


9-1-1972

Expanding the Role of Local Police in Environmental Protection

James E. Panton

John C. Meyer, Jr.

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/ealr>

 Part of the [Environmental Law Commons](#), and the [Law Enforcement and Corrections Commons](#)

Recommended Citation

James E. Panton and John C. Meyer, Jr., *Expanding the Role of Local Police in Environmental Protection*, 2 B.C. Env'tl. Aff. L. Rev. 358 (1972), <http://lawdigitalcommons.bc.edu/ealr/vol2/iss2/8>

This Article is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Environmental Affairs Law Review by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

EXPANDING THE ROLE OF LOCAL POLICE IN ENVIRONMENTAL PROTECTION

By James E. Panton and John C. Meyer, Jr.***

INTRODUCTION

Recent concern with environmental issues has prompted a great deal of reflection about the problem of enforcing anti-pollution legislation. Since environmental degradation is such a pervasive problem, a wide-reaching and comprehensive enforcement apparatus is required to cope with it. Local police agencies constitute an established law enforcement apparatus with both the personnel and potential to carry out an enforcement mandate; this is true despite the fact that their role regarding environmental matters is currently obscured. Yet police involvement in monitoring the quality of the environment is neither a new nor startling re-thinking of what the police role is or should be.

Historically, environmental dislocations have always been a matter of concern to American local governments. Some of these concerns were directed at protecting the purity of municipal water supplies, planting beautifying shade trees and developing parks. As time passed, the raising of agricultural animals was banished from cities and later still, some fifty years ago, steam locomotives, were outlawed from several of the most densely populated metropolitan areas. Naturally some of the complex synthetic impurities and pollutants which threaten man today were unknown or were tolerated because their danger to man was unknown in the past. An even more important reason to overlook their danger was the financial loss which would have been suffered by growing industries if they had attempted to limit their effluents in an expanding technocracy. However, as the public became more aware of the effects of environmental degradations, what are basically environmental protection laws were passed.

POLICING THE ENVIRONMENT

In the early days the first line of environmental protection was by necessity at the local level and was effectuated by the efforts of local police. The statute books of cities, towns and villages are liberally sprinkled with long-standing anti-dumping provisions, rules about keeping animals, and the making of excessive noise—emanating mainly from bawdy taverns—which were enforceable by the local sheriff's office or by some municipal peace officer.

The annual report of the Boston City Marshal for 1834 provides ample evidence that health and safety concerns surpassed his concern with crime-related deeds:¹

The second division of the municipal police comprises the misdemeanors and irregularities affecting the safety, the peace, and convenience and comfort of the community. In this branch may be included the violation of the license laws, the infraction of the several ordinances, regulating the streets, trucks, carts, carriages and horses, dogs, exhibitions and public shows—trespasses and offenses on the common and malls—the sale and stands of wood and bark—wood sawyers—unauthorized fire works—danger from lighted pipes and cigars—firing of loaded arms—unlawful games and plays—paving of streets and footwalks—dirt and rubbish—erecting of buildings—repairs of steps and cellar doors—projection of steps; signs, balconies and awnings—merchandise, snow and ice on sidewalks—coursing on sleds in the highways—swimming in exposed places—and various other subjects.

Urban environmental chaos in New York City was responsible for giving that community one of the highest death rates among cities of the world in 1864. This prompted the Police Board to try to "improve the city's public health by both publicity and action." Filthy and overcrowded streets, courtyards and alleys, the lack of water in tenements, and slaughter houses and fat-boiling establishments in residential areas all contributed to the deplorable living conditions. In response to this situation the police took censuses of people living in cellars or where there was less than 500 cubic feet of air per person. A sanitary squad was formed to check on the living conditions in tenements. This squad's reports continually cited the environmental disruption created by slaughter houses operating in residential areas.²

The police role in regulating the environment is not peculiar to America. Two students of the Australian police note that by

the Sydney Police Act of 1833, “. . . the police were given the task of administering not only the traditional criminal laws but also those affecting public health and hygiene. Sections prohibited such practices as the blocking of a town watercourse, the throwing of filth on public places, the beating of carpets in the street, and the breeding of swine in places adjacent to the street.”³ The Northwest Mounted Police of Canada, according to Superintendent Perry in 1893, enforced the criminal law as a sideline to the herding of cattle to railheads and conveying them to their destination.⁴ There is evidence that the Metropolitan Police of London were responsible for many similar regulatory functions in the years after Robert Peel created that force in 1822.⁵

Today in New York State, peace officers have all the authority under the Fish and Game law of a conservation officer over the unlawful taking or shooting of game and wildlife, except the authority to search without a warrant.⁶ The New York State Vehicle and Traffic Law has provisions relating generally to rubbish or other offensive matter on highways.⁷ Noise from motor vehicles⁸ and that created by citizens⁹ are also the subject of police enforcement. Needless to say, the police are empowered to enforce numerous statutes relating to alcoholic beverages, operation of motor vehicles, retailing on Sundays and similar regulatory functions defined in local administrative codes.

