

# U.S. EPA CRIMINAL INVESTIGATION DIVISION:

## STORMWATER ENFORCEMENT OVERVIEW



# *What Makes a Case Criminal?*

**LYING**

**CHEATING**

**STEALING**

# Criminal Enforcement: EPA CID



- Environmental Crimes Are Like Any Other Crime:

✓ **LYING** : To Regulators

✓ **CHEATING** : Not Incurring Costs Paid by  
Businesses Disposing of Waste Properly

✓ **STEALING** : From the Customer that Paid for  
Proper Disposal

# ENVIRONMENTAL CRIMES

ENVIRONMENTAL CRIMES ARE  
USUALLY COMMITTED WITH A  
SPECIFIC OBJECTIVE IN MIND:

**MONEY!**



# Environmental Criminal Enforcement: Why?

- Correction of ongoing violation
- Deterrence of future violations
- Equal treatment of regulated community
- Punishment of serious violations
- Effective use of resources

# INVESTIGATIVE DISCRETION: THE BIG PICTURE

## Threshold Questions for the EPA CID Investigator:

- ◆ Initial determination: Harm – Is there actual or threat of significant harm to human health & the environment?
- ◆ Culpable Conduct: Do the bad guys fit a profile?
- ◆ Flagrant Violators: Is there a routine pattern of violation?



**Enforcement priority?  
Seriousness of crime?  
Deterrent effect?  
Offender's culpability?  
Criminal History?  
Willingness to cooperate?  
Probable sentence?**



**Prosecute**



**Refer to civil  
Refer to other federal agency  
Refer to state  
Close investigation**

# ROLE OF THE CRIMINAL INVESTIGATOR:

- ◆ Coordinate all investigative team members
- ◆ Interview witnesses & collect evidence
- ◆ Draft & file investigative reports
- ◆ Coordinate with prosecutors
- ◆ Notify civil authorities of environmental threats
- ◆ Testify in judicial proceedings

**LAW &  
ORDER**



**We involve the U.S. Attorney's office and/or DOJ early on  
for prosecutorial assistance  
evidence gathering, search warrants, determining  
what charges to bring, etc.**



# Our focus – high impact cases



**Loss of life**

**Serious injury**

**Exposure**

**Pollution**

**Priority**

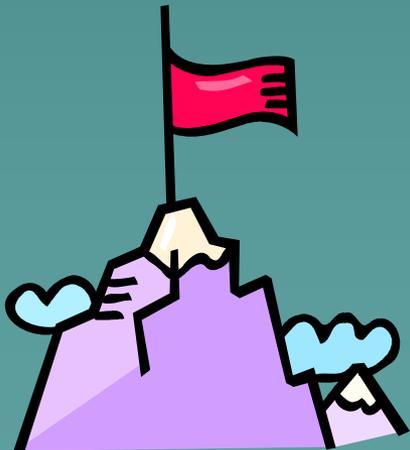
**Nationwide**

**Deterrence**

# Signs of Environmental Crimes

## *RED FLAGS!*

- Citizens Reports
- Employee Complaints
- Unusual after-hour Business Activity
- Disposal/storage in unusual areas
- Distressed vegetation
- Fish kills



