

**NACWA
Annual Seminar
Developments in Clean Water Law
Santa Fe, New Mexico
November 11, 2005**

“Civil Enforcement Developments”

**James R. Arnold
Andrea L. O’Toole
The Arnold Law Practice
San Francisco, California¹**

¹ Jim Arnold is a principal and Andi O’Toole is an associate attorney at The Arnold Law Practice, 225 Bush Street, 16th Floor, San Francisco, CA 94104, 415-439-8831, Email: ArnoldLP@aol.com.

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I. Introduction: “First Things First”

A. What is the Role of the Lawyer in Environmental Enforcement?

Lawyers act as conservative "predictors" of:

- 1) What the law requires (duties), and
- 2) What the law gives (rights).

Result: Lawyers in a confidential relationship represent and counsel clients in protecting and asserting rights protected by the law and in fulfilling duties required by the law.

1. Prior to enforcement, lawyers counsel clients in compliance strategies that are consistent with short term and long term goals of clients.
2. In response to enforcement, lawyers represent clients by understanding the statutory law, the law in regulations, the practices of the enforcement agency in guidances and penalty policies, and the range of possible outcomes.
3. Lawyers also represent clients in enforcement matters by clearly understanding the facts and their evidentiary value, and the administrative system and/or court system for the enforcement effort.

B. What Are the Twin Goals of Environmental Enforcement?

1. Deterrence – Cause the regulated community and individuals to “not do it”
2. Remove Economic Incentives – No “licenses to pollute”

II. EPA has made “Wet Weather” a Priority

A. Introduction²

EPA’s enforcement programs under the Clean Water Act (CWA) are supposed to “protect and improve the quality of the nation’s water.” The CWA enforcement programs include:

- National Pollutant Discharge Elimination System (NPDES) Program
- Pretreatment Program

² <http://epa.gov/compliance/data/planning/priorities/cwa.html>.

- Biosolid/Sludge Program
- Section 404/Wetlands Dredge & Fill Material Program
- Section 311/Oil and Hazardous Substances Spills Program
- Wet Weather Enforcement Programs.

POTWs and their operators, whether public or private, face enforcement under all of these programs. However, EPA is focusing enforcement efforts in fiscal years 1005-2005 on “wet weather enforcement.”

In most places, wet weather discharges have bacteria, pathogens and other pollutants that hurt water quality and can and do make people sick. OECA (the EPA Office of Enforcement and Compliance Assistance) is tackling wet weather enforcement as a national priority.³ OECA’s focus is on:

- (1) Combined Sewer Overflows (CSO);
- (2) Sanitary Sewer Overflows (SSO);
- (3) Storm Water; and
- (4) Concentrated Animal Feeding Operations (CAFOs).⁴

EPA has a strategy for CSOs, SSOs, and Storm Water.

B. The EPA’s CSO Strategy⁵

EPA had a long-gone 1997 deadline for its "Combined Sewer Overflow (CSO) Control Policy," which had set 9 minimum requirements for CSO communities. (These CSO communities were also supposed to come up with long-term control plans (LTCPs).)

Of course, the days and years go by. Many CSO communities don’t have the 9 minimum controls and don’t have LTCPs. See "2004 Combined Sewer Overflow Statistically-Valid Noncompliance Rate Study" (June 13, 2005).⁶ The new CSO strategy is to fix the CSO problem.

It has six goals:

³ These Clean Water Act priorities are for federal fiscal years 2005-2007.

⁴ To our knowledge, POTWs and their operators are impacted by three of these, because we don’t know of any CAFOs owned or operated by POTWs.

⁵ <http://epa.gov/compliance/data/planning/priorities/cwacso.html>

⁶ <http://epa.gov/compliance/resources/publications/data/planning/priorities/cwacsosvnrstudy.pdf>.

1. *Goal 1:* By October 1, 2008 (the end of FY 2007), 65% of all CSOs will have an approved LTCP with an enforceable schedule.

2. *Goal 2:* EPA will target 90% of its CSO enforcement at high-priority CSOs.⁷

3. *Goal 3:* EPA will study and fix all CSO discharges within one (1) mile upstream of a surface drinking water intake.

4. *Goal 4:* EPA's CSO enforcement program will give a 90% reduction in the volume of untreated overflows.

5. *Goal 5:* EPA will help all permitted CSOs in getting a LTCP done and approved. These LTCPs will have an enforceable schedule.

