

Environmental
Compliance
Navigator

2024™

Presented by

AARCHER®
Nashville | September 9-10

Environmental
Compliance
Navigator

2024™

Environmental Compliance and Criminal Enforcement

The perspective of a former Special Agent
with the United States Environmental
Protection Agency's Criminal Investigation
Division

Nashville, Tennessee
September 9, 2024

Why?

- You are a part of the solution
- Protect yourself, your people, and your company
- Ask the hard questions
- Answer the hard questions
- Operate with courage and integrity
- What to avoid and what to embrace as environmental compliance professionals

What are we going to cover?

- Criminal Enforcement Overview
- Criminal vs. Civil Enforcement
- Patterns Leading to Criminal Enforcement and Prosecution
- Conduct, Relationships, and Integrity
- Case Studies

Environmental Compliance Navigator

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Scot Adair – Quick Background



Special Agent – 28 Years

US Environmental Protection Agency's Criminal Investigation Division

- ❑ California, Arizona, Nevada, Hawaii, Oregon, Washington, Idaho, Alaska
- ❑ 18 Years – Special Agent
- ❑ 10 Years – Special Agent in Charge, Assistant Special Agent in Charge
- ❑ In field role, conducted investigations and supported prosecutions by US Department of Justice and State prosecutors
- ❑ As supervisor, oversaw all regional investigations and personnel in Western United States





Criminal Enforcement Overview

Federal Environmental Crimes Enforcement

- EPA-CID, FBI, and US Department of Justice
- Other Agencies – Department of Transportation, Bureau of Land Management, US Forest Service

State Environmental Crimes Enforcement

- Varies by state – many do not have a dedicated criminal environmental crimes enforcement program
- District Attorney's Offices and Attorneys General



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Criminal Enforcement Overview

US EPA-CID

Where does Criminal Enforcement fit in at the EPA?

- 165 Special Agents nationally (compared to 900 civil enforcement and compliance)
- National Enforcement Investigations Center (NEIC) – Crime scene technicians and analysis of samples for use in prosecutions
- Legal Support - Dedicated criminal enforcement attorneys to support the work done by investigators and DOJ partners

US Department of Justice

- Assigned Environmental Crimes Prosecutors – in each of the 94 offices
- Environmental Crimes Section – National coverage

Criminal Enforcement Overview

RCRA

Hazardous waste

CERCLA

Hazardous substances

CWA

Surface waters

Sewers and POTWs

Wetlands

SDWA

Public drinking water systems

Underground injection wells

CAA

Asbestos

Stationary sources

Ozone depleting substances

FIFRA

Pesticides

EPCRA

Hazardous chemicals and
extremely hazardous substances

TSCA

PCBs

Lead-based paint

Criminal Enforcement Overview

- False Statements/Concealment
- Obstruction of Justice/Obstruction of Agency Proceeding
- Conspiracy
- Mail Fraud
- Wire Fraud
- Money Laundering
- Smuggling



Criminal Enforcement Overview

How does a criminal investigation begin?



- Get leads from states, EPA, disgruntled employees, source development, other law enforcement, media, or simply responding to a major incident
- Evaluate them - about 15-18% opened as cases
- 90+% conviction rate on charged cases and >80% of defendants are individuals (as opposed to corporations)

Criminal vs. Civil Enforcement

Civil/Administrative

- ❑ Burden of Proof: Preponderance of the evidence
- ❑ Strict Liability violations (liable regardless of mental state or intent)
- ❑ Results:
 - Civil penalties
 - Injunctive relief (legal requirement requiring specific action – like a clean up)
 - Supplemental Environmental Plans (SEPs)

Criminal

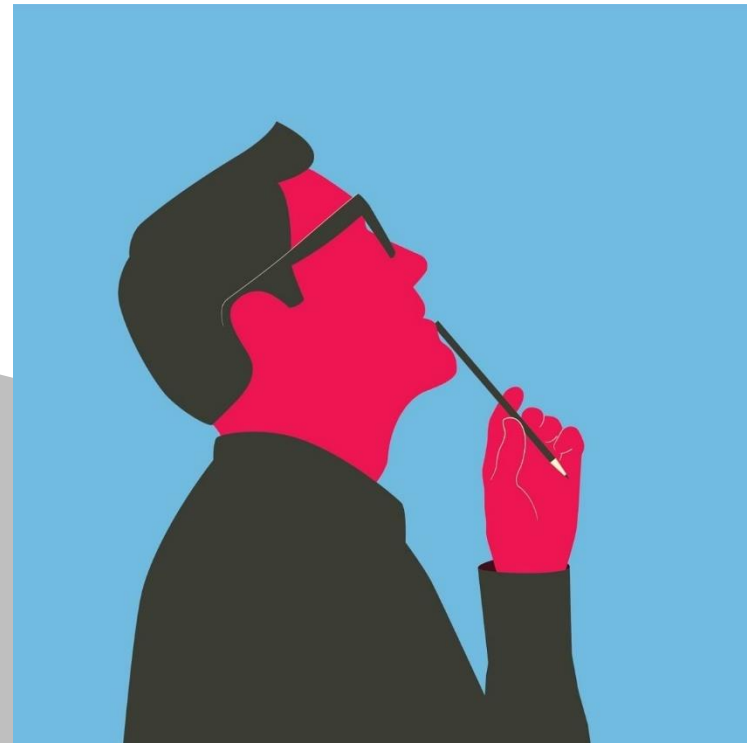
- ❑ Burden of Proof: Beyond a reasonable doubt
- ❑ Violations center on knowing/intentional/or extreme negligence
- ❑ Results:
 - Incarceration
 - Probation
 - Restitution
 - Criminal fine
 - Criminal record

