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June 10, 2014

Good afternoon:

On May 13, 2014, I participated in a roundtable discussion at a continuing legal education seminar put on by the Wisconsin Chapter of the Institute of Scrap Recycling Industries (WISRI) at Lambeau Field. The event included a private tour of Lambeau, including skyboxes and the locker rooms. An email invitation went out to prosecutors statewide. It was a free seminar designed to educate law enforcement and prosecutors on Wisconsin law relating to scrap recycling and encourage stronger partnerships. This type of event is likely to occur in the future, and WISRI hopes to have more prosecutors and law enforcement in attendance.

There was at least one representative from the Brown Co. DA's Office present during the day session before I got there. I was there for the roundtable later in the afternoon. No other prosecutors were present. I get that. We are all swamped, and even though a seminar is free, it will still cost us valuable time.

I am writing, though, to encourage everyone to consider taking advantage of this opportunity if it is offered in the future. I expect that it will be offered again.

Also, I am hopeful that all of us might consider looking at these cases as more than just simple theft. It was painfully clear that law enforcement and law-abiding scrap dealers are extremely frustrated with their inability to get cases charged against those who are trying to sell stolen scrap materials and against those scrap dealers who are not following the rules. I defended our offices and explained our need to prioritize cases and pick our battles given our extreme staffing shortages. Still, they made a strong case that these cases should be viewed more seriously by prosecutors, because these crimes have a larger impact on the communities we serve than run of the mill theft cases. I agreed to send this email in an effort to convince my colleagues that these cases are worthy of some priority in our offices.

Wisconsin modified the rules for scrap recyclers in 2008 via 2007 Act 64, which created section 134.405 and modified section 943.20(2)(d) to add specific provisions relating to scrap and metal theft. The legislature reacted to what was presented to them as a crisis.

First, energy producers and distributors and transportation providers were experiencing thefts that were endangering the safe and efficient distribution of energy and transportation of people and goods. For example, copper thieves were, and still are, breaking into electricity distribution facilities, such as substations, and stealing the grounding cables and plates. The utility company will not immediately be aware that the theft has occurred, and until it is repaired, it is a very dangerous situation that could be deadly to curious kids who wander through the hole cut in the fence.

Second, businesses experience huge problems with thefts from their scrap recycling bins and even from the fleet vehicles. The scrap price for certain metals had risen significantly, and thieves have become bolder. In an additional example from the utility industry, thieves have stolen entire reels of insulated wire from developments and have stripped all of the wiring out of homes under construction.

A major source of the problem was a lack of record keeping requirements. There were virtually no restrictions to help keep tabs on those scrap dealers who were less than honest, and even the honest dealers were not keeping records that law enforcement could use to track down thieves once it was discovered that a particular scrapped item was stolen. The spool of cable from the subdivision development site was clearly not scrap. No honest dealer would have taken that in as scrap. But someone has. It would not have been stolen if there were not someone willing to buy it. While the dishonest and careless scrap recyclers are far from the majority, the thieves know who they are.

Along with the scrap recycling industry, law enforcement was pushing for change, because they had no means of tracking where stolen property may have ended up. They also pushed for stronger enforcement provisions as an effort to deter further crimes.

Furthermore, these thefts are much more than just thefts of refuse. Often, there is considerable damage to property that must be repaired when the thefts occur.

It is also important to look at who is committing these crimes and what bigger problems are being fueled by this activity. Many, perhaps most, of the offenders are stealing to fund drug addictions. We are all experiencing severe effects on our communities from drug addiction. Thousands of people are overdosing in Wisconsin every year from opiates. Hundreds are dying. Most are under 25 years of age. Many of these scrap metal thieves are stealing to support a heroin habit, so this is more than just theft when we measure the overall impact on our communities.

A couple of us, including John Chisolm and I, were fortunate enough to be invited to a summit on this issue back in 2007, before the law changes were enacted. We got the message, and the Milwaukee DA's Office has a designated prosecutor on these cases. Obviously, the Milwaukee DA's Office is probably the only office that can afford to assign a designated prosecutor to take these cases, but there are other ways all of our offices could put a priority on these cases. I put a strong pro-prosecution policy in place. That policy includes not just going after the thieves, but enforcing the rules on scrap purchasers under section 134.405. The law-abiding scrap purchasers have invested significant amounts of money to develop data collection and storage systems to comply with the law. They get priced out by those who don't follow the rules. We need to make sure that all are following the rules.

Laws have been enacted to help us to make these prosecutions meaningful. Section 134.405 provides escalating criminal penalties for scrap dealers who do not keep the records required

under the law. The threat of charges has convinced many of the evasive dealers to get in compliance. If we do not have uniform enforcement statewide, though, the illegal activities will move to the counties where enforcement of the scrap dealer standards is light or nonexistent. None of us would want our county to become the Mecca for stolen scrap. None of us wants to attract drug addicts from other counties to our communities to sell their stolen materials. It is in each of our interests to see that the scrap dealers in our counties follow the rules.

We have some help in being able to charge felonies in scrap theft cases:

943.20(2)(d) provides that if the property stolen is scrap metal, the "value" also includes any costs to repair or replace any property damaged in the theft or removal of the scrap metal. Thus, costs to repair the hole in the cyclone fence can be included in the value.

971.36(3) provides the potential to charge multiple individual thefts as a single crime if the property belonged to the same owner and the thefts were committed pursuant to a single intent and design or in execution of a single deceptive scheme. That can help us get the value up to the felony level.

We also have some help in charging a felony criminal damage to property:

943.01(2)(b) provides that if the property damaged belongs to a public utility or common carrier and the damage is of a kind which is likely to impair the services of the public utility or common carrier, it is a felony. For instance, if ground wires are removed from electrical utility equipment, a lightning storm would likely result in widespread power outages.

943.01(3) provides that if more than one item of property is damaged pursuant to a single intent and design, you may combine them into a single charge that could bring the value of the damage over the felony threshold level.

Even if we can not charge a felony, we should keep in mind that most of the people committing these thefts are not caught the first time. Many have a scheme that they have been carrying out for some time. We need to start somewhere, even if it is just a misdemeanor, and we should take it seriously.

NOTES RE: WISRI ASSISTANCE:

Your local utility provider, especially the one who suffers the loss, will assist in providing the expert opinions and testimony you need.

WISRI will connect you with members of their organization who can provide expert guidance in determining the market value of the stolen items and any other help you may need.

All WISRI member facilities comply with 134.405 and collect and maintain detailed records relating to individuals who have scrapped items.

Also, WISRI is very willing to assist in arranging tours for any of us who wish to see first-hand how their member facilities function.

How can you reach a WISRI representative?

Danielle Waterfield is Assistant Counsel/Director of Government Relations for WISRI. She can get you connected. Reach her at 202/662-8516 or danielwaterfield@isri.org

Paul Breckheimer is the new President of WISRI. He is with Sadoff Iron and Metal in Manitowoc and Sheboygan. Reach him at 920/457-2431 or breckheimerp@sadoff.com

If you have questions, I am happy to try to help. Email is usually best, but my direct line is 262 548-7100.

Very truly yours,



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Waukesha County