiracy, subornation of perjury, and perjury in connection with the investigation of illegal transportation and disposal of toxic chemical waste at Lone Pine. The indictment stemmed from a subpoena served on Heflich's company, Taylor Pumping Service, on June 2, 1981, requiring production of its business records on June 5. Instead of complying with the subpoena, Heflich and Perno burned and buried the records in a pit dug with a back hoe. Heflich and Perno pleaded guilty to the charges and the prosecution of Mrs. Heflich was dropped. Perno was sentenced in January 1982 to 2½ years imprisonment, suspended, fined \$2,500 and placed on three years' probation. Heflich is awaiting sentencing.

On May 7, 1982, the Federal grand jury returned an 8-count indictment against George Borden, Jr. of St. Petersburg, Florida, former general manager of Lone Pine. He was charged with six counts of mail fraud and two counts of income tax evasion for allegedly participating in a scheme between June 1977 and May 1979 to dump chemical waste illegally at Lone Pine. As part of the scheme, Borden allegedly allowed Henry Heflich and his companies, Taylor Pumping Service and All Waste Services, to utilize Lone Pine illegally for the disposal of chemical wastes, for which Borden was paid in excess of \$30,000. On July 8, 1982, Borden pleaded guilty to the charges and on September 15, 1982 was sentenced to 3½ years imprisonment (with three years suspended), fined \$1,000, and placed on three years probation.

On June 18, 1982, the Federal grand jury returned a 21-count indictment against Scientific Chemical Processing and three of its former

officers—Leif Sigmond, Herbert Case, Jr., and Mack Barnes—for participating in a scheme to illegally dump chemical wastes at various sites in New Jersey, including the alleged disposal of over 17,000 drums at Lone Pine. They were charged with conspiracy and 20 counts of mail fraud. The scheme, which allegedly began at least as early as June 1977 and continued at least as late as October 1978, involved the alleged payment by the defendants of over \$180,000 to Henry Heflich for unlawfully transporting and dumping the waste at Lone Pine. Heflich, in turn, is alleged to have paid over \$30,000 in bribe monies to Borden in return for the right to bury the drums at Lone Pine. This case is scheduled for trial in mid-January 1983.

In announcing the June 18, 1982 indictment, U.S. Attorney W. Hunt Dumont characterized Lone Pine as a “major environmental case” and stated that the investigation could continue for another year. In connection with his broadening investigation of the illegal dumping at Lone Pine, Mr. Dumont has also subpoenaed all the records of the NJDEP relating to this landfill. That in itself is an unusual development considering that both the NJDEP and the U.S. Attorney’s office are both members of the New Jersey Inter-Agency Hazardous Waste Strike Force. The Inter-Agency Strike Force was formed with Federal funds to establish a coordinated and cooperative effort utilizing the collective resources of Federal and state law enforcement and regulatory agencies to investigate and prosecute the illegal disposal of toxic waste.

The Subcommittee commends the U.S. Attorney’s office in Newark for the aggressiveness with which it has pursued the Lone Pine investigation and the successful prosecutions that have been obtained to date.

The tragedy, of course, is that the toxic waste unit had the same opportunity to investigate and prosecute those responsible for the illegal dumping at Lone Pine 2½ years before the U.S. Attorney’s office acted on the matter. It had information in late 1978 indicating that Henry Heflich’s company, Taylor Pumping Service, and George Borden, Jr. were involved in the disposal of drums at Lone Pine, but failed to conduct appropriate interviews, subpoena records, excavate drums, or investigate the matter properly, and closed the case in March 1980.

Mr. Sakowicz testified that in order to establish any culpability in the case, it would have been necessary to conduct a retroactive investigation that predated the New Jersey hazardous waste manifest system (which was established in May 1978). He stated that in order to develop a retroactive investigation, he would need books and records and would have to identify a generator and link him to the particular waste that was buried at the site. The Subcommittee observes that the U.S. Attorney has had no difficulty conducting a “retroactive” investigation and thus far has obtained several sets of indictments and a guilty plea from Mr. Borden relating to an illegal dumping scheme at Lone Pine dating back at least to June 1977.

Perhaps the most incredible aspect of the mishandling of the Lone Pine case is the fact that in 1978 the toxic waste unit had information that approximately 50,000 drums of chemical waste had been removed from Scientific Chemical Processing, transported to an unknown landfill, and that telephone calls were made from SCP to the landfill when

the drums were being shipped. From subpoenaed SCP telephone records, it was learned that calls had been placed to Lone Pine Landfill. Yet, nothing further resulted from this information until June 1982, when the U.S. Attorney obtained an indictment against SCP and three of its former officers for illegally disposing over 17,000 drums at Lone Pine.

Although Mr. Sakowicz stated that he lacked the resources to investigate the Lone Pine matter, it should be noted that in February 1979, he did obtain a 34-count indictment of SCP and the same three officers, charging them with illegally dumping chemicals into the Newark sewer system. The New Jersey courts, however, granted defendants' motion to suppress evidence on the grounds of an illegal search and ultimately dismissed the indictment because SCP was exempt from the requirement for a discharge permit and insufficient evidence was presented to the grand jury to warrant charging defendants with creating and maintaining a criminal nuisance.

The further tragedy of Lone Pine is the regulatory indifference demonstrated by the NJDEP and EPA concerning this site prior to May-June 1981, when the Star-Ledger cited the dangerous environmental conditions existing at the facility and the Subcommittee held its hearing. The ineffectiveness of the NJDEP's regulation of this landfill has already been chronicled in this report. The EPA's role was equally dismal.

At the Subcommittee's June 9, 1981 hearing, Richard Dewling, EPA's Deputy Regional Director in New York, testified that EPA's initial involvement with Lone Pine occurred in June 1978, when the NJDEP notified EPA of the fire at the site. Thereafter, EPA performed a field inspection and tested water samples which indicated the presence of organic chemicals. Further sampling in 1979, 1980, and February 1981 confirmed that chemicals were indeed entering the Manasquan River from the landfill; however, in EPA's judgment, pollution levels had not substantially increased to suggest ranking Lone Pine higher than "medium priority," as compared to other New Jersey sites.¹⁷

Lester Jargowsky, the Health Officer of Monmouth County, New Jersey, who has persisted over several years in his efforts to get the NJDEP and EPA to take corrective action at Lone Pine, was a key witness at the June 9 hearing. In addressing the issue of whether chemical contaminants entering the Manasquan River are being adequately diluted so as to not jeopardize the reservoir project, Mr. Jargowsky said it best: "The solution to pollution is not dilution."¹⁸

Following the Star-Ledger's disclosures and the Subcommittee's referral of its investigation to the U.S. Attorney in May 1981, the EPA undertook further monitoring and sampling at Lone Pine on May 31. Mr. Dewling further testified on June 9, a week later, concerning the results:

EPA's most recent sampling confirms our initial rating of "medium priority" given to the site under the preliminary assessment process. *While the landfill has the potential to pose a serious environmental threat if the drum disposal allegations are correct*, none of the data available to EPA at present substantiate the need to change the initial site rating. (Emphasis added.)

¹⁷ Ibid. at 63-73.

¹⁸ Ibid. at 3-18 and 24-29.

According to Mr. Dewling, the information that prompted EPA's sampling activity on May 31, 1981 (and subsequent action at Lone Pine as described below), was the allegation that some 50,000 drums were buried at the site. The Subcommittee finds it difficult to understand why this was "news" to EPA in May 1981, since the allegation concerning the 50,000 drums was reported to EPA's New York office by New Jersey authorities as early as March 1979,¹⁹ over two years before, and was known to the Inter-Agency Hazardous Waste Strike Force, of which EPA is a member, from July 1979 until the Lone Pine case was closed in March 1980.

Finally, after more than a decade of regulatory futility, the first real action to identify the source of the chemical pollution emanating from Lone Pine Landfill occurred shortly after the Subcommittee's hearing. In July 1981, EPA engaged a firm to conduct a geophysical investigation to ascertain the validity of the allegation that 50,000 drums are buried at the site. The tests identified magnetic anomalies at three different depths (0-10 feet, 10-30 feet, 30-50 feet), and it was concluded that tens of thousands of drums may have been buried at the facility. In September 1981, excavation tests at the 0-10 foot level were conducted at several locations on the 144-acre landfill, and 69 drums were uncovered from four areas at a depth of 8-10 feet. The drums varied in condition from semicrushed to intact, and appeared to have been dumped, not placed in the landfill. Newspapers dated in 1978 and 1979, found in the excavated fill, indicated the drums may have been buried during that period. Analysis of samples taken from the drums and the groundwater encountered during excavation disclosed various types of toxic chemicals. Monitoring wells were installed around the perimeter of the site for further testing of the groundwater.²⁰

As a result of this information and a re-evaluation of the facility by the EPA and NJDEP, Lone Pine was upgraded from the status of "medium priority" among New Jersey sites in June 1981, to the 14th top-priority site in the country targeted for remedial action under Superfund, as announced by EPA in October 1981.

The situation at Lone Pine continues to deteriorate. EPA reported in June 1982 that continued testing of the groundwater monitoring wells disclosed that waste from the landfill has contaminated both the upper Vincentown aquifer and the deeper Red Bank aquifer, both of which discharge to some extent into the Manasquan River.²¹ EPA stated that it is "seriously concerned and the plan is to identify the needs to clean up the landfill as quickly as possible and clean up the water."²² On July 7, 1982, EPA appropriated \$300,000 of Superfund monies for a six-month feasibility study of Lone Pine to determine the most cost-effective way to remove the chemical waste at the site.

It is not possible at this time to estimate the cost to clean up Lone Pine, but undoubtedly it will be substantial, particularly with indications that drums are buried as deep as 50 feet. One thing is certain—it will be considerably more expensive to clean up the site now than it would have been at any time during the past decade, when regulatory

¹⁹ New Jersey's application to EPA for Federal funding, Mar. 20, 1979.

²¹ Letter and enclosures from Richard Dewling, EPA, Dec. 28, 1981.

²² Letter from Jacqueline Schafer, EPA, June 18, 1982.

²³ June 29, 1982 Newark Star-Ledger.

authorities knew toxic chemicals were leaching from the landfill. Lone Pine is an example of a solid waste landfill which has been under the direct supervision of two state agencies—the NJDEP and the New Jersey Board of Public Utilities—which inspected and regulated the site since 1970. Lone Pine is now one of the nation's worst Superfund dump sites. Millions of dollars will have to be spent cleaning up the site, which effective regulation could have prevented.

At the June 9 hearing, a NJDEP official was asked why his agency had not informed the Division of Criminal Justice of the identity of the haulers who allegedly brought chemicals into Lone Pine at the time the information was obtained in June 1978, rather than five months later. He replied that "it is important to note we didn't have an Inter-Agency Strike Force at that time." He explained that the activities and involvement of Criminal Justice in this area were relatively new, that the NJDEP was not very well conversant with them, and "that is why we have a Strike Force now."²³

Yet, in 1980–1981, when the Inter-Agency Hazardous Waste Strike Force was fully operational, breakdowns in communication and coordination continued to occur between the NJDEP and Criminal Justice, both members of the Strike Force, that resulted in duplicative efforts and mishandled investigations.

