



A View of the U. S. EPA Criminal Enforcement Program Inside and Out

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***For the
University of Houston Environmental Law Seminar Series***

April 6, 2016



FROM INSIDE THE GOVERNMENT LOOKING OUT



Office Locations



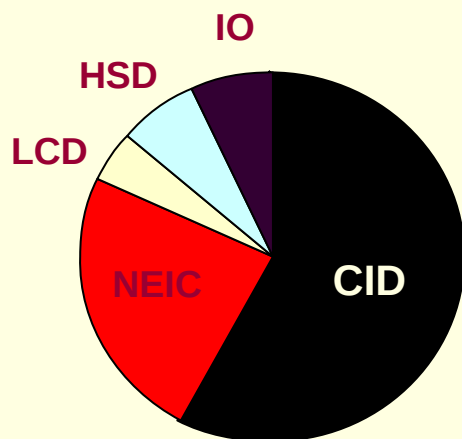
Headquarters, Washington, DC
10 Area Offices Co-located with the Regions
30 Resident Offices
National Enforcement Investigations Center, Denver, CO
National Computer Forensics Laboratory, Jacksonville, FL





Staff Profile- 2009

Our 388 FTE include Criminal Investigators, Scientists/Technical Staff, Lawyers and Administrative Personnel



<u>FTE</u>	<u>Organization</u>
30	Immediate Office
220	Criminal Investigation Division
96	National Enforcement Investigations Center
25	Homeland Security Division
17	Legal Counsel Division



Criminal Investigation Division

Special Agents Have Full Law Enforcement Authorities

Authorized to carry firearms

Serve Search and Arrest Warrants

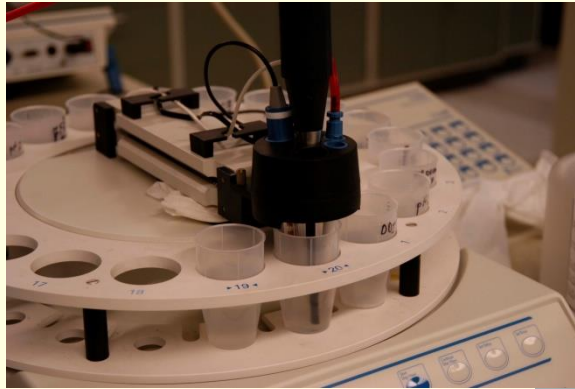
Interviews, Surveillance, and Undercover

DOJ Prosecution and Trials





National Enforcement Investigations Center:





National Enforcement Investigations Center Lakewood, CO

- EPA's forensics center -- nation-wide scope
- Serves civil & criminal enforcement programs – CID, OCE, Regions
- Homeland security role – identification & attribution; MOU with FBI
- 96 FTE: engineers, scientists, and support staff
- Media-specific regulatory & technical capability, especially CAA, RCRA, and CWA expertise. Compliance investigations, field sampling, forensic laboratory services, computer forensics, consultation, courtroom testimony.
- ISO Accredited: focused, enforcement-appropriate quality system





Legal Counsel Division



- LCD attorneys that provide general program support to OCEFT, NEIC, and HSD with 1 attorney focused on personnel law matters
- Regional Criminal Enforcement Counsel (RCECs) in regional offices (not OCEFT) that provide primary support for criminal cases