6. *Goal 6:* EPA will assist the CSO community in better understanding the CSO group's duties for complying with environmental laws. EPA will also help the CSO group in better management to meet those duties. This EPA assistance will reduce or eliminate pollutants.

EPA says it will use a wide range of compliance and enforcement "tools." These include compliance monitoring and help; and enforcement, both in administrative prosecutions and through the courts. EPA will target the violators who pose a significant risk to the environment and human health.

C. The EPA's SSO Strategy⁸

The States start many SSO investigations. But, EPA's involvement can be significant. EPA intends to get involved to protect the U.S.'s (and the general public's) investment in the wastewater infrastructure.

This "Strategy" has two goals:

1. *Goal 1:* Protect health and water quality on lands and in streams in priority areas or watersheds. These include:

a. Sensitive areas;

b. Watersheds or communities with potentially significant environmental or human health impacts due to wet weather non-compliance problems;

c. Areas with known impacts;

d. Environmental justice areas;

⁷ High-priority CSOs are those with discharges that impact sensitive areas, are located in environmental justice areas or have a significant environmental or human health impact.

⁸ <http://epa.gov/compliance/data/planning/priorities/cwasso.html>.

e. Communities where frequent and recurring SSOs are resulting in human exposure to raw sewage.

2. *Goal 2:* Protect the taxpayers' investment in wastewater infrastructure. EPA will do this by making sure municipal collection systems have sufficient capacity, properly manage their assets, and follow proper operation and maintenance rules.

Again, EPA will use the “stick and carrot” strategy it uses for its CSO Strategy. EPA will target municipal collection systems in priority watersheds and communities.

D. The EPA's Storm Water Strategy⁹

EPA will target at least 70% of storm water inspections and compliance assistance toward priority sectors or watersheds. The EPA Regions will focus the “inspection resources” where states have low levels of planned inspections (and where necessary for whatever national initiatives EPA has).

What are “priority sectors or watersheds”?

- (1) Sectors or watersheds in high growth communities where storm water dumps lots of sediment into surface waters.
- (2) Sectors or watersheds in “environmental justice” or tribal areas,
- (3) Sectors or watersheds where storm water has the potential to impact water quality, drinking water quality and public health,
- (4) Waters that are polluted by storm water,
- (5) Waters where storm waters restrict shellfish harvests, beach closures, or fish kills,
- (6) Habitats of threatened or endangered species.

The EPA Storm Water Strategy has two goals:

1. *Goal 1:* Minimize polluted storm water getting into surface waters. (EPA says construction sites discharge 2.5 million pounds [1,250 tons] of sediment a year.)
2. *Goal 2:* Help states, localities and tribes with storm water programs, with annual and joint inspections.

OECA sets out how EPA is going to do all of this in the “Compliance Assurance Resources Compendium.” The Compendium is posted on the National Environmental Compliance Assistance Clearinghouse as well as at:

<http://epa.gov/compliance/resources/publications/data/planning/priorities/priorities.pdf>.

⁹ <http://epa.gov/compliance/data/planning/priorities/cwastorm.html>.

III. Enforcement Mechanisms

A. Federal Enforcement & Crimes

1. **Bush Administration:** The statistics indicate the Bush Administration is de-emphasizing judicial enforcement.

	2002	2003	2004
EPA Criminal investigations	484	471	425
#s of Defs charged	372	247	293
Years of incarceration	215	246	77
Fines & restitution	\$62M	\$71M	\$47M

a. But, EPA has intensified enforcement of storm water management rules, and continued lawsuits against petroleum refiners, ethanol producers, and municipalities. And, monetary amounts of penalties continue to ratchet *upwards*, due to EPA Civil Monetary Penalty Adjustment Rules.¹¹

b. Significant Cases for Environmental Enforcement -- Generally

- 1) Work product protection for environmental consultant for “single purpose documents” to help attorney. *In re Grand Jury Subpoena v. Torf*, 350 F.3d 1010 (9th Cir. 2003).
- 2) Sentencing guidelines now advisory, not mandatory. *U.S. v. Booker*, 543 U.S. ___ (2005); 2005 WL 2217023 (D.N.J.).
- 3) Governmental employees have the right to enter private property for environmental inspections without warrants. *Palmieri v. Lynch*, 392 F.3d 73 (2d Cir. 2004); *Riverdale Mills, Corp. v. Pimpare*, 392 F.3d 55 (1st Cir. 2004).

