Obstacles to Environmental Enforcement

Environmental Criminal Prosecutions
ILEA Bangkok, Thailand 2016
OBSTACLES

I. Public Corruption

II. Government as Polluter

III. Resource Constraints
I.  Public Corruption

Potential Problem for Governments Everywhere

- Law Enforcement
- Regulatory Agencies
- Entities Administering a Benefits Program
Corruption is Real!
Issues Associated with Public Corruption

Cases can be very sensitive for a number of reasons:

– Individuals or Entities Involved
– Information at issue (intelligence, classified)
– Politically controversial
– Multi-jurisdictional

Violations overlooked or concealed
Impact of Public Corruption

Corrupt officials betray the public’s trust and pose a fundamental threat to environmental protection.

Allows the continuation of environmental degradation.

Undercuts the criminal justice system by discouraging legal compliance more broadly:
- Undermines deterrence
- Alters competition among entities

May discourage civil engagement overall.
Responses to Public Corruption

Prevention
- Work with regulatory/investigative agencies to improve internal controls

Education
- Educate the community and enlist their support in fighting corruption

Law Enforcement
- Seek out law enforcement partners that are free from undue influence and above suspicion
- Investigate and prosecute corruption offenses
Prevention: Internal Controls

Higher pay for civil servants
Whistleblower protection and other mechanisms to encourage reporting
Transparency and openness in government spending
Cutting red tape (including judicial reform)
Establishing international conventions
Deploying smart technology

Training

Support citizen and media “watch dog” efforts to uncover corruption.

Publicize the problem, efforts to combat it, and successes.
Investigate and Prosecute: Examples (USA)
Gregory Scott and Joe Parrish

- Former DC asbestos inspectors

- In 2011, they sought $20,000 in bribes to keep quiet about asbestos problems created during renovation of apartment building.

- Told construction contractor he would face $300,000 in fines and possible jail time, if they submitted their reports.
Cooperating witness gave them $5000 (on video). After second meeting to receive additional payments, they were arrested. Each sentenced to one year of prison and banned from seeking employment with government in the future.

Two Former District Department of the Environment Officials Sentenced to a Year in Prison on Federal Bribery Charges Defendants Admit Demanding $20,000 in Bribes in Exchange For Covering Up Asbestos Contamination

WASHINGTON - Joe L. Parrish, 54, and Gregory A. Scott, 60, former inspectors at the District of Columbia Department of the Environment (DDOE), Air Quality Division, were sentenced today to one-year prison terms for demanding and receiving $20,000 in cash as bribes for not reporting serious environmental infractions and assessing fines and penalties.

The sentences were announced by U.S. Attorney Ronald C. Machen Jr.; James W. McLamb, Assistant Director in Charge of the FBI’s Washington Field Office; Charles J. Willoughby, Inspector General for the District of Columbia, and David G. McLeod, Jr., Special Agent in Charge of the U.S. Environmental Protection Agency’s criminal enforcement program in the District of Columbia.

Parrish, of Windsor Mill, Maryland, and Scott, of Temple Hills, Maryland, each pleaded guilty in March 2012 in the U.S. District Court for the District of Columbia to one count of solicitation and receipt of a bribe by a public official. The Honorable Robert L. Wilkins sentenced them today. Upon completion of their prison terms, both men will be placed on two years of supervised release. During that time, each must perform 100 hours of community service.

As part of their plea agreements, both men have resigned from DDOE and to never seek employment with any federal or local government agency in the future.

Parrish and Scott were arrested September 11, 2011, following an investigation by the FBI’s Washington Field Office, the office of Special Counsel for the District of Columbia and the District of Columbia Office of the Inspector General.
Detroit Lead Inspectors

Donald Patterson, City of Detroit lead inspector

Felony wire fraud prosecution for extorting landlords and residents from 2008-2009.

Sentenced to 46-months in prison in February 2011.
Detroit Lead Inspectors

Anthony Sharpe, manager of Detroit’s Childhood Lead Poisoning Prevention Program

Sharpe set up a private company that charged building owners for lead inspections that were never performed and submitted faked test results to authorities in multiple cities.

Sentenced to 18 months in prison in September 2011.
II. When Government is the Polluter

In the United States, large organizations rather than individuals generate most illegal pollution.

