



Criminal Enforcement of Environmental Laws

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ISSUES FOR THIS SEGMENT

Environmental statutes contain both civil and criminal enforcement options.

- How do we decide which violations of environmental laws are crimes?
- What is the relationship between the civil and criminal environmental programs?

Environmental Violations Arise from a Civil Regulatory Framework

Federal standards implemented in state laws, regulations, and permits

Obligations imposed by state regs, permits, & orders subject to federal oversight

Monitored by:

Federal and state facility inspections

Self-disclosure requirements

- Testing and reporting of pollutant discharges
- Disclosure of unpermitted pollutant releases

Goals of Civil & Criminal Environmental Enforcement

- Protection of the Environment
- Protection of Public Health and Safety
- Through Punishment - Deterrence
- Promoting Compliance
- Ensuring Level Playing Field for Industry
- Remedial Measures: Cleanup Pollution and Victim Restitution

Same Evidence Supports Civil & Criminal Enforcement

- Permits, Inspection Reports, Samples, Lab Analyses, Photos, & Self-Reported Data
- Witnesses (inside and outside of target facility)
- Administrative File
 - Correspondences with regulated industry
 - Identification of responsible parties: potential witnesses or defendants
 - Permit negotiations
 - Complaints
- Prior NOVs, Admin. Hearings, & Penalties

Mental State for Criminal Culpability

- Knowing Violations – General Intent (CWA, CAA, RCRA, CERCLA)
- Willful Violations – Specific Intent
- Negligent Violations (CWA, CAA)
- Strict Liability (Civil Enforcement)

What Makes an Environmental Violation a Crime

FACTORS:

- Deliberate Conduct
- Clarity of the Violation
- Environmental Harm
- Regulatory Significance
- Relation to Other Common Crimes
- Culpability:
Who Gets Charged



What Mitigates Criminal Culpability

- Accidental Violation
- Good Faith – Mistake of Fact or Law
- Express or Implied Approval by Regulators
- Minor Violation
- Potential for Jury Nullification

Deliberate Conduct

- History of Violations
 - Prior Convictions Consent Decrees
 - Warnings, Administrative Orders, or Fines
- Willfulness
 - Mistake
 - Deliberate Misconduct with a Motive
- Deception
 - Failure to Report
 - False Statements
 - Tampering with Monitoring Equipment
 - Other Efforts to Conceal Violations or Mislead Regulators
- Contacts with, Notice to, or Approval by Regulators

Clarity of the Violation

- Is There any Ambiguity
 - In the Regulation
 - In the Permit
 - Problematic Enforcement History
- Ambiguity in the Criminal Context
 - Rule of Lenity Tilts Legal Interpretations in The Defendant's Favor
 - Reasonable Doubt
 - Risk of Bad Precedent

Environmental Harm

- Actual Harm or Threat of Harm to Human Health or the Environment
- A Factor in Charging Decisions Even If Inadmissible at Trial



Regulatory Significance

- Is this a common violation?
- Does the violation seriously undermine the regulatory scheme? (e.g. false reports)
- Is it a violation for which there is a substantial economic benefit or liability?
- Is civil enforcement effective?
- Will criminal prosecution create a necessary deterrent?

Relationship to Other Crimes

- Other Relevant Federal Criminal Statutes
- No Regulatory Framework Necessary:
Good Old Lying, Cheating, & Stealing
- Environmental Crimes Associated with Bad Conduct by Bad People
 - Obstruction of Justice
 - False Statements
 - Fraud

Violations by Corporations – Who Gets Charged?

- Unauthorized Act of a Low Level Employee?
- Who Made the Decision to Commit the Act that Violated the Law?
- With What Knowledge Was the Conduct Ordered or Undertaken?
- Was it Within the Scope of a Manager's Authority and Responsibility?
- Who Profited from the Illegal Conduct?
- Who Concealed it?

CASE EXAMPLE

U.S. v. CENTRAL INDUSTRIES, INC.

