Renaissance of Environmental Criminal Investigation in Louisiana: A Model for the Nation

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Warren County Courthouse
Monmouth, Illinois
The Prosecutor

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The Cover
The Warren County Courthouse, constructed of red Portage stone, was completed in 1895. Warren County was organized in 1825 and was named for Dr. Joseph Warren, who was killed at the Battle of Bunker Hill in 1775. He is believed to have been the first officer to fall in the Revolutionary War. The county seat is located in Monmouth, Illinois.
Highlights

Renaissance of Environmental Criminal Investigation in Louisiana: A Model for the Nation

BY BEAU JAMES BROCK AND MICHAEL DANIELS

Editor’s Note: This article was prepared and written prior to the recent Gulf oil spill that began on April 20, 2010. The comprehensive restructuring of the criminal division has now positioned LDEQ-CID as a full participant, and sole state agency representative, in the Deepwater Horizon Federal-State Criminal Investigation Team concerning the recent Gulf oil spill.

In Louisiana, perpetrators of knowing criminal violations of the Louisiana Environmental Quality Act, Title 30 subject themselves to felony conduct. Now, those are not just idle words on a page. The Louisiana Department of Environmental Quality Criminal Investigation Division (LDEQ-CID) is the primary state criminal investigative arm responsible for environmental criminal investigations in Louisiana under Title 30.

Prior to the establishment of the LDEQ-CID, intentional repeat offenders of the Environmental Quality Act would avoid compliance by abusing the civil enforcement scheme and then, after years of non-compliance, would declare bankruptcy and begin new violations under a different company name. An early example, Ed McCreary, in Baton Rouge, was eventually criminally prosecuted after years of intentionally polluting the Capitol Lake system through a covert piping network. LDEQ-CID currently works with local law enforcement with the goal of empowering them to investigate local criminal issues that may affect them. The reality, however, is that local law enforcement has neither the resources nor the specialized training to investigate moderate or complex environmental crimes due to other priorities and the nature of the environmental regulatory system.

Under La. R.S. 30:2025(F)(4), LDEQ-CID must determine whether a criminal violation has occurred and then shall notify the local district attorney of the violation. Without this criminal investigative arm, LDEQ would be unable to meet this legislative mandate. Both EPA and LDEQ have the authority to investigate criminal violations of the Clean Air Act, Clean Water Act, and RCRA, but only the state has jurisdiction to investigate solid waste crimes and state violations of the Louisiana Criminal Code which often are also in play when dealing with environmental crimes.

The State of Louisiana maintains sole responsibility to oversee solid waste both civilly and criminally in our state. Any criminal violations of solid waste must be investigated on the state level as EPA does not have jurisdiction over solid waste. Without an LDEQ-CID, criminal violations of solid waste, including illegal dumping of non-hazardous industrial waste, criminal violations of landfill operations, waste tire dumping, white goods dumping, and medical waste dumping cannot be effectively investigated nor prosecuted.

In February 2008, Beau Brock joined incoming Governor Bobby Jindal’s appointee LDEQ Secretary Hal Leggett as his confidential assistant, and left his previous position as Regional Criminal Enforcement Counsel (RCEC) for the United States Environmental Protection Agency (EPA) Region VI in Louisiana. According to Brock, leaving a federal civil service “classified” position

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for a political appointment was an easy one for him because Secretary Leggett had a bold vision for a better Louisiana. In their interview about the position, Brock asked Leggett what his plan was for LDEQ, and he responded by asking Brock to join him and they would “change Louisiana.” One of their chief concerns was agency integrity and public confidence in LDEQ, which had been wanting in the past. Leggett wanted to further assure a level playing field for honest businesses that found themselves unable to fairly compete with those who would ignore or flagrantly flaunt environmental safeguards.

From March 1999 until February 2008, as RCEC, Brock provided in-house legal oversight on all federal environmental criminal investigations in Louisiana managed out of the EPA-CID Louisiana Resident Office. During this eight-year period, the Louisiana EPA-CID office remained in the top 10 in case production for all of EPA-CID. This successful work was accomplished by aggressive development of a web of informational sources, thousands of man-hours spent by agents verifying complaints through interviews and surveillance, and close coordination with technical experts and prosecutors under the leadership of Assistant Special Agent-in-Charge Randall Ashe and then his successor Assistant Special Agent-in-Charge Damon Rodriguez.