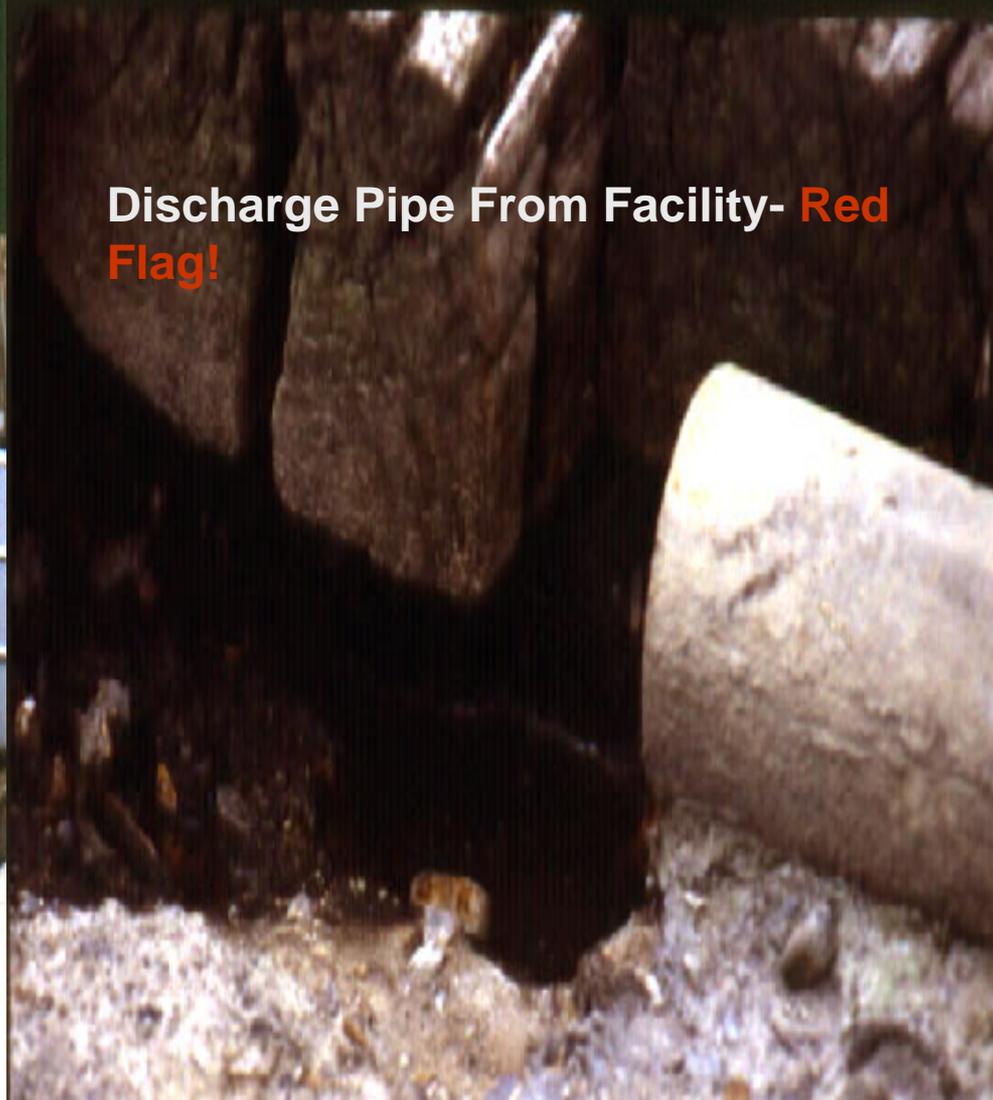
**NOTE: DRUMS ARE  
INVERTED TO DRAIN  
CONTENTS – RED FLAG!**



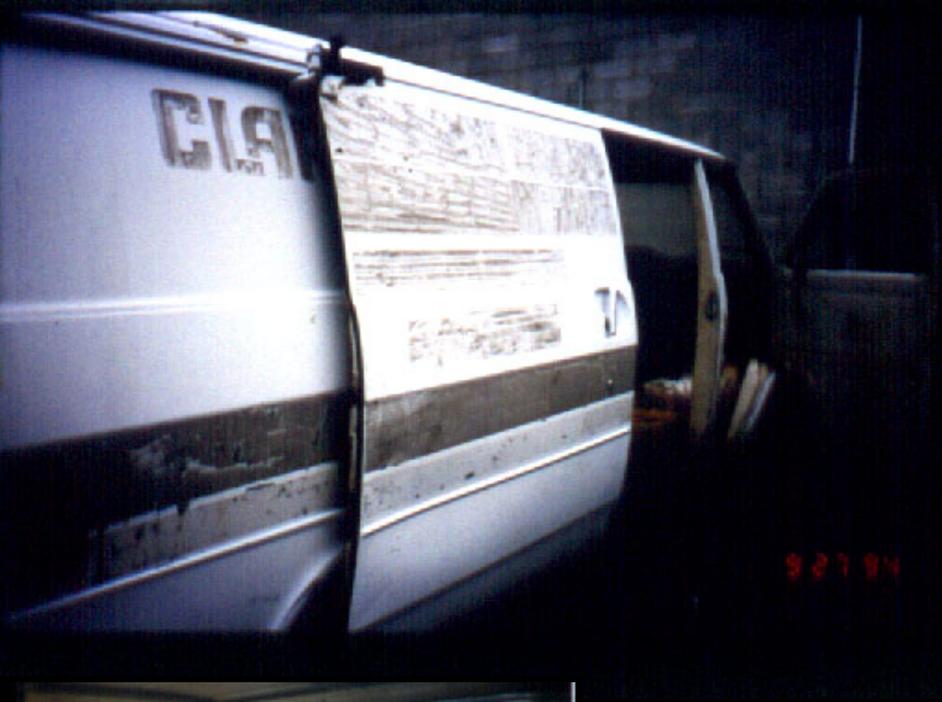
**Pesticides / Chemicals  
Draining into Ditch- Red  
Flag!**



**Discharge Pipe From Facility- Red  
Flag!**



**(Pesticides and chemicals draining into  
ditch)**



## Vehicle Disposals





**Evidence of Crime?**



# INVESTIGATIVE TECHNIQUES

## HOW DO WE CATCH 'EM?



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# HOW WE CATCH 'EM...

- ▶ Automatic Waste Water Samplers
- ▶ Video cameras (sewer lines, facilities)
- ▶ Dye tests
- ▶ Taggats
- ▶ Search warrants
- ▶ Subpoenas
- ▶ Surveillance
- ▶ Undercover



# HOW WE CATCH 'EM...

## Traditional Forensics:

Fingerprints on discharge equipment, could make our case, just like a traditional criminal investigation.



# YOUR PREVIOUS INSPECTIONS



# Key Information You Can Provide:

- ◆ Technical and regulatory expertise
- ◆ Detailed understanding of company operations
- ◆ Testing, sampling, laboratory analysis
- ◆ Help identifying specific elements of criminal violations
- ◆ Explain how past violations show knowledge & probable cause



# Criminal Violations

- ◆ Direct Discharges
- ◆ Pretreatment Violations
- ◆ False Statements
- ◆ Tampering with Equipment and Methods
- ◆ Knowing Endangerment

Indirect or Direct Discharge!





Indirect or Direct Discharge!

