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HYNES DEFENDS JURISDICTION IN ENVIRONMENTAL CRIME CASE

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WHEN the Brooklyn District Attorney's Office announced the indictment of Constantine Quadrozzi and his concrete company for discharging waste into Newtown Creek, District Attorney Charles J. Hynes urged local polluters to take notice.

'This indictment sends a message that we will not tolerate these actions,' he said at a January 2005 news conference.

While Mr. Quadrozzi, a vice president and chief environmental officer at what was then called Quality Concrete, might have been one of the first people in the five boroughs to face criminal charges for environmental crimes, prosecutors in Brooklyn clearly intended to bring more.

Robert Kennedy Jr., the chief prosecuting attorney of Riverkeeper, an advocacy group that spurred the investigation, commended the district attorney for bringing the case, telling The New York Times that too often prosecutors did not regard environmental crimes as real crimes.

A year and a half later, the Quadrozzi case is in jeopardy, after a Brooklyn judge last week said Mr. Hynes' office had overstepped its authority by charging Mr. Quadrozzi without the permission of the Department of Environmental Conservation (DEC). Mr. Hynes vowed earlier this week to fight hard to keep the case alive.

'It is perfectly clear that I have complete jurisdiction to prosecute criminal violations within Kings County,' he said through a spokesman.

The Attorney General's Office, which declined to comment for this story, has backed Mr. Hynes' prosecution. The DEC also supported the position.

Peter R. Sullivan and Brian Gardner of Sullivan Gardner, which represents Mr. Quadrozzi, said the ruling was significant for its scope.

'It applies to air and water pollution cases brought by the attorney general and the district attorney,' Mr. Sullivan said. 'DEC action is required as a predicate.'

The jurisdiction dispute arises out of the meaning of [Environmental Conservation](#)

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[Law §71-1933](#) and [§71-0403](#).

In *People v. Quadrozzi*, 7895/04, Justice Carolyn E. Demarest cited the following language from [ECL 71-1933\(9\)](#): 'All prosecutions under this section shall be instituted by the department or the commissioner and shall be conducted by the Attorney General in the name of the people of the state of New York.' The decision appeared in yesterday's Law Journal.

[ECL 71-1933\(9\)](#) was enacted in 1949 as part of the Water Pollution Control Act for New York state. The ECL has undergone several revisions, including an extensive one in 1988, but subsection 9 has remained much the same.

In 1980, however, the state Legislature enacted [ECL §71-0403](#) after the Appellate Division, Second Department, ruled that only the attorney general could prosecute a violation of [ECL §71-2105](#), which limits smoke stack emissions. In a memo to Justice Demarest last month, Assistant Deputy Attorney General Julieta V. Lozano argued that the 'legislative history [of [ECL §71- 0403](#)], the history of prosecutorial powers, and common sense' dictated that the district attorney had independent authority to prosecute violations of [§71- 1933](#).

Justice Demarest rejected the argument, citing both the language of the provision and the legislative history.

'A review of the relevant provisions of the ECL and the legislative history of [ECL 71-0403](#) has convinced this Court that [ECL 71-1933](#) requires some form of action by the Commissioner to institute a criminal prosecution, be it by request pursuant to [Executive Law §63\(3\)](#), by acting as a complainant or by formal direction to the prosecutor, before either the Attorney General or the District Attorney may initiate such action in a court of law,' the judge wrote. 'The failure to establish the authority to prosecute renders any indictment fatally defective.'

Justice Demarest also suggested the case should be dismissed 'in the interest of justice' because Mr. Quadrozzi and his company had spent \$350,000 to repair the problems that had allowed pollutants to leak into the river. She said 'there appears to be no additional benefit to be derived to the community by further prosecuting Defendants.'

Mr. Hynes took exception to that reasoning.

'It's not within the authority of Judge Demarest that she should make the decision as to whether or not the site as been cleaned up,' he said.

Mr. Hynes' office recently announced a criminal prosecution against the owners of Greenpoint Terminal Market, which burned down in a fire last month. The owners are accused of failing to repair dilapidated piers and concrete bulkheads. It is unclear whether Justice Demarest's ruling might affect such a prosecution.

Though environmental prosecutions are not common among district attorneys in the other four boroughs, the Westchester District Attorney's Office has an environ-

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mental crimes bureau dedicated to such cases.

Lucian Chalfen, a spokesman for the office, said the office is reviewing Justice Demarest's decision but declined further comment.

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