Legal Counsel Division

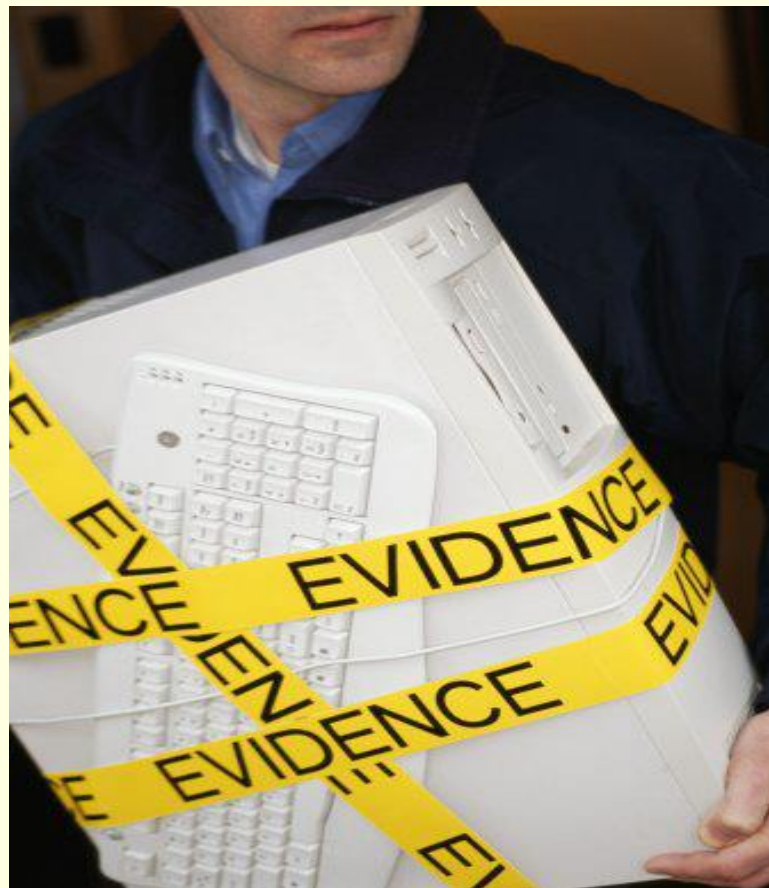


- Provide legal services to OCEFT Divisions
- Advocate for EPA's criminal enforcement interests when interacting with DOJ, OGC and other law enforcement agencies
- Participate in the development of statutes and regulations
- Provide legal training



National Forensic Computer Laboratory Jacksonville, FL

- Seize and Analyze Complex Digital Evidence
 - Computers & Servers
 - Cell Phones & PDAs
 - Internet Investigations
- Technical Surveillance Equipment Support
 - GPS - Cellular Tracking
 - Covert Video Surveillance Platforms of Suspect Sites
 - Body-worn Video and Audio for Undercover Operations
 - Audio & Video Forensics, Conversion & Duplication





Criminal Investigators- Training



**Federal Law
Enforcement Training Center**



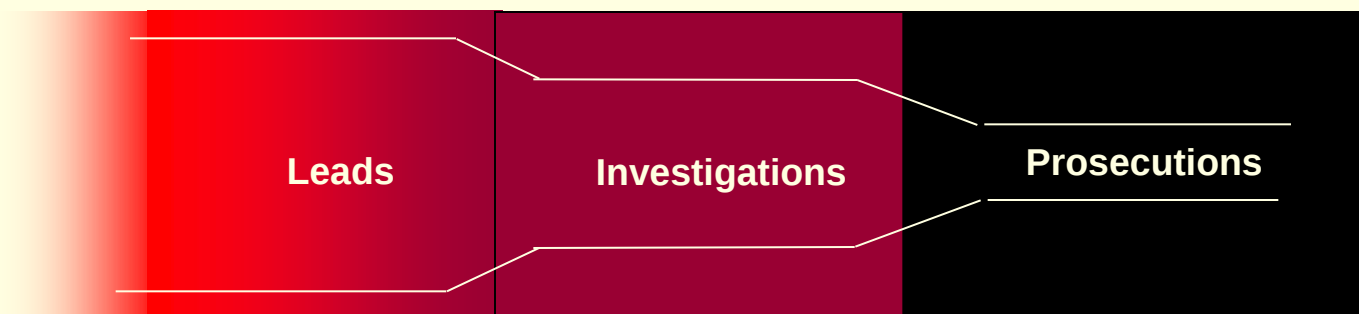
OSHA and Firearms Certified



**Specialized Advanced
Training**



Developing A Criminal Case



**Receive Upwards
Of 1,500 Leads
Annually**

**Highest Quality
of Leads are from
Within EPA**

**Approx. 20% Of
Leads Opened
As Cases**

**Approx. 750
Open Cases
Ongoing in 2009**

**Successful
Judicial Outcomes
In 1/3 of Open
Cases**



Developing A Criminal Case

Lead Information
Violation



Investigative Plan
Agent, RCEC & Prosecutor
Grand Jury



Plea/Trial
Sentencing

Atlantic States guilty

**“I hope maybe they finally get the message ...
to stop making pipe out of workers' flesh and bone.”**

Ralph Marra Jr., federal prosecutor

Residents
are elated,
shocked,
worried

By Robert H. Smith
Atlantic City, N.J. (AP) — Residents of Atlantic City, N.J., are elated, shocked, worried and angry over the guilty verdict in the case of four men charged with covering up the extent of contamination in the city's water supply.



