

PERSPECTIVE

Ethics

Thomas R. Cuba

You'll note that the title of this column has been changed from *Interactive Ethics* to just *Ethics*. The reason is that it is difficult to implement the interactive aspect of the column within the column itself given the deadline structure of the journal.

To accommodate the loss of the *interactive* nature of things, we changed the format around a bit and just present a situation and a discussion. Any comments are still most certainly welcome and could potentially appear in the Letters to the Editor section or as a responding article as appropriate.

For this discussion we present multiple situations to consider. Number one. You are meeting with a new client and he is telling you that he needs to fill in about 2 acres of wetlands in a remote location in order to have enough dry land to run his business. After you go through the explanation of permits, mitigation ratios, banks, expenses, and your fees, he sits back and thinks a while. Finally, he says, "OK, you get me a permit for the half acre under this here building and I'll take care of the rest."

Number two. You are meeting with a new client and he has asked you to brief him on the proper disposal of hazardous materials including medical and chemical wastes. He sits quietly while you explain about transporters, arrangers, approved disposal sites, continuous chain of custody documentation, and disposal fees. He sits back in his chair and thinks a while, maybe asks you a question or two, and says, "OK, thanks. Don't worry about it any more. I know of a hundred acres in west county that is just perfect for this stuff."

In these two situations, we have presented you with the foreknowledge of a crime about to be committed. The question is "What do you do now?" I actually consulted an attorney friend of mine on this one. I consulted only one because if you ask

more than one, you get different answers; so beware that other opinions may exist.

In reconciling these situations, there are a series of steps to take to assure first your own protection, second the protection of the client, and third the protection of the environment. My attorney friend said that you have absolutely no responsibility in these situations whatsoever. You are not a law enforcement officer, nor an officer of the court. But does it end there?

First of all, you should protect yourself and document your advice to not undertake any rash activities. Secondly, do the best you can to explain the ramifications of the actions to the client. This is what I meant by protecting the client. If the client is fully aware of the possible outcomes of conducting illicit environmental activities, he is protected in the sense that he has full knowledge for use in making a choice. If the client still chooses to err, he does so at a more severe risk. In doing these things, you have taken the steps necessary to achieve the third goal of protecting the environment.

These actions are self-preservationist but are also an ethical responsibility. To fully explain the situation to the client and document that explanation is what we do as professionals. Just because the intended activity may be illegal should not change that.

The second part of the question is "Should you tell anyone?" Your new client has clearly intimated that he intends to commit a crime. Do you have a responsibility to alert the authorities? Conversely, if you did so, do you have a liability should you defame the person inappropriately?

Legally, my advisor says there is no responsibility as no crime has been committed. Ethically, we must ask ourselves if we in fact believe the intent of the client. Does the client have any history in these matters? Is he just venting or is he seriously intending to commit the crime implied? While these questions must be asked, they only influence our decisions and do not define them for us. A history of environmental crime for example could be interpreted to make the client a seasoned felon or someone who has learned their lesson the hard way. The

answers may only affect how strongly we word our documentation of our advice.

The real test of this ethic is the same one that counselors and attorneys use: "Is there an imminent threat?" A psychologist is not allowed to divulge material shared in session unless there is a clear indication that the person is about to go commit murder. Are these environmental crimes in the same category? The filling of wetlands is not. In most instances that is a misdemeanor. The illicit disposal of hazardous waste is a felony, but does it represent an imminent threat to human life? Remember that these are not crimes against the environment—they are crimes that violate the law. It is not illegal to pollute the ground or to fill a wetland. It is illegal to do so without permission. As an aside, were the person intending to dispose of the hazardous material by dumping it in the drinking water reservoir, you may have a responsibility to alert the authorities to be extra cautious in their testing.

So what do you do? If you truly believe the client is intending to conduct this activity, your first choice is whether to remain in his employ. If you do, you may become an accessory. If you do not, he is left with no source of advice. You have no ethical responsibility to choose one way or the other. Simply proceed with extreme caution, and perhaps consult your own attorney.

When you read later in the newspaper that the event has occurred and has been discovered, do you have a responsibility at that point? This is where the previously recommended documentation comes into play. If you advised your client of the situation and the event occurred, neither your documentation nor your conversation will be admissible as evidence that the client in fact committed the crime, but may well be relevant to penalties after a conviction has been rendered. In the wetlands case, the event is normally handled administratively and your paperwork is not required. In the event of the felony, the paperwork will speak to intent and would be relevant in sentencing after conviction. Ethically, your paperwork should be given to both the defense attorney and the district attorney's office once a case becomes a criminal pros-

ecution, not before. How or even if it is to be used will be left to the judgment of the attorneys and the court.

So, as much as it pains me to agree with an attorney, I must admit that the legal advice and the ethical advice seem to coincide. The simple voicing of a threat to pollute or destroy wetlands does not elicit an ethical mandate for action on your part.

As a footnote, I am forced to add that the above has been prepared in light of criminal proceedings and should an attorney decide to proceed in civil court under the double jeopardy of a wrongful pollution suit, you're pretty much on your own.

Address correspondence to Tom Cuba, Delta Seven Inc., PO Box 3241, St. Petersburg, FL 33731; (fax) 727-550-2513; (e-mail) Delta-Seven@worldnet.att.net.

Thanks to the year 2000
NAEP Conference Sponsors



PROJECTGUIDES.COM

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

OXFORD UNIVERSITY PRESS

PRETI, FLAHERTY, BELIVEAU, PACHIOS & HALEY, LLC

NORMANDEAU ASSOCIATES

MCKENNA & CUNEO, LLP

GEORGE & LYNDA WOOD

ENVIRONMENTAL SCIENCE ASSOCIATES

ENVIRONMENTAL CAREERS ORGANIZATION

CABOT CORPORATION

QUIBLE & ASSOCIATES

VERRILL & DANA

OAK RIDGE NATIONAL LABORATORY

ARIZONA ELECTRIC POWER COOPERATIVE, INC.

NATIONAL SEVERE STORMS LABORATORY

MACKWORTH ENVIRONMENTAL

MUSKIE SCHOOL OF PUBLIC SERVICE

GARY KELMAN

MICHIGAN CHAPTER

CYNTHIA FRIDGEN

CTI & ASSOCIATES

AECOS, INC.

ENFO.COM

For information on serving as a sponsor for next year's conference in Washington, DC, contact Donna Carter, Conference Coordinator: (phone) 877-679-3913; (fax) 863-679-3520; (e-mail) conference@naep.org.