Conversely, LDEQ-CID results had not merely stagnated after initial successes, but had regressed so much during this period that even its very existence was in question. Specifically, during its formative years, between 1992 and 1999, LDEQ-CID averaged 10 criminal referrals a year for criminal prosecution, but between 1999 and 2008, that number dropped precipitously to an average of four referrals a year. A close examination of the production statistics of LDEQ-CID from 2004 to 2008 revealed even more troubling numbers. In fiscal year (FY) 2004-2005, other than a single EPA-CID dominated case, LDEQ-CID cases only resulted in $550 in total criminal fines. In FY 2005-2006 criminal fines totaled only $1,200. In FY 2006-2007, LDEQ-CID obtained zero results. No criminal fines, no defendants, no probationary terms—no results. In FY 2007-2008, criminal fines did total $11,700, but clearly these were not acceptable nor did this period engender public confidence or result in any deterrence in criminal conduct.

Based on concerns that the LDEQ-CID was not effective, Leggett asked Brock to review the program, assess its needs and capabilities, and implement any necessary changes to fix the program. Leggett was convinced of the need of an effective CID to support the agency’s overall mission; for the need for it to be a force capable of not only serving as a bulwark by protecting our most vulnerable communities from the nefarious activities of a few, but as the other bookend to his grand strategy of providing businesses and communities with the public confidence in a level playing field for all who come before the agency.

In order for Brock to obtain a truly objective determination of the LDEQ-CID’s status and capability, he decided he should reach out to the top environmental criminal investigator in the country, and see if he could be coaxed out of retirement to serve Louisiana and audit the existing CID program. That man was Tom Kohl. Kohl retired from EPA-CID as special agent-in-charge after serving our country as a federal agent for over 30 years. He was one of the “First 20” EPA-CID agents hired in 1982, he trained and supervised almost every other special agent-in-charge serving in EPA-CID, and he almost literally wrote or re-wrote the EPA-CID Special Agent Policies and Procedures himself or under his direct supervision.

In the spring of 2008, Kohl initiated an audit of LDEQ-CID and found several deficiencies. Recommendations by Kohl to develop sustainable programmatic changes in CID were then immediately put into place. Some of these recommendations included the following:

- comprehensive overhaul of the then current policies and procedures;
- replacement of the CID Manager;
- creation of a criminal investigator job series;
- establishment of legal counsel position inside CID;
- opening of a dialogue with EPA-CID;
- development of an effective outreach program;
- development of a formal case tracking system; and
- development of specific investigative discretionary factors in order to establish objective case selection criteria for CID.

These objectives set forth by Kohl were adopted by CID beginning fully in FY 2008-2009. There has been a transition as the measures outlined were implemented, phase by phase, and total agency commitment in responding to Hurricanes Gustav and Ike slowed some efforts, but significant progress has now been achieved. Specifically, the following areas have shown demonstrable improvement and have resulted from CID’s aggressive implementation of the Kohl audit findings:

- superior managerial leadership;
- establishment of legal counsel;
- law enforcement partnerships;
- new policies and procedures and case selection criteria;
- a 21st century case tracking system and electronic reporting capability;
- systematic outreach program;
- creation of a criminal investigator series at LDEQ;
- public access via Web site to CID activities;
- regionalization of criminal assets; and
- successful case results designed to meet overall agency objectives.

**Superior Managerial Leadership**

The successful management of an environmental criminal investigation program requires a leader to be energetic, technically sound, and above all else, capable of communicating with scientists, attorneys and affected communities. The selection process of a new manager at CID eventually resulted in placing Jeffrey Nolan into the position. Nolan fit the bill. He was a career DEQ employee and served in several capacities for the department. Specifically, he served many years as an inspector and in civil enforcement. His core background was a scientific one, but he had unique qualifications that he brought to CID such as a comprehensive knowledge of the overall DEQ mission as a program manager, extensive communication experience in his previous agency responsibilities throughout his career, and a passion to restore the vitality and professionalism of CID.

Under his leadership, CID is now poised to play a significant role in supporting DEQ’s overall mission and he has personally been responsible for successfully implementing the Kohl recommendations, and through his own resourcefulness, has developed other initiatives and management tools to take CID to the next level. One of the key moves made by Nolan was to obtain computer forensic training for the CID Analyst Kelly Phillips, and now she has completed all tests and is a “Certified Forensic Computer Examiner” by the International Association of Computer Investigative Specialists (IACIS). This gives CID an important criminal investigative tool in the execution of search warrants and the review of electronic documents including e-mails.

