



A well-functioning organisation for detecting and investigating environmental crimes: what is needed and how to get there? Experiences from Sweden

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<https://doi.org/10.3013/cepol-bulletin.envcrime.2024.010-a-well-fun>

Environmental crime is a relatively new area for law enforcement authorities to handle in many European countries. The investigations are complicated and require new investigation methods, competences and a multidisciplinary approach that is different from what police organisations are used to.

Most police authorities are at the beginning of a long process of finding out the best ways to combat environmental crimes. Instead of repeating the mistakes made by other countries in this process, it is important to learn from each other. This is especially relevant in the area of environmental crime, since environmental legislation in different Member States has a lot in common, it being based on the Environmental Crime Directive (ECD), other common EU legislation, treaties and conventions signed by all Member States.

The development of a law enforcement organisation specialising in environmental crimes started in Sweden in 1999 when a new cohesive environmental act entered into force. Since then, the police and prosecutor's office have reorganised their resources for handling environmental crimes, the Environmental Act has been modified and new structures for multidisciplinary cooperation have been formed, etc. Some progress has definitively been made, but a lot remains to be done. This article describes the initiatives taken to tackle environmental crimes in Sweden more efficiently and the challenges that have yet to be solved.

Keywords: Environmental crime, Environmental act, investigating crime, Swedish investigations, crime detection, Environmental Crime Directive (EDC)

Introduction

Based on experiences from the Swedish legal system, this article will describe some of the challenges of detecting and investigating environmental crime. Since the Environmental Act came into force in 1999, several measures have been taken to improve how authorities deal with environmental crime. These measures and some remaining challenges are described in the article.

The need for change and measures to be taken is based on the situation in Sweden. However, my experiences of working with environmental crimes in different parts of the world indicate that environmental crimes are largely similar (but maybe on different levels) wherever they occur in the world. Therefore, the ways to detect and investigate them are similar, too. Sharing best practices and solutions to common problems, as is the ambition of this article, is an efficient tool to improve how we handle environmental crimes in different countries.

Environmental crimes in Sweden

A large-scale environmental crime (e.g. the BT Kemi case in 1976; see BRÅ (2022)) where the authorities failed to penalise the perpetrator (in spite of clear evidence) was the spark that ignited efforts to improve environmental legislation in Sweden (Mårland, 2002). The efforts led to a new comprehensive legislation, the Environmental Act, enforced in 1999.

More comprehensive legislation was followed by the Swedish government's demand for more efficient enforcement of environmental crimes (and indirectly by the EU). Hence, the police and prosecutor's office started to organise their authorities in a more efficient way to combat environmental crimes. Emphasis was placed on how to detect serious environmental crimes and investigate them more effectively.

There has been some substantial progress since 1999, as I will describe in this article. However, there are still a lot of things lacking and deficiencies in how we handle, detect and investigate environmental crimes in Sweden.

The most worrying problem with environmental crimes is that the large majority of them remain undetected. The motivated criminal who wants to dump waste, release more chemicals than permitted from their plant or use an illegal pesticide faces a small or non-existent risk of detection.

Many other forms of crime are detected and reported by the victim of the crime; others are possible to detect because they occur in places where authorities are present. The latter is usually not the case in places where most environmental crimes occur.

Detection of environmental crimes is often a true challenge – mostly because it is a 'victimless' crime. Richard Macrory, Professor of Environmental Law at University College London, sums it up as follows:

The potential gap between the formal law and its enforcement is seen in many fields of law, but it raises particular challenges in the field of environmental protection. In areas of law such as competition, social security, or consumer protection, there are clearly defined victims with legal interests who can and will ensure

that the law is enforced. In contrast, the environment is often unowned in legal terms – with the consequence that the environment dies in silence, it has been said. The responsibility for its legal protection lies largely on public authorities – the police, local authorities or specialised regulatory agencies – often under competing policy priorities and severe resource constraints.

The second largest problem with environmental crimes is that if and when they are detected, the likelihood that the perpetrator will be brought to justice is slim. This situation is not limited to Sweden but is prevalent globally, too.

Legal background

The implementation of Sweden's new Environmental Act was an important improvement, as described above. The Swedish Environmental Act is now being revised for the second time. Clearer definitions of the use of administrative sanctions instead of legal sanctions, such as fines, and harsher sentences for crimes that are not dealt with by administrative sanctions are some of the goals of the revision of the Environmental Act.

