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Criminal Enforcement Program



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Overview of EPA's Criminal Enforcement Program

"While both corporations and individuals pay penalties, only individuals can go to prison – a sanction that no one can pass along to the American consumer as just another cost of doing business."

- James Strock, former EPA Assistant Administrator for enforcement, testifying in support of the Pollution Prosecution Act of 1990

The mission of the Environmental Protection Agency's (EPA's) criminal enforcement program is to investigate, help prosecute and deter the most egregious environmental offenders. Our nation's environmental laws include criminal provisions that address knowing and negligent environmental violations. For example, an intentional decision to discharge pollutants into a river without a permit, or to bypass a required pollution control device, would be a "knowing" environmental violation, and thus a criminal act. Criminal enforcement brings to bear the possibility of incarceration and monetary fines that are EPA's strongest sanctions.

Since the criminal enforcement program was established in 1982, most of the environmental crimes that EPA has investigated involve these "knowing violations" of the law, which are classified as felonies under the Clean Air Act (CAA) and Clean Water Act (CWA), as well as the federal hazardous waste law – the Resource Conservation and Recovery Act (RCRA).

Examples of environmental crimes investigated by EPA are:

- Air emissions of toxic pollutants resulting from inadequate or nonexistent pollution control
- Illegal discharges into surface waters or municipal sewer systems that threaten public safety, cause costly damage to infrastructure and impact important aquatic resources
- Illegal handling, transportation and disposal of hazardous wastes
- Industry-wide ocean dumping by cruise lines, cargo ships and other vessels
- Oil spills that damage beaches, near-shore marine and other sensitive habitats
- Illegal dredging and filling of wetlands
- False statements related to submissions to EPA or delegated states that threaten the integrity of environmental protection programs
- International smuggling of regulated ozone depleting chemicals which damage the ozone layer
- Pesticide violations, which cause evacuations, sickness or death in humans or wildlife



- Illegal asbestos removals, which expose and create health risks for workers, including the homeless, children and other vulnerable groups

Individuals and companies that commit environmental crimes often commit additional violations of the U.S. Criminal Code (Title 18), such as conspiracy, obstruction of justice, mail and wire fraud, etc. When these offenses are associated with alleged environmental crimes, EPA investigates and assists in the prosecution of such matters by the Department of Justice.

STRATEGIC DIRECTION OF THE CRIMINAL ENFORCEMENT PROGRAM

Case Selection and a Focus on Individual Defendants

In concert with general criminal case selection criteria, the criminal enforcement program has increased its efforts to incorporate EPA's broader enforcement strategy into its case selection process. While the criminal program will continue to maintain an overall enforcement presence by addressing EPA's "core programs" under all of the pollution statutes (water, air, waste, pesticides, and toxics), the criminal program is rebalancing its workload to open more cases with the most significant environmental and health implications and cases that address EPA's enforcement initiatives.

The criminal program collects data on a variety of case attributes to evaluate the range, complexity, and quality of our national docket. Beginning in FY 2010, data for selected attributes were used to categorize our cases into tiers based on the severity of the crime associated with the alleged violation. The data elements used in the tier methodology are directly linked to the criteria identified under the Federal Criminal Sentencing Guidelines. These include information about the human health and environmental impacts, the nature of the pollutant and the release, and the profile and compliance history of the subject(s). Case tiering is used throughout the investigative process including case selection and direction of resources for case support.

While case outcomes will fluctuate based on their specific characteristics, as well as the prosecutorial and sentencing decisions made by the U.S. Department of Justice and the federal courts, an emphasis on these priorities should yield greater environmental and public health benefits and deter illegal corporate and individual behavior. EPA also works to maintain the historically high conviction rate for defendants charged with environmental crimes, which is a critical ingredient of deterrence. A review of all "closed" environmental crimes investigations in which EPA served a search warrant found that criminal charges were filed against violators 67 percent of the time. The conviction rate for those defendants consistently runs near 90 percent, a strong affirmation that the government is in fact prosecuting the right cases. Under



this system, cases that reach prosecution have withstood substantial scrutiny and have been determined to be worthy of criminal enforcement.

EPA's criminal enforcement program emphasizes prosecution of individual defendants as high up the corporate hierarchy as the evidence permits. The reason for this focus on individual liability is simple: corporate managers will think twice about deliberately breaking the law if they understand that they face incarceration and personal criminal fines for criminal conduct, rather than consequences that will be borne solely by the company. During the early years of EPA's criminal program, organizational defendants made up approximately 70% of the total defendants charged and individual defendants made up the remaining 30%. Today those figures are reversed: 70% individual and 30% organizational defendants.

Civil-Criminal Enforcement Coordination

EPA's criminal program works closely with the civil enforcement and regulatory programs to align environmental crimes investigations with agency-wide and regional priorities and to coordinate cases when a facility is suspected of both criminal and civil violations. The criminal program provides training to help the civil enforcement program recognize signs of potential environmental criminal activity; we also provide training in evidence collection, documentation, and related enforcement-related technical subjects. These efforts increase the flow of information from civil enforcement personnel regarding environmental violators. EPA regions and CID Special Agents-in-Charge (SACs) conduct case screening sessions, and the criminal program is also working more closely with EPA emergency-response personnel – who are often the first EPA personnel at the scene of a potentially illegal release of pollutants –to assure that environmental crimes prosecutors have the best information available for case development.

Enhanced Deterrence Through Public Outreach

Deterrence depends on public access to information about EPA's criminal enforcement program. In addition to publicizing prosecutions through the media, the criminal program has undertaken several initiatives to enlist the public's help in identifying environmental violations and violators.

In January 2006 EPA launched the "Report a Violation" website, which allows the public to report possible environmental violations taking place in their community. This is a useful way for the public to help protect the environment by serving as additional "eyes and ears." Although most tips are referred to civil enforcement authorities after initial screening, to date the criminal enforcement program has opened 35 criminal investigations based on website tips. These tips have resulted in six cases that have been charged and convicted.

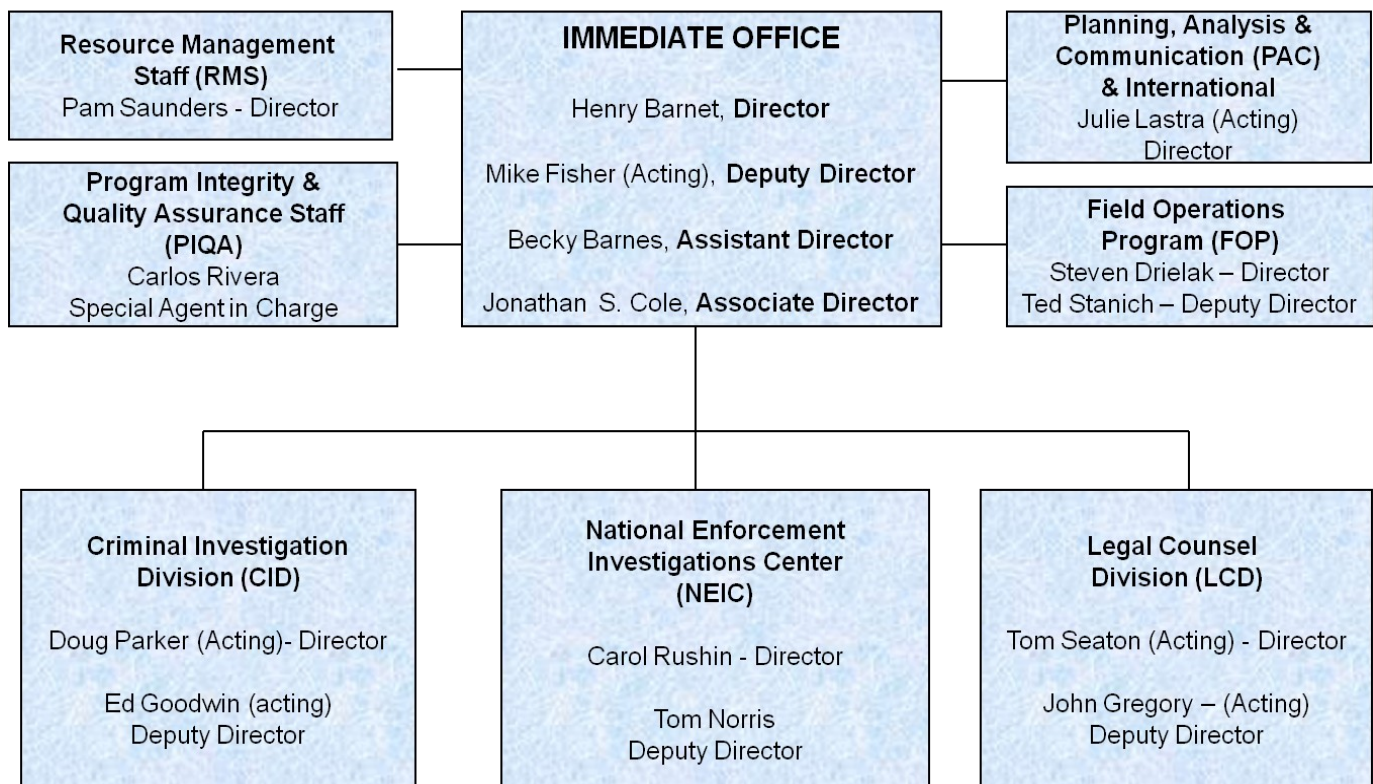


In December 2008 EPA launched the Fugitive website, to educate the public and seek information regarding individuals who are hiding or have fled the country rather than face prosecution for alleged environmental crimes. The website has proven to be a powerful tool to help ensure that environmental defendants' ultimate guilt or innocence is decided by the legal system. As of June 2011, creditable reports received assisted in the arrest or capture of five fugitives and the surrender of three other fugitives.