One example is the case involving Modern Transportation Company (MTC) a waste disposal firm in Kearny, New Jersey. In the spring of 1980, at a time when Mr. Sakowicz was recommending a priority investigation, including surveillances, of MTC for possible illegal disposal of chemical waste, the NJDEP instituted a similar investigation of the company. Neither agency was aware of the other's investigation. The NJDEP conducted a three-month surveillance of MTC which culminated in a cease and desist order and a \$20,000 fine against the company in May 1981 for the unauthorized acceptance of millions of gallons of organic chemical waste. At no time during the NJDEP's year-long investigation did the agency refer this matter as a criminal case to Criminal Justice. While the NJDEP maintains that it discussed its investigation at several Strike Force meetings and with toxic waste investigators in Criminal Justice, Mr. Sakowicz testified that he did not become aware of the NJDEP's civil prosecution of MTC until he read it in the newspaper. At the June 9, 1981 hearing, NJDEP officials were unable to tell the Subcommittee where and how MTC disposed of these millions of gallons of chemical waste or whether the company was continuing to accept such wastes.²⁴

In February 1982, the Subcommittee further inquired of the NJDEP concerning the status of its enforcement action against MTC. The NJDEP replied in July 1982 that the "offer of settlement" of \$20,000 had not been accepted by MTC to date. The deadline for acceptance was extended from time to time while discussions took place with MTC concerning correction of past practices. The NJDEP advised that "presumably" the chemical waste was processed through MTC and the effluent was discharged into the Kearney sewage system. By letter of June 18, 1981, MTC assured the NJDEP that organic liquid chemicals were no longer being accepted; however, a manifest

²³ June 9, 1981 hearing at 100–101.

²⁴ *Ibid.* at 121–125.

review in June 1982 disclosed that on October 21, 1981, MTC again accepted an organic waste stream. This matter is being reviewed for incorporation in the NJDEP's ongoing enforcement activities. The NJDEP further advised that while its investigation of MTC had been "discussed informally" at Strike Force meetings prior to the May 1981 issuance of the enforcement document, formal referral of the case to Criminal Justice was not made until April 8, 1982.

(4) *NJDEP's inability to collect fines*

The NJDEP's inability to collect fines against toxic waste violators is not confined to the Lone Pine and Modern Transportation cases; it is statewide. A review conducted by Herb Jaffe of the Newark Star-Ledger in April 1982 disclosed that, despite a "tougher" system of fines imposed against violators by the NJDEP in June 1980, the system "has thus far proven to be little short of a colossal failure." He reported that enforcement records of the NJDEP revealed that from June 1980 to April 1982, more than 235 fines had been assessed for toxic waste violations, totaling \$858,000; yet, only \$20,100 of this amount, or 2.3 percent, had been paid to the state. In fact, the survey disclosed, more fines were ultimately rescinded—\$45,050, or 5.3 percent—than paid, due to a variety of reasons including "errors in judgment," according to one NJDEP official. Despite the strong warnings contained in the NJDEP's Notices of Prosecution issued to violating companies (*i.e.*, "Violations . . . are to be corrected immediately. Prosecution is being withheld (for 30 days) to allow for settlement. . . . In the event payment is not made and the violations have not been corrected . . . this case will be referred to the office of the Attorney General for prosecution."), it is obvious that violators do not take them seriously. Not only have fines for some of the most blatant toxic waste offenses never been paid, the violators have been permitted to continue in business.²⁵

(5) *Changes in Strike Force operating structure since June 1981*

Although the administrative deficiencies cited in this report, relative to the Subcommittee's review of the toxic waste unit/Strike Force, stem largely from the mismanagement and mishandling of investigations by Deputy Attorney General Sakowicz, the ultimate responsibility for the operation of the program vested with Attorney General Degnan. Mr. Degnan stated publicly in July 1982: "As Attorney General I exercised as close a supervision over the criminal justice system as possible. It was a high priority with me." He stated that he knew about every investigation and was constantly briefed by Division of Criminal Justice personnel who worked those investigations.²⁶

The Subcommittee observes that when an agency, such as the Division of Criminal Justice, purports to be in the business of law enforcement, it ought to do just that—enforce the law. Anything less invites and encourages violations of law, defeating the very purpose for which the law enforcement agency exists.

Four days after the Subcommittee's June 9, 1981 hearing, the then Attorney General, James Zazzali (Mr. Degnan had resigned in March 1981 to seek the governorship of New Jersey),²⁷ and the Commissioner

²⁵ May 7, 1982 Newark Star-Ledger, p. 11.

²⁶ July 11, 1982, Newark Star-Ledger, p. 11.

²⁷ Mar. 6, 1981, Newark Star-Ledger, p. 1.

of the NJDEP announced a new policy to make toxic waste investigations priority matters and to improve the efficiency and coordination of cases handled by the Strike Force. Mr. Zazzali stated that because of the inter-relationship of toxic waste and solid waste, they would no longer be treated as separate concerns. "We're going to have a single force in the Division of Criminal Justice to maximize our efforts and resources for both areas. In addition, I will assign more attorneys and investigators to this joint force, as much as we can possibly spare them from other areas," he said.²⁸

A week later, the Star-Ledger reported that Deputy Attorney General Sakowicz had been promoted to a new assignment in the economic crime section, which handles major fraud cases. Mr. Sakowicz was replaced as head of the toxic waste Strike Force by Deputy Attorney General Steven Madonna, former head of the solid waste unit, who was placed in charge of the newly merged toxic waste/solid waste unit.

Further changes to strengthen the structure of the Division of Criminal Justice were announced by the present Attorney General, Irwin Kimmelman, in July 1982. Mr. Kimmelman stressed that while the Deputy Attorneys General will continue to work closely with the investigators in the Division, they will not become involved in cases at the outset of investigations, as has been the practice in the past. He pointed out that lawyers' time is too valuable for basic investigative tasks, and they should not be confused with the role of investigators. He pointed out that investigators are capable of developing the initial facts of a case and presenting the matter to the attorneys for possible grand jury action.²⁹

During its review, the Subcommittee was impressed by the performance of two New Jersey State Police Officers, Detective Sergeants Dirk Ottens and Jack Penney, who were assigned to the Inter-Agency Hazardous Waste Strike Force. These veteran investigators were among the few experienced professionals on a relatively young and inexperienced Strike Force investigative staff. Detective Sergeants Ottens and Penney appeared before the Subcommittee at the September and December 1980 hearings. Shortly thereafter, however, they were reassigned to other duties and their expertise in toxic waste investigations no longer was utilized, for reasons known only to New Jersey law enforcement authorities. The Subcommittee considers that unfortunate—both for law enforcement and for the citizens of New Jersey.

At a Subcommittee hearing in 1979, an Assistant Attorney General of the U.S. Department of Justice testified that EPA was in serious need of tough, highly-trained investigators who can handle the entire range of criminal cases, including organized crime's involvement in toxic waste disposal.³⁰ The same criteria should apply to Strike Force investigators. The investigative capabilities of the New Jersey State Police are among the finest in the country. Yet, the State Police's two most experienced toxic waste investigators—Ottens and Penney—were reassigned to other matters and were not replaced on the Strike Force by other operational detectives.

²⁸ June 9, 1981 hearing at 187-200.

²⁹ July 11, 1982 Newark Star-Ledger.

³⁰ May 16, 1979 hearing, "Hazardous Waste Disposal," Serial No. 96-48 at 722.

(6) *Training*

EPA's Strike Force grants required that New Jersey provide training for local law enforcement agencies in the area of detecting and prosecuting illegal disposers of hazardous waste. The Division of Criminal Justice was unable to afford formalized training in this area during the first 18 months of the Strike Force's operations because its first priorities were to provide adequate training for its own investigators as well as NJDEP personnel. From July 1979 to December 1980, approximately 120 persons received such training.³¹

Criminal Justice has made significant progress in its training program during the past year. In August 1981, units of the New Jersey State Police received specialized training relating to the infiltration of organized crime into the waste disposal industry and procedures used in hazardous waste investigations. The State Police academy, in turn, has provided specialized instruction to nearly 250 municipal police officers and selected state personnel on organized crime activity in the solid and hazardous waste industries.

In the spring of 1982, Deputy Attorney General Madonna initiated a multi-phase training program for county prosecutors' personnel. Under this program, assistant county prosecutors and investigators are assigned to assist Deputy Attorneys General and state investigators in day-to-day legal and investigative activities including initial response, case evaluation, witness interviews, testing and sampling, pre-trial preparation, etc. A one-week training course was held for county personnel in June 1982, and all 21 counties participated, as well as representatives from major police and/or fire departments in five counties and personnel from several New York agencies.

Criminal Justice is also formulating a three-hour training course for local police departments to provide a basic understanding of the modus operandi of hazardous waste violators, basic investigative techniques, and a summary of relevant criminal statutes. In addition, another short training course is being formulated for county and local sanitarians and health inspectors to provide a basic awareness of the signs and symptoms of criminal activities involving the storage and movement of hazardous waste.

The intensification and scope of Criminal Justice's hazardous waste training programs during the past year are commendable, particularly the program to involve county prosecutors and investigators in day-to-day legal and investigative activities. In the final analysis, law enforcement's success in combating illegal disposers is directly proportionate to the caliber and degree of training its officers receive.

(7) *Strike force conviction record (State and Federal)*

During the 3-year period (July 1978 to June 1981) of Federal funding of the toxic waste unit/Strike Force, the Division of Criminal Justice obtained indictments against 16 corporations and 40 individuals. Of the 16 corporations indicted, 5 pleaded guilty, 1 was convicted, 2 were acquitted, charges were dismissed against 3 others, and 5 cases are pending trial. Five companies were fined a total of \$592,000. Of the 40 individuals who were indicted, 15 pleaded guilty, 1 was convicted, 5 were acquitted, charges were dismissed against 9 others, and 10 are awaiting trial. Thus, the disposition of indictments against 30 persons

³¹ Dec. 16, 1980 hearing at 116.

in the 3-year period reflects that 16 pleaded guilty or were convicted and 14 were acquitted or the charges were dismissed.

While 15 of the 16 guilty persons were fined a total of \$186,250, the New Jersey courts appear to be rather lenient in sentencing hazardous waste violators to prison. Nine of the 16 individuals received prison sentences totaling 19½ years; however, imposition of sentence was suspended in 7 instances. Thus, only two individuals actually were incarcerated: one who was sentenced to four years, the other to six months. In the Subcommittee's judgment, suspended sentences and corporate or individual fines do not serve to dissuade other potential violators; to achieve maximum deterrence, courts must consider imposing sentences that result in actual imprisonment.

During the 2-year period (July 1979 to June 1981) of Federal funding when the U.S. Attorney's office in Newark was a member of the Strike Force, that office obtained Federal indictments against 7 corporations and 7 individuals. Of the 7 corporations indicted, 1 pleaded guilty, 2 were convicted, 3 were acquitted, and charges against 1 were dismissed. Three companies were fined a total of \$52,000. Of the 7 individuals who were indicted, 2 pleaded guilty, 2 were convicted, 1 was acquitted and charges were dismissed against 2 others. Of the four persons who pleaded guilty or were convicted, three were fined a total of \$25,500 and three received prison sentences totaling 8¼ years.

Once indictments are obtained, hazardous waste cases move slowly, at times, through the criminal justice system in New Jersey's courts. In five of Criminal Justice's prosecutions (involving five companies and 11 individuals), two years elapsed between indictment and trial, and in another case indictments have been outstanding for two years and the matter still has not been tried. We do not suggest that defendants' rights should be abridged or that they should not be afforded every protection under due process of law. But courts have an obligation to move cases to trial. The right to a speedy trial applies to society—the victim of illegal dumpers—as well as to the defendants.