Contrary to the ECD and environmental legislation in many other European countries, in the Swedish Environmental Act negligence is sufficient to constitute a crime in most paragraphs in the 29th chapter of the act containing the penal provisions. Intent or at least serious neglect is required in the ECD. The difference in the level of intent required by our national legislation and the ECD will be a challenge for Sweden when implementing the ECD.

Another fundamental difference is that Swedish environmental law criminalises unlawful acts, such as the release of environmentally hazardous substances. There is thus an early completion point. The ECD emphasises the **effects** of environmental crimes, that is, the damage that has occurred or that is expected to occur. The experiences of effect-based environmental legislation and how it can complicate law enforcement have led Sweden to argue for a more act-related structure of the ECD.

Experiences in investigations

In most countries, environmental crimes are a rather new phenomenon. There have certainly been acts by humanity that have had devastating effects on the environment since prehistoric times. However, laws to protect the environment are a recent phenomenon and, hence, environmental crimes, too.

Before 1999, there was no collective legislation protecting the environment in Sweden and, consequently, no specialist within the police or prosecutor's office. Cooperation between inspection authorities and the police was non-existent (Government of Sweden, 1997).

Since the implementation of the new and collective Environmental Act of 1999, the Swedish legal system has developed means and structures to handle environmental crimes effectively, at least more effectively than before 1999. This article is based on personal experiences of working in different positions within the police, including intelligence, investigations and strategic issues concerning environmental crimes since 1999 up to today. The descriptions of problems and possible solutions are based on the analyses that led to the organisational changes

and new methods that partly have been adopted since 1999, or are in a process to be adopted. To be able to investigate environmental crimes successfully, the following basic factors have to be in place.

- Motivated, well-trained staff with specialised expertise. This is not limited to the police. Probably the most important step in improving the handling of environmental crimes in Sweden was the creation of a specialised prosecutors' unit within the Office of the Prosecutor-General, REMA (the National Environmental Crime Unit). By letting environmental crimes be handled by a few specialists instead of them being spread out among general prosecutors, the competence in prosecuting increased significantly and the problems related to the priority given to environmental crimes in relation to other crimes were solved. Similar steps were taken by the police in 2015, such as creating regional specialised units for handling environmental crimes, work-related crimes and illegal hunting of protected species.
- Legislation that is well adapted and functional in order to protect the environment. The legislation has to enable legal actions against legal entities or individuals that violate environmental laws, combining natural science and law in a rational way.
- An organisation that enables specialised forensics to respond, take samples and collect evidence soon after an environmental crime is detected (as the evidence/pollutant will otherwise often be impossible to sample). The EU's ambitious project 'Protecting the European territory from organised environmental crime through intelligent threat detection tools' (Perivallon) seems promising when it comes to more effective detection of environmental crimes by using different technologies and AI.
- Cooperation between law enforcement authorities (i.e. police and prosecutors) and environmental authorities at the national level, and structured cross-border cooperation when investigating transnational crimes such as illegal export of waste.
- Inspection authorities that are the 'eyes and ears' of the police authority. They must have the competence, resources and authority to detect violations of the Environmental Act. They should work in such a way that they can discover more serious, deliberate environmental crimes in cooperation with law enforcement agencies.

Investigations into environmental crimes are both similar to and different from investigations into more traditional crimes, such as economic crimes, violent crimes and theft. It is mostly regulatory authorities that detect and report environmental crimes (while the public dominates in reporting other types of crimes).

There is often a clear need for assistance from specialists and external authorities (compared with most other crime areas, where the police authority has all the competence needed within its own authority). There are often no individual crime victims or plaintiffs in environmental crimes, as there are in violent crimes and cases of theft, fraud, etc. These factors have an impact on how environmental crimes are detected and investigated.

In other respects, environmental crimes are similar to other crimes and should be investigated in the same way. For example, when a uniformed, first-response unit comes to the scene of a suspected environmental crime (a stream full of dead fish, polluted by a nearby chemical plant, or a leaking oil cistern threatening the groundwater), it is important that it treats the scene as what it is, namely a crime scene. A crime scene should be sealed off, forensics

should be called in and witnesses should be interviewed (and, of course, resources to clear up the damage must be summoned).

Proposal for change

Effective and structured cooperation between police/prosecutors and supervisory authorities is considered to be a key factor when trying to improve the enforcement of environmental law. Different measures should be taken to enhance cooperation at different levels.

Regional and national liaison teams should be formed, consisting of representatives from different branches of the inspection service, the police, and other relevant authorities (customs, coastguard, etc., depending on the topic). Experts from inspection authorities can assist the police throughout the whole investigation process.

