COMPARING FLORIDA AND FEDERAL ENFORCEMENT TRENDS

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EPA Enforcement Authorities

Established under each Act—e.g.,

- Clean Air Act, 42 U.S.C. §7401 et seq.
- Safe Drinking Water Act, 42 U.S.C. §300f et seq.
- Safe Drinking Water Act,
EPA
Enforcement Mechanisms

• Requests for information--filed by EPA
• Civil Administrative Actions—filed by EPA
  – Notice of Violation
  – Compliance Order
• Civil Judicial Actions—Department of Justice generally files
• Criminal Action—US Attorney generally files
### Example—RCRA/USST

<table>
<thead>
<tr>
<th>Enforcement Authority</th>
<th>Summary</th>
<th>RCRA Section</th>
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| Information gathering and inspections | EPA may request information from any owner and/or operator of an UST.  
EPA may conduct inspections of the UST and associated equipment, sample contaminated media, and access and/or copy all records relating to the UST.  
EPA may seek penalties of up to $11,000* per tank for each day of noncompliance with a request. | Section 9005 (42 U.S.C. § 6991d)                                                                                                           |
| Corrective action order               | EPA may order, or ask a federal court to order, cleanup of UST releases to a level protective of human health and the environment.  
EPA can spend money to clean up a release in certain situations.  
EPA may seek to recover its cleanup costs if a liable, solvent party is found. | Section 9003(h) (42 U.S.C. § 6991b)                                                                                                         |
| Compliance orders                     | When an owner and/or operator fails to comply with a cleanup order, a request for information, or an inspection, EPA may take formal action seeking compliance and a penalty of up to $37,500* for each day of noncompliance. | Section 9006 (42 U.S.C. § 6991e)                                                                                                           |
| Imminent & substantial endangerment (ISE) | When the past or present handling, storage, treatment, or transportation of any solid or hazardous waste may present an imminent and substantial endangerment to human health or the environment, EPA take formal action to stop the endangerment. If a person does not comply with an order, EPA may seek penalties of up to $7500* for each day of noncompliance. | Section 7003 (42 U.S.C. § 6973)                                                                                                           |
| Monitoring, testing, and analysis     | Where hazardous waste (which may include petroleum) is or was stored, treated, or disposed of, or where its release may present a substantial hazard to human health or the environment, EPA may order an owner and/or operator to monitor, test and analyze. If an owner and/or operator does not comply with an order, EPA may: (1) take administrative action seeking compliance with the order and penalties of up to $37,500* for each day of noncompliance; (2) file a civil lawsuit seeking compliance with the order and penalties of up to $7500* for each day of non-compliance; or (3) do the monitoring, testing, or analysis and seek reimbursement for costs incurred. | Section 3013 (42 U.S.C. § 6934)                                                                                                           |
EPA/DEP Enforcement Relationship

- EPA exercises oversight and can intervene in the enforcement of programs it has delegated to DEP.
- EPA also provides grants to DEP for enforcement, among other things.
Preliminary RCRA cost estimates for FY 2016-2017

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<th>Program Elements</th>
<th>State</th>
<th>Federal</th>
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<td>Program Development</td>
<td>$ 617,726</td>
<td>$ 714,442</td>
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<td>Permitting</td>
<td>$ 439,232</td>
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<td>$ 217,789</td>
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<td>$ 469,676</td>
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<td>Totals</td>
<td>$ 2,802,929</td>
<td>$ 3,242,234</td>
<td>$ 6,045,163</td>
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Programs Covered by the Agreement

• Water Pollution Control (Clean Water Act Section 106, surface and ground water)
• Public Water System Supervision (Safe Drinking Water Act, Sections 1443(a) and 1451(a)(3))
• Underground Water Source Protection (Underground Injection Control) (SDWA Section 1443(b))
• Resource Conservation & Recovery (RCRA) (SWDA Section 3011(a))
• Clean Air Act Section 105
Enforcement Goal of Agreement

“Pursue vigorous civil and criminal enforcement that targets the most serious water, air, and chemical hazards in communities to achieve compliance. Assure strong, consistent, and effective enforcement of federal environmental laws nationwide. Use Next Generation Compliance strategies and tools to improve compliance and reduce pollution.”
EPA Enforcement Information

- Enforcement home page, https://www.epa.gov/enforcement
- Detailed enforcement database called Enforcement and Compliance History Online (“ECHO”) https://echo.epa.gov/.
EPA/Army Corps of Engineers Relationship

• MOU between ACOE and EPA regarding federal enforcement of Section 404 of CWA (dredge and fill)
• Spells out which agency is lead agency in handling enforcement.
• MOU is at www.usace.army.mil/Portals/2/docs/civilworks/mous/enfmoa.pdf
• Lots of side agreements.
Recent Enforcement Trends--Criminal

FY 2015 Enforcement and Compliance Annual Results
Criminal Enforcement
Environmental Crime Cases Opened, Defendants Charged, and
Sentencing Results – Years of Incarceration
FY 2011 – FY 2015

- The criminal program continued in FY15 to focus on complex cases that involve a serious threat to human health and the environment or that undermine program integrity.
- The focus on high impact more complex cases results in fewer investigations overall.