Information about each fugitive listed on the website includes the fugitive's photograph, a brief summary of his/her alleged violations and the location where he/she was last seen or believed to be living. A fugitive's location can be reported to EPA by anyone on the "Report a Fugitive's Location" online form. Reported information is electronically sent to EPA's Criminal Investigation Division for further review and action. The public may also report the information to their local police or, if outside the United States, to the nearest U.S. Embassy.

Organization

To meet the technical and legal challenges and sustain the high burden of proof required in criminal cases, EPA's criminal program relies on the expertise of a skilled team of special agents, forensic specialists, expert program personnel and attorneys.





STAFFING AND BUDGET

At the end of FY 2010, the EPA criminal program employed approximately 375 people, including special agents to investigate environmental crimes, scientists/technical staff/computer specialists to collect and analyze samples and electronic data, lawyers, policy analysts and administrative personnel. Here is the current breakdown of personnel within the organization and a review of the criminal program's total budget over the previous six years:

FTE*	UNIT WITHIN OCEFT
50	OCEFT Immediate Office (IO)
215	Criminal Investigation Division (CID)
94	National Enforcement Investigation Center (NEIC)
16	<u>Legal Counsel Division (LCD)</u>
375	Total



*Full time equivalent positions - 2011 Enacted

Total OCEFT Budget

Fiscal Year	Budget (real dollars)*	(nominal dollars)
2006	\$64 M	\$64 M
2007	\$65 M	\$67 M
2008	\$63 M	\$68 M
2009	\$70 M	\$74 M
2010	\$71 M	\$77 M
2011	\$65 M	\$73 M

*This column is expressed in constant 2006 dollars



Criminal Investigation Division (CID)

ORGANIZATION AND MISSION

The Criminal Investigation Division conducts criminal investigations of violations of environmental statutes and associated ancillary statutes, and working with DOJ and/or state prosecutors, provides full investigative support during prosecution.

CID began as a division within NEIC staffed by fewer than 25 agents, who came to EPA from other law enforcement agencies, such as ATF and IRS-CID. The program grew to approximately 45 Special Agents in the late 1980s. The passage of the Pollution Prosecution Act in 1990 led to an upsurge in hiring which eventually brought total Special Agent staffing to a legislatively-prescribed minimum of 200.

CID is led by a Director who oversees ten Special Agents in Charge (SACs). The SACs manage CID's Area Offices in each EPA Region. The SACs are assisted by an Assistant Special Agent in Charge (ASAC), and supervise Special Agents who conduct criminal investigations. In addition to the Area Offices located in the corresponding EPA regional city, a number of smaller Resident Offices are staffed with from two to five Special Agents. These are located in cities such as Detroit, Baton Rouge, and Miami, which are geographically distant from the corresponding Area Offices and have a large volume of environmental crimes work. CID field offices plan, develop, and coordinate investigative activities within geographic areas of responsibility, and oversee all operational aspects of criminal investigations to include interviewing witnesses, reviewing documents, serving of federal search warrants, collecting evidence, and testifying in judicial proceedings.

INVESTIGATIONS

Typically, CID carries approximately 800 open criminal investigations on its national docket. The bulk of these are centered on violations of the Clean Water Act (CWA), the Clean Air Act (CAA), and the Resource Conservation and Recovery Act (RCRA). OCEFT also pursues violations of the Federal Criminal Code, such as wire fraud and obstruction of justice.

Criminal leads arise from a variety of sources, including tips from EPA regions and the states, calls from disgruntled workers, anonymous tips, and information from other law enforcement organizations. Leads are evaluated by the SAC and an assigned agent, with a determination made within 45 days as to whether the lead should be opened as an investigation or referred elsewhere. The factors involved in determining whether to open an investigation include whether the alleged violation resulted in real or potential harm, and what type of conduct was involved, and various legal, technical, and regulatory considerations. The

initial assessment of a lead may also involve legal personnel -- the Regional Criminal Enforcement Counsel (RCEC) -- and technical personnel -- NEIC Technical Coordinator (NTC) -- working closely with the case agent. Both RCECs and NTCs are commonly co-located in the SAC offices.

CID focuses not simply on whether there is a provable criminal violation, but also on whether the circumstances of that violation warrant the investment of scarce investigative resources. Nationally, CID opens less than 20 percent of all leads as cases, and approximately one-third of the cases on the docket lead to criminal charges, which is similar to many other federal law enforcement programs. The life-span of a case may last several years, but we work to have the investigations completed within one to two years of their initiation.

CID uses investigative techniques similar to those employed by its law enforcement counterparts. After the receipt of lead information, state and federal environmental records and databases may be reviewed to determine a suspect company's regulatory history or an individual's criminal history. In all cases, interviews are conducted to gain a detailed view of the facts, and that often leads to more detailed investigative steps, such as surveillance of a facility or suspected individuals, issuance of grand jury subpoenas (through the Department of Justice), execution of search warrants where probable cause of criminal violations exists, and the use of traditional covert and technical investigative techniques.

CID's investigative work is conducted by the Special Agent(s) assigned to a case and supervised by the SAC and ASAC. Legal support is provided throughout the investigation by the RCEC. The use of the grand jury is led by the local United States Attorney's Office, which also plays a detailed role in the drafting and issuance of search warrants. During the execution of a criminal search warrant, support for forensic evidence collection such as sampling, monitoring, and site documentation is provided by NEIC personnel, with additional support provided by Field Operations Program (FOP) personnel. In addition to its accredited field support, NEIC also provides forensic analytical support with its accredited laboratory. CID's own National Computer Forensics Laboratory (NCFL) has Special Agents trained to seize and analyze digital evidence, such as that found on computers, "PDAs," and cell phones. NEIC, FOP and NCFL all play critical roles, as do a number of other forensic, investigative, legal, and prosecutorial partners, in successfully making cases.





A HISTORICAL LOOK AT SPECIAL AGENT STAFFING

The Special Agents who support EPA's criminal enforcement program are assigned primarily to CID.

- Agent numbers listed below for 1997-2001 reflect Special Agents on board at the end of the fiscal year, working on or in support of criminal investigations.

1997	200
1998	200
1999	192
2000	179
2001	181

- Agent numbers listed for 2002-2004 list Special Agents who were assigned to the criminal enforcement program, including some who performed a mix of environmental crimes and homeland security work over several years leading up to the creation of the Homeland Security Division in 2005-2006. (That division was disbanded in 2009, with some agents continuing to provide protection to EPA's Administrator, and the rest reassigned to support criminal investigations.)

2002	217
2003	217
2004	202

- Agent numbers listed for 2005-2010 reflect Special Agents working on or in support of criminal investigations.

2005	189
2006	183
2007	168
2008	183
2009	186
2010	206



CID LOCATIONS

CID Headquarters staff is primarily located in Washington, D.C. A small number of HQ staff with specialized support functions are stationed in the field (e.g., training staff at FLETC, computer forensics staff in Jacksonville, FL, etc.). The majority of CID's staff is located in its 41 Area and Resident Offices listed below.

Region	Office
1	Boston Area Office
	New Haven Resident Office
2	New York Area Office
	Syracuse Resident Office
	Edison Resident Office
	Puerto Rico Resident Office
3	Philadelphia Area Office
	Potomac Yard Resident Office
	Baltimore Resident Office
	Charleston Resident Office
4	Atlanta Area Office
	Nashville Resident Office
	Louisville Resident Office
	Charlotte Resident Office
	Knoxville Resident Office
	Gulf Breeze Resident Office
	Miami Resident Office
	Tampa Resident Office
5	Chicago Area Office
	Minneapolis Resident Office
	Indianapolis Resident Office
	Cleveland Resident Office
	Detroit Resident Office
6	Dallas Area Office
	Baton Rouge Resident Office
	Houston Resident Office
7	Kansas City Area Office
	St. Louis Resident Office
8	Denver Area Office
	Helena Resident Office
	Salt Lake City Resident Office
9	San Francisco Area Office
	Sacramento Resident Office
	Honolulu Resident Office
	Los Angeles Resident Office
	San Diego Resident Office
	Phoenix Resident Office
10	Seattle Area Office
	Portland Resident Office
	Anchorage Resident Office
	Boise Resident Office



National Enforcement Investigations Center (NEIC)

ORGANIZATION AND MISSION

The National Enforcement Investigations Center (NEIC), located at the Denver Federal Center in Lakewood, Colorado, is EPA's accredited environmental forensic center.



Founded in 1970, NEIC was originally known as the National Field Investigations Center – Denver. It was a field operations unit of the enforcement program of the Federal Water Quality Administration in the Department of the Interior. In late 1970, the Center was transferred to the new Environmental Protection Agency, reporting to the Office of Enforcement within EPA headquarters. In July 1975, the Center was renamed as the National Enforcement Investigations Center. In the mid-1990s, NEIC became a division within EPA's criminal enforcement program. Along with its partners in CID and the civil enforcement program, NEIC continues to deliver on its mission to improve and protect the environment and human health by providing technical forensic services to EPA's environmental enforcement programs.