**Establishment of Legal Counsel**

CID recruited candidates for an in-house attorney position within the division to assist in the development of investigations and to fully support effective prosecutions brought to local jurisdictions. In doing so, CID received over 100 applications for this position and was able to interview the top 12 who all had value to bring to the department. CID was fortunate to find Mike Daniels, who had previously been lead counsel on over 100 criminal jury trials in New Orleans, worked for the State’s Attorney General’s Office for years, and was currently working for the Louisiana State Police. In luring Daniels away from State Police, one enticement was to provide him with an opportunity to work in a new area of law, but one that made a significant impact on our state’s quality of life, and to join as a partner in the total renovation of the division.

Daniels has made important contributions in case development, for only a former prosecutor truly understands what other prosecutors are looking for, and most importantly, what a jury will accept and understand. He has been named a special assistant district attorney in cases in New Orleans and Shreveport and has assisted directly in preparing cases for motion and settlement in 10 more parishes over the past year. He is an integral part of the team, and his inclusion is no revolutionary concept as it mirrors the structure already in place and successfully utilized at EPA-CID.

**Law Enforcement Partnerships**

Another key to success has been the full development of law enforcement and community partnerships that have resulted in successful cases, the foundation of an intelligence network, and public awareness. LDEQ-CID imbedded one of its agents in the Louisiana EPA-CID office on a full-time basis immediately after the audit findings were released. This has served to build a bridge between the agencies and resulted in LDEQ-CID being a full partner in numerous (what were before) only EPA-CID criminal investigations. This work has also resulted in open information sharing among the agencies on environmental complaints and cross training between agents on LDEQ and EPA priorities. Joint search warrants, arrest warrants, and agency integration were all unheard of prior to this administration.

In the past, EPA-CID agents were forced to sign into the LDEQ building as visitors, were almost always escorted by an LDEQ employee wherever they went, and were not provided open access to LDEQ-CID information or its facility. The changes made have been dramatic to say the least. EPA-CID agents are now provid-
ed with identification cards that allow them free access to the entire building, and may travel unescorted throughout any of our buildings. EPA-CID has been encouraged to participate in all operations at LDEQ-CID and open intelligence between the agencies is now the status quo. Finally, EPA-CID has been given the option to include any of the LDEQ-CID agents around the state who they believe might assist them in their investigative process.

In 2009, after the systematic changes made by the department, LDEQ-CID was invited by the Federal Bureau of Investigation to participate in the first Federal-State Anti-Public Corruption Working Group in Louisiana. The only other state agency involved was the Louisiana Inspector General’s Office and, later, the Louisiana State Police joined the group. This was seen as a milestone for DEQ as a formal recognition of CID (and DEQ as a whole) and its newly restored integrity, professionalism, and esprit de corps. CID has been very active in participation with this group and its mission.

Finally, formal partnerships have been established also with the Louisiana State Police who have provided vehicles, shotguns, training, and investigative support to CID, with the Louisiana Department of Wildlife and Fisheries, and the Caddo Lake Foundation.

**New Policies and Procedures & Case Selection Criteria**

LDEQ has adopted policies and procedures drawn directly from Kohl and his work in the historical development of those at EPA-CID. Previously, the policies and procedures in place for LDEQ-CID were in part minimalistic and devoid of operational structure, and, in part, simply legally deficient. Kohl was instructed to utilize his experience and choose what worked and discard what was ineffective for a state organization but to contextually maintain consistency with the EPA-CID model. Thus, Kohl was given a clean slate to create what would best serve the state of Louisiana in the investigation of environmental crimes.

The results again have been highly successful. Kohl managed to coordinate with his former colleagues at EPA-CID and was able to draft policies and procedures that have completely transformed LDEQ-CID and its investigative practices. He finalized a new case selection criteria which mirrors that of EPA-CID and is designed to institutionalize CID as, not a “separate or isolated unit within DEQ,” but as an agency-integrated investigative tool whose chief purpose is to preserve and protect DEQ’s primary civil enforcement mission, and enable it to respond to those bad actors who refuse to come into compliance.

**21st Century Case Tracking System and Electronic Reporting Capability**

Cases in CID are now tracked in three distinct phases after a lead (or formal complaint) is documented. If the lead is determined to meet the discretionary investigative guidelines, and properly should be handled by CID, a case is formally opened by the division manager. After a case is opened, it is then a Phase One investigation. The case is then developed through verification of the initial information; permits and any pertinent civil enforcement history are researched; surveillance conducted; and interviews obtained.