Poultry Rendering Plant

Forrest, Mississippi

Clean Water Act &

Conspiracy Charges

Bird's Eye View of Central Industries



The Goo Lagoon



Awful Offal

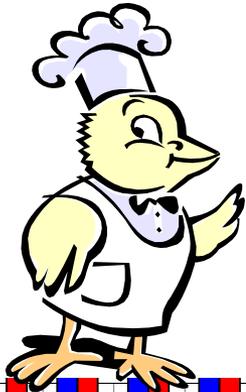


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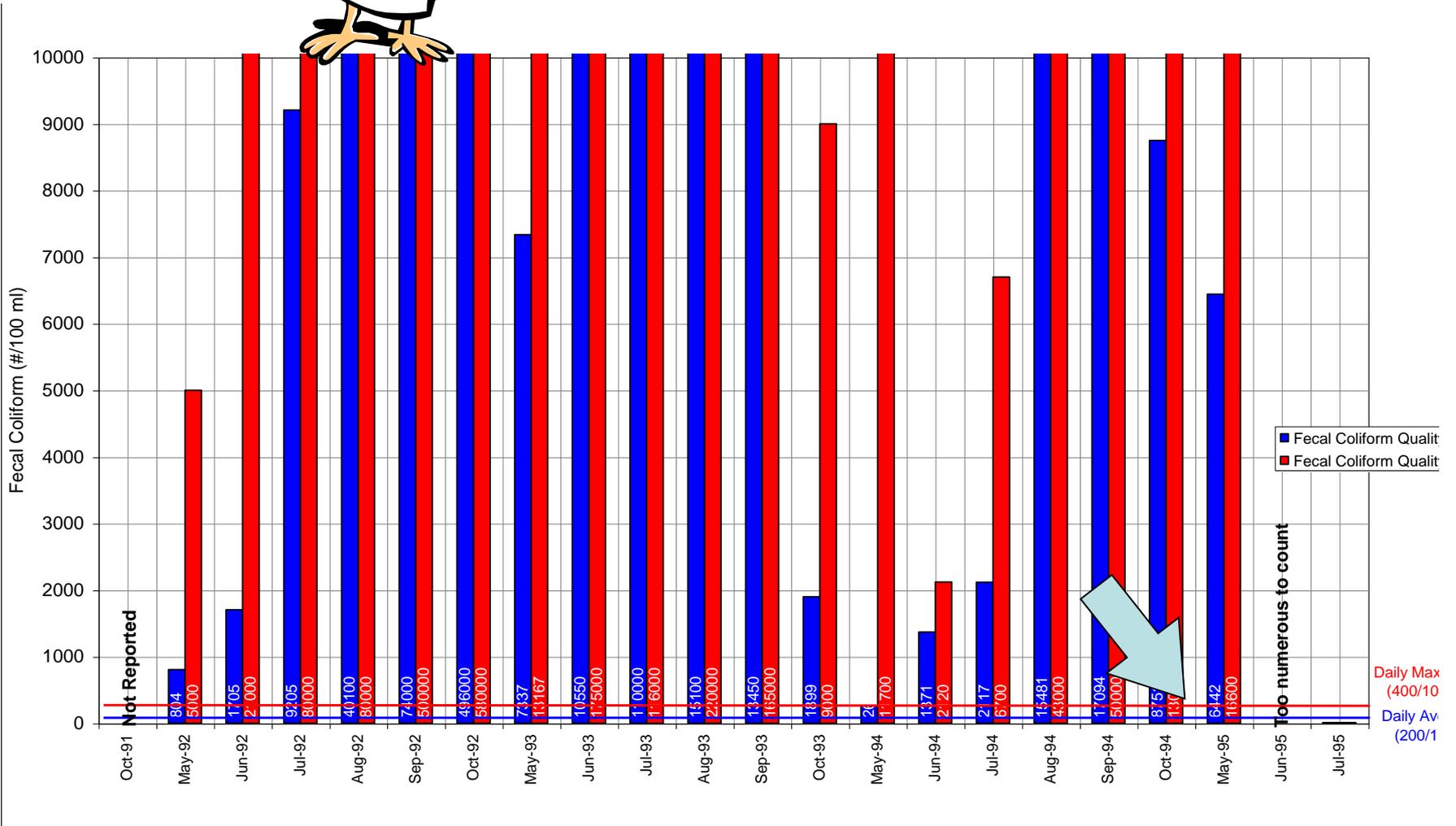