(8) *Concerns of Federal and State law enforcement officials in New Jersey*

It is unrealistic to expect law enforcement to control the toxic waste industry. That is the primary responsibility of Federal and state regulatory agencies. As Edwin Stier, Director of the Division of Criminal Justice, noted at the December 1980 hearing: "... the criminal justice system is a slow, cumbersome process that cannot be used to control illegal toxic waste dumping. We cannot totally rely on the criminal justice system. Effort has got to be made to beef up regulatory controls which are far quicker, which can respond much more rapidly to emergent situations."³²

Recently, both W. Hunt Dumont, the U.S. Attorney in Newark, and Mr. Stier commented publicly on the status of law enforcement and hazardous waste violators. Mr. Dumont said that his office has shifted its emphasis to criminal prosecutions, rather than civil actions, in an effort to deter illegal dumping, speed-up cases, and bring about tougher penalties. He noted, however, that while hazardous waste violators can be successfully prosecuted under such Federal statutes as mail fraud, interstate criminal acts, and income tax evasion, there

³² *Ibid.* at 133–134.

is no Federal statute that makes it specifically unlawful to dump toxic waste. He pointed out that while RCRA does have criminal provisions, they relate to the regulatory process. "Toxic waste dumping is serious enough business to warrant a direct Federal statute, and I would like to see one on the books," he stated.³³ The Subcommittee is interested in Mr. Dumont's views and is exploring in greater detail with him his suggestion for a specific Federal statute dealing directly with the illegal disposal of hazardous waste.

According to Mr. Stier, who has been involved in the criminal prosecution end of the toxic waste problem from the start, illegal toxic waste dumping—with violators constantly crossing state lines, nullifying state jurisdictions, and the effects of the state laws—is "a very serious interstate problem, and a problem so massive that it clearly requires the powers and resources of a Federal super agency." He has concluded that "a state-level approach cannot solve this problem," and that the state is "only spinning our wheels" in trying to investigate, enforce and prosecute on its own. He believes the problem is of national dimension and that possibly the super agency should be a commission, like the Securities and Exchange Commission or the Federal Trade Commission, with quasi-judicial powers to shut down operations immediately.

Mr. Stier has stated: "I think we in New Jersey have been successful, as far as we could go under the laws and under our jurisdiction, but the institutional weaknesses show me that something better is needed." He noted that dealing with multi-jurisdictional state agencies in toxic waste matters had, at times, "developed into an administrative nightmare." He cited "fragmented responsibilities and overlapping jurisdictions" and "conflicting priorities and perceptions" of the various agencies as part of the problem at the state level. He said that the Strike Force has been successful in bringing the toxic waste problem to public attention and that "we have learned more from investigating toxic waste than any other state." However, he added: "I'm afraid the problem is on a much more massive scale than anything I expected. We have used a variety of remedies that have not proven satisfactory. We litigate toxic waste cases in forums that are not prepared for them, that are slow and cumbersome. There are too many opportunities for delay, for shifting assets, and for people to avoid responsibility. The only way to meet the problem head-on through a long-term solution is to shift the responsibilities of state agencies in this area to some super agency at the Federal level. In my mind, it should be an agency with a full range of enforcement powers and resources to follow toxic waste and violators across state lines," he said.³⁴

Mr. Stier's candid evaluation of the difficulties New Jersey has encountered in attempting to cope with an interstate toxic waste disposal problem of national dimension gives pause for thought as to the ability of other states—which have not had the benefit of Federal funding—to address this problem. Based on New Jersey's experience in the area of hazardous waste enforcement, any further abdication of Federal enforcement responsibilities would not be warranted. To the contrary, in Mr. Stier's view, at least, there ought to be further concentration of authority at the Federal level.

³³ July 17, 1982 Newark Star-Ledger, p. 1.

³⁴ Aug. 1, 1982 Newark Star-Ledger, p. 1.

III. ORGANIZED CRIME INVOLVEMENT IN NEW JERSEY'S WASTE DISPOSAL INDUSTRY

The Subcommittee's hearings of December 16, 1980 and May 28, 1981 established the involvement of organized crime in the disposal of both solid waste and toxic waste in New Jersey. Harold Kaufman, a former FBI informant who is in the Federal witness protection program, was a witness at both hearings. Since 1979, Mr. Kaufman has assisted the Division of Criminal Justice and was described as "one of the most important witnesses that the State of New Jersey has had in its criminal prosecutions."³⁵

At the December 1980 hearing, Mr. Kaufman testified³⁶ that for many years the solid waste industry in New Jersey and New York City has been controlled by organized crime through a system of property rights enforced by fear, intimidation and violence. He stated that in recent years, organized crime has been moving into the lucrative area of toxic waste disposal through solid waste companies that enter the toxic waste business.

According to New Jersey authorities, the sanitation industry's concept of "property rights" is a system under which a garbage collector who first services a given location obtains the exclusive and perpetual right to service that location without competition, regardless of a change in the use at the location or the identity of the customer at the site.³⁷

In commenting on organized crime involvement, Mr. Kaufman stated that he did not want to "dirty every company that's in toxic waste. It's not fair. I don't know. I know the solid waste companies that are into toxic waste. Their property rights are being respected as far as toxic waste as well as solid waste."³⁸ He further stated: "You got to realize that most garbagemen are not organized crime. They're hard workers and everything else. But they are controlled through the property rights concept."³⁹ Mr. Kaufman testified that organized crime is the final arbitrator of property rights, stating: "If they have to shoot you to arbitrate, they will shoot you, but they are the ones that decide who gets the property when there is an argument between two people. As long as the same respect is given to toxic waste as solid waste, they are in control."⁴⁰ He stated that the enforcement power of organized crime comes from the New Jersey Trade Waste Association and Teamsters Local 945 in New Jersey, which is dominated by organized crime.

He identified various organized crime figures who have been involved in solid or toxic waste in New Jersey including Joe Lapi (also known as Joe Beck), Vinnie Mauro, Tino Fiumara, Ernie Palmeri, and the Gigante brothers (all associated with the Genovese crime family), and James Failla (also known as Jimmy Brown) of the Gambino crime family.⁴¹

Detective Sergeants Dirk Ottens and Jack Penney of the New Jersey State Police testified that the disposal of chemical waste is a

³⁵ Dec. 16, 1980 hearing at 5.

³⁶ Ibid. at 7-31.

³⁷ Oct. 17, 1980 press release by New Jersey Attorney General announcing indictment charging segments of garbage industry with conspiracy to violate state's antitrust law.

³⁸ Dec. 16, 1980 hearing at 12.

³⁹ Ibid. at 24.

⁴⁰ Ibid. at 24.

⁴¹ Ibid. at 27.

natural area for the infiltration of organized crime due to the cash flow nature of the business and because the hauling and disposing of toxic waste is very lucrative. Through their investigations, they identified the Genovese and DeCavalcante crime families as being involved in the toxic waste industry in New Jersey.⁴²

Testimony by Detective Sergeants Ottens and Penney, and Harold Kaufman, as well as intelligence information compiled by the Division of Criminal Justice, revealed that the Genovese crime family, through Joe Lapi and others, gained control of Chemical Control Corporation, a toxic waste incineration facility in Elizabeth, New Jersey, around 1978. The State Police officers also identified the involvement of the DeCavalcante crime family in the chemical waste industry through Joseph "JoJo" Ferrara, a close associate of John Riggi, acting boss of the DeCavalcante group.⁴³

Asked if he knew of any murders that resulted from the encroachment by one company on the property rights of another company, Mr. Kaufman identified Alfred DiNardi of Custom Disposal Service, who was killed in New York City, and Gabriel San Felice of Sano Carting Company, who was killed in New Jersey.⁴⁴

He testified that DiNardi was taking towns, or "stealing" them—a term used in the sanitation industry. According to Mr. Kaufman: "If you take a stop (a customer) from somebody, you are stealing that stop and you are considered an outlaw; you are not a member of the group. DiNardi had taken these towns from SCA (SCA Services, Inc.) and commercial stops, and other people too, but primarily SCA."⁴⁵

Mr. Kaufman testified that when SCA was expanding into a national waste disposal company in the early 1970's and was acquiring small companies through purchase, SCA gave the owners of the small companies stock in SCA, plus an employment contract to continue managing their former companies. Referring to New Jersey, he stated: "So you have the same people that individually were controlled by organized crime into SCA." He further stated in reference to New Jersey: "Tom Viola is the president of SCA; he buys a company . . . They have some of the toughest organized crime companies in the world in SCA through the Viola family."⁴⁶

Thomas Viola, together with his father and his brother, owned and operated a waste disposal business in New Jersey for many years. The Violas were among the first waste firms in New Jersey to sell their business to SCA. Following this acquisition by SCA in 1972, Thomas Viola became a vice president and member of the board of directors of SCA and served as regional director of the company in New Jersey until 1976, when he was elected president and chief executive officer of SCA.

Shortly after the December 16, 1980 hearing, Thomas Viola publicly repudiated Harold Kaufman's testimony, stating: "Neither I nor SCA Services is controlled by, or otherwise connected with, organized crime." Mr. Viola publicly requested that the Subcommittee provide SCA with the opportunity to testify.⁴⁷

⁴² Ibid. at 63-71.

⁴³ Ibid. at 65.

⁴⁴ Ibid. at 8.

⁴⁵ Ibid. at 8.

⁴⁶ Ibid. at 30.

⁴⁷ Ibid. at 208.

It should be noted that on December 22, 1980—only 6 days after the Subcommittee received testimony about SCA's ties to organized crime in New Jersey—Crescent Roselle, general manager of Waste Disposal, Inc., one of SCA's largest New Jersey subsidiaries, was brutally murdered in a gangland-style execution. Mr. Roselle was shot multiple times with both .22 and .32 caliber weapons outside his company offices in Elizabeth, New Jersey.

At the May 28, 1981 hearing, the Subcommittee received additional testimony concerning the involvement of organized crime in the waste disposal industry in New Jersey. The witnesses were Lt. Colonel Justin Dintino, New Jersey State Police; Deputy Attorney General Steven Madonna, New Jersey Division of Criminal Justice; Wayne Comer, supervisor, FBI, Newark; John Fox, chairman, and Thomas Viola, president, SCA Services, Inc.; and Harold Kaufman. The Subcommittee wanted a full and complete record and, to the extent possible, sought evidence of a clarifying, amplifying, or refuting nature.

Colonel Dintino stated that his testimony⁴⁸ was based on information obtained through investigative and intelligence-gathering activities—including electronic surveillances and a network of organized crime informants—which were conducted by the New Jersey State Police and other law enforcement agencies.

He stated that the testimony received by the Subcommittee in December 1980—that organized crime controls the garbage collection industry in New Jersey and is extending its influence into the area of toxic waste disposal—"is accurate." He said this was not to imply that everyone engaged in the waste disposal business in New Jersey is associated with organized crime, since that is not the case, but that "over the years organized crime has effectively controlled the solid waste industry through a rigid system of property rights, backed up by threats and acts of violence."⁴⁹

Colonel Dintino testified that as early as 1959, the New Jersey Senate conducted hearings concerning organized crime's control of the garbage industry and focused on property rights. In 1969, the solid waste industry was again the subject of public hearings, by the New Jersey State Commission of Investigation, which clearly established that organized crime controlled the industry and that there was a system of property rights.