If the case reaches the level in which CID has determined a provable criminal violation has occurred, it is then formally referred to the local and sometimes federal prosecutor in conjunction with EPA-CID. A referral is simply the formal notice provided by CID to the prosecutor that it has undertaken an investigation for which it believes it has uncovered criminal activity. Upon time of referral, the case then moves to Phase Two. After being turned over to the prosecutor for referral, the investigator’s job is only beginning. Many times an arrest warrant has not yet been perfected, nor have any grand jury proceedings been held. The continuing use of investigative techniques such as surveillance, consensual phone monitoring, body wires, and search warrants may still play a role even after referral.

When the prosecutor has formally charged a defendant in the case, it moves to Phase Three. It will remain in this phase until the case is adjudicated by a plea, trial or dismissal. During this phase the investigator is responsible, with the CID staff attorney, for preparing the case for trial, attending and participating in any and all court or negotiation sessions with the defense, and providing any support requested by the prosecutor in order to move the case along towards its conclusion.

CID Manager Nolan, in working with LDEQ’s internal IT Group, has developed an electronic reporting system for CID that is outside of the agency’s normal electronic mail and document system. It allows for secure communications by agents in remote locations or from LDEQ regional offices and the efficient transmission of case information between all members of the team. This was done in order to maintain the requisite confidential-
ity necessary for an effective law enforcement agency. Environmental criminal investigations are no different in this aspect, and, indeed, have even greater concerns in maintaining the confidentiality of informants and its investigative activities. It is just as fair to those who may be accused of crimes, but through CID’s diligence, if they are found to be innocent of such charges that these records do not unduly tarnish their reputations.

**Systematic Outreach Program**

CID has been charged with reaching out to community groups, local district attorneys, sheriffs, and elected officials. This comprehensive networking has resulted in a dramatic degree of public awareness, reinforcing public confidence and a countless number of leads. In getting its message out, CID was noticed by the Baton Rouge newspaper, *The Advocate*, which ran a page one story about the new CID and its mission as did the *Health Care Journal* of Baton Rouge.

The division now tracks its outreach man-hours and is a critical component to its success in the recruitment and continuing development of a web of information and the vigilant promotion of deterrence. Although many areas of law enforcement may not find this approach fruitful, in the area of environmental crime, it is imperative. This is because environmental crimes are de facto economic crimes that may or may not directly impact the environment. Many enviro-crimes have an indirect impact on the environment but undermine the integrity of the information used by the agency to assess public health conditions as they involve falsifications, failures to report, tampering with devices, or operating without a permit or pollution controls.

Also, these are crimes committed not covertly by those in a meth lab. No, these are committed by ordinarily law-abiding citizens, who make an active choice to break the law in huge facilities surrounded by witnesses and undermine their industrial competition in the fervent hopes of not getting caught. Active deterrence does work on almost all of these individuals. If they even are thinking about crossing the line of temptation, a visible CID presence in their area will make them think twice.

**Regionalization of Criminal Assets**

Former Secretary Hal Leggett firmly believed cases, whether they be civil or criminal, were not made within the four walls of DEQ’s building in downtown Baton Rouge. Prior to administrative changes brought about by Kohl, all CID agents worked out of Baton Rouge. In fact, their office was not compartmentalized and secure from anyone at DEQ. They were physically located in the middle of the legal department and anyone had access to their offices and cubicles.

This was changed almost immediately, with the approval of the secretary, by moving them up to the secretary’s floor and placed in a secure location. Access to CID could thence only be made by coded entry that only CID and Executive Staff could obtain. Executive Staff did not have any additional access to either the evidence room or the weapons room. Only CID could enter either of these locations.

Further, new hires were to be located in DEQ regional offices in both western and northern Louisiana in order to provide criminal investigative resources to all sections of our state that had long felt ignored. The regionalization of these resources and the new coverage of the state by investigators was a major boost to public confidence and CID is now able to support civil inspectors more efficiently, especially during this current period of diminished travel budgetary allowances.

**Creation of a Criminal Investigator Job Series at LDEQ**

Until the Kohl audit, LDEQ-CID was manned completely by environmental scientists whose only law enforcement training was to attend a basic law enforcement academy after which they received law enforcement commissions from the Louisiana State Police. None of the investigators had any previous law enforcement experience, and were required to have a college science degree in order to even be eligible to be hired in CID. To complicate matters, in contrast to Kohl’s original belief that the investigators “surely” had previous experience in one of the DEQ civil programs, most of them had little to no experience anywhere but CID.