Nationwide Coverage

The NEIC mission is national in scope and encompasses most major environmental laws and regulations. It provides expertise in field activities and engineering evaluations; forensic laboratory services; information technology support; technical analysis and training; and expert witness services in the courtroom for criminal and civil cases.

The NEIC Field Branch provides sampling and evidence collection support to CID. This support is provided both by the Lakewood based staff and six outplaced technical staff (NTCs) stationed in six of the ten CID SAC offices across the country. The Field Branch also provides multi-disciplinary teams that conduct investigations in support of civil case development. The investigations include multi-media and single-media inspections led by NEIC regulatory and technical experts who work closely with regional and state enforcement partners to identify potential compliance deficiencies. The inspections are usually conducted by examining a facility's manufacturing and waste management processes first, and then evaluating the applicability of federal regulatory standards. During its work in both programs, NEIC field personnel continually pursue the application and adaptation of new sampling methodologies and monitoring technologies to environmental enforcement settings.



NEIC maintains a highly sophisticated laboratory which uses a wide variety of analytical techniques to support criminal and civil investigations. The NEIC laboratory focuses on the following:

- Identifying and quantifying pollutants as supporting evidence to show violations of permit or regulatory limits under the CWA, CAA, or RCRA;
- Matching pollutants with sources by using techniques such as morphology, isotope ratios and trace metals comparison;
- Conducting applied research to improve existing compliance-related analytical methods.

NEIC's information technology capabilities are provided by a specialized staff which supports field investigations and laboratory sciences. Specialized services include records and document management, technical editing, visual graphics, and maintenance of the environmental forensics laboratory with access to a wealth of information services. Direct project support includes statistical and data analyses for reports and expert opinions. NEIC also has a Laboratory Information System which supports both science and investigation activities.

Staff

NEIC's staff include designated national experts in various scientific and media areas, including air and water pollution, hazardous wastes, sampling, data quality, and organic and inorganic chemistry. Several staff members have extensive experience working closely with CID agents and prosecutors in developing criminal cases and presenting data in depositions and criminal and civil trials. The entire technical staff has extensive training and experience in evidence handling appropriate for criminal investigations.

Accreditation

NEIC is accredited under ISO 17025 for environmental measurement activities. NEIC was granted accreditation by Forensic Quality Services-International (FQS-I) for field measurements/monitoring, field sampling, and laboratory measurement activities. FQS-I customized requirements for this accreditation, cover the work conducted by NEIC for civil, criminal, and special programs. NEIC is also accredited to measure asbestos in bulk materials under the National Voluntary Laboratory Accreditation Program, operated by the National Institute of Standards and Technology. Accreditation confirms that NEIC implements a recognized and systematic approach to planning, conducting, documenting, and assessing forensic and environmental data collection and development activities. Accreditation also confirms to environmental stakeholders and to the American public NEIC's ongoing commitment to sound science.



LEGAL COUNSEL DIVISION (LCD)

ORGANIZATION AND MISSION

LCD provides environmental criminal legal and policy support for all of OCEFT's responsibilities. LCD includes 15 attorneys plus support personnel stationed primarily in Washington, D.C. and in Lakewood, Colorado. Although LCD provides legal support regarding specific criminal investigations when needed, the legal support for most ongoing criminal investigations is provided by Regional Criminal Enforcement Counsels located in EPA's 10 regional offices.



PROGRAMMATIC TRENDS & CASE HIGHLIGHTS

Trends in Environmental Crimes and OCEFT's Response

The criminal enforcement program continues to emphasize investigations with significant environmental, human health, and deterrent impact, while balancing its overall docket with "core" cases across all pollution statutes and supporting OECA's National Enforcement Initiatives.

OCEFT uses a four-tier methodology for docket management and to evaluate the significance of the alleged criminal conduct against the objectives of the Agency's mission. Leads are reviewed, prior to case opening, for information in the following categories:

- Pollutant and Discharge Characteristics
- Human Health and Environmental Impacts
- Subject Characteristics
- Other Factors (a miscellaneous category such as a case of first impression or one that promises to effect major change in an industry)



By FY 2015, the program's goal is to have half of the investigative docket at Tier 1 and Tier 2 levels – those with the most significant health and environmental impact. Currently, EPA's docket has approximately 41% Tier 1 and 2 investigations.

International Efforts

OCEFT's primary international focus has generally been through the International Criminal Police Organization (INTERPOL), and its Environmental Crimes Committee. Through INTERPOL, and with support from the State Department, OCEFT has developed and participated in international environmental investigations, and have trained other environmental and law enforcement agencies throughout the world. In past years, OCEFT had an agent stationed at INTERPOL's headquarters in Lyon, France working on environmental matters, but that position has been withdrawn. However, EPA does provide funding to support INTERPOL's environmental crimes work.

EPA currently has a Special Agent assigned to the U.S. National Central Bureau – the government's official representative to INTERPOL. However, all criminal investigations with international aspects are worked by CID agents in the field who coordinate necessary efforts with headquarters staff.

Within the international area, EPA has recently focused on the illegal exportation of electronic waste to other countries, the illegal importation of ozone-depleting substances and non-compliant engines as well as trans-boundary pesticide and hazardous waste crimes.

Recent Criminal Investigative Results

Environmental Crime Cases Opened

346 Environmental Crime Cases Opened: In 2010, EPA opened 346 new environmental crime cases (an 11% decrease from 387 in 2009, but the second highest number of new cases since FY 2005). The emphasis on opening more significant "Tier 1" and "Tier 2" cases may result in fewer total new cases opened in coming years, but that decrease should be offset by greater human health and environmental impact represented by highly tiered cases.



Defendants and Convictions

289 Criminal Defendants Charged: Criminal charges were brought against 289 defendants in FY 2010 (45% increase over FY 2009 and the highest number since FY 2005). Of the 289 defendants, 251 (87%) were individuals, as opposed to a business or corporation.

88% Conviction Rate: Of the cases completed during FY 2010, 198 defendants either pled guilty or were convicted at trial. This was an 88% conviction rate, which is in line with EPA's historical average of approximately 90%. Defendants can be acquitted for a variety of reasons, e.g., found not guilty at trial or having convictions overturned on appeal. In FY 2010, several defendants were acquitted after juries found them not guilty. Similarly, charges were dropped against several defendants after exculpatory evidence in their favor was entered into the record. Also during FY 2010, charges were dismissed against: a company that went out of business; a company whose senior managers were convicted; a defendant who died; and a defendant who entered into a pre-trial diversion and paid \$50,000 in restitution.

Fines and Restitution

\$41 Million in Fines and Restitution: Criminal defendants were assessed a total of \$41 million in fines and restitution, a 57% decrease from the \$96 million in FY 2009. The 2009 figure was unusually high because it included a \$50 million fine assessed against BP Products North America Inc. for felony conduct associated with the explosion on March 23, 2005 at its Texas City, Texas refinery which killed 15 contract workers and injured over 170 others. The FY 2009 BP fine was the largest criminal fine ever assessed under the Clean Air Act.

\$18 Million in Court Ordered Environmental Projects: Court Ordered Environmental Projects represent the total monetary value of environmentally beneficial projects or other activities that a judge orders criminal defendants to pay for or undertake themselves. In FY 2010, courts ordered criminal defendants to pay \$18 million for environmental projects (an 80% increase over FY 2009). The Southern Union Company was sentenced to pay the largest amount for a project, \$12 million, as part of a sentence for illegally storing mercury at a company-owned site in Pawtucket, Rhode Island. The mercury was removed from the site by vandals and ended up contaminating a neighborhood residential area. The assessment included payments for a state emergency response fund and a children's hospital. (Note: the case is currently on appeal.)

Incarceration

72 Years of Incarceration: In FY 2010, individual criminal defendants were sentenced to a total of 72 years of prison time, (down from 76 years in FY 2009). In addition to the 72 years of aggregate prison time, defendants in criminal cases investigated by EPA were sentenced to an additional 22.5 years in prison – not included in the annual statistics – after being convicted and sentenced on charges not directly related to the environmental charges against them, but resulting from evidence gathered during the environmental investigation (e.g., in past years, the additional prison sentences resulted from convictions for such crimes as theft or illegal drug manufacturing). In FY 2010, the additional jail time resulted from a child pornography conviction. (Note: As in past years, the total level of incarceration in FY 2010 also was reduced by Supreme Court decisions which made the U.S. federal sentencing guidelines discretionary rather than mandatory for use by federal district court judges. Mandatory sentences would have included 26 additional years of jail time.)

Landmark Cases

AAR Contractor, Inc.

Longest jail sentences in environmental crimes history – total incarceration more than 51 years, total fines more than \$5.7 million, total restitution more than \$23 million



This was an investigation of the largest and most dangerous illegal asbestos abatement fraud in New York State history. The owners of AAR, Alexander and Raul Salvagno, defrauded hundreds of clients out of nearly \$22,000,000 million in payments. The Salvagnos directed the falsification of over 50,000 air monitoring reports at approximately 1,555 sites throughout New York State for a ten year period. These falsifications allowed the defendants and AAR to hide the fact that they had failed to comply with regulations promulgated pursuant to the Clean Air Act governing the removal of asbestos.