He stated that the principal organized crime groups exerting control over the garbage industry in New Jersey are the Genovese and Gambino crime families of New York, together with the mob-controlled Local No. 945 of the Teamsters Union in West Paterson, New Jersey. He identified various organized crime figures who have been involved in the solid waste industry in New Jersey including Peter LaPlaca, a capo in the Genovese crime group, whose primary function was to control the garbage industry; Ernest Palmeri, who was appointed as business agent of Teamsters Local 945 by LaPlaca in 1969; Tino Fiumara and John DiGilio, enforcers for the Genovese crime family; and Louis "Streaky" Gatto, who replaced both LaPlaca (deceased) and Fiumara (incarcerated in a Federal Penitentiary) and is presently controlling organized crime's interests in the garbage industry.⁵⁰

⁴⁸ May 28, 1981, hearing at 5-7, 14-15, 24-27, 31-39.

⁴⁹ *Ibid.* at 5.

⁵⁰ *Ibid.* at 5-7.

The PROD report, "Portrait of a Corrupt Union—Teamster Local 945," provides detailed insight into organized crime's domination of the garbage industry in New Jersey through Palmeri and other organized crime figures.⁵¹ Colonel Dintino stated that he fully agrees with that report.

Colonel Dintino testified that during the last five years, three individuals—each actively involved in the waste disposal industry in New Jersey—were shot and killed in gangland-style executions: Alfred DiNardi, owner of Custom Disposal Service, in June 1976; Gabriel San Felice, operator of Sano Carting Company, in May 1978; and Crescent Roselle, a management employee of SCA, in December 1980. He stated that these unsolved murders are under investigation by law enforcement authorities and, while he would not speculate on possible motives or suspects, several things were clear from the information developed: each of the victims had been involved in disputes over property rights or turf; each was shot multiple times and killed in gangland-style executions; and none of the victims were robbed.⁵²

Responding to the Subcommittee's request for information relative to Mr. Kaufman's testimony in December 1980, Colonel Dintino advised that the State Police's investigative and intelligence-gathering activities revealed the following associations between SCA managers or employees in New Jersey and organized crime:

(1) In 1973, the Roselle family, owners and operators of one of the largest solid waste businesses in New Jersey, sold a number of their companies to SCA, following which the Roselle brothers and other relatives continued to manage their former companies through employment contracts with SCA. One of the brothers, Crescent Roselle, served as general manager of the Roselle group of companies acquired by SCA.

Around this time, Gabriel San Felice, operator of Sano Carting Company in Keyport, New Jersey, began to expand his scavenger operations and to bid on municipal garbage contracts in the Bay Shore area. As a result of this bidding activity, a dispute developed between Crescent Roselle and San Felice over the municipal garbage contracts in Keyport and Matawan. San Felice was successful in underbidding Roselle for these contracts.

Crescent Roselle was able to use his influence with Ernest Palmeri, business agent of the mob-controlled Teamster Local 945, to intervene in his dispute with San Felice. San Felice, in turn, sought and obtained the assistance at various times of organized crime figures Frank "The Bug" Caruso, Vinnie Mauro, and Philip "Brother" Moscato to intercede on his behalf.

Various "sitdowns," or meetings, were held over several years among these organized crime figures in an effort to resolve the dispute between Roselle and San Felice. On one occasion in 1976, John DiGilio, Tino Fiumara, Ernest Palmeri, Crescent Roselle, Gabriel San Felice and other individuals held a meeting at which Fiumara told San Felice to give back the contracts to Roselle.

The subsequent result was that in the summer of 1977, San Felice relinquished the municipal garbage contracts in Keyport and Mata-

⁵¹ Ibid. at 15–24. (PROD was the Professional Drivers' Council which has now merged with the Teamsters for a Democratic Union, Washington, D.C.)

⁵² Ibid. at 6.

wan by assigning them to Roselle's Waste Disposal, Inc., an SCA subsidiary.

According to Colonel Dintino, there was no possible legitimate reason why individuals such as John DiGilio and Tino Fiumara should be involved in a dispute over municipal garbage contracts. He said they were involved "because they were protecting their interests. They were enforcers. They were there to make money. They would mediate disputes."

Palmeri's tenure as business agent of Local 945 has been marked with violence and corruption. Palmeri threatened and coerced various garbage contractors. On one occasion in 1976, Palmeri threatened San Felice, stating: "You're a dead man." On May 31, 1978, San Felice was murdered.⁵³

(2) A similar situation existed with respect to Alfred DiNardi, a sanitation contractor from Middlesex County, New Jersey. In the mid-1970's, DiNardi's company, Custom Disposal, began taking stops and towns from a number of companies. One instance, which involved Waste Disposal, Mr. Roselle's company, occurred in late 1975.

For years, Waste Disposal, had held the garbage contract in Roselle Park, New Jersey. DiNardi was successful in underbidding Roselle in late 1975 and was awarded a 2-year contract. Waste Disposal contested the award of the contract in court. In May 1976, judgment was rendered in favor of DiNardi's company. DiNardi was murdered in June 1976. Waste Disposal appealed the decision and in November 1976, the appellate court ruled in favor of SCA's subsidiary, reversing the lower court. The contract for Roselle Park was then rebid. A total of eight scavenger companies were either solicited to bid or picked up bid forms, including Custom Disposal and Waste Disposal. However, Waste Disposal was the only bidder and was awarded a 3-year contract.

In other words, Custom Disposal, which had initially won the contract in 1975, did not rebid it in 1976. Interestingly, after DiNardi's murder, his company, Custom Disposal, was managed, in effect, by Carmine Franco, president of the New Jersey Trade Waste Association and front man for Tino Fiumara in the garbage industry.⁵⁴

(3) Colonel Dintino furnished other examples of SCA subsidiaries in New Jersey whose managers had affiliations or contacts with organized crime. He identified those subsidiaries as United Carting Company and Impac, Inc.⁵⁵

The Subcommittee asked Colonel Dintino whether he had any information that Thomas Viola is a member of or associated with organized crime. Colonel Dintino stated: "Sir, positively. Mr. Viola is not a member of organized crime, but I would consider him an associate member of organized crime—a business associate."⁵⁶ The State Police definition of a "business associate" of organized crime is "someone who either knew or should have known a person's organized crime associations—that there is a business relationship between the indi-

⁵³ *Ibid.* at 6-7, 24, 36-37. The subcommittee made it very clear on the record that it was not making any inference as to the person or persons responsible for the San Felice murder, nor do the facts that the subcommittee is aware of permit the drawing of any such inference. The subcommittee's position also applies to the murders of DiNardi and Roselle.

⁵⁴ *Ibid.* at 7.

⁵⁵ *Ibid.* at 7, 33, 35-36.

⁵⁶ *Ibid.* at 85.

vidual and the organized crime subject, one in which they are working together in a business relationship for profit, knowingly."

Colonel Dintino further stated that it was inconceivable that anyone in the solid waste business in New Jersey over a period of years would be unaware of the property rights system and its enforcement by organized crime.

The Subcommittee expressed concern over the broadness of the term "business associate" of organized crime and raised the question of possible unfairness to label someone as an "associate" of organized crime if the only association was being involved in the same general business with organized crime figures. Colonel Dintino acknowledged that such would be the case "if you were talking about some other type of an industry, but we are talking about the garbage industry in New Jersey. We are talking about a property rights system in New Jersey which has been in effect for years. I am saying that someone in the garbage business since 1950 to the present time, is operating in north Jersey and central Jersey areas no way can operate unless somehow, somehow, they are dealing with members of organized crime—are given approval to deal in those territories."⁵⁷

FBI supervisor Wayne Comer testified,⁵⁸ concerning the existence of the property rights system in New Jersey's garbage industry, that prior to June 1976, property rights were protected by Ernest Palmeri of Teamsters Local 945 through a process of selective unionism.

He stated that the New Jersey Trade Waste Association was formed in June 1976, with Carmine Franco as president. Franco began to exert considerable control over the industry. He said that if a carting company took a stop, or threatened to, Franco would make a friendly contact with the company. If this failed to resolve the matter, the contending carting companies would be called to a grievance meeting. If this failed to resolve the dispute, both of the contending parties would seek the assistance of a supporting organized crime figure. "Generally, the more powerful organized crime member would win the dispute. It is the organized crime figure's role as mediator that forms the basis for the organized crime control over the garbage industry," he stated.⁵⁹

Mr. Comer testified that when SCA came into New Jersey in the early 1970s, it purchased large carting companies and allowed former owners to remain as managers. "Thus, the control remained in local hands. As a result, the respect for property rights and the contact with or coexistence with organized crime which predated SCA continued," he said. Foremost among the companies acquired by SCA was Waste Disposal of Elizabeth, New Jersey, whose president, Crescent Roselle, "was a powerful figure in the industry who attended grievances with other carting companies as well as with members of organized crime." Mr. Comer testified that after the murder of DiNardi in June 1976, "Roselle met with several members of the New Jersey carting industry and an organized crime figure, at which time stops taken by DiNardi were returned to their previous owners." He stated that information

⁵⁷ Ibid. at 33, 35-36. The subcommittee recognizes that this definition represents Colonel Dintino's views and those of the New Jersey State Police. And the subcommittee recognizes that others disagree with the definition as being overly broad.

⁵⁸ Ibid. at 39-55.

⁵⁹ Ibid. at 40.

which the FBI possesses indicates that Roselle "was an associate of organized crime figures and acted on their behalf in these disputes."⁶⁰

He further advised that the FBI had received allegations of organized crime influence into two other companies acquired by SCA in New Jersey—A. A. Mastrangelo and Sons, and Interstate Waste Removal, whose owners are reputed associates of organized crime.⁶¹

Mr. Comer testified that "no specific evidence exists which shows a relationship between SCA and organized crime beyond those of its individual managers (in New Jersey) which arise from circumstances independent of SCA's corporate structure." He stated that the FBI has no information which indicates that Thomas Viola is connected with organized crime.⁶²

Mr. Viola testified before the Securities and Exchange Commission in 1976, that after becoming vice president of SCA in 1972, his duties and responsibilities were to help assist the company in making acquisitions, primarily in New Jersey. He identified eleven companies in New Jersey that he assisted in bringing into SCA, including Waste Disposal, Inc.; Impac, Inc.; United Carting Company; A. A. Mastrangelo, Inc.; and Interstate Waste Removal.⁶³

In his testimony,⁶⁴ Deputy Attorney General Steven Madonna, Division of Criminal Justice, advised the Subcommittee that the solid waste industry in New Jersey is comprised of two distinct sectors. One, involving the commercial/industrial area of collection, is centered around the New Jersey Trade Waste Association and a sister group, the Hudson County Sanitation Association. The other, involving the municipal contracting sector of the industry, has its center of focus around the Municipal Contractors Association.

According to Mr. Madonna, SCA subsidiaries in New Jersey are members of the Municipal Contractors Association and are not members of the New Jersey Trade Waste or Hudson County Associations. He stated that since the return of the indictment in the trade waste conspiracy case, the Division of Criminal Justice has been conducting an investigation which focuses on the municipal contract sector of the industry. No SCA subsidiaries or employees in New Jersey have been indicted for any crimes connected with the solid or toxic waste industry by either state or Federal authorities.