# PRETREATMENT VIOLATIONS

## *Elements of the Crime:*



- ◆ A Person knowingly introduces into a Publicly Owned Treatment Works (POTW)
- ◆ A pollutant or hazardous substance
  - which could cause damage to the system
  - which could result in bodily injury
  - or which violates federal pretreatment standards or a local permit

# Direct Discharges to Waters of the United States

- ◆ 33 U.S.C. 1319(c)(1) or (c)(2) as violations of section 1311(a) or Sections 1311(a) and 1342 of Title 33.
- ◆ Elements of the offense:
  - A person, including responsible corporate officers for criminal cases
  - Knowingly/negligently discharged a pollutant
  - From a point source
  - Into a water of the United States
  - Without or in violation of a permit

# Falsification and Tampering

- ◆ Knowingly making a false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained
- ◆ Knowing falsifying or tampering with monitoring device or method
  - 2 years imprisonment; \$10,000 fine
  - 42 U.S.C. § 1313(c)(4)
- ◆ Most commonly involves falsification of discharge monitoring reports (DMRs) by holders of NPDES permits

# SCHEMES -TAMPERING and FALSE REPORTING

- ◆ **Initial Reporting** : Falsifying the size of the operation, chemicals and usage, anticipated waste by-product information.
- ◆ **Periodic Reporting**: Making up numbers or altering the analysis so the numbers reported to regulators are “good”.