Further, the workers employed by AAR were not provided with proper protective equipment, and dangerous levels of residual asbestos contamination were found by investigators at a number of locations that AAR had falsely declared to be safe. At least one former AAR worker has developed asbestosis as a result of being exposed, according to a state worker's compensation judge. The defendants also engaged in obstruction of justice by destroying evidence that demonstrated their years of illegal conduct.

The Salvagnos were convicted after a five-month long trial, and received the longest jail sentences for environmental crimes in history (19 ½ years and 25 years, respectively). They were also sentenced to RICO forfeiture of \$3.7 million and restitution of \$46 million. Their company, AAR Contracting, was subject to RICO forfeiture of \$2 million and restitution of \$23 million. Fourteen other company supervisors and workers pled guilty prior to the trial.

Atlantic States Cast Iron Pipe Company

The longest trial in environmental crimes history results in convictions of Atlantic States – a division of McWane, Inc. – and four managers for CWA, CAA, and other crimes. (This was one of five criminal prosecutions of the McWane Corporation between 2005 and 2009.)



McWane, Inc., is one of the world's largest manufacturers of cast-iron water and sewer pipes and has divisions located throughout the United States and Canada. In January 2003, *The New York Times* published several articles and the PBS television show *Frontline* aired a special program detailing the company's long history of safety violations, including worker deaths as well as serious environmental violations, at facilities including the Atlantic States Cast Iron Pipe Company ("Atlantic States") in Phillipsburg, NJ. Employees told investigators that the company was continuously discharging illegal amounts of contaminants, including heavy metals, hydraulic fluids, and solvac (a lubricant) into the

Delaware River. The workers also alleged that the facility burned excess paint in its furnace and tampered with the carbon monoxide reader, apparent criminal violations of the Clean Air Act.

The trial began in September 2005 and is the longest federal trial (defined in length, from jury selection to verdict) in environmental crimes history. On April 26, 2006, a jury found Atlantic States and four employees guilty of environmental and other crimes.

In April 2009, Atlantic States and four individuals were sentenced as follows:

Atlantic States: \$8 million fine and serve 48 months monitored probation

John Prisque (plant manager): 70 months in prison

Scott Faubert (former human resource manager): 41 months in prison

Jeffrey Maury (maintenance supervisor): 30 months in prison

Craig Davidson (finishing supervisor): 6 months in prison

(Note: the case is currently on appeal.)

Robert Lucas/Big Hill Acres

One of the most significant wetlands criminal prosecutions in history - total incarceration more than 23 years; total fines more than \$5.3 million



Robert Lucas, a real estate developer in southern Mississippi, and other defendants developed Big Hill Acres from 1994 through 1999. Beginning in 1996, inspectors from the U.S. Army Corps of Engineers informed Lucas that substantial portions of the property contained wetlands and could not be developed as home sites. The Mississippi Department of Health and other regulatory agencies told the defendants that they were creating a public health threat by continuing to install septic systems in saturated soil.

Despite warnings and cease and desist orders from the Corps and EPA, Lucas and his associates continued to improperly install systems that did not conform to state health department regulations in lots that they continued to develop and sell. Most of the land was sold to low and/or fixed-income families. While selling



the property, Lucas and several other defendants fraudulently told prospective buyers that the property was completely habitable. More than 600 families moved into Big Hill Acres. Within several years, a large number of the septic systems failed, causing raw sewage to seep up from the ground and flow across the development. A number of the homes in Big Hill Acres also suffered from slow drainage; brown, foul-smelling water backing up into bathrooms, kitchens, laundries and sinkholes; and standing water on the lots with debris rising to the surface.

On February 25, 2005, following a two month-long trial, five defendants – three individuals (including Robert Lucas) and two corporations - were convicted of multiple felonies: Clean Water Act violations for illegally filling hundreds of acres of wetlands, as well as conspiracy and mail fraud for selling hundreds of home sites on the filled-in wetlands, despite warnings from public health officials that the saturated soil could not accommodate septic systems. Robert Lucas was sentenced to nine years in prison-- the longest sentence ever in a wetlands case. The remaining two individual defendants each received a sentence of seven years and three months. These three defendants were also ordered to pay \$1.4 million in mitigation costs. Two corporations run by Lucas, Big Hill Acres, Inc., and Consolidated Investments, Inc., were also fined a total of \$5.3 million.

Evans Labor Camp

Total incarceration of more than 48 years for multiple defendants who ran a ‘house of horrors’ labor camp



This case began as an investigation into environmental violations and human health concerns associated with the Evans Labor Camp located in Putnam County, Florida. Robert Evans, Sr. owned and, with his co-defendants, operated a labor camp for migrant and seasonal agricultural workers. Cow Creek, a primary tributary of the St. Johns River, flows along the southern border of the camp. Evans, Sr. directed that the camp's heavily used septic tanks be configured to discharge raw, untreated human excrement directly into Cow Creek, which was severely contaminated as a result.

The investigation also uncovered serious non-environmental crimes. For many years, the defendants recruited African Americans from homeless shelters and the surrounding streets. The defendants charged the laborers \$50 per week for room and board, and put them to work in the fields for wages at or near

minimum wage. At the end of every weekday, the defendants gave the workers the opportunity to purchase -- on credit and at inflated prices -- crack cocaine and untaxed generic-quality beer and cigarettes at a "company store" operating at the camp. The defendants deducted the purchases from the laborers' weekly pay envelopes. After making the deductions, the defendants were paying their workers on average about 30 cents on the dollar. The defendants obtained the money to acquire "crack" by cashing checks written by their farmer clients. Because federal law requires large cash transactions to be reported by financial institutions, the defendants instructed the farmers to structure the payments in amounts less than \$10,000 to evade the reporting requirements. Evans, Sr. also obstructed justice by persuading one farmer to lie on his behalf to investigating IRS agents and to deny that the structuring took place.

Charges were filed against 9 individuals. Two of the defendants, Robert Evans, Sr. and his wife, were convicted by a jury on charges of running a criminal enterprise that distributed crack cocaine; conspiracy to distribute crack cocaine; trafficking in untaxed contraband cigarettes; violating the Clean Water Act; violating the Migrant and Seasonal Farm Worker Protection Act; structuring cash transactions to avoid financial reporting requirements; and witness tampering. Evans, Sr. was sentenced to 30 years in prison (36 months of which were for CWA convictions) and his wife was sentenced to 15 years in prison. The remaining defendants pled guilty to various but similar violations.

Sunday Abek Lead Poisoning

Toddler death after Lead Paint Falsification on EPA Form



Sunday Abek was two when her parents fled the civil war in Sudan and brought her to America. In March 2000, with the help of a refugee resettlement organization, they moved into a rambling tenement near the center of Manchester, New Hampshire. In April 2000, a week after arriving in the United States, Sunday began vomiting and running a high fever. She was rushed to a local hospital. Three days later, she died from lead poisoning. Sunday's death initiated an eight-month investigation by city, state, and federal authorities. EPA and state investigators consulted national experts on childhood lead poisoning; obtained assistance from four state and national laboratories; reviewed samples taken from Sunday's neighborhood; and eventually undertook a sophisticated isotope analysis that compared paint samples collected in



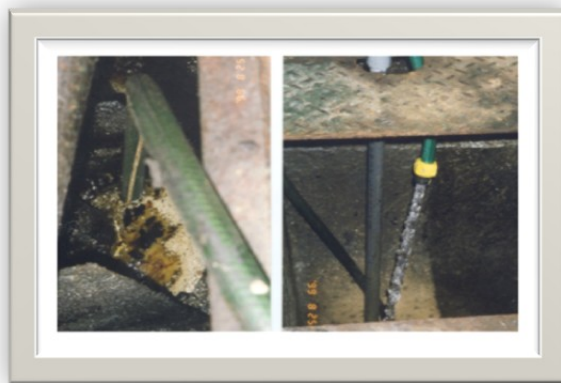
Sunday's Manchester apartment with lead in her body. This forensic work determined that Sunday was killed by the peeling and flaking gray paint covering the porch outside her Manchester apartment, where she played. Sunday's blood-lead level was 391 micrograms per deciliter, nearly 40 times higher than the commonly-used definition of lead poisoning.

Sunday's apartment building was managed by James Aneckstein and his company, JTA Real Estate Brokerage and Property Management, Inc. (JTA). The federal Residential Lead-Based Paint Hazard Reduction Act required Aneckstein to supply the Abek family with proper notification of the presence of lead-based paint at their apartment. Aneckstein provided regulators with a photocopy of a lead disclosure form that contained a suspicious signature purporting to be that of Sunday's mother, acknowledging receipt of the required notification. In April 2001, CID executed a federal search warrant at the JTA office and Aneckstein's residence. The original lead disclosure form for Sunday's apartment was found at the bottom of a trash can, torn into many pieces; it showed the signature of Sunday's mother to be a forgery.

In December 2001, Aneckstein and his company pled guilty to obstructing justice, making false statements, and failing to provide tenants with notice of lead paint hazards as required by federal law. Aneckstein was sentenced to 15 months in prison, and he and JTA were fined \$40,000. The defendants also agreed to retain an independent contractor to assess lead paint hazards at all rental properties they owned.