Mr. Madonna confirmed the existence of the property rights system in New Jersey's solid waste industry. He testified that in nine instances, following the death of DiNardi, contracts which Custom Disposal had taken from SCA subsidiaries reverted back to SCA. He stated that there was no magic to the term "reverted back," adding: "What I am, in effect, saying to you is that, after the word has gotten to the offending collector, more often than not they do not rebid." He termed it a kind of "default," stating that Custom Disposal did not rebid the contracts and, in all but one instance, no other company bid against the SCA subsidiary.⁶⁵

Mr. Madonna supervised a 3-year investigation into the commercial/industrial sector of the industry which resulted in an indictment in October 1980 of 57 corporations, individuals, the New Jersey Trade

⁶⁰ *Ibid.* at 41-42.

⁶¹ *Ibid.* at 47, 52-54.

⁶² *Ibid.* at 42-43.

⁶³ *Ibid.* at 238-239.

⁶⁴ *Ibid.* at 8-14, 28-34, 37.

⁶⁵ *Ibid.* at 13-14.

Waste Association and the Hudson County Sanitation Association as the core of a conspiracy to violate the state's antitrust laws. The first segment of the case—involving five individuals, two companies and the New Jersey Trade Waste Association—went to trial in September 1982. The defendants pleaded guilty to the charge, admitting that they conspired to monopolize trade in the solid waste industry in five northern New Jersey counties through an industry concept known as property rights and grievance proceedings effectuated through the New Jersey Trade Waste Association. The defendants are awaiting sentencing. The New Jersey Trade Waste Association has agreed to dissolve itself within 60 days after the sentences are handed down.

Colonel Dintino, Mr. Madonna, and Mr. Comer all advised that their testimony was based on information which was obtained independently of that which may have been furnished by Harold Kaufman, and that their respective agencies had been investigating the waste disposal industry in New Jersey for several years before Mr. Kaufman came to their attention. They stated that they considered Mr. Kaufman completely reliable and that they had been able to corroborate and substantiate the information which he had furnished.⁶⁶

During his testimony at the May 28, 1981 hearing,⁶⁷ Harold Kaufman was referred to his previous testimony concerning SCA in December 1980 when he stated that in New Jersey, SCA has some of the toughest organized crime companies in the world through the Viola family. He was asked if he meant by that statement that Mr. Viola was the head or a member of an organized crime family. Mr. Kaufman stated he was not referring to an organized crime family but the blood family of Violas—Tom; his brother, Frank; and their father—who recruited these companies to join SCA.⁶⁸

John Fox, chairman of the board of SCA testified⁶⁹ that following the Subcommittee's December 1980 hearing, SCA's board named a special committee of outside directors to investigate Mr. Kaufman's statements, and the special committee, in turn, retained the New York law firm of Rogers and Wells to conduct the investigation. Mr. Fox stated that the law firm was granted unlimited and unqualified access to all personnel and documents of SCA and conducted extensive and intensive interviews with company personnel. The firm also received responses to questionnaires which they prepared and sent to the managers of all SCA operating centers in New Jersey. Following its extensive 3-month investigation, Rogers and Wells advised the board that there was no evidence to support Mr. Kaufman's allegations.

Mr. Fox was asked how he reconciled his testimony that there was no evidence of a property rights system in New Jersey and that SCA participated in it with the statements made by the law enforcement officers at the hearing. He said that he heard those statements for the first time at the hearing, and that he could only depend upon the investigation done by Rogers and Wells. He stated that SCA would now look carefully into the charges made at the hearing and would continue its investigation. He said that SCA would make "very sure that whatever has come out is either true or false as far as the board is concerned."⁷⁰

⁶⁶ *Ibid.* at 14, 41, 44.

⁶⁷ *Ibid.* at 208–216.

⁶⁸ *Ibid.* at 210.

⁶⁹ *Ibid.* at 56–95, 121, 123–127, 130.

⁷⁰ *Ibid.* at 121.

In his testimony,⁷¹ Thomas Viola, president of SCA, categorically denied Mr. Kaufman's allegations concerning himself and SCA. He stated that to the best of his knowledge "no one in SCA has any connection with organized crime, and organized crime exercises no control or influence over SCA."⁷²

In noting that SCA grew rapidly in the early 1970's by the acquisition of more than 130 local garbage companies, Mr. Viola stated: "It is, of course, conceivable that some of the employees who came with some of these companies may have committed crimes or even had contacts with organized crime. If that occurred, I am not aware of anyone at SCA who had any knowledge of those past associations."⁷³

Mr. Viola further testified that he had no knowledge of any such "property rights system" and stated that SCA does not participate in it, if it does exist. While he had heard many allegations concerning a property rights system, as a result of different investigations by various agencies going back to 1959, he added that he had no personal knowledge that any such system exists.⁷⁴

On June 22, 1981, less than a month after the hearing, Mr. Viola resigned as president and chief executive officer of SCA. According to a press account at the time,⁷⁵ Mr. Viola stated in his letter of resignation that he had refuted every allegation made against him. "Despite this exoneration," he wrote, "severe damage had already been done to my business and personal reputation by the wide circulation given to these allegations . . . The inevitable resulting loss in my effectiveness has led me to today's decision." Mr. Fox issued a statement expressing his gratitude to Mr. Viola, but said "the board had determined that the change in management was in the best interests of the company."

Two weeks later, the Newark Star-Ledger reported that SCA was seeking to sell off its solid waste subsidiaries in New Jersey. At SCA's annual meeting in September 1981, Mr. Fox publicly disclosed the company's decision that SCA should divest itself of its solid waste subsidiaries in northern New Jersey, stating:

In addition, allegations were made by law enforcement officials that a certain few employees of the Company located in subsidiary operations in New Jersey were known to be associates of the criminal element in that state. Further, they alleged that illegal territorial arrangements were practiced by all firms engaged in solid waste handling in North New Jersey.

We have not been able to verify any of these charges. However, since these rumors seem to emanate from the industry's poor reputation in Northern New Jersey, your management has decided to actively explore the possibility of disposing of these Company subsidiaries which we operate there.⁷⁶

SCA has advised the Subcommittee that as of October 1982, the following subsidiaries in northern New Jersey have been, or are being, disposed of: (1) Impac, Inc.'s stock was sold back to the Iommetti brothers, former owners of the company, in August 1981; (2) Industrial Haulage Corporation was sold in June 1982 to corporations owned by Frank Viola, former co-owner of the company; (3) A.A.

⁷¹ Ibid. at 95-123, 127-136, 197-207.

⁷² Ibid. at 108.

⁷³ Ibid. at 108.

⁷⁴ Ibid. at 110, 120.

⁷⁵ Boston Globe, June 23, 1981.

⁷⁶ Letter of Aug. 17, 1982, to subcommittee from Mr. T. Kenwood Mullare, Jr., Vice President and General Counsel of SCA.

Mastrangelo, Inc. and United Carting Company are being sold to Joseph and Ralph Mastrangelo, who no longer is affiliated with SCA; and (4) the assets of Waste Disposal, Inc.'s Matawan and Neptune operations are being sold to Peter and Joseph Roselle, former co-owners, and John Pinto and John Pinto, II. Disposal of Waste Disposal's operations at Elizabeth and East Orange is being negotiated.⁷⁷

Further, with respect to SCA, the Subcommittee concludes that when the company was expanding its operations nationwide in the early 1970's, it acquired a number of solid waste carting companies in New Jersey and retained as managers the former owners, consistent with its acquisition policy in other states. Several of those managers in New Jersey, who are no longer employed by SCA, had affiliations with organized crime figures and one manager, Crescent Roselle, actively participated in meetings with members of organized crime to settle property rights disputes. During the past year, SCA has been disposing of its solid waste subsidiaries in northern New Jersey. The Subcommittee has no information indicating that SCA's current board of directors has any connection or affiliation with any organized crime figures.

IV. EPA'S ENFORCEMENT PROGRAM AND POLICIES IN THE ADMINISTRATION OF RCRA AND SUPERFUND

At its April 2, 1982 hearing, the Subcommittee examined EPA's overall enforcement program with emphasis on compliance, policy, and activities under both RCRA and Superfund. The Subcommittee also focused on the impact of EPA's reorganization efforts on the effectiveness of its enforcement program. Enforcement issues were also the subject, in part, of the Subcommittee's hearings on November 16 and 18, 1981.

The basis for the April hearing was the Subcommittee's concern that after 14 months into the present administration, EPA had not maintained an effective program to enforce the civil and criminal sanctions that Congress had provided when it enacted RCRA and Superfund. As Chairman Dingell observed in a statement announcing the hearing: "Those laws cannot protect the public health and environment, as they were intended to do, without a strong enforcement program to back them up. The Department of Justice, as the enforcement arm of the Federal government, provides that mechanism; however, without referrals of cases from EPA, the Department is powerless to act."⁷⁸

A. DECREASE IN REFERRALS OF CIVIL ENFORCEMENT ACTIONS

In 1981, a dramatic decrease occurred both in the overall number of civil enforcement actions forwarded to EPA headquarters by the regional offices and in those sent by EPA to the Justice Department for prosecution. In contrasting 1981 to 1980, the data shows a 79 percent decline in the number of case referrals to EPA headquarters from the regions and a 69 percent decrease in the number of referrals to the Department of Justice.⁷⁹

⁷⁷ Ibid. and subcommittee staff telephone conversation with Mr. Mullare on Oct. 26, 1982.

⁷⁸ Press statement of Mar. 25, 1982.

⁷⁹ Apr. 2, 1982 hearing at 287 and 289.

The slowdown is graphically reflected in the area of hazardous waste enforcement. No Federal judicial actions using RCRA authority had been filed as of April 1982 and only seven were filed in 1981. From April through September 1982, three such cases were filed. This sharply contrasts to the 43 actions filed in 1980. Actual experience also contrasts sharply with the expectation of Carol Dinkins, Assistant Attorney General of the Justice Department's Land and Natural Resources Division, who testified in July 1981 that "In the months to come, we expect to see an increasing flow of hazardous waste enforcement activity with early consultation and involvement in EPA enforcement matters, increased filings of hazardous waste litigation and criminal prosecutions."⁸⁰ In an interview with the Subcommittee staff in March 1982, Mrs. Dinkins attributed the drop in cases to EPA's continuing reorganization process, stating that "it has hindered their generation of cases."

EPA officials acknowledged that levels of new case initiation were unsatisfactory. At the April hearing, William Sullivan, EPA's Enforcement Counsel, testified: "This is not to say that current levels of new case initiation are satisfactory to me or the Administrator. Disruption due to reorganization, morale problems precipitated by RIF rumors, and other problems have contributed to a temporary decline. Our early emphasis on exploring alternatives to litigation may have been misunderstood by the staff as hostility to litigation or even enforcement itself."⁸¹

In the Superfund area, EPA requested the Justice Department to amend 16 pending RCRA cases to add Superfund counts; however, no new straight Superfund cases had been referred by EPA to the Justice Department for enforcement until several days before the April 1982 hearing, when one such case was referred. From April through September 1982, 11 such cases were referred, eight of which were on September 30, the last day of the fiscal year.