# SCHEMES -TAMPERING and FALSE REPORTING

**Lab Reports and Results:** Adding extra fish to test samples at a “friendly” lab, “adjusting” readings to provide client with a passing analysis.

**Samples:** Does the sample submitted to the lab accurately represent the waste stream or, have they taken multiple samples and submitted only the “best” for analysis?

# SCHEMES -TAMPERING and FALSE REPORTING

**Automatic Samplers:** Surruptiously removing the sampler during actual discharge time, then filling sample jars with clean water, or, putting the intake hose into a clean water source.

**Changing Operations:** Holding back normal waste streams (possibly in unidentified holding tank) or, shutting off certain manufacturing processes or systems during inspection.



# Clean Water Act Criminal Penalties



- ◆ Discharge – Felony 3 years
- ◆ Discharge – Misdemeanor 1 year
- ◆ Knowing Endangerment 15 years
- ◆ False Statements 2 years
- ◆ Fines – Felony \$50,000/day
- ◆ Fines – Misdemeanor \$25,000/day

# Knowing Endangerment

- ◆ Defendant knew at the time of the event that he or she placed another person in imminent danger of death or serious bodily injury.
  - 15 years imprisonment; \$250,000
  - 33 U.S.C. § 1319(c)(3)

# Allan Elias and Evergreen Resources, Inc.



# Allan Elias and Evergreen Resources, Inc.

- ◆ Allan Elias owned Evergreen Resources, Inc. (a phosphate fertilizer plant) in Soda Springs, Idaho. He ordered one of his workers to clean out a tanker trailer knowing that it contained cyanide. He told the worker, Scott Dominguez, that it only contained mud and water.
- ◆ Dominguez entered the tanker, was overcome by the gas and ended up brain damaged for life. The fire department cut a hole in the tanker to pull Dominguez out, barely saving his life. Elias also lied to the fire department HazMat team about the contents of the tanker.
- ◆ Elias was convicted and received one of the longest prison terms for an environmental crime in US history: **17 years in prison.**

# *PRETREATMENT VIOLATIONS*



# Perfection Industries Inc.



# Perfection Industries Inc.

## ◆ Lead:

- August, 2001, the North Texas Municipal Water District (NTMWD) alleged that Perfection, a metal plater operating 2 facilities in Terrell, Texas, was illegally storing hazardous waste i.e., plating bath residues, where cyanides were used.
- October and November, 2001, EPA Region 6 and TCEQ Region 4 inspect, find more hazardous waste generated and stored.
- How about pretreatment?????

# Perfection Industries Inc.

**May, 2002:** In November, 2001, TCEQ conducted a pretreatment inspection of the NTMWD, during which they visited Perfection's facilities.

Observed what appeared to be untreated plating wastewater being discharged at both facilities.

NTMWD conducted covert 24-hour composite sampling of Perfection's Metro Drive facility wastewater effluent from Nov. 12, 2001-Mar. 1, 2002

Analyses of samples taken from Nov. 12- Jan. 28, 2002, revealed Perfection violated the conditions of their pretreatment permit **213 times**, including excessive discharges of chromium, silver, zinc & cyanide

# Perfection Industries Inc.

## ◆ CID Investigation:

- Retrieved copies of SMRs submitted by Perfection to the City & NTMWD. SMRs had attached sample analyses reports (SARs) conducted by Perfection's contract laboratory, ERMI Laboratories.
- Via court order, we obtained original sample analyses reports from ERMI.
- We compared Perfection's SMRs with attached SARs against original sample analyses reports from ERMI. We discovered:
  - ✓ **Five instances**- Perfection conducting additional unreported sampling during the monitoring period.
  - ✓ **Three instances**- altered SARs submitted by Perfection.