Data Source: Criminal Case Reporting System
Prepared by: OC/ETCD/C3/MB

12/16/2015
U.S. Environmental Protection Agency 14
Recent Enforcement Trends--Civil

FY2014 Enforcement and Compliance Annual Results
Civil Enforcement Case Initiations and Conclusions
FY 2011 – FY 2015

- In FY 2015, EPA initiated approximately 2,380 civil judicial and administrative cases.
- In FY 2015, EPA concluded approximately 2,380 civil judicial and administrative cases.
- In FY 2015 EPA continued to pursue larger more complex, risk-based enforcement cases. This strategy leads to significant environmental and health gains, but general lower numbers of cases overall.

Data Source: Integrated Compliance Information System.
Prepared by: OC/ETDD/D3MB
November 7, 2015

1/16/2015 U.S. Environmental Protection Agency
Enforcement Annual Results in EPA Regions for Fiscal Year (FY) 2015

- Case map allows searches by address, place, or physical location on map.
- Includes civil and criminal cases.
Region IV Enforcement (FY 2015): Summary

- Serving Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

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<tr>
<th>Civil Cases</th>
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<tr>
<td>Estimated pollution reduced, treated or eliminated (pounds)</td>
<td>107,509,100</td>
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<tr>
<td>Estimated hazardous waste treated, minimized, or properly disposed of (pounds)</td>
<td>55,660,900</td>
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<tr>
<td>Estimated contaminated soil/debris to be cleaned up (cubic yards)</td>
<td>496,900</td>
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<tr>
<td>Estimated contaminated water/aquifer to be cleaned up (cubic yards)</td>
<td>25,057,400</td>
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<th>Enforcement Activities</th>
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<td>Case initiations</td>
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<td>Case conclusions</td>
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National Enforcement Initiatives FY2017-19

National Enforcement Initiatives are in addition to EPA’s core enforcement work, including protecting safe drinking water, reducing air pollution, and protecting safe and healthy land.

Air

- Reducing Air Pollution from the Largest Sources
- Cutting Hazardous Air Pollutants (Expanded initiative for FY17-19)

Energy Extraction

- Ensuring Energy Extraction Activities Comply with Environmental Laws

Hazardous Chemicals

- Reducing Pollution from Mineral Processing Operations (Returning to base program level in FY17)
- Reducing Risks of Accidental Releases at Industrial and Chemical Facilities (New initiative for FY17-19)

Water

- Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation’s Waters
- Preventing Animal Waste from Contaminating Surface and Ground Water
- Keeping Industrial Pollutants Out of the Nation’s Waters (New initiative for FY17-19)
EPA Enforcement Goals

• Tough civil and criminal enforcement for violations that threaten communities and the environment.

• Next Generation Compliance: achieve greater compliance and reduce pollution using advanced monitoring and information technologies.

• Strong EPA/State/Tribal environmental protection: work together toward shared environmental goals.

Source: https://www.epa.gov/enforcement/enforcement-goals
“Next Generation Compliance”

- Design regulations and permits that are easier to implement
- Use and promote advanced emissions/pollutant detection technology
- Shift toward electronic reporting
- Expand transparency
- Develop and use innovative enforcement approaches (e.g., data analytics and targeting)

https://www.epa.gov/compliance/next-generation-compliance
Criminal Enforcement Support

- Program provides federal, state and local prosecutors with the evidence needed to prosecute environmental crimes.

- Staff includes
  - 200 fully authorized federal law enforcement agents.
  - 70 forensic scientists and technicians, located at the National Enforcement Investigations Center (NEIC).
  - 45 attorneys who specialize in environmental crimes enforcement.
US Department of Justice

- Environmental and Natural Resources Division (ENRD) https://www.justice.gov/enrd.
- Enforces civil and criminal pollution-control laws.
- Defends challenges to government environmental and natural resource programs and activities.
ENRD Environmental Enforcement Division

• One of the largest litigation sections in the Department and includes nearly one-half of the Division's lawyers

• Except for cases initially subject to treatment as direct referrals, ENRD Assistant AG for ENRD must review and approve all litigation.
ENRD Core Mission

• Strong enforcement of civil and criminal environmental laws to ensure clean air, clean water, and clean land for all Americans;

• Vigorous defense of environmental, wildlife and natural resources laws and agency actions;

• Effective representation of the United States in matters concerning the stewardship of our public lands and natural resources; and

• Vigilant protection of tribal sovereignty, tribal lands and resources, and tribal treaty rights.