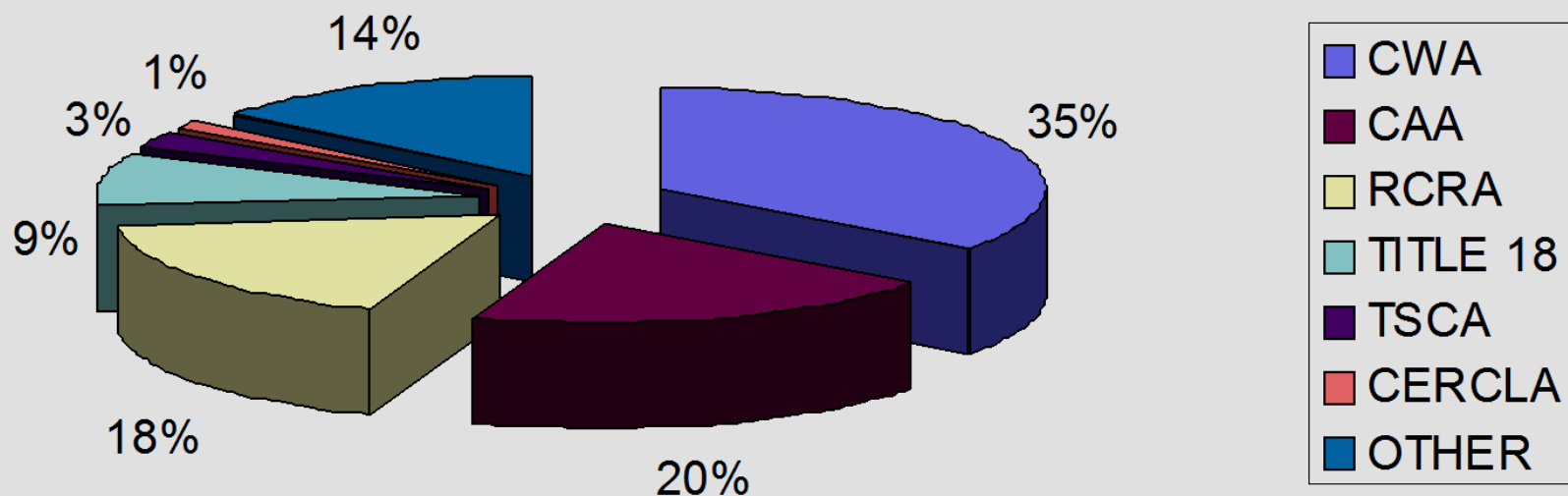
**Four
bosses
facing
prison**

Four men charged with covering up the extent of contamination in the city's water supply were found guilty in a federal court in Atlantic City.



Every agent investigates cases under all statutes and criminal code (Title 18)

Distribution of Open Cases by Media





Selecting Cases That Count

- Balancing the docket with core and priority cases
- Priorities include
 - High Impact Cases
 - National Enforcement Priorities
 - Regional Enforcement Priorities
 - Emerging Environmental Problems
- Devaney Memo (1994)

I. Release and Discharge Characteristics

Pollutant Type	Non-Hazardous	Hazardous/Toxic
Frequency/Duration of Release	Single Event	Ongoing, Repetitive, Continuing, Multi Location

II. Human Health and Environmental Impacts

Exposure Related	No Documented Exposure	- Documented Exposure - Evacuation of Community - Public Utility Disruption	Death Actual Serious Injury
Restitution & Remediation Related	Up to \$100k Less than \$1M	\$1 million or greater	

III. Subject Characteristics (of the target)

Substantial Corporation	1-99 employees < \$5 million (+) Sales Revenue	100 (+) employees \$ 5 million (+) Sales Revenue
... With ... High Ranking Defendant .. or .. Criminal/Civil History	Rank and File Lower Mngmt Permitted	WITH. . . → Mid Mngmt Sr Mngmt OR → Unpermitted Formal Enf Action Prior Criminal Conv

IV. Other Factors

ADI/SAC Review

Provide Justification: Cases: AAR/Salvagno,
Issues: Case of first impression, broad reaching consequences. Title 18 Factors

High Impact Methodology

Three Ways to Designation

1: Death/Injury

Category II

Human Health and
Environmental Impacts

Death

Actual Serious
Injury

2: Hits in Three Out of Four Categories

Category I

Release & Discharge
Characteristics

Hazardous/Toxic

OR

Ongoing, Repetitive,
Continuing, Multi Location

Category II

Human Health and
Environmental Impacts

Exposure

(i.e., Documented Exposure, Evacuation of
Community, Public Utility Disruption)

OR

Estimated
Remediation/Restitution
\$1 million or greater

Category III

Subject Characteristics

Substantial Corporation

(i.e., 100 (+) employees or \$5 million (+) Sales Revenue)

WITH ...

Subject: Mid-Mngmt
or Higher

OR

Enforcement History
(e.g., Formal Enf Action, Prior Criminal
Conviction, Unpermitted)

Category IV

"Wildcard" Factors

Justification

3: The "Wildcard" Trump

Category IV

"Wildcard" Factors

An overwhelming justification



Success Rate

- 67 % of cases with search warrants result in charges being filed
- 80 % individual defendants / 20 % corporate (86% in 2009)
- 95 % conviction rate for charged defendants
- 85 % success rate in trial (59/50)



Advantage - U. S. Government

- Almost unlimited funds to investigate and prosecute
- Personnel
 - Investigators
 - Regulatory and technical experts
 - Forensic Laboratories- analytical and IT
- Plenty of time- only limited by the Statute of Limitations
- Usually they get a Head Start