Criminal vs. Civil Enforcement

Mental State

What was their intent?

Environmental Crimes are often the result of **calculated business decisions** to make or save money. Usually seen as a “white collar” crime – unless public health has been impacted or is at risk.



Criminal vs. Civil Enforcement

Why is criminal enforcement important?

Protects Program Integrity

- Self reporting and the submission of accurate data is essential to the ability to regulate industry.

Accountability

- “Leveling the playing field” so that there is no advantage to knowingly violate the law

Deterrence

- Getting arrested, prison, and a criminal record cannot be passed along to consumers as “a cost of doing business”



Criminal vs. Civil Enforcement

When and how is the decision made to charge a case as a criminal offense?

- If the elements of a crime can be met and proven
- Always the decision of the prosecutors – not the investigating agency
- CONDUCT and HARM are evaluated and are usually a factor (**actual harm** *is not a requirement* for a case to be investigated and charged)



Factors Leading to Prosecution

Compliance History

Conduct

Severity

Priorities

Factors Leading to Prosecution

Compliance History

Part of the Investigative Process

- Repeat offender?
- Responsive to regulatory requirements and changes?
- Proper permits? No permits at all?
- Properly resourced?
 - Pollution treatment/prevention
 - Personnel



Factors Leading to Prosecution

Conduct

- Truthful with investigators? Inspectors?
Emergency Response personnel?
Community?
- Choosing deception and obstruction over and over?
- Company Culture? (Delay, lie, minimal cooperation)
- Complete responses to questions asked, grand jury subpoenas, and civil information requests? (Lies of omission)
- Other behavior? (Criminal history, UFAP)



Factors Leading to Prosecution

Severity

Actual or Threat of Harm

- Human Health
- Environmental Impact
- Near miss?

Program Integrity

- Falsified data submissions
- Cascading impacts to others



Factors Leading to Prosecution

Priorities

Is this an enforcement priority for the federal government? State government?



US EPA 2024-2027

- Climate Change
- PFAS Exposure
- Coal Ash Contamination
- Environmental Justice
- Drinking Water Compliance

Other State Enforcement Priorities

- Environmental Agency Website
- Attorney General Website
- Local District Attorney's Website

Relationships

Regulators and the Regulated Community

- Foster a relationship based on honesty, integrity, and good will.
- Not always easy – but the dividends are there.
- Encourage two-way communication and a willingness to do what is asked of you.
- If you are at a point of disagreement that cannot be resolved, attempt to ***elevate*** the issue.



Case Study #2 – AMCAN (Coca-Cola)

- 2009 Newspaper Article
- \$7.5 million civil settlement with City of American Canyon for excess pollution into POTW.
- Over a lengthy period of time, POTW exceeded NPDES permit limits. Suspected AMCAN as pollution source.
- AMCAN bottling plant – fruit juices, electrolyte drinks, energy drinks.



Case Study #2 – AMCAN (Coca-Cola)

- Investigation
- CID confirmed that former Environmental Manager routinely instructed employees to *falsify and submit* analytical data (City, State, US EPA).
- Confirmed analytical data from POTW was appropriately collected and analyzed.
- Conducted current/former employee interviews
- Grand Jury subpoenas



SAN FRANCISCO CHRONICLE AND SFGATE.COM | Tuesday, February 10, 2009 | B3 +

AMERICAN CANYON Settlement of pollution allegations

By Kelly Zito
CHRONICLE STAFF WRITER

A subsidiary of the Coca-Cola Co. has agreed to pay a \$7.59 million settlement to American Canyon after city officials accused the bottling company of discharging polluted water since at least 2005.