¹⁰ Transactional Records Access Clearinghouse, Syracuse University. Prosecutions for violations of federal environmental laws decreased by 23% during Bush Administration compared to 2d term of Clinton Administration. Published by the American Bar Association’s Section of Environment, Energy & Resources, Water Quality and Wetlands Committee as its *Year in Review Report – 2004*.

¹¹ For instance, a \$25,000 penalty under an environmental statute is now \$32,500.

2. Recent Settlements -- Examples of EPA's CWA prosecution cases:¹²

- a. Hawaii Department of Transportation Clean Water Settlement (October 6, 2005)—From EPA Press Release:

“HONOLULU -- The Department of Justice, the EPA, and the Hawai'i Department of Health have reached an agreement with the Hawai'i Department of Transportation that requires the department to pay a \$1 million penalty and spend an estimated \$50 million to address Clean Water Act storm water violations at highways and airports in Hawai'i. *'Storm water discharges pollute Hawaii's streams, coastal waters, and coral reefs,'* said Wayne Nastri, administrator of the EPA's Pacific Southwest region. *'By agreeing to make long-lasting changes to its operations under this settlement, HDOT will reduce its impacts upon the environment at roads, airports and harbors. We believe these actions will result in increased protection of coral reefs and improved water quality for the people of Hawai'i.'"*

- b. Louisville and Jefferson County Metropolitan Sewer District (April 24, 2005) – From EPA Press Release:

“WASHINGTON, D.C. (April 24, 2005) -- The U.S. Environmental Protection Agency, the Department of Justice and the Commonwealth of Kentucky's Environmental and Public Protection Cabinet jointly announced a comprehensive Clean Water Act settlement with the Louisville and Jefferson County Metropolitan Sewer District. The agreement ensures that the Metropolitan Sewer District will make extensive improvements to its sewer systems to eliminate unauthorized discharges of untreated sewage and to address problems of overflows from sewers that carry a combination of untreated sewage and storm water at a cost that is likely to exceed \$500 million. The district's sewer systems have frequently been overwhelmed by rainfall resulting in unlawful discharges of untreated sewage and overflows of combined sewage into the Ohio River and its tributaries totaling billions of gallons each year.”

3. Press Releases – EPA's Deterrence Tool

Press releases play a large role in the EPA's enforcement programs. In EPA Region 9, press releases are issued in 90% to 95% of enforcement cases. Region 9 informally estimates that press releases result in more calls from similar potential violators, asking “Who should I talk to about compliance?”¹³

¹² See EPA Cases and Settlements at:

<http://cfpub.epa.gov/compliance/cases/index.cfm?templatePage=12&ID=3&sortBy=&stat=Clean%20Water%20Act>.

¹³ JRA Note: EPA press releases may also result in more “citizen suit” enforcement.

The following is another recent example of an EPA press release for a settlement of a CWA prosecution against a POTW, Sanitation District #1 of Northern Kentucky.

“(WASHINGTON, D.C. – October 7, 2005) – The U.S. Department of Justice and the U.S. Environmental Protection Agency today announced they have reached a comprehensive Clean Water Act settlement with the Sanitation District No. 1 of Northern Kentucky. At a cost of at least \$880 million, the District has agreed to make extensive improvements to its sewer systems to eliminate unauthorized overflows of untreated raw sewage and to control overflows of combined sewage and stormwater. Each year, the District has been unlawfully discharging untreated sewage and experiencing overflows of combined sewage into the Ohio River and its tributaries in amounts totaling almost a billion gallons.

The settlement is contained in a consent decree filed today in the U.S. District Court for the Eastern District of Kentucky in Covington. The decree represents the combined efforts of both the Commonwealth of Kentucky and the United States, which have entered into this settlement as plaintiff and intervening plaintiff, respectively.

The major features of the consent decree will require the District to (1) propose and implement specific corrective action plans to bring combined sewer overflows (or CSO's, which are overflows of a combination of untreated sewage and stormwater from permitted outfall locations) into compliance with water quality standards; (2) propose and implement specific corrective action plans to eliminate unauthorized sanitary sewer overflows (or SSO's) of untreated sewage (the worst of such overflows, representing approximately 60% of the total, occur at certain pump stations which must be addressed by no later than 2015); (3) improve its sewer system's management, operation and maintenance (MOM) programs to prevent future overflows; and (4) respond to overflows when they occur.