# Perfection Industries Inc.

## ◆ CID Investigation:

- July 26, 2002, CID interview of former Perfection employee William "Billy" R. Janicek
  - ✓ Janicek confessed to falsifying Perfection's April, 1998, SMR
- July 29, 2002, CID interview of current Perfection employee Martin Bruce Booth
  - ✓ Booth admitted that Perfection was illegally storing hazardous waste. Confessed to falsifying Perfection's June, 2000, SMR

# Perfection Industries Inc.

July 30, 2002, members of the Texas Environmental Enforcement Task Force executed federal search warrants at both Perfection's facilities -

In an interview conducted during the warrant, Booth admitted: Falsifying another SMR & discharging untreated wastewater.

Investigators recovered a loaded Mossberg shotgun from Perfection's Metro Drive facility belonging to McNair.

# Perfection Industries Inc.

## ◆ Adjudication

➤ March, 2004: Janicek was charged with three felony counts – knowing discharge violation of a pretreatment program; submitting a false SMR; submitting a false SMR via U.S. Mail

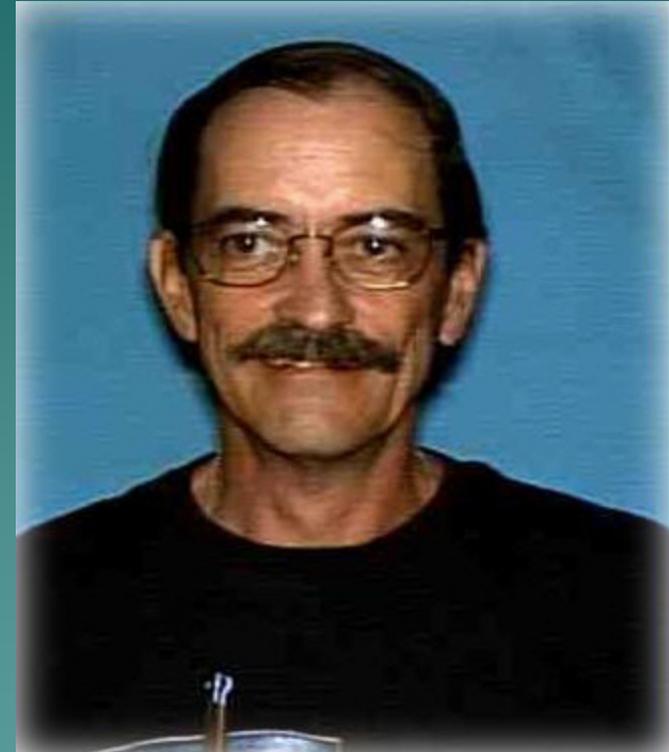
✓ May, 2004: Janicek plead guilty to the false statement count, was sentenced to 2 years probation and \$3,000 fine.



# Perfection Industries Inc.

## ◆ Adjudication

- April, 2004: Booth & Perfection charged with 11 felony counts, including 3 mail fraud, 3 False Statement, and 5 CWA
  - ✓ August, 2004: Perfection plead guilty to 1 False Statement count & was sentenced to 5 years probation and a fine of \$150,000
  - ✓ July, 2004: Booth plead guilty to 1 False Statement count and was sentenced to 1 year of probation



# Perfection Industries Inc.

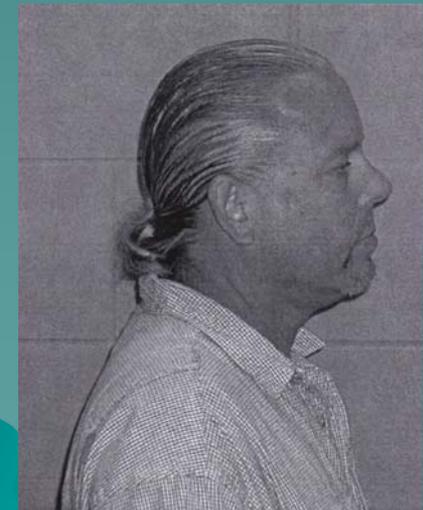
## ◆ Adjudication

- August, 2004: Dile Kent McNair charged via information with 1 count of being a felon in possession of a firearm
  - ✓ August, 2004: McNair plead guilty to the sole count and was sentenced to 180 days home confinement and 3 years probation



