

Maintaining a Criminal Case as a Regulator

On This Day in the Year 2018

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INTRODUCTIONS

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DO WHAT YOU NORMALLY DO!!!!!!

TOPICS

- HEALTH AND DISTRICT ATTORNEY OVERVIEW
- ENFORCEMENT TOOLS
- ENVIRONMENTAL CRIMES TASK FORCE
- CRIMINAL VS. CIVIL/ADMINISTRATIVE ACTIONS
- INTERACTIVE CASE STUDIES

WHY DOES THIS MATTER TO YOU???

- Law Enforcement May Come Asking
- The Agency May Exhaust Administrative Options
- Criminal Violations Exist For Many Issues

DEMOGRAPHIC

- Salt Lake County
 - 19 Cities
 - 18 Storm Water Agencies
 - 18 Code Enforcement Agencies
 - 8 Police Agencies
 - 8 Fire Agencies
 - Agencies vary in regulatory authority
 - 1 Million People



DISTRICT ATTORNEY'S OFFICE

- Environmental & Health Unit Coordination
 - SLCo HD Agency Representation
 - Regulatory Compliance & Enforcement
 - Environmental Task Force
 - Western States Project
- DA Staff:
 - 2 Administrative Attorneys
 - Investigator
 - Paralegal
 - Misdemeanor Attorney
 - Felony Attorney



DIVISION OF ENVIRONMENTAL HEALTH

- Water Quality & Hazardous Waste Bureau
 - Processing Facilities, Used Oil, Solid & Hazardous Waste
 - HHW Facility
 - Disposal of chemicals
 - 24 hour Emergency Response
 - (801)580-6681
- Sanitation & Safety Bureau
 - Meth Contamination
 - Public Lodging
 - Body Art, Massage, Cosmetology Permitting
 - Housing
 - Solid Waste Cleanup
- Food Protection Bureau
 - Retail Food Safety
 - Disease Investigation
 - Unauthorized Food Sources
- Air Pollution Control Bureau
 - Vehicle Emissions Inspection and Maintenance Program



SLCO HD ENFORCEMENT TOOLS

- Unincorporated and incorporated areas
- Duties include enforcement of:
 - State health laws and rules
 - Health Department regulations
 - Responsibility to public health



- Administrative Process
 - Warning Letters
 - Notice of Violation
 - Permit Suspension
- Criminal
 - UCA 26A-1-123
 - Health Regulations
 - State Rules



ENVIRONMENTAL CRIMES TASK FORCE

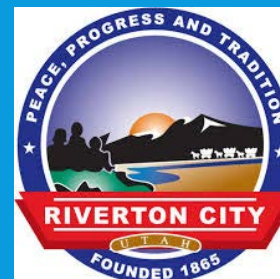
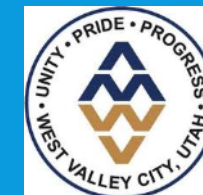
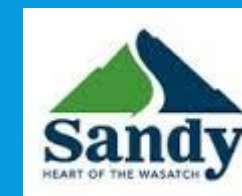
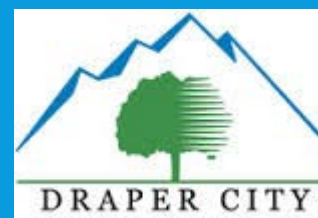
- Originated in 1991
 - (Law Enforcement, Fire, D.A.)
- Jurisdiction of Salt Lake County
- Jointly organized by Salt Lake County Attorney's Office & Health Department
- Recognized by County Commission in 1992
- Primary Goal
 - Exchange information to support environmental enforcement



TASK FORCE PARTICIPANTS



- Storm Water Agencies
- Municipal Public Works
- Police, Sheriff
- Code Enforcement
- County Flood Control
- Municipal Attorneys and Prosecutors
- Utah Department of Agriculture & Food
- Local Planning and Zoning
- Utah Division of Occupational Licensing
- Utah Adult Protective Services



TASK FORCE—IT'S A TEAM THING

- Health Department
 - Regulations
 - State Rules (DEQ)
 - Ordinances
 - Responsibility to Public Health
 - Unincorporated or Incorporated
- Code Enforcement
 - Ordinance
 - Criminal Code—Maybe
- City/District Attorney
 - Criminal Code
 - Criminal Standard
- Storm Water
 - Ordinances
 - Portions of State Rule
 - UPDES, Manage System, SWPPP
 - City



PURPOSE OF THE TASK FORCE

- *Coordinate information and resources between agencies.*
- *Expand awareness of environmental violations.*
- *Improve training of local government agencies.*
- *Increase public awareness.*
- *Increase enforcement referrals.*
- *Solve problems with all enforcement tools available.*

IS THERE A DIFFERENCE BETWEEN A CIVIL/ADMINISTRATIVE CASE AND A CRIMINAL CASE?