In their work plans for the FY 1982 budget, EPA's regions projected that they would submit over 300 case litigation reports for the fiscal year beginning October 1, 1981.⁸² By mid-February 1982, however, less than 10 percent of the projected cases had been received by EPA headquarters. Realizing that this left the agency's enforcement program open to further criticism, the Administrator's Chief of Staff initiated calls to the 10 regional administrators in late February and gave them a specific quota of litigation case reports to be submitted by the end of March which would approximate one-half of the projected 300 cases for the fiscal year. However, very few cases were received from the regions during March because they simply did not exist in the enforcement pipeline.

Mr. Sullivan testified that EPA had overestimated its projection of 300 case litigation reports for FY 1982. He said that the agency would not have the number of referrals it has had in the past in the water and air areas, but that he anticipated a number of hazardous waste case referrals "before this year is out and we are working hard on them and this will come quickly."⁸³

⁸⁰ July 29, 1981 hearing, "Superfund Oversight," Subcommittee on Commerce, Transportation, and Tourism, Serial No. 97-72, at 184.

⁸¹ Apr. 2, 1982 hearing at 337.

⁸² Staff interview with John Dantel, EPA's Chief of Staff, Mar. 25, 1982.

⁸³ Apr. 2, 1982 hearing at 328-329, 341.

Indeed, EPA did overestimate its projection of 300 case litigation reports for FY 1982. During the fiscal year, a total of 124 cases were referred from the regional offices to headquarters—119 of which were submitted during the last six months of the fiscal year, April–September 1982. During FY 1982, a total of 100 civil cases were referred from EPA headquarters to the Department of Justice—88 of which were forwarded during the last six months of the fiscal year. This compares to 116 cases referred to the Justice Department in FY 1981, and 200 in FY 1980. Interestingly, 16 percent of EPA's civil case referrals to the Department of Justice in FY 1982 were made on September 30, 1982, the last day of the fiscal year.

Between Fiscal Years 1980 and 1981 in the area of hazardous waste enforcement, civil case referrals from EPA to the Justice Department under RCRA and Superfund declined from 46 to 8, an 82 percent reduction. In FY 1982, the agency demonstrated progress in increasing its civil case referrals under RCRA and Superfund to 29 cases. Approximately 45 percent of these hazardous waste cases were referred on September 30, 1982, the last day of the fiscal year. This "hurry-up referral process" raises the question of whether the recent case referrals are quality cases from a rehabilitated enforcement pipeline or whether they merely reflect a "bean counting" effort in response to the quotas that each region was given in late February 1982 by the Administrator's Chief of Staff.

The mere referral of cases to the Justice Department without the subsequent timely filing and prosecution of these cases by the Department of Justice neither deters environmental pollution nor achieves enforcement results. The Subcommittee is concerned with the quality of referrals and the considerable disparity between the number of referrals by EPA to the Justice Department and the actual number of cases that are filed in U.S. District Courts. In calendar year 1981, EPA referred 78 civil cases to the Department of Justice. As of early October 1982, only 35 (45 percent) of these case referrals had been filed in U.S. District Courts. And only 28 percent of the civil cases referred by EPA to the Justice Department during the first six months of calendar year 1982 have been filed in Federal Court.

EPA's enforcement effort during the first 14 months of the Reagan Administration came to a virtual halt and created a widespread perception that the agency lacked a strong enforcement arm. The Subcommittee will continue to evaluate the actions the agency takes to dispel its poor enforcement image, including its progress in civil litigation efforts as well as other enforcement indicators and the timeliness of filings by the Department of Justice.

B. CONTINUAL REORGANIZATION OF ENFORCEMENT PROGRAM, MID-1981 TO MID-1982

To understand the situations and events that led to the decline in enforcement activity, it is necessary to review the evolution of EPA's enforcement program and to contrast the differences in enforcement philosophies between the present and the previous administrations.

Under the previous administration, EPA's enforcement program was structured under an Assistant Administrator for Enforcement and consisted of three offices: water enforcement; general enforce-

ment; and mobile sources, noise, and radiation enforcement. Individual enforcement offices included both attorneys and technical personnel who jointly developed cases for litigation. This organizational structure was basically duplicated in the regional offices.

EPA's hazardous waste enforcement program was initiated in June 1979. Douglas MacMillan, who served as Director of the Hazardous Waste Enforcement Task Force and Acting Director of the Office of Hazardous Waste Enforcement from June 1979 to January 1982 when he left the agency, was a witness at the April 1982 hearing.⁸⁴ He stated that when the hazardous waste enforcement program was instituted in mid-1979, both EPA and the Justice Department "recognized that hazardous waste problems required a unique enforcement approach." New complexities involving pollution, technology, and the law were involved. He said that EPA recruited a task force "equally divided between legal and technical personnel" which joined with the Justice Department and EPA regional staff to establish "case development teams." He said these multi-disciplinary teams tracked the development of site investigations from inception to final resolution of any problem. He stated that "The task force was based on the premise . . . that unified legal and technical teams . . . reporting to one supervisor were significantly more efficient and effective than lawyers supported by loaned technical staff who reported to different supervisors."

Mr. MacMillan noted that while the hazardous waste enforcement program was "far from perfect . . . it did make some significant strides. From a standing start in mid-1979 . . . the rate of judicial enforcement activity rose sharply. Twelve Federal judicial actions designed to force responsible parties to clean up problem sites were filed under RCRA's imminent hazard provisions in 1979. An additional 43 Federal judicial actions designed to secure site clean up were filed in 1980. A significant percentage of these cases resulted in negotiated clean up agreements or in preliminary judicial orders providing for at least partial clean up. Approximately \$50 million in privately financed site clean up had been completed or legally committed by the end of 1980."⁸⁵

Mr. MacMillan further stated, "I think it is only fair to note that RCRA in fact passed in 1976 and EPA under prior administrations really did not start enforcing it until mid-1979."

With the change of administrations in 1981, only seven hazardous waste enforcement cases were filed that year, and only three such cases have been filed during the first nine months of 1982.

The Subcommittee observes that this dramatic decline in enforcement litigation is basically attributable to two factors: (1) EPA's continual reorganization of its enforcement program since mid-1981, which has resulted in uncertainty and confusion and has adversely impacted employee morale and efficiency, and (2) an enforcement philosophy that emphasizes "nonconfrontational voluntary compliance" with environmental statutes and regulations.

In June 1981, Administrator Anne Gorsuch reorganized EPA's enforcement program by abolishing the Office of Enforcement, transferring its major components to the assistant administrators for the various media programs (i.e., air, water, hazardous materials, etc.),

⁸⁴ *Ibid.* at 291-293, 315-316, 321-324.

⁸⁵ *Ibid.* at 292.

and establishing the Office of Legal and Enforcement Counsel reporting directly to her.

In September 1981, Mrs. Gorsuch again reorganized the enforcement program by eliminating the enforcement divisions as separate offices in the regions and transferring the legal functions of the divisions to the offices of the Regional Counsels who were placed under and reported directly to the General Counsel at headquarters, thus integrating enforcement legal functions and general legal functions. In addition, technical personnel in the regions were transferred from the old enforcement divisions to the various media operating divisions.

In December 1981, Mrs. Gorsuch further reorganized the enforcement program by centralizing enforcement legal activities for the majority of the media programs in the Office of Enforcement Counsel, within the Office of Legal and Enforcement Counsel. Technical personnel, however, remained with the various media offices, thus separating the legal enforcement staff from the technical staff.

Although the initial reorganization of EPA's enforcement program occurred in June 1981, it was not until December 29, 1981 that enforcement policy, procedures, and operating guidelines were provided to the regions and headquarters personnel. These, in turn, were revised on February 26, 1982.

In response to Mr. Sullivan's February 26, 1982 revisions, at least one Regional Administrator wrote Administrator Gorsuch protesting the numerous inconsistencies between the enforcement policies and procedures in the February 26, 1982 revisions and those contained in the Administrator's earlier September 15, 1981 memorandum, stating:

Although it appears to us that most authority is taken from the region in the area of enforcement . . . the document . . . places the responsibility with the Regional Administrator "to assure that internal regional and headquarters processes produce timely resolution." I am afraid that, given the total headquarters control proposed by this memorandum, that is one assurance which the Regional Administrators cannot provide.⁶⁶

This highlights the confusion and lack of sound management then existent in EPA's enforcement program.

At this point the multiple reorganizations of the preceding eight months had resulted in the media program offices being given the principal authority and lead role in achieving compliance through the informal and administrative processes (administrative compliance orders, notices of violation, warning letters, etc.) while the Enforcement Counsel had the total responsibility for litigation and Justice Department liaison, control over the timeliness of the enforcement process, and the responsibility for evaluating enforcement results. Yet, the Enforcement Counsel did not have anyone in the regions, where enforcement cases are generated, working for or reporting directly to his office.

On March 26, 1982, the General Counsel, Robert Perry, was appointed by Mrs. Gorsuch to also fill the position of Associate Administrator for Legal and Enforcement Counsel. This position had been vacant the preceding 6 months since its first occupant resigned after 2 months in the job. Shortly thereafter, on April 7, Mr. Sullivan, the Enforcement Counsel, notified Administrator Gorsuch that he was resigning effective April 19, 1982.

⁶⁶ Ibid. at 349.

Amazingly, the reorganization of EPA's enforcement program continued. One of Mr. Perry's first official acts was to appoint a new task force to evaluate the effectiveness of the recent reorganization of the Office of Enforcement Counsel as well as to review regional enforcement policies and procedures. In April, a draft guidance for establishing the "final" organization structure for the offices of Regional Counsel was sent to the regions. To allow flexibility to meet varying needs among regions, the Regional Counsels were given the option of choosing from among four basic organizational structures. Comments of the regions were solicited. Following the review of responses from the regions, additional "guidance on completing the reorganization process" was furnished to the regions in May.

Finally, on July 6, 1982, more than a year after the initial reorganization was announced, Mrs. Gorsuch issued the final guidelines to establish operating procedures, roles, and responsibilities for EPA's various offices, both at headquarters and in the regions, to administer the agency's civil enforcement program.

These guidelines provided that legal work associated with enforcement litigation would be performed in newly structured and expanded Offices of Regional Counsel reporting directly to the Associate Administrator for Legal and Enforcement Counsel and placed the responsibility for initiating enforcement legal actions on the Regional Administrator. The policies and procedures set forth by the Enforcement Counsel on February 26, 1982 were revoked in their entirety.

The Subcommittee is concerned not so much with the type of enforcement structure EPA utilizes—provided it produces effective results—as the fact that it took the agency an entire year to delineate the responsibilities and implement the operating procedures for the structure that was chosen. This is a poor reflection on the performance of EPA and indicates mismanagement, disregard, or indifference by top agency officials regarding their enforcement responsibilities. It is little wonder that uncertainty and confusion have prevailed in EPA's enforcement program over the past year, impacting on employee morale and efficiency and resulting in dramatically fewer enforcement actions.

Criticism of the agency's enforcement policies and program has come from all sectors, including the regulated industry itself. Early on, Mrs. Gorsuch's indecisiveness and lack of commitment in establishing a positive, effective enforcement program prompted these rather pointed comments in the October 21, 1981 issue of *Chemical Week*, an industry publication:

Normally the sight of a regulatory agency in turmoil is not calculated to bring tears to industry's eyes, but an ineffective Environmental Protection Agency is not what the chemical industry needs. What it needs and what it expects from the Reagan administration is an agency that will discharge intelligently its responsibilities to the American people.

