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ENVIRONMENTAL INJUSTICE / TROUBLED INVESTIGATIONS Last of four parts; EPA AGENTS ACCUSED OF GOING TOO FAR

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ORTHBRIDGE - One day two years ago, James Knott was in his office talking on the telephone when he noticed something unusual happening in the lobby of Riverdale Mills, his wire-mesh manufacturing plant here.

As he walked out, Knott saw nearly two dozen people, including several men wearing dark jackets with bold "US AGENT" lettering on their backs. Over the next seven hours, the agents, armed with semiautomatic pistols, seized boxes of documents from file cabinets and desks. The 69-year-old Knott was incredulous as he watched the scene unfold. In 1979, he'd bought this forgotten mill on the Blackstone River, 13 miles southeast of Worcester, pumped his own money into it, and over the ensuing years turned the granite and red-brick complex into one of the town's largest employers. The plastic-coated wire mesh that Knott invented is used to make lobster traps all over the world.

Knott wondered what he could have done to invite a raid of his company. Nearly a year later, on Aug. 12, 1998, he had his answer. Knott was indicted on two counts of violating the Clean Water Act for allegedly pumping highly acidic water into the town sewerage system.

In separate press releases, US Attorney Donald K. Stern and the Boston office of the Environmental Protection Agency condemned Knott, warning that a conviction could result in up to six years in prison and a \$1.5 million fine.

But Knott fought back and has turned the tables on his accusers. The charges against him were later dropped, and today it is the federal government that sits in court as a defendant, forced to explain its pursuit of Knott and allegations that some agents manufactured and withheld evidence.

The Knott case shines a light on the relatively unknown work of 200 EPA criminal agents who pursue polluters nationwide. The group has been responsible for some high-profile prosecutions, and the work of several agents has been praised both in New England and nationally. But there are also accusations that some agents have bullied targets of their investigations, padding enforcement statistics on the backs of small business owners accused of minor offenses.

"PROTECTING THE ENVIRONMENT IS OBVIOUSLY ONE OF THE MOST IMPORTANT JOBS OUR GOVERNMENT CAN DO," SAID JUDSON STARR, A WASHINGTON LAWYER WHO DEFENDS COMPANIES ACCUSED OF ENVIRONMENTAL CRIMES AND ONCE SERVED AS CHIEF ENVIRONMENTAL PROSECUTOR IN THE JUSTICE DEPARTMENT. "BUT FOR SOME, EXTREMISM IS NO VICE IN PROTECTING THE ENVIRONMENT." AN AGGRESSIVE TONE THE BROCHURE TOUTING THE CRIMINAL INVESTIGATION DIVISION OF THE EPA FEATURES THREE PHOTOGRAPHS OF AGENTS HOLDING SEMIAUTOMATIC HANDGUNS IN THE FIRING POSITION. TO THOSE CRITICAL OF THE DIVISION, THE BROCHURE SETS THE TONE FOR A LEVEL OF ENFORCEMENT THAT IS DISPROPORTIONATE TO THE CRIMES ALLEGED. Environmental crimes are different: They almost never involve defendants with histories of violence or prior criminal activity. The polluters are frequently corporations and search warrants are sometimes

executed in company offices.

Yet the EPA often sends in large numbers of armed agents to serve the warrants. "It's ridiculous," said one EPA agent, who asked not to be identified. "Everyone stands around and talks about why so many of us are needed."

The EPA criminal unit is reviewing its search warrant procedures, having established an advisory group earlier this year to make recommendations. The agency withheld records on complaints about search warrants when the Globe requested them under the Freedom of Information Act. The EPA said producing the records "could reasonably be expected to interfere with law enforcement proceedings."

Knott complained that his employees were repeatedly videotaped and photographed during the execution of the search warrant. One agent, according to court papers, allegedly told an employee, "Answer my questions or you will be obstructing justice. If you refuse to answer, you will be taken to court and you will have to pay your own legal fees."

The files of the EPA criminal investigation unit also contain complaints of inappropriate behavior, according to records the agency did release under the Freedom of Information Act.

Sylvia Lowrance, the EPA's deputy administrator for enforcement, said it is not unusual for those targeted by investigators to complain they were mistreated or that agents acted inappropriately. "I have been involved in the investigation of some of those allegations and the vast majority have proven absolutely false," she said.

The mayor of Pineville, La., last year complained that EPA agents were threatening employees of the city sewer department with indictments and jail time. "They are asking our employees who they are voting for in the mayor's election and using a strong-arm approach that if they 'come clean' they will not be prosecuted," Mayor Fred Baden said.

US Representative Maurice Hinchey, a New York Democrat, said he was disappointed with both the level of competence and professionalism of EPA criminal agents when he turned to the agency for assistance in investigating the contamination of drinking wells in Beekman, N.Y. Hinchey said he had credible evidence that illegal hazardous-waste dumping was fouling the ground water. The EPA, he said, mishandled the case.