The District will develop these plans through a “watershed approach” by which the District will identify remedial measures and establish priorities taking into account natural background conditions, other point source discharges and non-point source discharges. The District has four watersheds in its service area and will develop watershed plans for each area. The watershed plans will be updated at least every five years. Use of this watershed approach is expected to lead to improvements in water quality at a quicker pace in critical areas and more efficient and cost-effective solutions. The purpose of the watershed plans is to eliminate the SSO's and to ensure the CSO's meet applicable water quality standards.

“Today's settlement represents a significant commitment by the District to address for the long term its aging sewer systems,” said Kelly Johnson, Acting Assistant Attorney General for the Justice Department's Environment and Natural Resources Division. *“Systems like this across our nation have created significant environmental problems. Northern Kentucky should be commended for agreeing to the commitments set forth in the consent decree filed today, which will bring much needed protection to human health and the environment in this part of the Ohio River basin.”*

“Sewage overflows are a major problem across the country, and bringing systems into compliance is one of EPA's top enforcement priorities,” said Granta Y. Nakayama, EPA's Assistant Administrator for Enforcement and Compliance Assurance. *“This innovative watershed approach to controlling discharges of raw sewage will have a positive impact on the environment.”*

Until 1995, the District was responsible for the operation of only two wastewater treatment plants. In 1995, the District became a regional district and acquired the combined sewers, sanitary sewers and treatment systems of 35 municipalities within the boundaries of Boone, Campbell, and Kenton Counties. By 1999, the District had also acquired the sanitary sewer systems of Boone County, the City of Alexandria and the City of Independence. In 2003, the District also assumed responsibility for regional stormwater management. The District is now responsible for the operation and maintenance of one major regional wastewater treatment plant, eight minor treatment plants, approximately 1,500 miles of combined and separate sewer lines, approximately 128 pump stations, 15 flood stations, and other sewer and stormwater facilities. The District has plans to construct two additional major regional wastewater treatment plants. *The District's sewer systems have often been overwhelmed after rainfall events resulting in discharges of untreated SSO's averaging 82 million gallons annually. Rainfall events also cause CSO's totaling over 850 million gallons annually.* These SSO's and CSO's have adversely affected water quality in the Ohio River and its tributaries, including the Licking River and Banklick Creek.

In addition to the control requirements, the consent decree also requires the District to pay a civil penalty of \$476,400 of which \$328,200 will be paid to the Commonwealth of Kentucky and \$138,200 will be paid to the United States. The District will also perform a supplemental environmental project (SEP) at a cost of \$311,000 to reduce excess flows into the sewer system from residences and to extend sewer service to areas currently served by defective septic tanks or straight pipes discharging raw sewage. Under Commonwealth supervision, the District will also spend an additional \$325,000 for the performance of four state environmental projects involving land conservancy, monitoring of water quality, public education on water quality issues, and watershed restoration.

"We are pleased that EPA and the Commonwealth of Kentucky collaborated as plaintiffs in this settlement, as was done in the recent resolution of the Louisville MSD matter," said Jimmy Palmer, EPA Regional Administrator in Atlanta. *"This teamwork, and the cooperation the District exemplified by its commitments set forth in the consent decree, mean that valuable resources will be spent on what's important, protecting human health and environment."*

In the past, the United States has reached similar agreements with numerous municipal entities across the country including Mobile; Jefferson County (Birmingham), Alabama; Atlanta; Knoxville; Miami; New Orleans; Toledo; Hamilton County (Cincinnati), Ohio; Baltimore; Los Angeles; and Louisville."¹⁴

4. Water Quality & Wetlands – EPA General Enforcement Approach

- a. Section 309 of the CWA authorizes EPA enforcement with (i) administrative compliance orders, (ii) administrative penalties, and (iii) civil penalty lawsuits.
- b. The Courts then set penalties with a “top-down approach”
 - 1) Maximum penalty authorized by CWA = \$32,500/day/violation (adjusted for inflation from \$25,000/day).

¹⁴<http://cfpub.epa.gov/compliance/cases/index.cfm?templatePage=12&ID=3&sortBy=&stat=Clean%20Water%20Act>.