USL City Environmental, Inc.

Individuals receive a total of 39 months incarceration and company fined \$5.5 million for CWA and RCRA violations



USL City Environmental was once the largest hazardous waste treatment facility east of the Mississippi River, located in Detroit, Michigan; its operations were a complete sham. Gazi George, the former Vice President of USL City Environmental, and Donald Roeser, former Plant Manager, were knowingly failing to treat the hazardous waste received at the company's central waste treatment facility from 1997 through

1999. Liquid hazardous waste was unlawfully discharged directly into a sewer through a covert bypass pipe and other methods. Solid hazardous waste was sent untreated to a non-hazardous waste landfill. The defendants were also allegedly falsifying samples and reports, and tampering with a monitoring device to advance their scheme.

Donald Roeser and Gazi George were charged with conspiracy to violate the Clean Water Act, conspiracy to violate RCRA, violating the Clean Water Act by bypassing treatment and tampering with a monitoring device, and violating RCRA by transporting hazardous wastes to unpermitted facilities and making false statements. George pled guilty in late 2004 to a felony violation of the CWA and RCRA. He was sentenced to 27 months imprisonment, 3 years supervised release, and a \$60,000 fine. Roeser pled guilty and was sentenced to 12 months imprisonment and a fine of \$60,000. The corporate defendant, U.S. Liquids of Detroit, Inc., also pled guilty and paid a \$5.5 million fine.

M/V Cosco Busan

The Cosco Busan smashed into the San Francisco Bay Bridge, spilling 58,000 gallons of heavy fuel oil, fouling 26 miles of shoreline, and killing more than 2,000 birds



On November 7, 2007, as the Cosco Busan was departing Oakland, California, for South Korea in a heavy fog, the 810-foot ship collided with a tower of the San Francisco Bay Bridge. The impact ruptured a fuel tank, discharging approximately 58,000 gallons of bunker fuel oil into the San Francisco Bay. The Cosco Busan spill has been estimated to have cost more than \$70 million in damage to beaches, wildlife, and the fishing industry.

A multi-agency investigation determined that the ship's Pilot, John Joseph Cota, and the crew charted an incorrect course and relied on navigational equipment they knew to be malfunctioning. Cota also provided



false information in a required U.S. Coast Guard physical – concealing numerous prescription medicines that would have caused the U.S. Coast Guard to deny his pilot's license had he been truthful.

On July 17, 2009, Cota was sentenced to serve 10 months incarceration. Cota previously pled guilty to negligently causing discharge of a harmful quantity of oil in violation of the Clean Water Act and to violating the Migratory Bird Treaty Act, by causing the death of protected species of migratory birds.

On August 13, 2009, Fleet Management, a Hong Kong-based ship management firm, operating the Cosco Busan, pled guilty to a criminal violation of the Oil Pollution Act of 1990 as well as felony obstruction of justice and false statement charges for creating false and forged documents after the crash at the direction of shore-based supervisors with an intent to deceive the U.S. Coast Guard. On February 19, 2010, Fleet Management was ordered to pay a \$10 million monetary assessment with \$2 million of the total to be devoted to fund marine environmental projects in San Francisco Bay.

BP – Texas City

Failure to ensure the mechanical integrity of refinery process equipment led to an explosion that killed 15 workers and injured nearly 200 others.



The British Petroleum/Amoco (BP) refinery, located in Texas City, Texas, is that company's largest facility in the United States. The refinery covers more than 1,200 acres and employs 1,800 permanent employees and hundreds of contract workers. Its 29 refining units and four chemical units have the capacity to process 460,000 barrels of crude oil per day. On March 23, 2005, a catastrophic explosion occurred, when hydrocarbon vapor and liquid were released into the open air and then reached an ignition source. The explosion killed 15 contractors who were working in a trailer approximately 150 feet from the hydrocarbon release; it injured nearly 200 other workers.

The investigation established that from January 1999 to March 23, 2005, the company knowingly violated the accident prevention requirements under Section 112 of the Clean Air Act, which require the establishment and implementation of procedures to maintain mechanical integrity of process equipment and the notification of workers regarding known potential fire, explosion or toxic release hazards.

On March 13, 2009, BP Products North America pled guilty to a felony violation of the CAA. BP was ordered to pay a \$50 million fine and serve 3 years of probation.

Kroy Corporation

Two Florida men and company sentenced for smuggling ozone-depleting substance



Kroy, a corporation formed in February 2007, and its president, James Garrido, imported merchandise, including refrigerant gas. Between March 2007 and April 2009, Kroy and Garrido smuggled large quantities of HCFC-22 into the United States for subsequent resale. The defendants routinely declared imported merchandise as either legal HFC-134A refrigerant gas or as “United States Goods Return.” Except for a small quantity of legal refrigerant strategically placed in front of the contraband, the shipments contained HCFC-22 and were accompanied by false documentation. Neither Kroy nor Garrido held unexpended consumption allowances that would have allowed them to legally import the HCFC-22. From 2007 to April 2009, Kroy and Garrido illegally imported approximately 418,654 kilograms, or 29,107 cylinders, of illegal HCFC-22 in eleven separate shipments, with a total fair market value of more than \$3.9 million.

Amador Hernandez was one of the associates who worked for Kroy and Garrido, completing customs entry paperwork for four of the illegal importations in early 2009. In each of those shipments, Hernandez declared the merchandise as either refrigerant gas HFC-134A, HFC-404A, or HFC-410, and as “United States Goods Return,” when in fact the shipments contained predominantly restricted HCFC-22.



Hernandez completed false paperwork for approximately 82,852 kilograms, or 5,116 cylinders, of HCFC-22 with a fair market value of more than \$700,000.

On February 10, 2010, James Garrido and Kroy Corporation were sentenced. Garrido was sentenced to 30 months' imprisonment, to be followed by three years of supervised release. Kroy Corporation was sentenced to five years of probation. Additionally, Garrido and Kroy were sentenced, jointly and severally, to pay a criminal fine of \$40,000, and were further ordered to forfeit \$1,356,160 to the United States. On April 10, 2010, Hernandez was sentenced to 6 months home detention, followed by three years probation.

Evergreen Resources

17 years in jail for environmental crimes that left a 20 year-old employee permanently brain damaged



On a hot August morning, 20 year-old Scott Dominguez reported to work at Evergreen Resources, a small fertilizer manufacturing plant in his hometown, Soda Springs, Idaho. "I'm afraid to go to work," Dominguez said to his girlfriend before he left on that day that would change his life forever.

The workday began like any other, with gruff commands barked out by the owner of the company, Allan Elias, a Wharton graduate, a lawyer and one of the most notorious violators of environmental and worker-safety laws in the state.

Mr. Elias wanted his workers to clean out a 25,000-gallon tank that contained cyanide waste. He refused to test the air or the waste inside the tank. He ignored the pleas of his workers for safety equipment. The day before Dominguez had been forced by his boss to work inside an enclosed tank, cleaning out chemical residue, and had gotten a terrible sore throat and flulike symptoms. "There's nothing in that tank but mud and water," stated Elias. When the workers complained of sore throats and difficulty breathing, Mr. Elias told them to finish the job or find work somewhere else.

Mr. Dominguez, a high school graduate, wanted to keep his job. Wearing just jeans and a T-shirt, he used a ladder to descend into the tank. Two hours later, covered in sludge and barely breathing, he was removed from the tank by paramedics and rushed to the hospital, a victim of cyanide poisoning at the hands of a ruthless employer who would blame his “stupid and lazy” employees for the incident.

Later in the day Elias went to visit Dominguez in the local hospital, where the doctor asked him if they might be looking at a case of cyanide poisoning. Elias told the doctors there was nothing but mud and water in that tank. The next day, Elias went back to his office fabricating and backdating all employee safety plans. He proceeded to white out each and every mention of cyanide.

Mr. Dominguez suffered severe and permanent brain damage. He now has the rigid body movement and stammering speech found in patients with advanced Parkinson’s disease.

As a result of EPA CID's criminal investigation, a jury convicted Elias of three felonies for violating the federal Resource Conservation and Recovery Act (RCRA) and for illegally disposing of deadly cyanide waste. Elias was also convicted of making a false statement by fabricating and backdating a safety plan for entering the storage tank containing cyanide. Elias was sentenced to serve 17 years in prison for his crimes and ordered to pay \$6 million in restitution to the victim and his family.

Olympic Pipeline

A rupture causes a devastating explosion, killing three boys. Two Olympic Pipeline executives jailed in first-ever jail terms in pipeline rupture case.



It was the next-to-last school day before the summer break, and Stephen Tsiorvas & Wade King, both 10-year-old boys, went to play in the park near their homes in Bellingham, Washington. Liam Gordon Wood, a local 18-year-old boy who had just graduated from high school earlier that week went to do some fly-fishing on the creek to celebrate the beginning of summer. Unbeknownst to them, their lives were in serious jeopardy.



While they played and fished on that beautiful summer day, a 16-inch pipeline, owned by the Olympic Pipe Line Company, burst. Olympic was pumping gasoline through the pipe from a refinery when a pressure relief valve failed, leading to a catastrophic rupture. 237,000 gallons of gasoline escaped from the pipeline, flowing downstream on the surface of the creek, headed directly towards the three boys.