Kohl’s recommendation to create a “criminal investigator” classified job series took over a year to process and gain approval through the state civil service department. However, it was probably the most significant factor in CID’s accelerated professionalism and efficiency in investigative activities. Now, CID has a healthy mix of personnel with decades of traditional detective level experience and others with sound science background with some criminal investigative experience. It is true after two full years of re-organization, only one of the staff...
from 2008 remains in CID, but the hiring of new employees have been strategically determined to provide the team with diverse skill sets and enable it to meet any challenge.

For example, a key hire for CID was the recruitment and retention of Keith Bates. Bates was one of the finest detectives the Baton Rouge Police ever had. Even today he is consulted on homicides and CID is always willing to support in such cases whenever the need arrives. Bates retired from the City Police as its chief of staff and then served as the chief of staff to the East Baton Rouge Sheriff until an unsuccessful election forced the sheriff, and of course him, out of office. But the parish’s loss was the state’s gain as Bates has been not only been a mentor to the division, but the embodiment of professionalism, and what it means to live as a policeman, a role model and a true champion for victims’ rights.

**Successful Case Results**

It might well be the bottom line for all state agencies in the country, and not merely the most famous line from Jerry MacGuire—“show me the money!” And if CID wasn’t getting results and continuing to show value to and for DEQ, it would not be functional. In its first full year of operating under this new administration, CID immediately returned dividends in case conclusions. The totals included criminal defendants paying over $600,000 in criminal fines to the courts, over $600,000 in restitution and over $42,000 in costs of investigation back to DEQ.

The largest state-only environmental criminal fine ever in the amount of $55,000 was obtained in a plea in northern Louisiana during the year and the first true joint EPA-LDEQ criminal case concluded with major results.

Significantly, it also marked numerous arrests and a succession of major cases which are now in Phase Two or Phase Three, which will begin to generate a regular and sustainable set of case conclusions and which will continue to focus on both individuals and corporate defendants. Prior to the new administration, CID was only receiving 35 to 40 leads a year, but in its first full year, CID received approximately 150. This may not directly translate to more cases, as CID will concentrate its efforts on the most egregious offenders, but it will result in better cases opened to effectuate greater deterrence.

Finally, prior to the changes, CID had not collected any costs of investigations for over seven years. This is incredible as state law allows for it. CID now does attempt to collect these costs after a successful prosecution if the local district attorney and court will include this condition in sentencing. Again, in its first year CID collected over $42,000 in costs and this current FY 2009-2010 has collected $11,500 and criminal fines on top of that totaling over $30,000 through two completed quarters of the year.

**Conclusion**

LDEQ-CID is now positioned to perform its duty at the highest levels of programmatic efficiency and professionalism. It has developed full and integrated partnerships with EPA-CID, FBI, and Louisiana State Police and seeks to work with others whose missions can be duly served through any cooperative measures.

Cases can and will be made on perpetrators in the most remote regions of our state and in urban forests where villagers seek to hide their nefarious activities in plain sight. CID needs the support of every citizen to be on guard for such wrongdoing and to report what they know. Confidentiality can be respected. If you see or suspect illegal activity, please call LDEQ at 888.763.5424 or 225.219.3640 or call LDEQ-CID directly at 225.219.3944. This law enforcement arm built to preserve the quality of life for every citizen of Louisiana is no longer a paper tiger, but a fightin’ tiger, capable of and willing to investigate any situation.

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1 Resource Conservation and Recovery Act.
2 Ashe moved on after his Louisiana success to promotion as the special agent-in-charge of the EPA-CID Region VI Chicago Area Office.
3 Rodriguez moved on after his EPA-CID success to promotion as the United States Coast Guard Investigative Services special agent-in-charge for the central region of the United States.
4 All case production results from this period to the current date are now published on the LDEQ-CID Web page. There is a link from the main LDEQ Web page to the CID page, which is now easily accessible by the public.
5 Secretary Leggett developed a left and right “bookend” methodology to work with communities and businesses under his administration. One bookend was the reformation and development of a legitimate CID and the other bookend was the formal policy and implementation of work under the deputy secretary of his Small Business and Community group. This group actively reached out to every mayor and parish president in the state and invited them to participate in our policy directives. This was accomplished by members of Leggett’s Executive Staff and local employees meeting with the mayor or duly appointed executive in charge at the local town or city’s office.