Supervisors at the city's

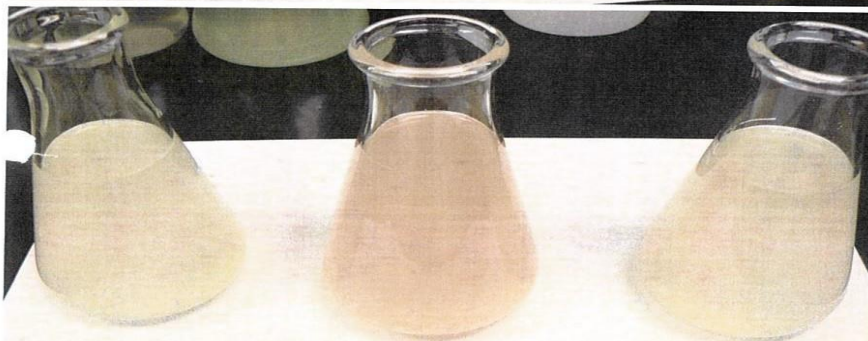
water treatment plant said ... 2007 they noticed higher-than-normal levels of pollutants in the water released by AMCAN Beverages, Inc., which produces Arizona Iced Tea and other drinks. A city investigation indicated minerals and other substances may have been illegally discharged going back to 2005, city officials said.

Instead of litigation, the city and company elected to negotiate a settlement that was ultimately approved by the City Council on Friday.

The company, American Canyon's largest user of water, admitted no wrongdoing as part of the settlement.

E-mail Kelly Zito at
kzito@sfgate.com

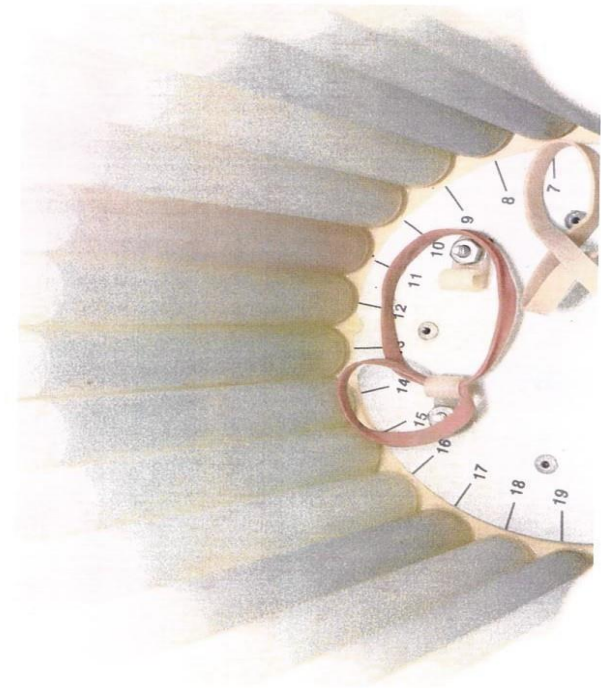
Case Study #2 – AMCAN (Coca-Cola)



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0230 hrs



#2

Case Study #2 – AMCAN (Coca-Cola)

Investigation

Key Interviews

- Lead AMCAN WWTP Operator
- Contract Employees
- POTW Manager & Staff

Analytical Data

- POTWs:
- Covert Sampling
- Chains Of Custody
- Appropriate Analytical Method



Case Study #2 – AMCAN (Coca-Cola)

Key Findings

- Witness statements were consistent
- Bottling production increased nearly **75% in two years**
- Environmental Manager never requested increased operating budget
- Lied about ability to properly operate pretreatment plant (Coca Cola)
- Lied to POTW officials investigating excessive high Biological Oxygen Demand and Total Suspended Solid loads in influent in sewer line near AMCAN

Motive?

Case Study #2 – AMCAN (Coca-Cola)

- Six count Indictment

- Five Counts: 33 USC § 1319 (c)
(4) Clean Water Act
- One Count: 18 USC § 371
Conspiracy
- Indictment UNDER SEAL

1 MELINDA HAAG (CABN 132612)
2 United States Attorney
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RICHARD W. WILSON
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**SEALED
BY COURT ORDER**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WHA

CR 10 0724

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
DHIREN PATEL,)
Defendant.)

VIOLATIONS: 18 U.S.C. § 371 –
Conspiracy; 33 U.S.C. §§ 1319(c)(2)(B) &
(c)(4) -- Clean Water Act; 18 U.S.C. § 2 –
Aiding and Abetting

SAN FRANCISCO VENUE

Case Study #2 – AMCAN (Coca-Cola)

- Arrest/Adjudication:
- Arrest at Pepsi, in Phoenix, Arizona
 - Included a visit to the USMS, hospital, and an over-night in the Maricopa County Jail
- Post Arraignment reluctance to accept responsibility
- “Reverse Proffer” with counsel
 - Very effective



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Scot Adair

Special Agent in Charge (retired)
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