According to the Whatcom County Medical Examiner Liam Wood was overcome by noxious fumes, and fell into the creek and drowned prior to the explosion. The gasoline ignited, creating a literal river of fire and turned into a deadly fireball, speeding down the creek for more than a mile, devastating everything in its path. The massive fireball sent a plume of smoke 30,000 feet into the air, visible from Anacortes to Vancouver, B.C., Canada.

Stephen Tsiorvas & Wade King jumped into the water, desperately trying to escape the flames, but they were too late. They couldn't get out of the way of the fireball. The boys were horribly burned, suffering second and third degree burns over 90 percent of their bodies. They were found immediately and flown to the intensive-care burn unit at Harborview Medical Center in Seattle. Tragically, both of them died the next day.

Olympic Pipe Line and three employees pled guilty to a felony under the Hazardous Liquid Pipeline Safety Act and two Clean Water Act misdemeanors. They paid a record \$112 million to settle federal criminal fines and civil claims against them. This was the first time a pipeline company had been convicted under the Act. Two Olympic executives were sentenced to jail - the first jail terms ever received by pipeline managers in a pipeline rupture case.

As the pipeline fireball continued on its path of destruction, eight Bellingham residents were injured, homes were destroyed, and everything that lived in and along the creek was killed. The City of Bellingham's water treatment plant was severely damaged, leaving further devastation for the community of Bellingham. Most of the collateral property damage was caused by explosions, which broke windows in homes and businesses and leveled houses. Gasoline migrated into the city's sewer system, and the vapors were at explosive levels for an hour.

The Bellingham Fire Department's investigation later determined that Wade King and Stephen Tsiorvas ignited the gasoline vapor from the ruptured pipeline when they inadvertently lit a butane fireplace lighter near the spill in Whatcom Falls Park. The boys had been using the lighter to set off fireworks outside the park earlier in the day. Bellingham Fire Chief Mike Leigh gave his view that the boys were simply in the wrong place at the wrong time.

Pacific States Cast Iron Pipe Company

One of five prosecutions involving the McWane Pipe Company: Children struggling to breathe, businesses routinely evacuated, employees violently ill from breathing toxic fumes.



According to news and victim accounts, a father watched helplessly in the early morning hours as his children awoke gasping, choking, and crying, struggling to breathe. Pacific States Cast Iron Pipe Company's emissions were filling his house through the windows they had left open to cool their home during a warm summer evening. Earlier that day, a business in town had to send all of their employees' home because the emissions had made many of them violently nauseous. Town citizens were getting sick, the dangerous emissions causing sore throats, stinging eyes, nausea, and breathing difficulties. Parents kept their children indoors to keep them safe when the plant's emissions blew their way. Dozens of citizens had been calling the Utah Division of Air Quality pleading with them to do something.

This investigation began after an assistant vice-president/general manager of the Pacific States Cast Iron Pipe Company – a division of McWane, Inc., told EPA agents he was terminated after he reported serious environmental violations and financial reporting discrepancies to upper management.

EPA's criminal investigation and detailed forensic work revealed that the company had been submitting fraudulent air emission tests and lying to the state environmental agency, reporting that emissions were within permit limits. In fact, the complete opposite was true, and these illegal emissions were particles so tiny, they were passing through the nose and throat and going directly into the lungs of the citizens of Springville, Utah.

As a result of EPA CID's criminal investigation, McWane was charged with conspiracy, violating the Clean Air Act and false statements. Charles Matlock, former Vice-President and General Manager of Pacific States Cast Iron Pipe Company, was charged with conspiracy, and violating the Clean Air Act by tampering with a monitoring device and method. Matlock was sentenced to 12 months incarceration and a \$20,000 criminal fine. McWane pled guilty to two false statements and was sentenced to a \$3 million fine (the largest criminal environmental fine in Utah) and 3 years probation.

**Donald Patterson**

Detroit Inspector took bribes and ignored lead contamination; a toddler permanently brain damaged from lead poisoning.



Donald Patterson, a corrupt Detroit city inspector, took bribes to overlook lead contamination in low income family homes where he knew children were living. In 2009, a tenant living in low-income housing reported to state officials that Patterson had taken a bribe to falsely “clear” a home with dangerous lead levels. Patterson was soliciting and accepting bribes from tenants and landlords, using threats of criminal prosecution and child neglect to intimidate the tenants and landlords to pay the bribes and conceal the matter from state regulators. Patterson then submitted falsified lead reports.

One of the houses he "inspected" had lead paint inside and a two-year-old boy was hospitalized with a case of lead poisoning. He had extremely high levels of lead in his blood, over 15 times the acceptable level. The child's grandfather testified at the sentencing hearing that his grandson suffered permanent damage.

Patterson shook down the boy's grandfather and the owner of the rental home for \$400. He told the grandfather he could give him "lead abatement training" so he could remove the dangerous paint himself and save a lot of money. Rather than provide proper training in exchange for the \$400 he received, Patterson provided a 15 minute explanation on how to use paint stripper. While Patterson was at the house, state lead inspectors showed up unexpectedly. "He turned around, walked back out and called me outside and said I've got some more stuff I want to give you to finish the job, but I can't give it to you here. You've got to meet me somewhere... to get it," said James Harvey, the grandfather.

Patterson did not inform the child's grandfather that it was important to keep the child out of the home during any lead abatement. The child was, in fact, out of the hospital and back in the home being re-exposed to lead while the grandfather attempted to follow Patterson's instructions.

Patterson was charged by a federal grand jury with bribery, false statements and wire fraud. Patterson was sentenced to serve 46 months in jail.

Spray Lady

A milk carton as deadly as a chemical weapon



Minnie Lou Rudd of Batesville, Mississippi opened her refrigerator, grabbed a carton of milk, and poured herself a glass. Minnie Lou could not have known that what she drank that day has been used as a chemical weapon. She later died.

Margaret Stewart of Clarksdale, Miss., illegally sold the pesticide Endosulfan to the public and to Minnie Lou's daughter in unmarked containers, including one gallon milk containers. When Endosulfan is mixed with water it turns a milky white color. Minnie Lou Rudd died after she mistakenly drank a mixture of Endosulfan and water out of the milk container that was purchased from Stewart.

Endosulfan is an organophosphate pesticide, also used as a chemical weapon. It is highly toxic to the nervous system. Exposure, left undiagnosed and untreated, will cause headache, nausea, vomiting, dizziness, tremors, convulsions, coma and death from respiratory arrest.

Stewart sold the Endosulfan in milk jugs and bleach containers without any pesticide warnings. Stewart was sentenced to one year in prison, by the U.S. District Court for the Northern District of Mississippi for selling a deadly pesticide without the appropriate labels or containers.

**Honeywell Inc. Baton Rouge**

32 year-old man dies in explosion, leaves behind a wife and 3 year-old triplets



32 year-old Delvin Henry, an employee at Honeywell Inc's Baton Rouge plant, opened a one-ton cylinder which had been erroneously labeled as containing relatively benign refrigerant. Once opened, approximately 1800 pounds of spent antimony Pentachloride, a highly toxic and corrosive hazardous material, was violently released from the cylinder. Henry was sprayed with the liquid and engulfed in a cloud, causing severe internal and external injuries. Henry died the following day from his injuries, suffering for 32 hours before dying. Henry left behind a wife and 3-year-old triplets.

U.S. Chemical Safety and Hazard Investigation Board (CSB) found the cylinder had been improperly relabeled as a refrigerant at a Denver facility owned by Chemical and Metal Industries Inc. The agency's investigation found that Honeywell had no program to identify and address potential hazards in the ton-cylinder area, and neither the company nor C&MI had a systematic process for positively verifying the contents of cylinders. Citing inadequate hazard analyses, sometimes-lax work practices and other problems, a report issued by the CSB concluded that the release of toxic chemicals at Honeywell International Inc.'s plant in Baton Rouge, La., could have been prevented.

Honeywell pled guilty to a bill of information charging one count of negligently causing the release of hazardous air pollutants and negligently placing another person in imminent danger of death. Honeywell was sentenced to two years probation, a criminal fine of \$8,000,000, restitution of \$2,000,000 to the victim's three children, and community restitution totaling \$2,000,000 to the Louisiana Department of Environmental Quality, the Louisiana State Police Hazardous Materials Unit, and the Louisiana State Police Emergency Operations Center. Chemical and Metals Industries, Inc. paid a \$1 million criminal fine and \$2 million in restitution to the victim's estate, including his three children. This was the largest criminal fine and restitution award in the Middle District of Louisiana.

In a separate 2011 criminal prosecution, Honeywell International paid an \$11.8 million criminal fine for knowingly storing nearly 10,000 drums of mixed hazardous/corrosive and radioactive wastes without a permit for almost a decade at its yellow cake uranium processing facility in Metropolis, IL.

Motiva Enterprises, LLC.

Negligent Endangerment: Tank explosion incinerates one man, seriously injures eight



"I saw a big fireball and a black cloud coming at me," recounted 40-year old truck driver John Beaver, who was working at the Motiva Enterprises oil refinery in Delaware City, Delaware. Beaver was describing the scene when a giant storage tank at the refinery exploded. He was sitting in the cab of his truck at the time, waiting to be loaded with some petroleum waste. When he saw the fireball coming at him he ducked under the dashboard for protection, but immediately began to have trouble breathing. He managed to get the truck rolling for about 50 feet, but then passed out. Two other contract workers nearby managed to get to him and pull him away from the fumes.