# UPDATE

- ◆ October 2, 2007: Dile Kent McNair and Extreme Metal Finishing, Inc., were indicted by the Federal Grand Jury in Tyler, Texas
  - ✓ Two counts of illegal storage of hazardous waste
  - ✓ Two additional counts of bankruptcy fraud against McNair
- ✓ October 4, 2007: EPA-CID, TCEQ Special Investigations and the Rains County Sheriff's Department arrested McNair
- ✓ McNair is currently out of jail on bond, facing not only the new charges but also the possible revocation of probation



# David van Dyke



# DAVID VAN DYKE

- ◆ Van Dyke was the certified operator of the Warsaw, Indiana WWTP, which discharges into Walnut Creek, a tributary of the Tippicanoe River. Rather than pay for sludge disposal, the defendant ordered that sludge be recirculated within the plant.
- ◆ This killed the plant's biological treatment system, leading to the release of untreated sewage into the creek.
- ◆ Thousands of fish were killed in Walnut Creek between late July and early August 2002 as a result of these activities. He also altered lab reports to the state environmental agency.
- ◆ He was sentenced to 46 months in prison.

# CASE EXAMPLE: Dakota Plating Investigation



# Background / Chronology

- ◆ Electroplater – Zinc
- ◆ Sioux Falls, South Dakota
- ◆ Began business in 1992
- ◆ Reported as “No Discharge” facility from 1992 – 1996
- ◆ Informant calls City Wastewater Dept. in March 1996 – Search Warrant
- ◆ EPA – CID investigates 1996 – 1997
- ◆ Defendants sentenced April 1998

Hoechst



**Illegal Discharge Point- Hidden under block**

4 3'96



Note: staining from plating waste

4 3'96



City Inspectors sealing illegal drain

4 3'96

# Convictions

- ◆ Parent Corporation “Sun-Wise Systems” pled **guilty to felony Knowing Discharge of Wastewater**
- ◆ Owner and 2 employees pled **guilty to negligent Discharge of Wastewater**
- ◆ Foreman of facility pled **guilty to Conspiracy by covering up the scheme**

# Sentencing

- ◆ Sun-Wise Systems, parent corporation:
  - \$7500 fine
  - \$15,000 restitution to City of Sioux Falls, SD
  - \$7500 restitution to the Big Sioux River Environmental Trust Fund
- ◆ President, Sun-Wise Systems, Inc.:
  - 4 months imprisonment
  - 4 months home confinement/ \$3000 fine
- ◆ Foreman:
- ◆ 1 year probation/\$300 fine
  - 80 hours community service
- ◆ Pretreatment Coordinator:
- ◆ 1 year probation/\$250 fine
  - \$250 restitution to the Big Sioux River Environmental Trust Fund
  - 80 hours community service

# RABUN DAIRY CASE



# RABUN DAIRY CASE

- ◆ **January, 2007:** EPA-CID received allegations that in one 5-hour period the Rabun Dairy illegally discharged 90,000 of untreated cattle waste from its waste lagoon via a 4-inch discharge hose into a tributary of Reddig Creek, a tributary of the Lake Fork Reservoir, a water of the U.S.
- ◆ The waste lagoon effluent was alleged to have flowed onto a neighboring horse ranch where several horses, upon eating hay contaminated by the discharge, became ill and subsequently died.

# RABUN DAIRY CASE

Investigation by EPA CID agents uncovered the following:

- ◆ Over a 5-hour period: At least 43,338 gallons of untreated cattle waste pumped from the Dairy's waste lagoon over a hill onto land where the fast moving effluent followed a "cattle path", exited the Dairy property, and flowed into a small, unnamed tributary on the neighboring horse ranch.
- ◆ Extensive investigation was undertaken to prove the unnamed tributary was a "water of the United States," or that it flowed into a water of the United States.
- ◆ CID could not persuade the U.S. Attorney's Office to prosecute the Dairy or its owner. **The USA's Office declined the case.**



Outfall.....  
....Waterfall

It's really all  
how you look  
at it, isn't it?

*QUESTIONS??*

