

Environmental Enforcement

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Overview

- Historical Perspective
- Types of Cases
- Investigative Agencies
- Stats – 2011
- S.E.P.s
- Training & Education
- Mens Rea
- Proof of Knowledge

Historical Perspective

- Began in the late 1970s
- The Pollution Division
- One person assigned to this Division as well as other duties
- Received most, if not all, cases from the Harris County Pollution Control Division (HCPCD)

Historical Perspective

- Responsible for the prosecution of two seminal cases:
- *American Plant Food Corp. v. State* (Water Pollution)
- *Exxon Co. U.S.A. v. State* (Air Pollution)
- Still make case law with every trial today.

Historical Perspective

- 1991 – SB2
- Created a multitude of new offenses, both felonies and misdemeanors
- Health & Safety Code
- Water Code
- Basic framework we still use today.

Types of Cases We Prosecute

- Illegal Dumping – Strict Liability
- Water Pollution – Strict Liability
- Used Oil Act Violations
- Air Pollution
- Hazardous Waste Violations

Special Situation Cases

- Parks and Wildlife Code Violations
 - Sewage discharges from boats
 - Industrial Waste discharges
(Fish houses/Seafood processors)
 - Prohibited Species cases
(Non-native Fish/Plant life)

Who Investigates Environmental Crime?

- HCPCD – HCPHES(PCD)
 - (Merger with the Health Department)
 - 15 Investigators
- HPD/EIU – 1993
 - 6 Police Officers and 6 City Inspectors
- HCEED – 1993
 - 7 Constables + 2 Salvage Yard Detail
 - (Today, only 3 Constables)

Who Investigates Environmental Crime?

- Texas Parks & Wildlife Department
 - 2 Game Wardens (Environmental Officers)
- Texas Commission on Environmental Quality (TCEQ)
 - 2 Criminal Investigators
- E.P.A. – ???
- County Attorney's Office

Stats – 2011

- 262 Cases – \$409,500.00
- 108 New Investigations Opened
- 201 Open Investigations
- Total Restitution – \$91,920.85
- Total Community Service Restitution
\$380,085.75

Supplemental Environmental Projects (S.E.P.s)

- Both the City of Houston and Harris County have S.E.P. Accounts
- Corporations perform projects through Pre-Trial Intervention Agreements
- Penalties – Fines + S.E.P. Contributions
- Total S.E.P. Contributions – 2011
\$600,000.00

Training & Education

- City of Houston Seminars (NEET)
 - Waste Transporter Seminar
 - Power/Pressure Washing Seminars
 - Apartment Complex Sewage Issues
 - Automotive Industry Seminar
- HCPHES Training
- H-GAC Environmental Roundtables

Training & Education

- TCEQ Basic Environmental Course
- TELEA Conference
- SEEN Conferences
 - Our office is an agency member representative for TDCAA
- FLETC (Advanced Environmental Crimes Course – Two Weeks)
- NDAA Courses

Conclusion

- No other county in Texas does what Harris County does
- No other county in Texas has more than one prosecutor assigned to environmental
- The vast majority of criminal environmental case law has come and continues to come from Harris County
- Harris County is the leader in Texas on environmental crimes

Miscellaneous Items

- Mens Rea (Culpability)
- Intentional or Knowing Violations
 - “with respect to conduct” (Texas law)
 - *Ahmad v. United States* (Federal law)

Public Welfare Doctrine

- Strict Liability Offenses
 - Water Pollution (Chapter 7.147, Water Code)
 - Illegal Dumping (Chapter 365, H&S Code)
- Reckless Violations (Endangerment)
- Criminal Negligence

§ 7.202. Proof of Knowledge

In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury under Section 7.168, 7.169, 7.170, or 7.171, the defendant is responsible only for the defendant's actual awareness or actual belief possessed.

§7.202.

- Knowledge possessed by a person other than the defendant may not be attributed to the defendant.
- To prove a defendant's actual knowledge, however, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

QUESTIONS???

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