What is the difference???

▪ Criminal

- Beyond a reasonable doubt
- Known individual or company
- Criminal Act (Defined by Statute or Ordinance)
- To file must have a “likelihood of conviction”

▪ Civil/Administrative

- Preponderance of Evidence 51% likelihood
- Known violation of regulation, rule, ordinance or statute
- Subject or Business

KEY COMPONENTS FOR ADMINISTRATIVE CASE LEADS TO PREPONDERANCE

NOT ALL ARE REQUIRED, MAY BE
ABLE TO ACCOMPLISH WITH ONE OR
TWO ELEMENTS

- DETAILED NOTES
- PHOTOGRAPHS
- SAMPLES
- INTERVIEWS
- WITNESS STATEMENTS
- VIOLATION OF LAW, REGULATION,
RULE, STATUTE ORDINANCE

WHAT ARE THE KEY COMPONENTS CRIMINAL CASE?

MUST HAVE THE MAJORITY OF THESE:

- VIOLATION OF CRIMINAL LAW
- POSITIVE IDENTIFICATION OF THE SUBJECT AND BUSINESS
- WITNESS STATEMENTS
- INTERVIEWS
- FOLLOW-UP INTERVIEWS
- DETAILED NOTES
- CLOSED ALL THE GAPS

CASE STUDY 1—WHAT I CAN'T RUN SEWER PIPES TO A CANAL???



Code enforcement identifies a sewage discharge into the dry bed of the Utah and Salt Lake Canal

BUILDING CODE VIOLATION KNOWN CRIMINAL HISTORY



WHAT AGENCIES WOULD YOU INVOLVE IN AN INVESTIGATION, BASED ON THIS INFORMATION?

- POLICE
- CODE ENFORCEMENT
- HEALTH DEPARTMENT
- PLANNING & ZONING
- CANAL OWNER
- DA INVESTIGATOR???

WHAT IS THE OBJECTIVE?

- Identify sewage source
- Verify on-going Code Enforcement Violations
- Identify installation and drainage for sewage pipe
- Interview about the violation
 - Prepare questions, before hand.
 - All agencies have a responsibility to ask questions.

WHAT DO YOU NEED TO GAIN ON THE VISIT??

- Interview owner or occupants
- Building Code Violation for Pole Barn vs. Garage with Apartment
- Occupancy
- Sewer Connection??
- Establish plumbing located in garage
- Garage Use
- Point of Discharge

WHO IS INVOLVED WITH AN INTERVIEW???

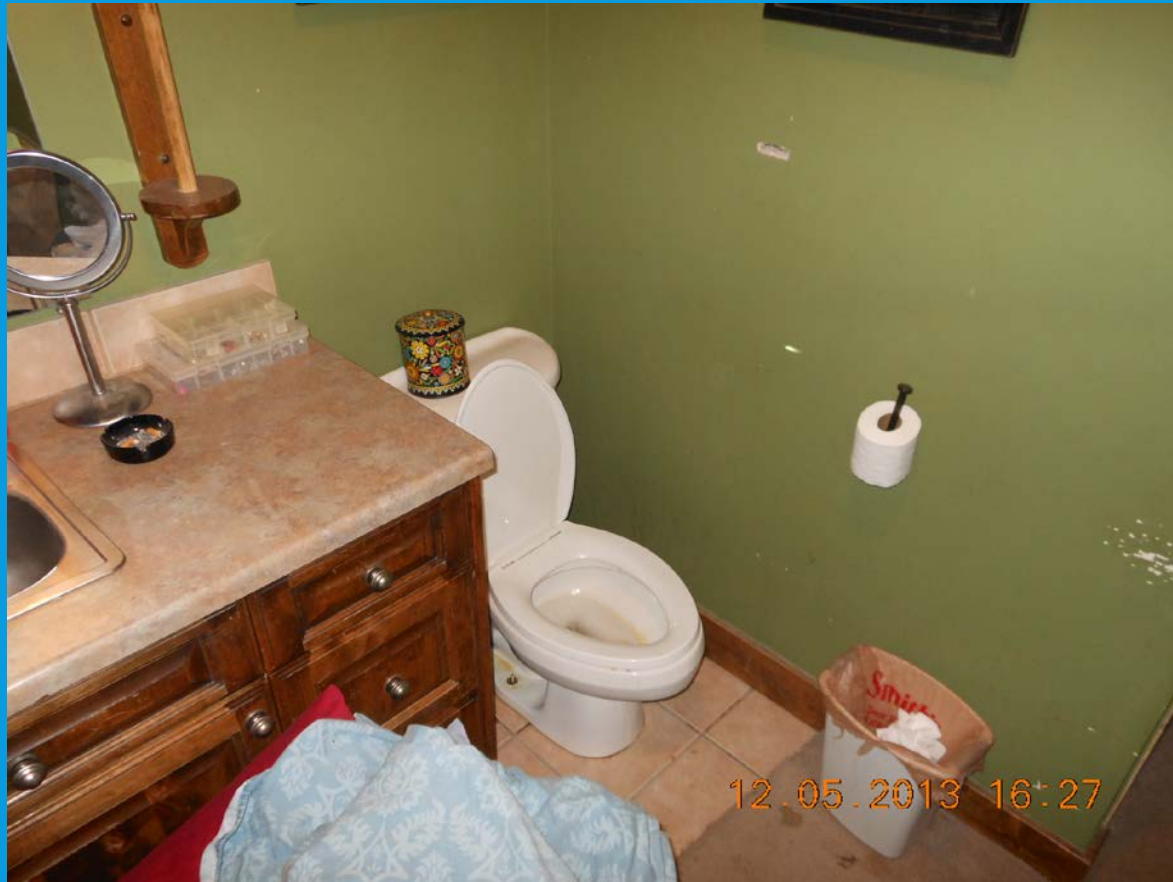
- Health
- Code Enforcement
- Police
- Planning & Zoning
- Storm Water