The question is, whether she and her team know how to do it. A management attitude that turns off hundreds of competent and dedicated professionals, and EPA has them, is not good. In a highly competitive industry, companies cannot afford to spend their resources on environmental protection, however well conceived the rules, unless they perceive that those rules are backed up by credible enforcement policy.

Without an effective EPA, industry's contribution to pollution, which has been diminishing, is bound to grow again. In the long run, the American people will not stand for that.

When the present administration took over the management of EPA, it instituted an enforcement philosophy which emphasizes voluntary compliance with environmental statutes and regulations. Legal action against violators is theoretically reserved for only those situations where voluntary compliance fails.

The concept of voluntary compliance is a valid enforcement tool, provided it is used in conjunction with a strong enforcement program. The cart, however, cannot precede the horse. A regulatory agency can have a strong enforcement program without voluntary compliance, but the reverse situation simply will not produce effective enforcement. As Mr. MacMillan testified: "Voluntary compliance is unarguably a primary goal of any enforcement program. However, once law enforcement loses its credibility, voluntary compliance will quickly erode, and overemphasis on nonconfrontation will inevitably lead to compliance problems and a hasty return to stricter regulations."⁸⁷

This difference in enforcement philosophies was evident in EPA's approach to problem sites under Superfund. In October 1981, the agency released its interim list of 115 priority sites targeted for Superfund action. Thereafter, the agency identified hundreds of potentially responsible parties connected with these sites. In February 1982, EPA sent out 707 notice letters to those parties advising them of the option of undertaking voluntary clean up action or alternately being drawn into legal action. At the time of the April hearing, EPA had received responses from only seven companies, or one percent, who indicated a willingness to negotiate.

Mr. Sullivan testified that he never expected a larger response and that the notice letters were a "first step" in the enforcement effort. He acknowledged, however, that a one percent response was an indication of industry's perception that EPA is not as serious about enforcement as it should be.⁸⁸

Anthony Roisman, who, until January 1982, headed the Justice Department's hazardous waste section and was responsible for litigation brought by the Federal government and EPA in the clean up of sites and the enforcement of hazardous waste laws, viewed it differently: "I don't think there's any comparison between a letter-writing campaign . . . and an enforcement program. . . . When you dry up the litigation, you reduce the opportunity for voluntary compliance."⁸⁹

He stated that responsible parties will not comply voluntarily "unless they know that there is going to be a serious consequence—certain, swift and severe." He added, "Enforcement is the inducement to industry to do that clean up. For the industry that will not do it voluntarily, lawsuits. For those that will, consent decrees. But it is an enforcement program with a strong, effective hammer to go with the conciliation to make it work."⁹⁰

Testifying at the April 1982 hearing,⁹¹ Mr. Roisman stated that under the previous administration, letters were also sent to potentially responsible parties. The difference was that the letters usually con-

⁸⁷ *Ibid.* at 293.

⁸⁸ *Ibid.* at 342.

⁸⁹ Feb. 1, 1982 TV program, "MacNeill-Lehrer Report".

⁹⁰ *Ibid.*

⁹¹ Apr. 2, 1982 hearing at 294-304, 314, 316-321.

tained a proposed consent decree that informed the company: "Within 10 days, we intend to file suit against you. If you are interested in discussing a settlement of this case, sign the attached consent decree and return it." That program, he said, produced about one-third of the cases filed, resulting in either court actions or settlements. He stated that a letter-writing campaign, such as EPA is now engaged in, "with a threat at the end of it that if you do not come in we may do something else, having never done anything else, has no effective impact whatsoever . . ." ⁹²

Mr. Roisman advised that he resigned his position at the Department of Justice in January 1982, "because I had no work." He stated that before the present administration took over, EPA and Justice Department were getting the job done. "We were not getting every site cleaned up, but we had an effective enforcement program. Within a month after Anne Gorsuch became the Administrator of EPA, essentially no new cases were sent to the Justice Department, and no new cases were filed. The EPA had stopped the flow of cases; the enforcement momentum had stopped . . ." He said that EPA's reason, for not referring cases was that the agency was reorganizing. He stated: "First they took the lawyers and the technical people who worked at headquarters in enforcement and they sent them to individual programs. Then they reorganized back and brought the lawyers back to the enforcement program, leaving the technical people away from the lawyers so that they couldn't bring the cases effectively. Then they told us that they were working with the regions to reorganize there. In short, we had a lot of paper work and no action." ⁹³

C. NEGOTIATIONS WITH INMONT CORPORATION CONCERNING GENERAL DISPOSAL CO. SITE

EPA's policy of nonconfrontational voluntary compliance was pursued to an irresponsible extreme in one instance, involving highly improper conduct on the part of an agency official, as disclosed in the Subcommittee's April 1982 hearing.⁹⁴ On July 10, 1981, a chemical fire and explosion destroyed the General Disposal Company hazardous waste drum storage site in Los Angeles County, resulting in the first major removal action by EPA under Superfund. EPA spent approximately \$1.4 million of Superfund monies before one of the potentially responsible parties. Inmont Corporation, took over the remainder of the clean up following an agreement reached with EPA on September 24, 1981.

Negotiations leading to this settlement were begun in early August, and Mr. MacMillan and two attorneys comprised EPA's negotiating team. By early September, the negotiations had proceeded to the point that EPA was seeking a settlement in the range of \$850,000 (its "on-the-table" figure) and Inmont's offer was in the neighborhood of \$450,000. Internally, EPA had decided on a bottom-line figure of \$700,000, the lowest amount the agency would accept in settlement—which, of course, the negotiating team did not disclose to Inmont.

⁹² Ibid. at 316.

⁹³ Feb. 1, 1982 TV program, "MacNeil-Lehrer Report".

⁹⁴ Apr. 2, 1982 hearing at 322-324, 409-411.

The agency, however, was not speaking with one voice in its negotiations with Inmont. Thornton Field, Special Assistant to the Administrator for Hazardous Waste, who was not a member of the negotiating team, had, unknown to the designated agency negotiators, some 15 conversations with Inmont's attorney, Mr. David Weinberg, during the negotiating period concerning various substantive matters relating to the negotiations. During one of those conversations in early September, Mr. Field disclosed to Mr. Weinberg EPA's bottom-line bargaining figure of \$700,000. On September 14, four days after a negotiating session had ended in deadlock, Inmont offered to undertake completion of the clean up at an estimated cost of \$700,000, which was accepted by EPA. Mr. Field claims that his disclosure of the bottom-line bargaining figure was done for the purpose of expediting a possible settlement and to eliminate any further posturing. The Subcommittee finds Mr. Field's action to be highly improper and recommends that the agency implement procedures to insure that its negotiations with outside parties are conducted in a proper and professional manner.

D. SECTION 103 OF SUPERFUND STATUTE

Further evidence of enforcement laxity is found in EPA's failure to implement and enforce section 103 of the Superfund statute, which became effective in December 1980, requiring persons who release hazardous substances into the environment in amounts exceeding certain quantities to notify immediately the National Response Center. The intent of the notification requirement is to insure that the Federal government is made aware of releases that may require immediate action to avoid or mitigate potential danger to public health and the environment. Section 103 carries criminal sanctions and failure to report is a criminal violation.

Immediately after passage of the act, agency officials recognized that the law was extremely broad in scope, with release defined to include not only spills that may need emergency action, but also many routine emissions and discharges. As an immediate and practical solution, EPA officials intended to publish in the *Federal Register* an information notice setting forth a proposed enforcement policy requiring immediate notification only for "episodic, non-routine, unanticipated or accidental releases of hazardous substances."

From January to June 1981, the proposal was submitted to, and approval obtained from, OMB and the Coast Guard. In June 1981, however, the program office received redirection from the Administrator's staff to rewrite the notice as an interim final rule. In August, Christopher Capner, Acting Assistant Administrator for Solid Waste and Emergency Response, recommended that the agency revert back to issuing the original interpretive notice and policy statement to be followed by a rulemaking targeted for spring 1982. Two months later, however, the agency decided to defer publication of an interim implementation policy in favor of a spring 1982 rulemaking package with appropriate scientific documentation of reportable quantities adjustments.

At the April 1982 hearing, Mr. Capper testified ⁹⁵ that the agency anticipated going forward with the proposed rulemaking in April-May and, allowing for the appropriate comment and review period of approximately 90 days, should have a regulation out around September 1982. Several days after the hearing, Mr. Capper was assigned to new duties in the Administrator's office, and Rita Lavelle was appointed as Assistant Administrator for Solid Waste and Emergency Response. Once again, the rulemaking process has been delayed and is now expected to be issued in early 1983. By the time a regulation is implemented, over two years will have elapsed since the statute was enacted.

At the April 2, 1982 hearing, Congressman Wyden denounced the total agency inaction in this key area and inserted into the record an internal EPA memorandum which acknowledged over a year ago that the agency was not meeting its responsibilities in enforcing section 103. The document, dated September 2, 1981 from Mr. Capper to Mr. Daniel, states in part: "We do not appear to be receiving the anticipated increase in reporting from the general public at this time. Industry groups are advising members not to report any but the most serious releases until EPA's policy is published, and the problem is resolved. This situation leaves EPA in a position of neither enforcing the letter of the law nor issuing a stated enforcement policy." ⁹⁶

As of April 1982, the National Response Center was receiving approximately 150 reports of significant releases monthly, only 41 percent of the anticipated number of approximately 365 per month. It is noted that in September 1981, an agency official happened to read a New Orleans newspaper article describing ten hazardous substance incidents which had occurred in Louisiana in the preceding four months. Upon checking with the National Response Center, it was learned that of these ten incidents, only one had been reported. As of April 1982, there had been no referrals of section 103 non-reporting violations from the EPA regions to headquarters, and only one region had an open case.

E. CRIMINAL ENFORCEMENT PROGRAM

With respect to EPA's criminal enforcement program, it is noted that as early as May 1979, James Moorman, an Assistant Attorney General in the Justice Department, testified as follows at a Subcommittee hearing: ⁹⁷

EPA is in serious need of tough law enforcement investigators; investigators with training comparable to that of the IRS, the Customs agents, and the FBI. While a high degree of specialized technical knowledge is also necessary for these investigations, I believe that fundamental investigative techniques and good investigative instincts are equally or more important.

These investigators are needed not only to identify sites and their contents and owners and operators and former owners and operators, they are also needed to ferret out the elements of organized crime that are alleged to be involved in hazardous waste pollution. They must be willing to deal with the entire range of civil and criminal problems, from the white-collar malfeasance committed by corporate executives in the disposal of hazardous waste, to the organized crime types who are involved with the midnight dumping of hazardous waste and toxic substances into our rivers, our lakes, our wetlands, our sewers or any other convenient location.

⁹⁵ Ibid. at 349-357, 414-420.

⁹⁶ Ibid. at 350.

⁹⁷ May 16, 1979 hearing, "Hazardous Waste Disposal," Serial No. 96-48 at 722.

Despite Mr. Moorman's strong admonition three years ago, EPA's criminal investigative resources have not substantially improved today. While efforts have been underway to correct this situation over the past year with the establishment of an Office of Criminal Enforcement, inordinate delay in staffing has prevented implementation of the program.