PROBLEMS OF LOCAL ENFORCEMENT

In the local governmental structure of New York State, it is the municipal codes that contain the majority of the environmental proscriptions. However, there is much unevenness from community to community in the substantive provisions and in the severity of fines for violations found in these codes. As a result two contiguous municipalities may share a common environmental problem while one may not have the code provisions necessary to enforce the infraction. Consequently, selective enforcement or no enforcement may result. There is thus an incentive for industries to move to an area where code provisions and enforcement is minimal in an effort to reduce overhead costs.

Even within a single municipality's code there is often much unevenness in relation to provisions and enforcement. Many provisions are survivals from previous years or earlier administrations. This incremental approach to environmental control has led to

sporadic enforcement at a time when crisis stimulates public outcries against a multitude of conditions.¹⁰

Although some municipalities have made concerted efforts to improve code provisions and enforcement, these changes are usually the by-product of an unrelated series of crises. Without sustained interest and formal machinery to cope with the total problem over time, piecemeal efforts are likely to lose the support of the public and of municipal budget makers. Program planning and implementation have been pre-empted by a succession of crises occurring over the history of the municipality. This tends to reduce understanding of the environment as a total urban problem.

For example, one code for a small city in eastern New York contains provisions pertaining to abandoned vehicles, waste disposal, housing and zoning standards, music in restaurants, noise, and the blocking of sidewalks. While many of the provisions have been revised within the past twenty years, some of them originate from the far distant past and reflect a life style and a hierarchy of needs quite foreign from the present.

In sum, the approach of municipalities to anticipating the whole array of possible environmental abuses appears to have been reactive and defensive rather than planned or preventive. In spite of the fact that these statutes cover many contingencies, they do not provide a uniform focus for environmental protection which relates the cumulative impact of such nuisances as noise, litter, and overcrowding to the quality of life. This makes law enforcement difficult and suggests the need for providing the municipal police officer with a revised environmental protection code which relates to the regulatory police function.

It is imperative that code revisions be made so that local law enforcement officers have both a comprehensive body of law upon which to base their attack upon environmental violations, and also the means to deal with their individual problems. While the needs of each municipality play a vital role in code formulation, the experiences of other jurisdictions should also be considered. Policies and provisions found to be effective elsewhere may be ignored if each jurisdiction relies solely upon its past history.

Although the police have been drifting away from environmental enforcement due to the ever-increasing emphasis placed upon "crime-fighting" which arose during the thirties, history has repeatedly shown the police to be the logical agency to deal with

environmental infractions. Through legitimizing enforcement of environmental regulations as part of the broader police function, the role of the police will expand to encompass the responsibility for maintaining the public morals, health and safety.¹¹

AREAS OF POLICE INVOLVEMENT IN ENVIRONMENTAL ENFORCEMENT

Certain common factors exist in municipalities which contribute to reduction in the quality of life. Four categories of environmental pollution may be distinguished: first, unintended incremental pollution; second, by-products of living; third, residuals of urban decay; and fourth, results of overtaking the natural environment. These will be discussed in turn.

Unintended Incremental Pollution

Much environmental degradation arises from human action or inaction in the course of everyday life. This pollution is the unintended result of human affairs, especially the activities of recreation and relaxation. Due to the unintentional character of this form of pollution, it can insidiously build into a major problem if corrective steps are not taken. This form of environmental pollution is, however, most amenable to correction by local law enforcement personnel. Littering, unnecessary noise, and animal excrement in public areas are all forms of "unintended incremental pollution" that are amenable to local enforcement.

By-products of Living

Modern life in urban and rural areas produces a great quantity of waste matter which has the potential for despoiling the landscape and attracting insects and rodents. Pending a revolution in packaging or in the chemistry of consumer products, the prompt removal and proper disposal of these waste products will continue to be a major responsibility of local governments.