EVERYBODY INVOLVED
IN THE INSPECTION

QUESTIONS FOR THE OWNER???

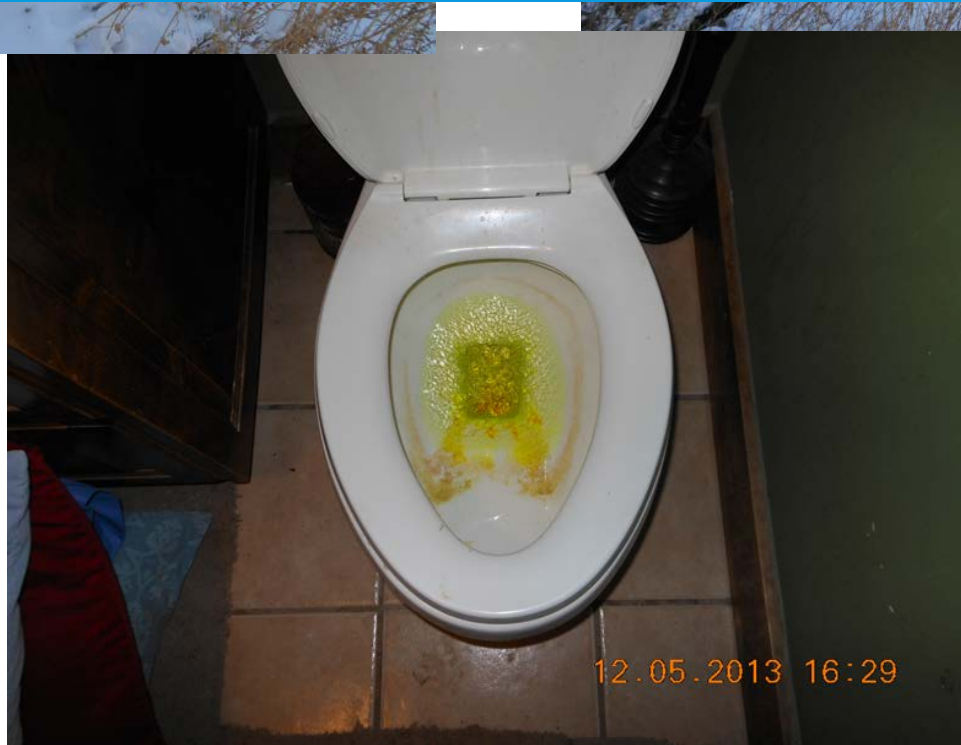
- Who is the owner
- What wastewater comes from the garage? (toilet, sinks, drains)
- Where does wastewater drain? (Follow-up: Sewer or septic)
- Who installed the drain pipes?
- Who occupies the garage apartment
- What approvals did you receive during construction
- What was in that approval?
- Why is there a pipe with toilet paper and fecal matter in the canal
- What inspections did you receive and can we see the inspection reports
- May we inspect the property?
- May we take a dye test from the plumbing fixture?

HOW DO YOU ESTABLISH WHERE THE TOILET DISCHARGES?





DYE TEST



WHAT NOW??

- EVALUATE EVIDENCE
- MEET WITH AGENCIES
- DEFINE COURSE OF ACTION
- INVOLVE CANAL COMPANY

CRIMINAL VIOLATIONS??

CIVIL VIOLATIONS??

- Criminal
 - Utah Water Quality Act
 - Building Permit
 - (Assault)—Threatened Canal Company
- FUTURE 26-A-1-123
- Civil
 - Utah Water Quality Act
 - Housing Regulation
 - Wastewater Regulation
 - Planning and Zoning
 - Building Permit
 - Apartment

DETERMINE VIOLATIONS WHICH ARE CRIMINAL AND WHICH ARE CIVIL??