Later, from his hospital bed, Beaver recalled seeing two men working on top of the tank that was destroyed in the explosion. One of those workers, Jeffrey Davis, 50 — a contractor, was killed when he fell from atop the collapsing storage tank into a pool of the toxic acid — his body was never found. Eight other workers were seriously injured.

The tank that had exploded was one of a cluster of six big storage tanks that held more than 1.2 million gallons of spent sulfuric acid. During the explosion, the tank was rocked off of its foundation and later collapsed in the fire, while a nearby tank began to leak. More than 660,000 gallons of sulfuric acid spilled from the tanks, breached a large containment area and began polluting the nearby Delaware River. Approximately 99,000 gallons of sulfuric acid drained into the Delaware River for days after the explosion.

"The horrifying fire and explosion caused by a tank known to be emitting highly flammable hydrogen gas left him incinerated and destroyed. We were not even left with his body to bury," said Mary Davis, Jeff Davis' widow. "Motiva destroyed our hopes, our dreams and our future."



Following the explosion, EPA criminal investigators gathered evidence indicating that Tank 393 had a long history of problems. Among other things, Tank 393 had numerous localized corrosion and leaks during the previous eight years.

Company inspectors repeatedly recommended that Tank 393 should be taken out of service as soon as possible for an internal inspection, but no internal inspection was conducted. Motiva also switched Tank 393 from storing fresh sulfuric acid to spent sulfuric acid without conducting a full engineering review that would have required technical experts to analyze the changes to account for the flammable hydrocarbons in spent sulfuric acid.

Shortly before the explosion, Motiva had several warnings from its own employees about Tank 393's problems. Nevertheless, workers were sent to the acid tank farm to repair the catwalk connecting the tanks on July 17, 2001, and a hot works permit was issued for the job. During the afternoon of that day, flammable vapors from Tank 393 reached a heat source, and the resulting explosion caused Tank 393 to separate from its foundation pad.

Motiva Enterprises LLC, an oil refining business owned by Shell Oil Company and Saudi Refining Inc., pled guilty to negligently endangering workers at its former refinery in Delaware City, Del., discharging pollutants into the Delaware River, and negligently releasing sulfuric acid into the air.

"This accident likely would have been averted by a stringent tank inspection and repair program," said Rudolph Contreras, civil chief, U.S. Attorney's Office for the District of Delaware. "Although Motiva saved thousands of dollars in putting off the inspection of Tank 393, it has now paid more than \$58 million as a consequence of its actions. This fact alone should be a clear message to other companies that cutting corners on safety and the environment makes no economic sense."

The U.S. Chemical Safety Board (CSB) subsequently charged that the accident occurred because of neglected warnings, shoddy equipment changes, and chronic, unrepaired corrosion and leaks in the 415,000-gallon storage tank. "Had any one of these elements been handled more effectively," said CSB chairwoman, Carolyn Merritt, "this accident probably would not have occurred."



FREQUENTLY ASKED QUESTIONS

How big is EPA's criminal enforcement program?

EPA's overall enforcement program employs approximately 3,400 environmental professionals and has an annual budget of more than \$500 million. Approximately ten percent of those personnel and a slightly larger fraction of that budget are committed to criminal enforcement. (The approximately 350 OECA FTE committed to criminal enforcement breakdown roughly as follows: OCEFT has fewer than 300 FTE that do full-time criminal work; NEIC aims to contribute half of its time to criminal enforcement; finally, approximately 30 Regional Criminal Enforcement Counsel and a few other OECA employees work in support of the criminal program.)

What specific law enforcement powers do OCEFT's Special Agents have?

EPA's criminal enforcement program was established in 1982. In 1988, Congress granted full law enforcement authority to special agents designated by the Administrator to investigate environmental crimes -- to carry firearms, execute search warrants, and make arrests -- empowering CID Agents to enforce our nation's environmental criminal laws as well as any other federal criminal law, in accordance with guidelines established by the Attorney General of the United States (18 U.S.C. 3063).

Why is CID located in so many offices?

Consistent with other Federal law enforcement agencies, CID uses a field structure comprised of Area and Resident Offices. The program's special agents are stationed in over 40 locations, creating a nationwide federal presence and placing these agents where they need to be to do their jobs -- close to suspected environmental crimes.

Unlike EPA's civil enforcement program, where an *inspection* can usually be planned ahead, executed within a specified period, and "processed" back at the office, the inherent nature of a criminal *investigation* demands an unknowable amount of time "on the ground." Criminal investigators must develop leads, conduct surveillance, search for evidence, perform interviews, and reassure potentially reluctant witnesses to testify in court proceedings. Agents must work closely with the U.S. Attorney's offices, located in 94 federal judicial districts across the country, to ensure prosecutorial support for their cases -- from the very



beginning of an investigation (such as seeking search warrants and subpoenas) to indictment and through trial. Not only do EPA's criminal investigators require prosecutorial support, the prosecutors rely on the agents for the cases they build and to uncover the evidence necessary to prove environmental crimes. Special Agents must also garner investigative support from other Federal, state, and local law enforcement by building relationships on an ongoing, face-to-face basis. Historically, when CID added a new office in an area where it had not had a permanent presence, the number of leads, investigations, referrals, and prosecutions significantly increased in that area.

In some ways, the criminal enforcement program can be likened to the Superfund program, which has on scene coordinators (OSCs) in at least 35 offices nationwide. Like the OSCs, who have to respond quickly to emergencies and monitor superfund sites nationwide, it would be difficult for criminal agents to effectively address environmental crimes if they were stationed solely in Regional offices hundreds of miles from the scene of the violation and the investigation. Indeed, even the current dispersion of CID's Agent resources does not guarantee a consistently quick response to environmental crime scenes. Many states have no resident EPA criminal investigators, which means that the nearest EPA Special Agent may be several hundred miles (and several states) away.

Who are our investigative partners?

To magnify the effect of its own investigative resources, OCEFT has formed strong partnerships with many other federal, state, tribal and international law enforcement agencies. These partnerships support the enforcement of environmental criminal statutes as well as ancillary statutes such as mail fraud, wire fraud, conspiracy, and money laundering. The partnerships and coordination of agencies provide broad-based support for the criminal prosecution of both organizations and individuals. This is accomplished by combining resources and technical expertise, and coordinating investigative approaches and activities. In the international arena, CID works jointly with international police organizations to identify and apprehend fugitives of environmental crime and secure witnesses for investigations.

Who prosecutes our cases?

Although EPA is the federal agency that most frequently investigates environmental crimes, Congress has not granted it the power to prosecute environmental crimes. Instead, after OCEFT has determined that the violation of an environmental requirement is potentially criminal in nature, EPA seeks prosecutorial assistance from DOJ (or EPA's state and local prosecution partners- an Attorney General's Office, a District Attorney's Office, etc.). Ultimately, determinations as to whether to present a case to be indicted, initiate plea negotiations, or decline prosecution are within DOJ's discretion. Several factors are important to the prosecutor in deciding whether the conduct rises to the level of a formal prosecution. These include the



severity of the actual or potential harm, whether the appropriate level of intent has been documented, whether the violator was cooperative, whether there is a history of similar violations, and the priorities and available resources of the prosecutor's office.

What is the mix of criminal investigations on OCEFT's docket?

The bulk of OCEFT's criminal cases (about 75%) involve violations of the Resource Conservation and Recovery Act, the Clean Water Act, or the Clean Air Act. DOJ has successfully prosecuted CID investigations involving all major environmental statutes, including: the illegal transportation, treatment, storage, and disposal of hazardous waste (some cases that resulted in deaths and serious injury); illegal discharges to U.S. waters; false statements related to required self-reporting of pollutant emissions and discharges under various statutes; other types of data fraud cases (e.g., private laboratories submitting false environmental data to state and federal environmental agencies); industry-wide ocean dumping by cruise ships; oil spills that caused significant damage to waterways, wetlands and beaches; international smuggling of refrigerants and other ozone-depleting substances whose release increases skin cancer risk; and illegal handling of hazardous substances such as pesticides and asbestos that exposed children, the poor, and other especially vulnerable groups to potentially serious illness.

How does OCEFT obtain and analyze forensic evidence for use in its investigations?

NEIC is a primary source of forensics support. It is a recognized center of expertise in forensic environmental science and applied research and development. This expertise includes media-specific regulatory and technical capability, especially as regards the CAA, RCRA, and CWA. NEIC's support for cases includes field sampling, laboratory services, consultation, and courtroom testimony.

CID also maintains its NCFL, which provides on-site support to EPA Special Agents in the execution of search warrants involving computer or other electronic evidence, the subsequent analysis of the seized computer/electronic evidence, and Internet investigative support.

OCEFT's FOP also uses specialized equipment to conduct chemical, biological, and radiological sampling and evidence collection at environmental crimes scenes while ensuring onsite health and safety. FOP, which is currently in the process of obtaining accreditation and crime scene investigation certifications, also manages the National Criminal Enforcement Response Team (NCERT). NCERT provides evidence collection and all hazards sampling for large-scale operations and searches conducted by OCEFT special agents, as well as protective escorts in contaminated zones in support of EPA programs.



Are Agents expected to know all the legal technicalities of the environmental statutes at issue during their investigations?