- 2) Reduce penalty total by determining the seriousness of the violation, the economic benefits, the history of the polluter, its good faith efforts to comply, the economic impact of a penalty on the polluter (“ability to pay”), and requirements of justice.¹⁵

5. Examples from EPA Region 9:¹⁶

- a. *Where do the cases come from?* Region 9 picks cases from tips, priorities (industries, media programs, etc.) USEPA HQ does not play as large a role in selection of cases to be prosecuted by Region 9 as in the past. And, some national cases do wind up in Region 9. EPA and USDOJ will sometimes take over “citizen suit” cases, and enforce. And, “citizen suit” intervention can sometimes hold up settlement of some “national cases.”
- b. *EPA Regions are required to quantify “results.”* EPA HQ requires Region 9 to quantify the types of positive environmental results. The focus is on deterrence, and so Region 9 must prove the effectiveness of its enforcement programs. Of course, one case is still just one case. But, the effectiveness of each of Region 9’s substantive program areas is gauged on its “deterrence effect.” In particular, Region 9 asks “is the violator a leader or a follower in terms of compliance?”

B. Private Enforcement and Defense – Citizen Suits

1. Overview of Citizen Suits¹⁷

To supplement state and federal enforcement, Section 505 of the CWA generally allows citizens to initiate civil lawsuits against any person, including the U.S. and other government agencies, for violating the CWA. Citizens can seek injunctive relief, civil penalties and attorneys’ fees. The theory is that defendants will want to avoid citizen suits because they can cost more than responding to actions by EPA itself, which tend to favor administrative efforts at compliance.

As an example, a citizen group sued a large dairy operation in Oregon for dumping animal wastes into waterways. *Community Assn. for Restoration of the Environment v. Henry Bosma Dairy*.¹⁸ The U.S. Court of Appeals for the 9th Circuit found that the citizens group 60-day notice of violations of the CWA was legally adequate even though it did not list all violations the group alleged in the complaint

¹⁵ “Water Quality and Wetlands: 2004 Annual Report,” from ABA Section of Environment, Energy & Resources, *Year in Review 2004*, *supra*.

¹⁶ JRA Notes from presentation by Nancy Marvel, EPA Region 9 Regional Counsel, BASF Environmental Law Enforcement Program, June 30, 2005.

¹⁷ The following is based on our conclusions, not EPA Region 9’s.

¹⁸ 305 F.3d 943 (9th Cir. 2002).

they filed after EPA did not act. Thus, the notice of intent to sue does not limit the number of violations asserted in a citizen suit.

2. Some California Citizen Suit Issues

Citizen suits continue to be a “hot topic” in many areas across the U.S. POTWs and their operators face a continuing threat from communities, individuals, and interest groups in what amounts to a form of “vigilante justice” against water pollution. (Some of this is from “NIMBY” and some of it is from the common phenomena of “we want a safe and healthy environment but we want someone else to pay for it...”)

In California, popular initiatives (law making by the voters) are significant. Recently, Proposition 64 amended the State’s “little FTC Act,” §17200 of the Business & Professions Code (which allows citizen suits against unfair business practices resulting from violations of law, etc.). As a result, plaintiffs cannot “put on the hat of the Attorney General” and sue on behalf of all of the citizens of California. Instead, they must have specific and personalized injury from the violation that results in the unfair business practices.) The result of the amendment of §17200 and abuses of Proposition 65 (the “warn before exposing to toxics law”), is a broadly supported effort to add “citizen suit” enforcement to all public health and welfare laws.

- a. **AB528: “Public Health and Environmental Compliance Law of 2005”** -- *Would allow “any person” with “beneficial interest” to sue for violations of environmental and public health laws.*

AB528 would allow “citizen suit” enforcement of many of California’s environmental and public safety and health laws. The State’s environmental laws are generally more protective of human health and environmental values than federal law. However, unlike the U.S. Clean Air Act, Clean Water Act, *et al.*, many of CA’s environmental laws, including key statutes protecting air, water and endangered species, do not provide a private right of action to enforce them. AB528 would change this.

AB528 does not allow those individuals and organizations to challenge permits issued by public agencies.

AB528 is strongly opposed by the same groups that got Proposition 64 passed.¹⁹ Opponents argue that the voters curtailed citizen suits through passage of Proposition 64 and passing AB528 would ignore the will of the people. Large business interests – and their insurance carriers -- generally oppose any measure that will increase the potential for litigation.

¹⁹ As noted in the text, Proposition 64 was made law by popular vote in November 2004. It requires that any plaintiff must have suffered injury and financial or property loss in order to pursue claims for unfair business practices under Business and Professions Code §17200 et seq.

Proponents of AB528 argue that California's environmental laws will be enforced more efficiently and effectively. The private individuals and organizations would only be allowed to enforce the laws where government regulatory agencies fail to act. Proponents claim these private citizen suits are a necessary mechanism where the government fails to ensure the environmental quality of the State. The proponents strongly assert that the Bush Administration has weakened environmental protections, and point to numerous lawsuits where the Administration has joined with industry groups to challenge California's laws.