In fiscal year 1981, EPA had a total of four criminal investigators, three in Philadelphia and one at headquarters. In the summer of 1981, preparations were initiated to establish an Office of Criminal Enforcement for the 1982 fiscal year, effective October 1, 1981, and the budget provided for the hiring of 25 criminal investigators. On the eve of the Subcommittee's November 18, 1981 hearing, Administrator Gorsuch approved a centrally-controlled criminal enforcement program and authorized hiring the additional investigators (a total of 21 since the four investigators hired in fiscal year 1981 were carried forward).⁹⁸

At the November 18 hearing, Mr. Sullivan testified that "We are staffing up to 25 investigators as quickly as we can do it. We are interviewing and getting them hired . . . I expect that we will be up and running with a full criminal program by the end of the first quarter (1982)." ⁹⁹

Contrary to Mr. Sullivan's testimony and Administrator Gorsuch's authorization, however, the additional criminal investigators had not been hired as of the April 1982 hearing. In fact, the announcements advertising those positions had not even been issued by EPA. Questioned about this excessive delay, EPA General Counsel Robert Perry testified that the agency had encountered a problem of unexpected overlap.¹⁰⁰ He said that about a month before, the Inspector General of EPA had raised questions about the possibility of overlap between his responsibilities and those of the criminal enforcement office, and had requested an official opinion.

This, in itself, is incredible since the Inspector General's office does not conduct investigations of substantive issues in environmental cases. Neither Mr. Perry nor Mr. Sullivan was able to provide a satisfactory explanation as to why these investigators were not hired back in November and December of 1981, as Mr. Sullivan had testified was being done, or why they had not been hired since that time.

Two weeks after the hearing, Mr. Perry advised the Subcommittee that he had resolved the overlap question by advising the Inspector General that the responsibility for pursuing criminal investigations under environmental statutes could not be delegated to the Inspector General's office, whose responsibility is one of oversight in determining the agency's efficiency and effectiveness of operation. He stated that after reviewing several alternatives for the management and placement of the investigators, it was decided that they would be supervised by the Office of Criminal Enforcement, but would work out of four or five area offices around the country. He further advised that job announcements for the positions would be issued by the end of May and that hiring should be completed by September 1982.¹⁰¹

As a result of the final reorganization of the enforcement structure at EPA, the Office of Criminal Enforcement has now become the

⁹⁸ Nov. 16 1981 hearing at 153-168.

⁹⁹ Nov. 18, 1981 hearing at 276-278.

¹⁰⁰ Apr. 2, 1982 hearing at 342-346.

¹⁰¹ *Ibid.* at 422-426.

Criminal Enforcement Division in the Office of Legal and Enforcement Counsel. Mr. Perry further advised the Subcommittee in early August 1982 that the Office of Personnel Management had reviewed and approved the criminal investigator position descriptions for coverage under the Federal government's early retirement provisions for law enforcement officers, as well as the premium pay provisions relating to nightwork and irregular, unscheduled overtime duty. This decision is expected to enhance EPA's ability to attract the best available investigators. EPA completed its staffing requirements by September 1982, and provided the criminal investigative staff with several weeks of specialized training at the Federal Law Enforcement Training Center in Glynco, Georgia.

While the Subcommittee is encouraged that EPA's criminal enforcement program is finally moving forward, the delay in hiring the investigators until nearly a year after funds were available to do so is inexcusable. The failure to require the prompt staffing and implementation of this program suggests a cavalier attitude toward criminal enforcement on the part of the agency's top management officials.

The Subcommittee is concerned that EPA's criminal investigators will not have full law enforcement powers, i.e., the authority to carry weapons and to make arrests. Such authority has not been granted to the agency by statute. In the Subcommittee's judgment, this oversight should be rectified promptly.

The Office of Management and Budget approved the criminal investigative positions in EPA's budgets for fiscal years 1982 and 1983 only on condition that law enforcement powers not be sought. The Subcommittee believes that OMB has a misconception about the nature of the investigative activity these personnel will be undertaking, particularly investigations involving the illegal disposal of hazardous waste. Tough criminal elements often engage in this activity, some of whom are members of, or associated with, organized crime. In addition, in order to achieve maximum effectiveness, it is essential that investigators develop informants within the waste industry. EPA's investigators should have the means and the ability to protect themselves and others in these situations, just as FBI agents and state investigators have who work hazardous waste cases. The agency's position description for criminal investigators states, in part :

Suspected violators are often highly organized crime groups whose criminal activities are interwoven with legitimate business activities. Assignments often involve large-scale searches and seizures which may be performed under hazardous and potentially dangerous conditions. In such situations, incumbent is expected to coordinate with outside law enforcement agencies possessing law enforcement powers.

Investigations involve the utilization of undercover agents and surveillance which require the penetration of close knit groups over extended periods of time. The incumbent must exercise excellent judgment on all matters vital to the protection of agents and investigative personnel.

Such language raises questions about realistic situations: How can one ask a man, who is participating in a potentially dangerous situation, to seek the assistance of outside law enforcement officers who possess authority to carry weapons, when he himself does not? It places the investigator in an untenable position. And what happens if an EPA investigator, conducting a mobile surveillance, detects illegal dumping in progress? He lacks both the means and the authority to make an arrest for the crime being committed in his presence. Will the

violator wait around at the scene while the investigator locates a Federal, State or local law enforcement officer who is empowered to make the arrest?

Of course, certain Federal agents—FBI, Customs, Secret Service, etc.—carry weapons and make arrests because of the nature of their duties. But when one considers that Internal Revenue Service investigators, and even investigators for the General Services Administration and the Veterans' Administration in certain situations—not to mention Department of Agriculture personnel investigating food stamp violations—are authorized to carry firearms and to make arrests, it makes little sense that similar authority is not granted to EPA investigators, who work in potentially more dangerous situations.

In the Subcommittee's view, it is unreasonable and dangerous to have EPA's criminal investigators working hazardous waste cases without full law enforcement authority.

In July 1981, as a partial and interim solution to EPA's serious lack of investigative resources, the agency entered into an agreement with the FBI whereby the Bureau would accept for investigation, upon referral by EPA, 30 hazardous waste criminal cases per year. Ten such cases had been referred to the FBI as of November 1982. In addition, 15 criminal referrals, principally Clean Water Act violations, have been sent to the Justice Department.

The Subcommittee concludes that since the spring of 1981, EPA's enforcement program has been plagued by indifference, lacked decisive direction, and been mired in confusion. Without a strong enforcement policy, backed up by an aggressive program, no one can reasonably believe that EPA's rhetoric urging "voluntary compliance" will cause many generators, haulers, and disposers of hazardous waste to adhere to the letter of the law. Instead, the improper landfilling and indiscriminate disposal of toxic substances will continue to threaten our neighborhoods and contaminate our water supplies.

V. RECOMMENDATIONS

(1) Based on the problems experienced by New Jersey over the past four years in its Federally-funded efforts to investigate and prosecute illegal disposers of hazardous waste, it is important that EPA evaluate the civil and criminal enforcement programs in key states to ascertain if they are capable of discharging their hazardous waste enforcement responsibilities, or if greater emphasis needs to be placed on enforcement at the Federal level.

In this regard, it is recommended that EPA, through its regional offices, contact state environmental agencies and appropriate state law enforcement officials in those states which are leading producers and/or disposers of hazardous waste to obtain a candid assessment of their current capability and future potential to investigate and prosecute, through civil and criminal actions, improper or illegal disposers of toxic substances. EPA's evaluation of state enforcement programs should include such areas as sufficiency of budgetary allocations, experience and extent of manpower resources (legal, investigative, technical), equipment resources (laboratory, photographic, radio-equipped vehicles, etc.), degree of coordination and cooperation among various agencies within the state, adequacy of state hazardous waste laws and penalties, ability to cope with interstate violators, adequacy of training

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programs for legal and investigative personnel, and other relevant factors.

(2) During a period of reduced Federal assistance to the states for enforcing hazardous waste laws, it is important that state officials maximize available resources to meet the challenge of criminal activity in this area. The distinctive aspect of the improper or illegal disposal of hazardous material is the necessity to transport the waste, usually by truck. The investigative capabilities of experienced State Police personnel can clearly make an important contribution to these enforcement efforts, as well as to the public health and safety. Accordingly, it is recommended that State Police agencies become more directly involved in state hazardous waste enforcement programs.

(3) In addition to increased state law enforcement efforts, the Subcommittee believes there must also be a strong, effective Federal deterrent to illegal hazardous waste disposal. Under the existing Memorandum of Understanding between the EPA and FBI, only 10 criminal cases have been referred to the Bureau for further investigative action. Recognizing the Solid Waste Disposal Act Amendments of 1980 increased the criminal penalties under RCRA from misdemeanors to felonies, the applicability of other Federal criminal statutes, and the FBI's special capabilities to develop informants and sources of information knowledgeable about both intrastate and interstate waste disposal activities, it is recommended that the FBI implement a stepped-up program to generate and develop illegal toxic waste disposal cases on its own, rather than rely almost solely on the referral of such cases from EPA.

(4) In view of the dangerous nature of hazardous waste investigations and the possible involvement of highly organized crime groups, the 98th Congress should consider legislation to provide EPA's criminal investigators with full law enforcement authority, i.e. to carry firearms and to make arrests.

(5) In order to insure that enforcement action has a significant deterrent effect on illegal disposers of hazardous waste, the RCRA statute should be amended to require mandatory sentences for second convictions.

VI. ADDITIONAL VIEWS

We join in the conclusions and recommendations of the Subcommittee Report. There should be no misunderstanding either within the Executive Branch or within the regulated chemical waste community about Congressional resolve for aggressive and vigorous law enforcement efforts designed to identify those individuals and organizations responsible for reckless or illicit disposal of hazardous waste. Further, enforcement efforts designed to eliminate the hazards associated with many of these toxic waste sites enjoy broad bi-partisan support within Congress in general and this Committee in particular.

We believe that the Subcommittee Report, constructive though it is, may provide a misleading impression concerning recent law enforcement posture.

While there is no doubt that the reorganizations within the Office of Enforcement of the EPA sent conflicting and confusing signals to both the EPA Regional Offices and to the regulated community, the evidence now available demonstrates that EPA has resumed its civil

enforcement case referrals to historical levels. The Subcommittee Report notes that 88% of EPA's 100 FY 1982 civil case referrals to the Department of Justice were made in the last six months of the fiscal year, with 16 referrals on the last day of the fiscal year, September 30, 1982. Unfortunately, the Report neglects to note that the number of such referrals to DOJ in FY 1983 (as of December 8, 1982) is 33. This referral rate represents an annual rate nearly twice that of FY 1982 and equivalent to the 200 civil enforcement case referrals to the Department of Justice in FY 1980.

We also believe that efforts by both the EPA and the Department of Justice to seek voluntary industry compliance whenever possible is not only reasonable, but helps to conserve limited enforcement resources. The referral of 133 cases by EPA to DOJ from April 1, 1982, to December 8, 1982, demonstrates a degree of law enforcement commitment at least comparable to the level of early years. In a message to conferees attending the National Enforcement Conference on September 20, 1982, EPA Administrator Anne M. Gorsuch noted that the voluntary compliance approach "... can only be successful if the regulated community understands that we are willing to resort to civil prosecution if negotiation does not yield the desired results within a reasonable period of time." We believe that the Administrator's clear statement of resolve has contributed to the recent improvements both in the quality and number of EPA's enforcement referrals.

Notwithstanding the above, we believe the Subcommittee Report to be a thoughtful and timely review of a subject which rightly is gaining heightened public awareness.

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