Offices of the United States Attorneys

• Website at https://www.justice.gov/usao.
• Environmental crimes not a “priority area.”
• Go to Southern, Middle or Northern District links to see enforcement information.
• Exceptions for Secretary of the Army, acting through the Corps of Engineers, for dredge and fill and other Corps cases.
• Everglades exception.
“Yates Memo”

1. To be eligible for any cooperation credit, corporations must provide to the Department all relevant facts about the individuals involved in corporate misconduct.

2. Both criminal and civil corporate investigations should focus on individuals from the inception of the investigation.

3. Criminal and civil attorneys handling corporate investigations should be in routine communication with one another.

4. Absent extraordinary circumstances, no corporate resolution will provide protection from criminal or civil liability for any individuals.

5. Corporate cases should not be resolved without a clear plan to resolve related individual cases before the statute of limitations expires and declinations as to individuals in such cases must be memorialized.

6. Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay.

Recent Florida Federal Enforcement Cases

• *Briese Schiffahrts GMBH & Co. KG MS* N.D. Florida 3:15-CR-00075-RV -- On 3/15/15 pleaded guilty to failure to maintain an accurate oil record book, in violation of the Act to Prevent Pollution from Ships and tampering with witnesses by persuading them to provide false statements concerning a bypass hose used to discharge oil into the sea. $1.25 million in fines and a $250,000 community service payment to the National Fish and Wildlife Foundation.
Cases--Continued

Carbofin S.p.A., (M.D.Fla. 2015) sentenced to pay criminal penalty of $2.75M for use of a so-called “magic hose” to dispose of sludge, waste oil and oil-contaminated bilge water directly into the sea bypassing required pollution prevention equipment, and knowingly falsifying the vessel M/T Marigola’s oil record book in violation of the Act to Prevent Pollution from Ships (APPS), with $600,000.00 to the National Marine Sanctuary Foundation for the benefit of the Florida Keys National Marine Sanctuary.
Cases--Continued

- Williams, Curry, & Sunland Pest Control Services, S.D. Florida 2:16-CR-14001-JEM. Sentenced in connection with the illegal application of a pesticide that resulted in injuries to a minor child. Sunland was sentenced to five years of probation. Williams and Curry were sentenced to one year in prison.
Cases--Continued

• Michael Moshe Shimshoni
  M.D. Florida 8:13-CR-355-T-30TGW. 11/13/14, plead guilty to improper removal of lead paint, leaving chips on ground, and improper notice. Defendant was sentenced to pay a $2,500 fine and $50,000 in restitution.
Cases--Continued

• *New Nautical Coatings, Inc., Sea Hawk Refinish Line, Inc., and four individuals.* S.D. Florida 14-200081 CR UNGARO/TORR. New Nautical manufactured an antifouling coating called Biocop, which contained tributyltin methacrylate ("TBT"), a chemical compound with significant harmful effects on marine life. After EPA cancelled New Nautical’s pesticide registration, defendants continued to manufacture and sell it for three years. New Nautical sentenced to pay a fine of $1,235,315. Individual defendants sentenced to five months in prison and six months home confinement, three months in prison, and probation.
Jose Miguel Calvo, S.D. Florida, 14-20883-CR-MARTINEZ/GOO. Miami dock builder sentenced to one year probation for building illegal structures in navigable waters. Sentenced to 12 months of probation and ordered to pay a $20,000 fine.
Cases--Continued

Amason and Soong. M.D. Fla. Indicted for fraud-related offenses in connection with their submission of false claims to BP Deepwater Horizon oil spill settlement fund. Both sought payment for damages suffered as boat captains. One was never a captain, the other was in jail at the damages time.
FDEP Enforcement Authorities

- Civil and administrative enforcement authority under Chapters 403, 376, 373, Fla. Stat., for environmental violations, Chapters 253 and 161, Fla. Stat. for proprietary (state lands)
- Can be delegated to authorized local government agencies.
- Inspection and inspection warrant authority under Section 403.091, Fla. Stat.
- Inspections must be by consent or warrant. No penalty for refusal to allow inspection unless violation of permit requirement
Some Differences

• Inspections:
  – EPA Notice of Information requires response, under pain of penalties.
  – FDEP has inspection authority, only with permission or warrant, no penalty authority.