Governmental entities are large organizations, and can be among the largest illegal polluters.
When Government is the Polluter

Three types of cases in the USA:
- Military cases
- Publicly-owned sewage treatment plants
- Publicly-owned drinking water providers
Responses to Pollution by the Government

Prosecute individuals for criminal conduct

Prosecute the government entity

Alternatives to prosecution
Key Questions for Prosecuting Individuals

Hold the government employee to the same (or higher?) standard as private sector employee

Different issues of culpability and motive for public employees.
Key Questions for Prosecuting a Government Entity

Does the law allow prosecution?

As a public policy matter, should the government entity be prosecuted?
– Political Will?
– Is it Worth Prosecuting?
Non-prosecutorial responses to Government Polluters

Policy solutions may yield environmental benefits when prosecution is impossible
- Removal and/or remediation

Transparency is critical: Public needs to understand the problem
- Deterrence

What role can a prosecutor have outside of the judicial process?
Prosecutorial Principles for Government Polluters

Hold individuals accountable for criminal conduct

Focus on future compliance by entities rather than fines
III. Limited Resources

Investigative, prosecutorial, and/or judicial resources are always in short supply.

Two general responses:
- Maximize effective use of existing resources
- Seek out and utilize outside resources
Evolving models of policing:

**Three Rs:** Random patrol, rapid response, and reactive investigation. This often results in disparate results and detachment from the community.

**Community policing:** Community policing is outward facing. It emphasizes problem solving that includes the public as an active, involved partner. It focuses on the three Ps: partnership, problem solving, and prevention.

**Intelligence-led policing:** ILP extends community policing to include research-based approaches, information and communications technology, and increased information sharing and accountability. ILP encourages the use of criminal intelligence in support of collaborative, multijurisdictional approaches to crime prevention.

**Predictive policing:** Predictive policing builds on ILP by extracting operationally relevant knowledge from the abundance of data that public safety agencies collect every day. With new technology, new business processes, and new algorithms, predictive policing is based on directed, information-based investigations and proactive, intelligence-based tactics, strategy, and policy.

*Predictive Policing: What Can We Learn from Wal-Mart and Amazon about Fighting Crime in a Recession?*  
*By Charlie Beck, Chief of Detectives, Los Angeles Police Department, and Colleen McCue, President and Chief Executive Officer, MC2 Solutions, LLC, Midlothian, Virginia*
Meeting the Resource Challenge in Environmental Cases

Cooperate with and train other law enforcement entities. Make thoughtful use of networks and task forces.

Enlist the help of workers, competitors, citizens, “watch dog” groups and the media.

Mine and analyze all available information.
Meeting the Resource Challenge in Environmental Cases

Develop a thorough but efficient investigative approach.

Make good prosecution decisions.

Ensure publicity for prosecuted cases to maximize deterrent impact.
Publicizing Prosecutions: Traditional Press

Waste treatment officials convicted of pollution

DEARBORN
By DAVID ASHFELDER
FREE PRESS STAFF WRITER

Three former officials of a Dearborn waste treatment plant were convicted Tuesday of federal Clean Water Act violations for dumping untreated industrial waste into the Detroit sewer system.

A 12-member jury in U.S. District Court in Detroit found Michael G. Panyard, 46, of Pleasant Ridge, the former general manager of Comprehensive Environmental Solutions Inc., guilty of nine counts of conspiracy, making false statements to investigators and the Clean Water Act violations. The jury deliberated for two days after a three-week trial.

The jury of nine women and three men found former plant manager Charles D. Long, 41, of Brownstown Township guilty of conspiracy and violating the Clean Water Act. Unlike the others, former Chief Executive Officer Bryan S.J. Mallindine, 51, of Carlsbad, Calif., was found guilty of a misdemeanor count of violating the Clean Water Act. The jury acquitted Mallindine on two felony counts, clearing him of the misdemeanor count.

Seattle businessman who accidentally poisoned teen sentenced


By LEVI PULKKINEN Seattlepi.com May 25, 2012

SEATTLE -- A Seattle business man who accidentally poisoned a teen worker by directing him to pour hazardous chemicals down a toilet has been sentenced to nearly three years in prison.

Patrick Dooley, the 60-year-old owner of Bargains, Inc., was sentenced Friday for violating the Clean Water Act and tampering with witnesses.

