



# ENFORCEMENT OF ENVIRONMENTAL LAWS

Gary F. Baumann  
ATTORNEY-ADVISOR

270-798-0732

[gary.f.baumann.civ@mail.mil](mailto:gary.f.baumann.civ@mail.mil)

- **BAD NEWS**
  - You could go to jail



- **GOOD NEWS**
  - We have an entire environmental staff who will help keep you out of jail and allow training to continue
- **GREAT RESUME BUILDER**

- Enforcement may be by STATE or FEDERAL regulators
- Federal:
  - EPA (Water, Air)
  - Army Corps of Engineers (Wetlands)
  - USFWS/NOAA (Endangered Species)
- State (by delegation from EPA):
  - Tennessee
  - Kentucky

# Federal EPA Enforcement Options (in order)

- ADMINISTRATIVE Enforcement Actions  
Against FEDERAL FACILITIES  
(NOV's, admin hearings, most common)
- CIVIL JUDICIAL Actions Against  
INDIVIDUALS or FACILITIES (court)
- CRIMINAL Prosecution Against  
INDIVIDUALS

# EPA'S OBJECTIVE is COMPLIANCE

- Punish Non-Compliance
- Deter Non-Compliance By Others
- Correct Harm Caused By Non-Compliance



# STATE ENFORCEMENT ACTIONS

- Most Environmental Statutes Allow EPA To Delegate Permitting, Oversight, And Enforcement Responsibilities To States
  - As of the Fall of 2006 Tennessee is the Lead Regulator
  - EPA has not delegated as Kentucky Lead Regulator
- States Must Be Capable Of Enforcement And The Program Must Be No Less Stringent Than The Federal Program
- EPA Has Some Parallel Enforcement Authority

# STATE ENFORCEMENT ACTIONS

- Sovereign Immunity Waivers allow states to regulate us, a federal entity, and penalize us for violations.
- State could not regulate federal entity without a waiver of sovereign immunity
- **Not all waivers of SI are worded the same**

# Fines & Imprisonment

- **States: RCRA, SDWA, TSCA....CAA**
  - Tennessee - \$10,000/day + 1- 6 years
  - Kentucky - \$25,000/day + 1- 5 years
- **EPA: RCRA, SDWA, TSCA, CAA...UST**
  - Most Fines: \$37,500/day/violation
- **Plus Multi-day Penalties And History Of Non-Compliance**
- **Will Attempt To Recover Economic Benefit**
- **Fines Are Paid From O&M Funds**

# CRIMINAL & CIVIL ENFORCEMENT

- Most Statutes Provide That Federal Employees Can Be Held Civilly Liable For Violations Resulting From Performance Of Their Official Duties; CWA, CAA, RCRA
- Federal Employees Can Be Held Liable For Fines And/Or Imprisoned (criminal cases)

# CRIMINAL LIABILITY

- **“Knowing”** Violation -- Need Only Prove Knowledge Of Actions Taken, Not Knowledge Of Environmental Statute
- **“Responsible Official”** One Who Has Knowledge Of Wrongful Act And Authority To Take Action, But Fails To Do So May Face Prosecution (knew or should have known)
- **Negligent Acts Are Enough** -- CWA, CAA

# PROSECUTIONS

- Sixteen DOD Personnel Have Been Prosecuted



- Thirteen Federally, Ten Convicted
- Three By States, Two Convicted



# U.S. v. DEE

- Famous “Aberdeen Case”
  - SES, GM-15, GS-14
- May 1989, RCRA Violations
- 3 Years Probation, 1,000 Hours Community Service
- DOJ Denied Requests To Pay Them For Attorney Fees Of \$108,000 Each



## Fort Drum, NY Firing Range (U.S. v. Carr)

- Mr. David Carr- civilian range foreman
  - directed several workers to dispose of old cans of waste paint in a small, man-made pit on the range
- 43 count Indictment charged Mr. Carr with the supervision and direction of other civilian employees in the disposal of between 100 to 150 five-gallon cans of paint
- Carr was convicted of two violations of CERCLA for twice failing to report a spill of hazardous substances
- **Sentence:** One year of imprisonment (suspended); served one year of probation and paid \$300 in fines and assessments.

# U.S. v. CURTIS

- Naval Air Station, Adak, AK
- Used leaky abandoned steam pipe to transfer jet fuel
- Convicted March 1992 of 5 counts of CWA violations
- Sentenced to 10 Months Imprisonment

# Camp Pendleton, CA

## Recordkeeping Violation

- Wastewater treatment plant operator
- Required to monitor and record chlorine levels in discharge
- Falsified chlorine levels in records
- No exceedance, no illegal discharge, no harm to environment, etc.
- Convicted of records violation
- Attorney fees and lost operators license

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ENVIRONMENTAL  
VIOLATIONS ARE NOT  
CAREER ENHANCING even if  
you manage to avoid jail

# LEGAL REPRESENTATION

- Uniformed Servicemember tried at a Court Martial: Trial Defense Service lawyer is assigned
- Anyone (incl. active duty) tried in any other court: Expect to have to pay for your own lawyer that you hire. (exceptions exist, but don't expect it)

# ATTORNEY-CLIENT PRIVILEGE

- There Is No Attorney-Client Privilege Between Environmental Attorney And A Commander Or A Federal Employee On Environmental Compliance Issues – (At Least In Cases Involving Federal Investigations And Prosecutions)

# What to do When a Regulator Appears

- Check Credentials
- If the Regulator is alone, ask if contact has been made with the Installation Environmental Division- if not call, ASAP
- Do **not** allow the Regulator to Proceed With the Inspection until a Representative from the Installation Environmental Division Arrives
- Keep Unit Environmental Records Accessible and in Good Order

# Media specific

- Water
  - What can/can't go down the sink?
  - Water down the sink is treated
  - Stormwater is NOT treated. Goes directly to streams.
  - Use drip pans
  - Preserve Erosion Control Measures

# Media specific

- Hazardous Materials (HAZMAT)
  - Know what must be separated from garbage (e.g. antifreeze, chemicals, compressed gases, paints & thinners, flammables, corrosives, med waste, tires, petroleum/oil/lubricants, batteries, pallets, MRE Heaters)
  - Identify
  - Label/placard
  - DO NOT MIX
  - Proper packaging/handling/storage
  - **Disposal-what you do at home may not be legal at Ft. Campbell**

# Media specific

- Endangered Species
  - Follow Range/Training Area Regs
- Clean Air Act
  - Asbestos & Lead based paint (self-help projects)
  - Standby Generator Usage

# Training outside Ft. Campbell

- Other US installations
  - Follow their Range/Training Area Regs
- Outside US-may be more or less strict
  - Range Regs
  - Host Nation laws
  - SOFA
  - Treaties
  - Note Cultural differences b/t US and Host Nation

# Enviro Take-Aways

- Identify issues
- Know who to call
- Ft. Campbell Enviro Handbook
- Enviro staff is there to assist in education/compliance
- **Environmental Compliance is better/easier than going to jail**
- **Environmental Violations = more restrictions to training in the future**