"It was the carelessness, the unprofessionalism, the lack of attention to detail, lack of communication. The way they carried out their work was absolutely astonishing in their ineptitude," he said in an interview with the Globe. "There ought to be more uniformity in approaches. . .adhering to a high level of professional standards. This is important police work."

Plant owner defends record

Knott has never been bashful about taking on the government. For many years he had questioned the regulators who showed up at his mill, and disputed government interpretations of various laws. In 1993, he was cited for failing to get state approval for a private well at the plant, and in 1995 for failing to properly mark and cover barrels of waste oil. But Knott also insists he is both serious and sensitive to environmental concerns at his plant.

As evidence, he points to an award his company received in September from Governor Paul Cellucci for outstanding achievement in reducing the use of toxins. The state lauded Riverdale Mills for inventing and designing a system to eliminate solvents in the manufacturing process.

The EPA became interested in Knott two years ago, when it said it received an anonymous tip from a mill employee that the plant wastewater treatment system was inoperable and the facility was sending acidic water into the town sewerage system - a violation of the Clean Water Act.

When agents searched the mill, they said they found that wastewater was being diverted past the plant's treatment system and that key parts of the system had been dismantled. Knott denied the charge.

Inspectors tested the wastewater at the mill in October 1997 and again in November of that year. They focused their efforts on what they called "Manhole 1," which was located on the street just outside the plant. They did additional testing at "Manhole 2," which was 303 feet away. Both manholes are located on property owned by Knott. The second manhole is located next to where the wastewater from Riverdale Mills enters the town sewerage system.

According to the EPA, dozens of tests at Manhole 1 revealed highly acidic wastewater that violated clean-water standards. But the investigators performed only a handful of tests at Manhole 2.

As Knott and his attorney analyzed the EPA's test data, they were troubled by the way investigators recorded the only result at the second manhole that violated the law. The number "7" looked as if it had been changed to "4." The change was significant because a 7 indicated a pH range within legal limits (PH measures the acid level of water). A reading below 5 indicates the water is too acidic and could threaten plants and fish. So a reading of 4 was illegal.

In February, Knott hired a former FBI handwriting expert. As EPA agents watched, David P. Grimes examined the original test results. He said his examination of the documents "revealed alterations, overwriting of numerals and letters, and strikeovers without proper initials for correction." He noted "a numeral having a formation similar to the sevens in the notes was changed to a numeral four."

Two weeks later, US District Court Judge Nathaniel Gorton threw out the test results without ruling on the allegation the results were changed. Gorton said the EPA took samples on the Riverdale Mills property without informing Knott, even after agreeing to do the work in the company of a mill employee.

The government's case largely hinged on those two days of pH testing in 1997. The judge's ruling eliminated one day of testing as evidence, weakening the case.

Then, on April 23, the government withdrew its case against Knott before trial. Knott's attorney, Warren Miller of Boston, received a fax saying: "The United States submits that it has determined, in preparing for trial, that the evidence to support the counts of the indictment is insufficient to sustain the government's burden of proof."

But the dismissal did not end the Knott case. On June 3, 1999, Assistant US Attorney Jeanne M. Kempthorne, now chief of the corruption unit, sent a letter to Judge Gorton revealing that crucial information was withheld from the affidavit supporting a second search warrant at the mill in July 1998. She wrote, that the affidavit "omitted certain facts." What EPA agent Stephen Creavin failed to disclose was information that Knott says exonerates him. The affidavit did not include test results from November 1997 showing that wastewater at the second manhole - the one closest to where the mill wastewater entered the town system - met all standards.

Knott said the indictment against him has not only damaged his reputation, but threatened his business. A BankBoston loan officer threatened to cancel a \$2 million loan agreement because of concern about the potential \$1.5 million fine, said Knott. He said he has spent \$225,000 on legal fees and expert witnesses.

In June, Knott filed a Hyde Amendment complaint, which allows the subject of a criminal case to collect attorney's fees and other expenses if the government action is "vexatious, frivolous, and in bad faith." The case is pending. Knott has also filed a separate claim for \$2.51 million in damages under the Federal Tort Claims Act, alleging Creavin withheld evidence and falsely accused him of fouling local waters.

In his complaint, Knott alleges that there was never any credible evidence to support the charges against him. An engineering professor he hired from Worcester Polytechnic Institute, James O'Shaughnessey, re-created the plant conditions on the days the EPA agents tested. Even assuming the plant's internal treatment system wasn't working, the tests performed by the professor indicate that the lowest possible pH level of the wastewater produced at the plant was 6.5, still within legal limits.