Convicted at trial, Dooley was caught in August 2010 pouring excess cleaning products down a toilet at his South Seattle warehouse.

A 17-year-old boy working for Dooley was poisoned after Dooley directed him to pour the contents of a dozen 5 gallon buckets down a toilet. Bleach in one bucket reacted with another cleaner there and created chlorine gas, which the boy accidentally inhaled.

Dooley, 60, also instructed another employee to lie about his employment status and
Criminal Enforcement

EPA's criminal enforcement program enforces the nation's laws by investigating cases, collecting evidence, conducting forensic analyses and providing legal guidance to assist in the prosecution of criminal conduct that threatens people's health and the environment.

HEADLINES

July 19 – Former President of Texas Company Indicted for Employee Deaths and Environmental Violations

WASHINGTON – Port Arthur Chemical and Environmental Services LLC (PACES) and its former president Matthew L. Bowman have been charged with conspiracy to illegally transport hazardous materials, resulting in the deaths of two employees, in an indictment handed down by a federal grand jury in Beaumont, Texas. Read more in the press release.

July 13 – Ohio Valley Coal Company pleads guilty to violating Clean Water Act

COLUMBUS – The Ohio Valley Coal Company (OVCC) pleaded guilty to criminal violations of the Clean Water Act arising from two coal slurry release incidents that polluted Captina Creek in Belmont County, Ohio. OVCC operates a mining facility in Alleghonia, Ohio.

In January and February 2008, the company negligently failed to sample and monitor the flow of pollutants discharged from its holding pond at Powhatan Mine Number 6 into Perkins Run, which flows into Captina Creek. The illegal discharge of coal slurry turned the creek black for 22 miles downstream. Read more in the press release (PDF).
Publicizing Prosecutions: Government Publications

Criminal Enforcement Alert

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November 2011

New Vehicle Testing Technology Makes Inspection Fraud Easier to Detect, Spurs Increased EPA Criminal Enforcement

People have been finding ways to cheat the system for years, but now, vehicle emissions testers have found a new way to do it. This new technology makes it easier to detect fraud and increase the chances of a conviction. The only way to catch the tester is to have a trained officer on hand who can spot the telltale signs of a cheat. This officer must also be able to identify the different types of vehicles and the vehicles that are most likely to be involved in this type of fraud.

In recent years, however, the majority of vehicle emissions testing programs across the country have been using sensors to detect the presence of pollutants in the vehicle’s exhaust. While these sensors are relatively easy to install, they can be used to replace traditional testing methods in lieu of traditional testing methods. While this technology is not foolproof, it has been shown to be effective in detecting vehicle emissions that are not being accurately measured.

In Nevada, for example, the state’s Department of Motor Vehicles (DMV) has been using sensors to detect vehicle emissions. The DMV has also partnered with the Nevada Attorney General’s Office to investigate these cases. The investigation has led to charges being filed against individuals and companies.

Environmental Crimes Case Bulletin

U.S. Environmental Protection Agency
Office of Criminal Enforcement, Forensics and Training

Case Bulletin June 2012

This bulletin summarizes publicized investigation activity and adjudicated cases conducted by the OCEFT Criminal Investigation Division special agents, forensic specialists, and legal support staff.

Defendants in this edition:

- Boris A. Tarvick — Region 1
- Capushe M. Murrell — Region 3
- Rodney R. Halley — Region 3
- Michael J. McKenna, Bee Marsh Laboratories — Region 3
- Carlos A. Garcia — Region 4
- Spectro Alloys Corporation — Region 5
- The Ohio Valley Coal Company — Region 5
- Kent Phillips — Region 6
- Cody T. Turner — Region 6
- Sedrick Dunningsburg — Region 7
- Ronald Monera — Region 10

Did you know?

- Oregon provides a variety of training programs during the summer months, including a program for students who want to learn about crime scene investigation.
- The United States Marine Corps is one of the best prepared organizations in the world and in terms of combat readiness, but even they have had to make adjustments to their training programs to keep up with the rapid changes in technology.
Publicizing Prosecutions: Private Publications & Social Media
Additional Obstacles:

Perceived impact of environmental enforcement on jobs and the economy

Political influence of regulated community

Vague or non-existent laws or regulations
Additional Obstacles:

- Lack of public awareness or concern
- Lack of judicial familiarity
- Organized crime