Criminal

- Clean Water Act—Class “A”
- City Ordinance
 - Zoning
 - Building

Administrative

- Clean Water Act
- City Ordinances
- Other Rules or Regulations

WHAT FOLLOW-UP NEEDS TO BE DONE?

- Re-interview
 - Who put in the sewer system?
 - Where does it go?
- Class "B" for City Violations
- Determine if Warrant is needed

WHAT DO YOU THINK HAPPENED???

CONCLUSION

- Criminal Standard not met for WQ Act to be filed
- Class B Misdemeanor Violations at the city not pursued chose lien and civil course
- Notice of Violation remains unresolved
 - Health now has a process for non-respondents
- Canal company capped the sewer pipe and DA investigator provided security to canal staff
- Periodic checks to ensure the cap had not been removed

CASE STUDY 2—DIESEL FUEL CAN'T ENTER THE JORDAN RIVER???

AN EXCESS STORMWATER TALE









Sample #1



Sample #2





Sample #3

03.06.2013 12:10

SAMPLE RESULTS

- Sample #1—Soil Sample
 - 195,000 ppm diesel-range organic
 - 105 ppm gasoline-range organic
- Sample #2—Drainage Ditch (Soil)
 - 6,600 ppm diesel-range organic
- Sample #3—River Bank
 - 24,500 ppm diesel-range organic

GROUP DISCUSSION

- What are the objectives?
- What steps to take to investigate?
- What agencies will you involve?
- Do you want an interview? If so, who do you want to interview?
- What questions will you ask in the interview?

WHAT AGENCIES DO YOU INVOLVE?

- Code Enforcement
- Fire Department
- Health Department
- State Agencies—Depends
- Law Enforcement
- Storm Water

EACH AGENCIES OBJECTIVES

- Health
 - Protect the environment/water
 - Remediation
 - Samples
 - Interview
 - Enforcement Action (y/n)
- Police/DA Investigator
 - Crime?
 - Interview
 - Sample Results
- Storm Water
 - Protect storm water
 - Remediation
 - Storm Water Maintenance (Approval)
- Code Enforcement
 - Illicit Discharge violating city code
- Fire Department
 - Diesel Tank Requirements
 - Permits

WHAT ARE THE OBJECTIVES?

- Identify contamination or not
- Understand Why???
- Talk about the issue with management
- Outline requirements for compliance

WHAT ARE THE NEXT INVESTIGATION STEPS?

- Evaluate Evidence
- Identify Regulation, Rule, Ordinance and Statute Violations
- Define Follow-Up Objectives

DO YOU WANT AN INTERVIEW?

- Who do you want to interview?
 - Owner
 - Operations or General Manager
 - Employee
 - Witness

WHAT QUESTIONS

- Where does the drainage from the trench go to?
- What can enter the Jordan River from the property?
- What is the purpose of the trench?
- What policies or procedures do you have about discharge?
- What training do you provide employees?
- How long has the diesel fueling tank been located there?
- What is the staining from?

INTERVIEW RESPONSES

Interviewed Operations Manager who is the property owner

- “The trench was on the property in 1997 when purchased”
- Rental business leases the property and must maintain.
- “Trench is to drain water into the Jordan River”
- “If dammed, it makes a lake.”
- “Drainage waters go to the Jordan River”
- “Did not observe the oils and fuel stains in pre-snowfall clean-up”

LAW SLIDE/HANDOUT

WHAT ENFORCEMENT ACTION WILL YOU TAKE???

Criminal Charge—Code Enforcement or Health or ???

Administrative Action (NOV)

Warning Letter

No Action

WHO DO YOU TAKE THE ENFORCEMENT ACTION AGAINST???

- Business—Criminal and Administrative NOV
- What about the employee??

WHAT DO THE AGENCIES HOPE TO ACHIEVE WITH THE ENFORCEMENT ACTION TAKEN???

- Remediation along banks and the property
- Drainage ditch removed
- Behavior change
- Best Management Practices for contaminants from the business operations
- Required Permits

RESULT

- Plea Agreement (Settle Administrative and Criminal Action)
 - Class A Misdemeanor
 - \$2,000 Plea in Abeyance Fee
 - Pay a Penalty \$4,402
 - Pay \$1,666 Assigned Fund
 - Prepare a Written Pollution Prevention Plan
 - Reimburse Murray City

HOW DOES THIS APPLY TO YOU?

- Be thorough in notes, questions, and samples
- Recognize this may be your only chance
- Involve appropriate agencies for your case
- Know your enforcement tools and others
- Ask for help
- Do what you normally do to investigate

QUESTIONS???