Garbage collection, as evidenced by the recent sanitation workers strike in New York City, is an essential service which if ceased or performed poorly will create an immediate hazard to health and the environment. Debris from construction sites, sloppily collected refuse, and the use of detergents are other examples of pollution from the by-products of modern living. Again, much effort has been expended in formulating code provisions to handle problems.

Unfortunately, an equal effort in enforcing these provisions at the local level has not been expended. While isolated cases are currently dealt with by the police, a concerted enforcement effort is necessary to reduce this peculiarly virulent form of pollution.

Residuals of Urban Decay

When cities die¹² or become dormant, much of the remaining "shell" of life remains in the form of uninhabited buildings, vacant lots and gaping foundation holes left by razed structures. The removal of old structures from the heart of central cities is often accomplished without any effort being taken to restore the resulting devastation on the urban landscape. Cellars of empty buildings become resting places for the remains of the buildings' superstructures.

Junked cars, refrigerators, other household appliances, tires, miscellaneous automobile parts and rotted lumber are further blights on the urban landscape. "Anti-dumping" laws are found in most codes. The difficulty of their enforcement is often compounded by a lax official attitude toward the problem. Yet, this is one area in which police action to correct the condition is an attractive solution—and one which has ample precedent. Not only can the police take action against violators, but they can also report on conditions needing correction by other municipal agencies.

Results of Overtaxing the Natural Environment

Sewage and urban run-off into our rivers and streams soon results in the death of the receiving body of water.¹³ Air pollution has created substantial health hazards because the natural "flushing" capacity of the atmosphere has been exceeded. The overloading of our environment soon manifests itself in the decay of natural resources and the resultant risk to health. Citizen assaults against the flowerbeds and grass in city parks, illegal tree cutting and indiscriminate attacks on beneficial urban zoological life are manifestations of the same kind of problem. Obviously, this is another area in which police can take action against individuals contributing to these conditions.

While each of these four forms of pollution enumerated above are proper subjects for enforcement action by local police, there is no articulated policy to guide their efforts. It may be said that this is a "blurred edge" of enforcement in that the methods and goals of police enforcement programs need clarification.

A MODEL FOR POLICE ACTION

A suggested solution to this problem includes the creation of a model "local government environmental code" which would provide the necessary guidance for municipalities in directing enforcement and levying sanctions for violations. Ample precedent exists for the use of the model code, especially in criminal law and environmental law areas.¹⁴ This approach has the advantage of integrating the experiences of many local municipalities in attacking the four problem areas discussed above. A model code would also provide the necessary background for each municipality's own definition of special problem areas and for setting realistic sanctions. Given this, local law enforcement agencies should be able to secure large improvements in environmental quality.



FOOTNOTES

* B.A. in Government, M.A. in Public Administration, Doctoral Candidate in Public Administration.

** B. A. in Economics, Doctoral Candidate in Criminal Justice.

¹ Common Council Doc. 9 (1834), *Report of City Marshal*, in R. Lane, *POLICING THE CITY*, p. 19 (Cambridge: Harvard, 1967).

² J. F. Richardson, *THE NEW YORK POLICE*, p. 150 (New York: Oxford, 1970).

³ D. Chappell, and P. R. Wilson, *THE POLICE AND THE PUBLIC IN AUSTRALIA AND NEW ZEALAND*, p. 9 (St. Lucia: Queensland, 1969).

⁴ E. McCourt, *SASKATCHEWAN*, pp. 49-50 (New York: St. Martins, 1968).

⁵ C. Reith, *THE BRITISH POLICE AND THE DEMOCRATIC IDEAL* (London: Oxford, 1943).

⁶ N.Y. Conservation Law §380(3) (McKinney 1967).

⁷ N.Y. Vehicle and Traffic Law, §§1219, 1220 (McKinney 1970).

⁸ *Id.* §375(31).

⁹ N.Y. Penal Law, §240.20(2) (McKinney 1967).

¹⁰ R. Dahl, *WHO GOVERNS?* (New Haven: Yale, 1961).

¹¹ *Mugler v. Kansas*, 123 U.S. 623 (1887).

¹² *See*, J. Jacobs, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES*, (New York: Vintage, 1961).

¹³ *See*, R. E. Coker, *STREAMS, LAKES AND PONDS* (New York: Harper, 1954).

¹⁴ National Association of Attorneys General, Committee on the Office of Attorney General, *THE OFFICE OF THE ATTORNEY GENERAL*, pp. 375-395 (1971).