The use of criminal intelligence in combating environmental crimes on a large scale really can be a game changer. When applied to environmental crimes, intelligence can be very effective in detecting more serious offences at an early stage. For instance, illegal transboundary shipments of waste have successfully been targeted by using intelligence to locate which shipments to stop and search. A large majority of those targeted as a result of intelligence were found to be illegal, according to statistics from the Environment Agency of England and Wales (www.environment-agency.gov.uk). A more random approach would, of course, have been much less effective. Competitors, the public, compliance and monitoring authorities, branch organisations and bailiffs, etc., are valuable sources of information. Again, the fact that environmental crimes are relatively new and complicated and, so far, are not given high priority, hinders the effective use of intelligence to combat them. A clear directive instructing national and regional intelligence units to put effort into tackling environmental crimes is called for.

An increasing challenge for environmental crime units in many European countries is that environmental crimes are increasingly transnational and involve convergence crimes (ELI, 2022) and/or can be defined as organised crimes. This requires a multidisciplinary approach and structured sharing of information between law enforcement authorities and between law enforcement authorities and environmental authorities/supervisory authorities.

Strict legislation on confidentiality in Sweden, and probably in other countries as well, is regarded as a major obstacle to combating environmental crimes. Less strict regulation of what information authorities can share about environmental crime-related matters and when is needed. A number of initiatives have been undertaken recently by the government to investigate how sharing of information between different authorities can be done more efficiently (Government of Sweden, 2023).

As mentioned previously, environmental crimes are in some ways similar to and can often be investigated in the same way as other crimes. However, this is not always the case. A first-response unit with little or no experience of environmental crimes may consider an environmental crime, such as the ones mentioned above (a stream full of dead fish or a leaking oil cistern) to be 'someone else's problem', it not being a crime, but an 'accident'. The standard procedures for other types of crimes, such as securing and documenting the crime scene, collecting evidence and interviewing witnesses, etc., will not be carried out. We have some unfortunate examples of a first-response unit arriving at an environmental crime scene in Sweden, doing nothing, as one may expect from police officers, and,

hence, making further investigation of the crime impossible. The reason is that the officers did not realise that the incident was a potential crime. Luckily, we have other examples where officers first on the scene have done more than one could expect and collected all the evidence needed for a successful investigation. One cannot expect uniformed officers to be experts on environmental crimes. However, they should know what constitutes an environmental crime, the basic legislation and which experts to contact within the police and the regulatory authority when they arrive at the scene of a suspected environmental crime. There will need to be more of a focus on training and competence in the future.

Since the only really bad sample is the one that is not taken, legislation should allow civil authorities/supervisory authorities to take samples that can be used as evidence when the use of police forensics, for different reasons, is not an option. Traditional forensics, for example recording fingerprints left on empty bottles of chemicals, the marks left by tools on an opened oil drum or the tyre tracks left by a truck that dumped waste in a meadow, must not be forgotten (as sometimes happens) when investigating environmental crimes.

In my view, legislation has to focus on the (illegal) act itself. When a factory has exceeded the permitted emissions, it should be punishable. If an act causes, or is likely to cause, damage to the environment and people's health, etc., it should be punishable. The ability to protect the environment or people's health is much more complicated if an **effect** has to be proven. An effect can appear in the future or not be detected at all (being caused by the accumulation of toxic emissions over the years or because the link between a release of emissions and future health problems cannot be proven, even if relevant).

Inspection authorities have to work in such a way that they can also discover more serious, deliberate environmental crimes. Traditionally, inspection authorities have worked more as 'consultants' in Sweden, announcing their arrival at the company to be inspected in advance or, even worse, performing their inspections only by studying reports sent to them by companies. It is increasingly understood in Sweden that this defensive approach is used by companies that want to save money by not applying measures required by environmental law. Slowly, and under pressure from the National Environmental Protection Authority, the local and regional inspection authorities are shifting towards a more investigative and questioning approach.

Conclusion

In spite of all the improvements that have been made, there is still much that can be done to improve how we handle environmental crimes in Sweden as well as in most countries. Small changes to organisational structures, legislation, investigative methods or the ways organisations cooperate can make a big difference.

Until now, law enforcement authorities have been focusing on investigating environmental crimes, with improved results in recent years. Now, as the threats from environmental crimes increase (described well by Europol (2022)), we also need to focus on how to prevent and detect environmental crimes more effectively. Sharing ideas between countries is one key to success. Improved cooperation between authorities, the establishment of intelligence units focusing on environmental crime, a multidisciplinary approach and increased sharing of information between law enforcement authorities are some of the further measures that can be taken.

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