

# Criminal Environmental Enforcement

**Presented at the  
UHLC  
Environmental  
Practicum—2014**

**March 27, 2014**

**Roger A. Haseman  
Assistant District Attorney  
Harris County, Texas**

# Overview

- Historical Perspective
- Types of Cases
- Investigative Agencies
- Stats – 2013
- 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), now Pollution Control Services

# 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 – HCPCS(PCS)
  - (Merger with the Health Department)
  - 15 Investigators and a Laboratory
- HPD/EIU – 1993
  - 6 Police Officers and 6 City Inspectors
- HCEED – 1993
  - 6 Constables



# Who Investigates Environmental Crime?

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

# Stats – 2013

- 619 Cases – \$394,450.00
- 240 New Investigations Opened
- 50 Open Investigations
- Total Restitution – \$92,362.875
- Total Community Service Restitution  
\$174,051.62
- Approximately 60% of cases are felonies.

# 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

# Training & Education

- City of Houston Seminars (NEET)
  - Waste Transporter Seminar
  - Power/Pressure Washing Seminars
  - Apartment Complex Sewage Issues
  - Automotive Industry Seminar
- HCPCS 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.

# Corporate Responsibility

- Misdemeanors – Agents/Employees
  - Felonies – High Managerial Agent
  - Sec. 7.22, Penal Code
- 
- No Probation for Corporations
  - Art. 17A.08, Code of Criminal Procedure

# Projects

- § 7.203, Water Code  
Criminal Enforcement Review
- Is this statute constitutional or does it violate the Separation of Powers doctrine?
- See *Ex parte John Christopher Lo*, No. PD-1560-12 (Tex.Crim.App., March 19, 2014)(Per Curiam Opinion)

# Projects

- Right to Enter Provisions
- § 26.014. Power to Enter Property
- § 26.173. Power to Enter Property

## Local Governments

- Are these provisions constitutional?
- Or, are they overbroad?

# Projects

- May a peace officer enter public or private property at any reasonable time for the purpose of inspecting and investigating conditions related to water quality?
- Or, must a peace officer first obtain a search warrant?

Do exigent circumstances apply?

- Or, must a peace officer obtain consent?

# Projects

- Is it possible for a peace officer to be a trespasser on private property if he enters property, then open for business to the public, for the purpose of investigating a discharge coming from the property?
- Does it make a difference if the business has “No Trespassing” signs posted?
- Can a peace officer be a trespasser if he has a legitimate purpose to enter the property?

# QUESTIONS???

**Roger A. Haseman**

**Assistant District Attorney**

**Chief, Environmental Crimes Division**

**Harris County, Texas**

**713-755-5834**

**haseman\_roger@dao.hctx.net**