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?
Prosecute yes


no

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
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?

CSI, Ecology Division
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”.
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.
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?????
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.
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.
CID Investigation:

  - 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
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 pleaded 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
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
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

Note: Wastewater Holding Tank
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
- Defendants sentenced April 1998
Illegal Discharge Point- Hidden under block
Note: staining from plating waste
City Inspectors sealing illegal drain
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
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?