Agents receive extensive training in the environmental statutes and regulations, but cannot be expected to know the finer points of pollution control regulatory programs or to keep fully abreast of changes in the law. Two groups of EPA attorneys provide legal support to OCEFT's investigations, and provide similar assistance to DOJ later in the lifespan of a case, when the prosecutor becomes involved. (While ECS prosecutors at "Main Justice" specialize in environmental crimes, most of the AUSAs with whom OCEFT works have little expertise in environmental crimes, and require a greater degree of legal support.) A group of approximately 30 RCECs around the country are primarily responsible for environmental crimes casework. They serve as legal advisors to CID's field agents, and in many instances, also serve as Special Assistant U.S. Attorneys to assist with the prosecution. Approximately 15 headquarters attorneys in OCEFT's Legal Counsel Division are also committed to support the program; they serve as counselors to the program managers and provide legal oversight, but are generally more involved with policy issues than with casework.

What are the basic requirements to be an agent, and what type of training does one undergo?

Like applicants for any federal Special Agent position, CID agent applicants must be a United States citizen, between the ages of 21 and 37 years old, and in excellent physical condition. CID Special Agents receive twelve weeks of basic federal law enforcement and Criminal Investigator training at the Federal Law Enforcement Training Center located in Glynco, Georgia. In addition to the basic law enforcement training, CID Special Agents receive an additional eight weeks of training in conducting investigations of the criminal provisions of our federal environmental laws. Our Special Agents also receive periodic in-service training, as well as advanced training in various investigative techniques which includes firearms and physical techniques training.

What sort of "supervisory oversight" is there of an agent's work and the overall criminal program?

From the time a lead is received until a final resolution of an investigation, the CID SAC and ASAC in the relevant EPA Region oversees and approves the work of their subordinate agents. The SAC has authority to decide which leads should be opened as investigative cases. After a case has been opened, the SAC and ASAC approve investigative reports and assists the agent in moving the case towards prosecution, if appropriate. CID does not have authority to authorize search warrants, subpoenas, grand juries, indictments, and other judicial processes. These activities are coordinated through the Department of Justice and the U.S. Courts.



National program oversight is provided by CID's Assistant Director for Investigations who oversees the activities of the regional SAC offices through regular communication, weekly reports, and quarterly case reviews.

Is there inherent danger in OCEFT Agents' work?

Law enforcement is a hazardous profession by nature. In addition to the adversarial nature of police work, OCEFT's Special Agents can encounter additional dangerous situations in the course of their career. For example, Special Agents can face an increased risk of physical injury due to both exposure to hazardous substances and conducting investigations in industrial facilities which may have not been maintained properly.

What differentiates a case from being "criminal" or "civil" when deciding how to pursue it?

As a legal matter, environmental criminal liability is triggered only through the existence of some level of intent, or "mens rea" (by contrast, civil liability arises simply through the existence of an environmental violation, without regard to what the responsible party knew about the matter). Most of the environmental crimes that EPA investigates involve "knowing violations" of the law, which are classified as felonies (negligent violations are misdemeanors under the Clean Water and Clean Air Acts, and older statutes like FIFRA (the pesticide law) and TSCA (the toxic substances law) lack felony provisions). To prove a "knowing violation," the government need not show that a defendant knew the law, and then consciously chose to disregard its requirements. "Ignorance of the law is no excuse" -- people are presumed to know the law, and cannot evade criminal liability by claiming that they did not realize they should not have engaged in illegal pollution. Rather, a "knowing" violation is one in which the defendant is aware of the facts underlying the violation -- conscious and informed action brought about the violation, rather than accident or mistake. Thus, an intentional decision to discharge pollutants into a river without a permit, or to bypass a required air pollution control device could be "a knowing violation," and thus criminal, without regard to the defendant's knowledge of the law.

At a more practical level, some of the factors used in deciding whether a case should be "criminal" vs. "civil" include: sufficiency of the evidence, seriousness or risk of environmental harm; public health impacts; nature of the acts (knowing acts of pollution, or blatant failures to obtain permits or to meet core regulatory requirements; compliance history; and acts of deception or false statements.)

How much does it cost to "fund" a Special Agent within CID?

It costs approximately \$216,000 to fund each agent per year which includes costs for payroll, travel, equipment, training, and other expenses.



Acronyms & Definitions

ADI: Assistant Director for Investigations - A supervisory criminal investigator that manages the CID Headquarters Field Investigations Team, Interpol Section and Center for Strategic Environmental Enforcement. The ADI is responsible for the national oversight of CID's criminal investigations.

ADO: Assistant Director for Operations - A supervisory criminal investigator at the Headquarters level who manages the, acquisition and allocation of resources, budget, vehicles and equipment for the CID.

ADT: Assistant Director for Training - A supervisory criminal investigator at the Headquarters level who manages the national training program, including the Use of Force Program, for CID.

ASAC: Assistant Special Agent in Charge - A supervisory criminal investigator who assists the Special Agent in Charge with managing the criminal investigations and personnel assigned to an Area Office. The term "ASAC" also applies to the position of "**Associate Special Agent in Charge**", a senior, non-supervisory criminal investigator.

AUSA: Assistant United States Attorney - A federal prosecutor who represents the United States in U.S. District Court and the United States Court of Appeals. AUSAs prosecute most violations of federal criminal environmental laws on behalf of the U.S. EPA.

CAA: Clean Air Act

CSEE: Center for Strategic Environmental Enforcement. CID's CSEE collects, analyses and distributes data associated with criminal investigations.

CWA: Clean Water Act

CERCLA: Comprehensive Environmental Response, and Liability Act

DOJ: The U.S. Department of Justice.

ECS: Environmental Crimes Section. An office under the U.S. Department of Justice, Environmental and Natural Resources Division, staffed by approximately 40 attorneys who prosecute environmental crimes across the country.



EPCRA: Emergency Preparedness and Community Right to Know Act

FIFRA: Federal Insecticide Rodenticide and Fungicide Act

FLETC: Federal Law Enforcement Training Center - FLETC is a Department of Homeland Security component which operates a large scale training facility in Brunswick, GA. CID operates a Headquarters unit at FLETC which coordinates basic and advanced training for all Special Agents.

FOP: Field Operations Program - OCEFT's highly-trained team uses specialized equipment to conduct environmental sampling and evidence collection at environmental crime scenes while ensuring onsite health and safety.

MPRSA: Marine Protection Research and Sanctuaries Act

NCERT: National Criminal Enforcement Response Team - A team, managed by the FOP, that provides evidence collection and sampling for large-scale operations and searches conducted by OCEFT special agents.

NCFL-TEC: National Computer Forensics Laboratory and Technical Investigative Equipment Support Center - A specialized unit that provides computer forensic and technical equipment support on a national level for the investigation and prosecution of environmental crimes. The NCFL is comprised of criminal investigators who are specially trained to operate sophisticated computer forensics and other technical equipment in support of criminal investigations and prosecutions.

NEIC: National Enforcement Investigations Center - NEIC, located in Lakewood, CO, plays a unique and integral role with supporting complex criminal and civil enforcement investigations. NEIC supports CID criminal investigations through the collection of evidentiary environmental samples. It also provides forensic laboratory analysis and expert technical consultation and advice during the investigation and prosecution of cases. NEIC's expert support is critical to the success of many CID investigations.

NSSF: National Secure Storage Facility - CID's secure storage facility for the management and control of government purchased equipment issued to Special Agents.

NTC: NEIC Technical Coordinator – An outplaced NEIC staff co-located with CID SAC area office. They provide day to day consultation, regulatory interpretation, and coordinate Field and Lab support.



RAC: Resident Agent in Charge - A criminal investigator who is the team leader of a satellite office within an Area Office. Resident Agents in Charge report to the Special Agent in Charge of the Area Office.

RCEC: Regional Criminal Enforcement Counsel - An EPA Attorney who is assigned to an EPA Region, and provides legal advice and expertise to Special Agents and federal prosecutors about the investigation and prosecution of environmental crimes. RCECs can also be cross designated as "Special Assistant United States Attorneys."

RCRA: Resource Conservation and Recovery Act

SA: Special Agent— Criminal investigators who are specially trained to investigate criminal violations of federal law. CID Special Agents are sworn federal law enforcement officers with full law enforcement authority. Today, EPA CID has offices located in 16 Area Offices and 25 Resident Offices across the country.

SAC: Special Agent in Charge. A supervisory criminal investigator manages the criminal investigations and personnel assigned to an Area Office.

SAAB: Special Agent Advisory Board - A CID committee comprised of criminal investigators who review and suggest improvements to CID policies and procedures.

SDWA: Safe Drinking Water Act

TSCA: Toxic Substances Control Act

USA: United States Attorney. The United States Attorneys serve as the nation's principal litigators under the direction of the Attorney General. There are 93 United States Attorneys stationed throughout the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. Each United States Attorney is the politically appointed and serves as the chief federal law enforcement officer of the United States within his or her particular jurisdiction.

USAO: United States Attorney's Office. The United States Attorney's Office is a division of the U.S. Department of Justice responsible for prosecuting criminal cases brought by the Federal government, prosecuting and defending civil cases in which the United States is a party, and collecting debts owed to the Federal government. EPA-CID routinely requests prosecutorial assistance from USAOs.