"How, then, could the EPA agents have recorded pH of less than 5.0 at manhole No. 1?," Knott's complaint against the government states. "Only by the use of inaccurate equipment, incompetent testing, or deliberate falsification."

Even though it dismissed the case against Knott, the EPA and US attorney's office in Boston insist Knott did violate the Clean Water Act. "James Knott disconnected a pretreatment system," said Sam Silverman, an enforcement lawyer with the Boston EPA.

In a filing last month in response to Knott's complaint against the government, David M. Uhlmann, the assistant chief of the Environmental Crimes Section at the Department of Justice in Washington, wrote "there was at the time of the indictment and there remains today a substantial basis for the government's contention that [Knott] committed the crimes."

Furthermore, the government has denied that any of its agents acted inappropriately or falsified documents in the case against Knott. The decision to dismiss the case was simply a matter of prosecutorial discretion, the

government said, and not the result of "malicious or wanton" conduct.

Knott, however, suspects the case against him was a bit of bureaucratic payback. As the government provided Knott with files related to the case during the discovery process, his lawyer came across a copy of a letter written by Knott to state environmental officials in 1990. There was no explanation for why the letter, which involved a dispute over permitting for electric generators, was in the files of the EPA investigators.

At the bottom of Knott's letter is a handwritten message from an unidentified environmental official asking a colleague, "Do we just drop this?" Just below that note, the official makes another comment, one that Knott believes may explain why his case was so vigorously pursued.

"I wouldn't mind making his life miserable for awhile," the official wrote.

Cases questioned

Inside the EPA, some criminal staff members wonder how the Knott case ever became a criminal matter in the first place. Both locally, and in Washington, some EPA officials say there is debate about the selection of cases, and assertions that some smaller criminal cases would have been better handled as civil complaints.

There are other business owners like Knott asking how their cases became criminal matters. Several EPA agents pointed to examples of prosecuting "minnows" while ignoring the "whales."

One such case is that of Orlando D. Cervantes, a New Mexico farmer who pleaded guilty to fouling local waters with runoff from water used to wash his plants. Cervantes was indicted even though he paid to have the runoff hauled to a safe location after he was notified that tests showed a problem. "It was a PR stunt," says Cervantes. "Now they can tell Congress, 'Hey, look at what we are doing.'"

Gary Clinch of Longview, Wash., had charges dropped against him in May after a jury refused to convict him of charges he illegally removed asbestos. Clinch was repairing six carports at a building complex he owns when he said he unknowingly removed sprayed-on asbestos. After learning it was asbestos, Clinch said he paid an expert to haul it away. The EPA, however, considered it a criminal offense and Clinch was indicted last December, a year and a half after the asbestos was removed.

Gary H. Baise, a Washington lawyer who served as chief of staff to the first administrator of the EPA in 1970, said Knott and defendants in the other cases have legitimate complaints.

"The cases. . . are ones that would appear to be normal civil cases, traffic tickets," he said. "These cases seem to be going criminal. They have to make the numbers and make themselves relevant."

But Lowrance, the EPA's deputy administrator for enforcement, said the agency is blind to the size of a company, considering only what a person or corporation is accused of doing. "We target criminal misconduct," she said.

Recognizing the significant impact of a criminal charge, the EPA's criminal investigation division has guidelines to evaluate the relative severity of violations.

"There is universal consensus that less flagrant violations with lesser environmental consequences should be addressed through administrative or civil monetary penalties and remedial orders, while the most serious environmental violations ought to be investigated criminally," according to the guidelines. "The challenge in practice is to correctly distinguish the latter cases from the former."

In the case of Knott, whatever wastewater flows out of his plant ends up at the Town of Northbridge sewerage treatment plant about two miles away. The sewage is treated and sent into the Blackstone River. The town's plant superintendent, James Madigan, said he regularly monitors the pH level of the discharge he sends into the river. The pH level has always been within acceptable limits, he said.

Asked about the effect on the environment if Knott was violating the law as charged, Madigan said there was none.

"That was one of the concerns investigators had," Madigan said in a recent interview. "With flow time, [the Riverdale Mills wastewater] would be so diluted you wouldn't even notice it here. It would have no impact at all on us. I definitely told the investigators. That is one of the questions they asked me. They were concerned about that."

When asked if he testified before the grand jury that investigated Riverdale Mills, Madigan said no. "I was supposed to testify before the grand jury, but they called me and canceled," Madigan said. "They said it wasn't necessary."

End of series

Globe online This series is available on the Globe online at <http://www.boston.com>. Use the keyword: Pollution.

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GRAPHIC: 1. James Knott, owner of Riverdale Mills, said the indictment against him has not only damaged his reputation, but threatened his business. / GLOBE STAFF PHOTO/TOM HERDE 2. TO CRITICS, this photo from a brochure touting the criminal investigation unit of the EPA sets the wrong tone.

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