

NACWA 2011 Developments in Clean Water Law

Enforcement Developments Potential Criminal Liability for Municipal Clean Water Utilities November 18, 2011

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Criminal Offenses

- **Clean Water Act (33 U.S.C. § 1319 (c))**
 - Felony for “Knowing” Violations
 - 3 years in prison/ \$5,000 - \$50,000 fine per day of violation
 - Misdemeanor for “Negligent” Violations
 - 1 year in prison / \$2,500 -\$25,000 fine per day of violation
- **Rivers and Harbors Act (33 U.S.C. §§ 406, 411)**
 - Misdemeanor Strict Liability Offense
 - 1 year in prison/ \$500 - \$25,000 fine per day of violation
 - Potential minimum 30-day prison term

Other Criminal Offenses

- **Conspiracy (18 U.S.C. § 371)**

- Felony – Five Years in Prison, \$250,000 fine for individuals, \$500,000 fine for organizations.
- Misdemeanor – Same prison term limit as underlying offense, Fine

- **False Statements (18 U.S.C. § 1001)**

- Felony – Five Years in Prison, \$250,000 fine for individuals, \$500,000 fine for organizations.

- **Obstruction of Justice (18 U.S.C. §§ 1505, 1519)**

- § 1505 - Felony – Five Years in Prison, \$250,000 fine for individuals, \$500,000 fine for organizations.
- § 1519 – Felony – 20 Years in Prison, \$250,000 fine for individuals, \$500,000 fine for organizations.

- **Alternative Fines Act (18 U.S.C. § 3571(d))** – Twice the “Gain or Loss”

Recent Criminal Cases

United States v. United Water Services, Inc., D. Bowie, and G. Ciaccio

- Northern District of Indiana (20-cr-217)
- Gary Sanitary District
- Charges:
 - Conspiracy
 - Tampering with a Monitoring Method (CWA 33 U.S.C. § 1319(c)(4))
- 78 alleged occurrences of chlorine level tampering
- Other alleged misconduct

United States v. John Tuma and Cody Tuma

- Western District of Louisiana (11-cr-31)
- Arkla Disposal Services, Inc. / CCS
- Charges:
 - Discharge to POTW in violation of Approved Pretreatment Program (33 U.S.C. § 1319(c)(2)(A))
 - Discharge to Red River Without a Permit (33 U.S.C. § § 1311(a), 1319(c)(2)(A))
 - Obstruction of Justice
- Alleged misconduct

DOJ and EPA Policies

DOJ Policies

- U.S. Attorney's Manual re Environmental Prosecutions (USAM § 5-11.114(C))
- Factors in Decisions on Criminal Prosecutions for Environmental Violations in the Context of Significant Voluntary Compliance or Disclosure Efforts by the Violator
- Principles of Federal Prosecution of Business Organizations (USAM § 9-28)

EPA Policies

- “Audit Policy” – Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations
- Interim Approach to Applying the Audit Policy to New Owners

Additional Notes

U.S. Sentencing Guidelines

- Environmental Crimes - § 2Q1.1
- Effective Compliance and Ethics Program – § 8B2.1

Debarment and Suspension for Federal Contractors

- FAR §§ 9.104, 9.406, 9.407

Questions?

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