

Criminal Environmental Enforcement

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Environmental
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Overview

- **Historical Perspective**
- **Mens Rea**
- **Types of Cases**
- **Investigative Agencies**
- **S.E.P.s**
- **Corporations and Associations**
- **Plea Negotiations/Trial**

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 Department (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)

Historical Perspective

- **1991 – SB2**
- **Created a multitude of new offenses, both felonies and misdemeanors**
- **Health & Safety Code**
- **Water Code**
- **Natural Resources Code**

- **Basic framework we still use today.**

Mens Rea (Culpability)

- **Intent**
- **Knowledge**
- **Recklessness**
- **Negligence**

- **Strict Liability**

Mens Rea

- **Intentional or Knowing Violations**
- **Water Pollution**
 - “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**

Types of Cases Prosecuted

- **Illegal Dumping**
 - **State Jail Felony (Intentional/Knowing)**
 - **All Misdemeanors (Strict Liability)**

- **Water Pollution**
 - **Felony (Intentional/Knowing)**
 - **Misdemeanor (Strict Liability)**

Types of Cases Prosecuted

- **Used Oil Act Violations**
 - **Only Felonies (Intent or Knowledge)**
- **Air Pollution**
 - **Felonies (Endangerment Violations)**
 - **Misdemeanors (Rule/Permit Violations)**
 - **All require Proof of a Culpable Mental State)**

Types of Cases Prosecuted

- **Hazardous Waste Violations**
- **Felonies**
 - **Storage and/or Disposal (Intent/Knowledge)**
 - **Endangerment (Intent/Knowledge)**
- **Misdemeanor**
 - **Release (Intent/Knowledge)**

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**)

Special Situation Cases

- **Vehicle Emissions Fraud**
 - Tampering with Governmental Records
 - Inspection Certificates
- **Penal Code Violations, but Clean Air Act related**

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)**
- **E.P.A.**
- **County Attorney's Office**

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**

Corporations and Associations

- **Misdemeanors – Agents/Employees**
- **Felonies – High Managerial Agent**
- **Sec. 7.22, Penal Code**

- **No Probation for Corporations**
- **Art. 17A.08, Code of Criminal Procedure**

Plea Negotiations/Trial

- **99 percent of all cases result in a plea or some disposition other than trial.**
- **Scenario 1.**
 - Attorney comes in and demands a trial.**

Plea Negotiations/Trial

- Scenario 2.

First Offender Felony Offense

If plea, pen time, probation or deferred adjudication.

Lessor Included Offenses

Plea Negotiations/Trial

- Scenario 3.

Defendant is a Corporation or Association

A plea results in a final conviction.

Consider Pre-Trial Intervention (Informal type of Community Supervision)

QUESTIONS???

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