Criminal Case Development & U.S.E.P.A.-C.I.D.

Presented by

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Objectives for our discussion

- EPA-CID organizational awareness.
- Legal summary.
- Differences between criminal v. civil.
- Search warrants and how & why criminal investigations are initiated and conducted.
Area Offices.
   – New Orleans Area Office.
• SAC and RAC authorities.
• Answer directly through chain to Washington, D.C.
The Criminal Laws in Black & White & …Green. (Part I)

• Resource Conservation & Recovery Act.
  – 42 U.S.C. § 6901 et seq. (RCRA)

• Clean Water Act.
  – 33 U.S.C. § 1251 et seq. (CWA)

• Clean Air Act.
  – 42 U.S.C. § 7401 et seq. (CAA)

• Comprehensive Environmental Response, Compensation & Liability Act.
  – 42 U.S.C. § 9601 et seq. (CERCLA)
• Federal Insecticide, Fungicide & Rodenticide Act.
  – 7 U.S.C. § 136 et seq. (FIFRA)
• Toxic Substances Control Act.
  – 15 U.S.C. § 2601 et seq. (TSCA)
• Safe Drinking Water Act.
  – 42 U.S.C. § 1401 et seq. (SDWA)
• Emergency Planning & Community Right-to-Know Act.
  – 42 U.S.C. § 11001 et seq. (EPCRA)
The Criminal Laws in Black & White & …Green.

- **Marine Protection, Research, & Sanctuaries Act (Ocean Dumping Act).**
  - 33 U.S.C. § 1401 *et seq.* *(MPRSA)*

- **Act to Prevent Pollution from Ships/MARPOL.**
  - 33 U.S.C. § 1901-1912 *(APPS) (MARPOL)*
Penalties and Yardage

• Federal Sentencing Guidelines.
• Individuals face possible jail time.
• Reductions possible for cooperation with the government.
Types of Enforcement

- **Civil**
  - Referral to DOJ civil.
  - Administrative actions by EPA itself.
  - Judicial actions include monetary fines and injunctions.

- **Criminal**
  - Jail and/or fines.
  - Restitution.
Putting it into Perspective

• Communicating with Regional personnel about the statutes.
  – Citations under the Congressional Acts rather than U.S.C.
  – Not law enforcement trained.
  – Different objectives.
• Expanding role of criminal enforcement.
• Task Force approach with agencies.
Environmental Harm

Actual Harm.

Threat of Significant Harm.

Failure to Report an actual discharge.

Violation represents a trend in industry.
Culpable Conduct

- History of Repeated Violations.
- Deliberate misconduct resulting in violation
- Concealment of misconduct or falsification of records
- Tampering with monitoring or control equipment
- Business operating without a permit or required documentation.
The Criminal Investigative Process

- Disgruntled employee.
- Information resources on corporation.
- The processes at the facility.
- Regulatory interpretation.
- Multi-agency, multi-discipline cooperation.
- Investigative discretion.
- Working with the Prosecutor.
- HEALTH & SAFETY CONCERNS.
Only can investigate what we know

1) How you can help this team approach.

2) Can you verify?

3) Remain confidential.
The Criminal Search Warrant

- Coordination with the Prosecutor.
- Writing the Affidavit.
  - Days, weeks, or years of investigation.
  - Legal background.
- Judge’s approval.
- Execution of the warrant.
Clean Air Act (CAA)

- Complex permitting schemes.
- Mathematical formulae to determine emissions.
- Best viewed as mini-statutes.
- Criteria pollutants.
False Statements in CAA documents

42 U.S.C. 7413(c)(2)(A)

- A person
- knowingly
- makes false material statement, representation, or certification in or omits material information from or alters, conceals, or fails to file or maintain
- a document filed or required to be maintained under the CAA.
Tampering with Monitor Device or Method

42 U.S.C. 7413(c)(2)(C)

- A person
- knowingly
- falsifies or tampers with or renders inaccurate or fails to install
- a monitoring device or method
- required by the CAA
Knowing Failure to notify or report
42 U.S.C. 7413(c)(2)(B)

- A person
- knowingly
- fails to notify or report
- as required by the CAA
PCS Nitrogen

- 2 million dollar felony CAA plea.
- Pled to emissions that were unreported in their Title V application and to the LDEQ.
- Knowing conduct.
- 3 managers also charged.
Knowing or Negligent Endangerment

42 U.S.C. 7413©(4) & (5)

[42 U.S.C. 7412(b)(1)]

- A person
- negligently or knowingly
- release into the ambient air
- any hazardous air pollutant listed under Section 7412 of the CAA or any extremely hazardous substances listed pursuant to 42 U.S.C. 11002(a)(2)
- and at the time of release, negligently or knowingly put another person in imminent danger of death or serious bodily injury.
• Attorney ordering demolition of office.
• LDEQ inspector called out & advises of danger employees put in through this process.
• Defendant ignores inspector and disposes of asbestos tiles in landfill without proper packaging or controls.
• Negligent endangerment guilty plea.
  – 6 months confinement; 24 months probation.
Violation of a National Emissions Standard for hazardous Air Pollutants (NESHAP)
42 U.S.C. 7413(c)(1)

- Owner or operator
- of a stationary source
- knowingly
- constructs a new source or modifies an existing source or emits a hazardous pollutant or fails to comply with a design, equipment, work practice, or operational standard
- in violation of an applicable NESHAP.
CAA Criminal Elements for violation of Asbestos
NESHAP during demolition/renovation
42 U.S.C. 7413(c)(1)

• Person who is an owner or operator
• of a demolition or renovation operation involving the disturbance of regulated asbestos material of at least 260 linear feet on pipes, 160 square feet on other facility components, or 35 cubic feet off other facility components
• knowingly
• fails or causes another person or employee to fail to comply with any of the work practice standards in 40 C.F.R. 61.145 or waste disposal standards in 40 C.F.R. 61.150.
Crimes and Misdemeanors

• Lyin’ cheatin’ stealin’
• Knowingly doesn’t ordinarily require “regulatory knowledge.”
• Money being made through these criminal endeavors.
Contact Information

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