• Administrative penalties:
  – EPA can seek significant daily penalties
  – FDEP’s limit is $10,000 under the Environmental Litigation Reform Act of 2001 (“ELRA”), codified at § 403.121(2), Fla. Stat.
Criminal Enforcement

• Criminal investigations handled by the Florida Fish and Wildlife Conservation Commission (FWC) Division of Law Enforcement.
• Criminal prosecutions handled by State Attorneys for Florida’s 20 judicial circuits.
• Investigations and prosecutions may be from DEP referral or independently.
• Criminal statewide statistics not kept.
FDEP Information

• FDEP General Counsel Website:
  – http://www.dep.state.fl.us/legal/

• FDEP Enforcement Manual:
  – http://www.dep.state.fl.us/legal/Enforcement/enforcement.htm#new
# FDEP Enforcement Manual

## Explanation of all changes made since January 1, 1999

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## Table of Contents, Introduction and Chapters

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<td>Compliance Options Introduction, First Steps, Specific Non-Compliance, Conclusion</td>
<td>September 2013</td>
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# FDEP Enforcement Manual (continued)

## Appendices

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<th>Appendices</th>
<th>Collection/Write-Off Documents</th>
<th>Data Management Documents</th>
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<td>Civil Penalty Policy Memos</td>
<td>Consent Order Pollution Prevention Language Attachments</td>
<td>Model Documents For 62-780</td>
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<td>Model Letters</td>
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- **Civil Penalty Policy Memos**

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## Model Consent Orders

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<td>Indigent Petroleum Cleanup CO</td>
<td>January 2015</td>
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## Compliance and Enforcement

**Florida’s environmental laws** allow sites to be developed, projects to be built and facilities to be operated if there is reasonable assurance they will comply with those laws. Permits and other authorizations issued by the Florida Department of Environmental Protection (DEP)—whether for air emissions, coastal construction, landfills, marinas, wastewater plants, or paper mills—establish detailed conditions (compliance standards) under which those activities can be conducted while preserving air and water quality. Compliance is essential to environmental and public health protection—and DEP’s objective is to resolve violations of Florida’s environmental requirements effectively and return violators to compliance as quickly as possible.

Being ‘in compliance’ means obtaining the proper written authorization to conduct an activity, if specific permission is required, and adhering to the conditions of that authorization and other applicable rules and laws. If no authorization is required, being in compliance simply means abiding by the law—don’t litter, don’t dump pesticides in the pond in your backyard. DEP promotes compliance through developing sound rules with public input, writing clear and enforceable permits, providing technical assistance and public education—like this Web site—having a strong field inspection presence in our **district offices** and other delegated local programs, and evaluating environmental data to check the performance of regulated activities.

DEP also promotes compliance through enforcement. Enforcement is punishment for non-compliance but it also must involve deterrence—delivering a potent message to the violator, and to others, that violations are not tolerated. The message may be in the form of penalties that hit the pocketbook, compensation required for damages, or implementation of ‘in-kind’ projects that prevent pollution or otherwise enhance the environment. In all cases, ensuring that the violator fixes the problem and comes back into compliance is the first objective.

Determining the right response to any violation requires considering many factors, including:

- How serious was the violation?
- Is it a first-time violator or a chronic offender?
- Was the violation inadvertent, was it due to negligence, was it willful?
- Can the site or facility be brought back into compliance without formal enforcement?
- Can any damage to the environment be undone or remediated quickly?
- Is the violator responding in good faith?

This Web site offers insights into DEP’s compliance and enforcement philosophy as we answer those questions and summarizes some of the laws and rules that apply, the types of programs and actions we make use of, and the results of what we do.
DEP Enforcement Goals

From DEP Enforcement Manual, Ch. 3:
Achieving compliance with the agency’s rules and statutes through amicable means is always preferred, and the options explained in the previous chapter should be considered before proceeding with enforcement. Unfortunately, compliance cannot always be achieved using only compliance tools. When enforcement is the best tool for achieving compliance, it should be used. . . . (Last updated November 2015)
Number of Enforcement Cases Opened 2000-2015
DEP Enforcement Activity - 2015

- Consent Orders entered: 75%
- Complaints filed: 6%
- Final Judgments entered: 6%
- Notices of Violation issued: 8%
- Final Orders issued: 6%
DEP Enforcement Activity 2005-2015
DEP Penalty Assessments – 2000 thru 2015