As of June, 2005, AB528 is assigned to inactive status on the Assembly floor. It will be revived in the 2006 legislative session. There will be a fight as the State heads into its gubernatorial election in November 2006.

b. Attorneys Fees Where "Citizen Suit" Right Already Exists -- Example

A recent example of an attorneys fee award in the California courts demonstrates how lack of "transparency" (and accurate recording of decision making) in operations of a municipality will result in an attorneys' award under a state's "fees award for public benefit results" statute. *Protect Our Water v. County of Merced*, 130 Cal.App.4th 488 (2005).

Section 1021.5 of the California Code of Civil Procedure allows a state court to award attorneys fees if a party in a lawsuit is successful, and the success "...has resulted in the enforcement of an important right affecting the public interest .."²⁰

The county in this lawsuit had not prepared an adequate administrative record to support a permit for gravel mining the County had issued. Although the group did not ultimately "win" its case, the remedy it sought was achieved.

The decision illustrates the extent to which the principles of "citizen suit" enforcement of "public rights" are imbedded in the law.

3. Citizen Suits Against POTWs

There are many citizen suits against POTWs. One recent example where a POTW prevailed is *American Canoe Association, Inc. v. D.C. Columbia Water and Sewer*.²¹ In *American Canoe*, environmental groups sued the District of Columbia's POTW using the citizen suit provisions of the CWA. The plaintiffs claimed the POTW violated the terms and conditions of its NPDES permit by failing to install

²⁰ None of the debate over AB358 or the restrictions on "citizen suits" by 2004's Prop. 64 affect Section 1021.5, CCP. That debate relates to the substantive right to sue to enforce environmental and public health statutes. Section 1021.5 provides attorneys fees if a substantive right for a citizens' suit already exist. For example, in *Protect our Water* it was compliance with California's "little NEPA statute."

²¹ 306 F.Supp.2d 30 (DC DC 2004), dismissed by stipulation, 2004 WL 2091485 (D.C. Cir. Sept. 17, 2004).

odor controlled carbon filters on vents located on National Park Service property. The federal court ruled that the CWA cannot be used to enforce complaints about odor, noise or other non-water issues where the NPDES permit did not impose those obligations upon the permittee. As noted, the case was settled before it was considered by the federal court of appeals.

IV. How to Keep Mistakes from Becoming Violations

A. How a Mistake Becomes a Violation -- “*They Really Must’ve Known Something.*”

1. Small events lead up to major mistakes and violations.
2. The “slippery slope” of compliance by bureaucracy – and individuals.

B. Some issues to think about:

1. What level of failure is tolerated?
2. Trying to prove you did everything possible.
3. Using common sense and diligence.
4. What are the industry standards?

C. “Corporate Culture”

The “culture” of any organization determines the level of “compliance” with its goals and objectives – as well as the goals and objectives (i.e., requirements) imposed from outside the organization.

The “corporate culture” is the shared values, traditions, customs, philosophy, and policies of an organization. These values, policies, etc., include the regulatory compliance practices of the organization. A “corporate culture” which promotes regulatory compliance will likely lead to fewer violations. Violations of regulations will still occur, particularly in the “liability without fault” area of enforcement of public health and welfare laws. When they occur, the organization with an appropriate “corporate culture” – and its individuals – are less likely to be found culpable and therefore more likely to face *civil* and not *criminal* enforcement.

The EPA issued the *Devaney Memo*²² in 1994. Earl Devaney, then director of EPA's Office of Criminal Enforcement, listed the factors that separate cases meriting *criminal investigation* from those which should be enforced as *civil enforcement* (whether through administrative penalties or in the courts).

²² <http://www.epa.gov/Compliance/resources/policies/criminal/exercise.pdf>.

These “culpability” factors include:

1. What history, if any, does the organization have of repeated violations?
2. Was there any deliberate misconduct resulting in violations? (See above, “They must really have known something...”)
3. Did the organization or the individual conceal misconduct or falsify records?
4. Did someone tamper with monitoring or control equipment?
5. Did the organization operate pollution-related activities without a permit, license, manifest or other required document?

V. Conclusion

Recent civil enforcement under the Clean Water Act show some common signs:

1. The aging infrastructure of POTWs will result in more violations.
2. As federal enforcement declines, calls for citizen suit enforcement will increase.