Disadvantages- Government

- Wide range of experience levels for investigators, regulatory and technical personnel
- Investigations tend to drag out over time
 - Evidence gets stale
 - Witnesses become hard to find or memories fail



FROM THE DEFENSE SIDE LOOKING IN



Advantages- Client

- Defense can be more agile than the government
- Access to “inside information”
- Access to witnesses (employees)
- Wear government down in some cases
- An effective Defense Team will put Government on Notice
 - Environmental Investigator
 - Regulatory Experts
 - Defense Counsel



Disadvantages- Client

- Usually government case has been ongoing
 - Interviews of former employees and witnesses
 - Surveillance
- Some witnesses already locked in
- Search warrants and undercover operations
- Grand Jury process
 - Subpoenas and Witness testimony
- Whistleblower issues
- Can take a long time (5-year SOL)



DEFENSE ISSUES

- Timing can reduce costs to Client
 - Approach government as soon as practicable
 - Defense counsel should make contact with government prosecutor
- Investigation will have to be completed by agent before talking resolution
- Get ahead of the Government Investigation!
- Providing counsel for Company and Individuals
- A good defense can be EXPENSIVE \$\$\$



OTHER DEFENSE ISSUES

- Yates Memorandum (Sept. 9, 2015)
 - Issued by Sally Yates, Dep. Attorney General
 - To get credit for cooperation companies must disclose all individuals involved in violations
 - Both civil and criminal actions should focus on individuals as well as corporations
 - Civil and criminal attorneys should communicate
 - No corporate resolution will provide protection from civil or criminal liabilities



OTHER DEFENSE ISSUES

- Yates Memorandum (continued)
 - Corporate cases should not be resolved:
 - Without a clear plan to resolve related individual cases before the statute of limitations expires
 - Without getting declinations as to individuals memorialized
 - Civil attorneys should consistently focus on individuals as well as the company- evaluate whether to bring suit beyond ability to pay



Preventing Environmental Violations

- Tour all manufacturing process areas and the facility at least annually
- Review regulatory information such as permits, inspection reports, NOVs etc.
- Get to know the regulatory officials responsible for the facility
- Encourage clients to institute an Environmental Management System (EMS) and develop a Envir. Management Plan



Examples- Environmental Criminal Defense

- Container Cleaning Operation- RCRA
- Plating Operation- CWA pretreatment
- Large Foundry Operation- CWA pretreatment
- Chemical Blending Operation- RCRA
- Petroleum Production “Fracking” Company- CWA wetland and direct discharge



Container Cleaning Operation RCRA





Container Cleaning Operation RCRA





Container Cleaning Operation RCRA





Container Cleaning Operation RCRA





Container Cleaning Operation RCRA





Container Cleaning Operation RCRA





Container Cleaning Operation RCRA





Container Cleaning Operation RCRA





Disposition

- Consultants disposed of waste offsite in first 2 months
- Facility cleaned up
- Counsel and consultants had 2 meetings with the AUSA and EPA Agent
- Plea of 1 felony count RCRA storage for the company
- President/CEO was not charged



Plating Operation CWA Pretreatment





Plating Operation CWA Pretreatment





Plating Operation CWA Pretreatment





Disposition

- The pretreatment permit was not written properly to include the alleged violation.
- City/County inspectors knew of the issues at the plant and did nothing to correct them.
- AUSA declined to prosecute the case



Large Foundry Operation CWA Pretreatment





Disposition

- Defense investigator and CWA expert collected samples mirroring the government investigation
 - Discovered other pipes coming into manholes that could have accounted for high lead levels
 - Company was in the process of upgrading their facility
- AUSA declined the case



Chemical Blending Operation RCRA Storage





Chemical Blending Operation RCRA Storage





Chemical Blending Operation RCRA Storage





Chemical Blending Operation RCRA Storage





Chemical Blending Operation RCRA Storage





Disposition

- Government executed a search warrant and collected samples from containers
- Samples indicated that waste in drums was hazardous waste under RCRA
- AUSA was ready to charge matter
- Defense investigator asked for and received photos from warrant
- Samples were not documented properly
- Case was Declined by AUSA



Petroleum Production Company CWA Direct Discharge / Wetlands





Petroleum Production Company CWA Direct Discharge / Wetlands





Petroleum Production Company CWA Direct Discharge / Wetlands





Petroleum Production Company CWA Direct Discharge / Wetlands





Petroleum Production Company CWA Direct Discharge / Wetlands





Disposition

- AUSA and EPA wanted to charge both the company and Chief Operating Officer with felonies
- Defense Investigator determined that U.S. Natural Resource Conservation Service representative assisted land owners in building ponds
- Company pled to 2 misdemeanors and COO was not charged



■ QUESTIONS?