Jackson's Drinking Water



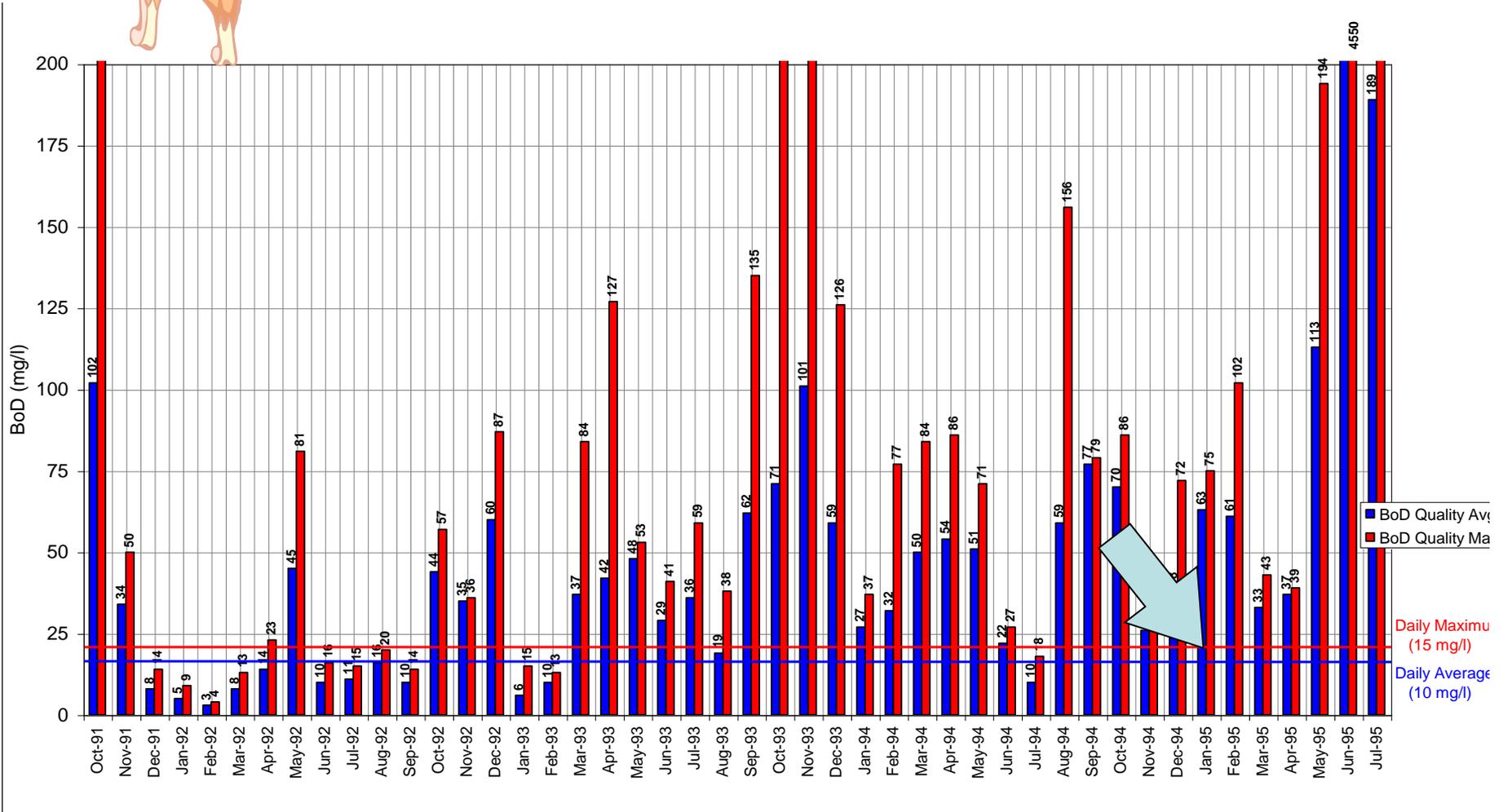


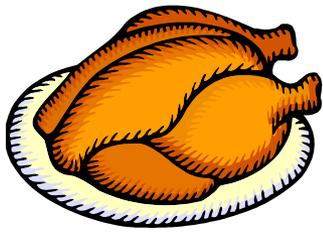
Fecal Coliform



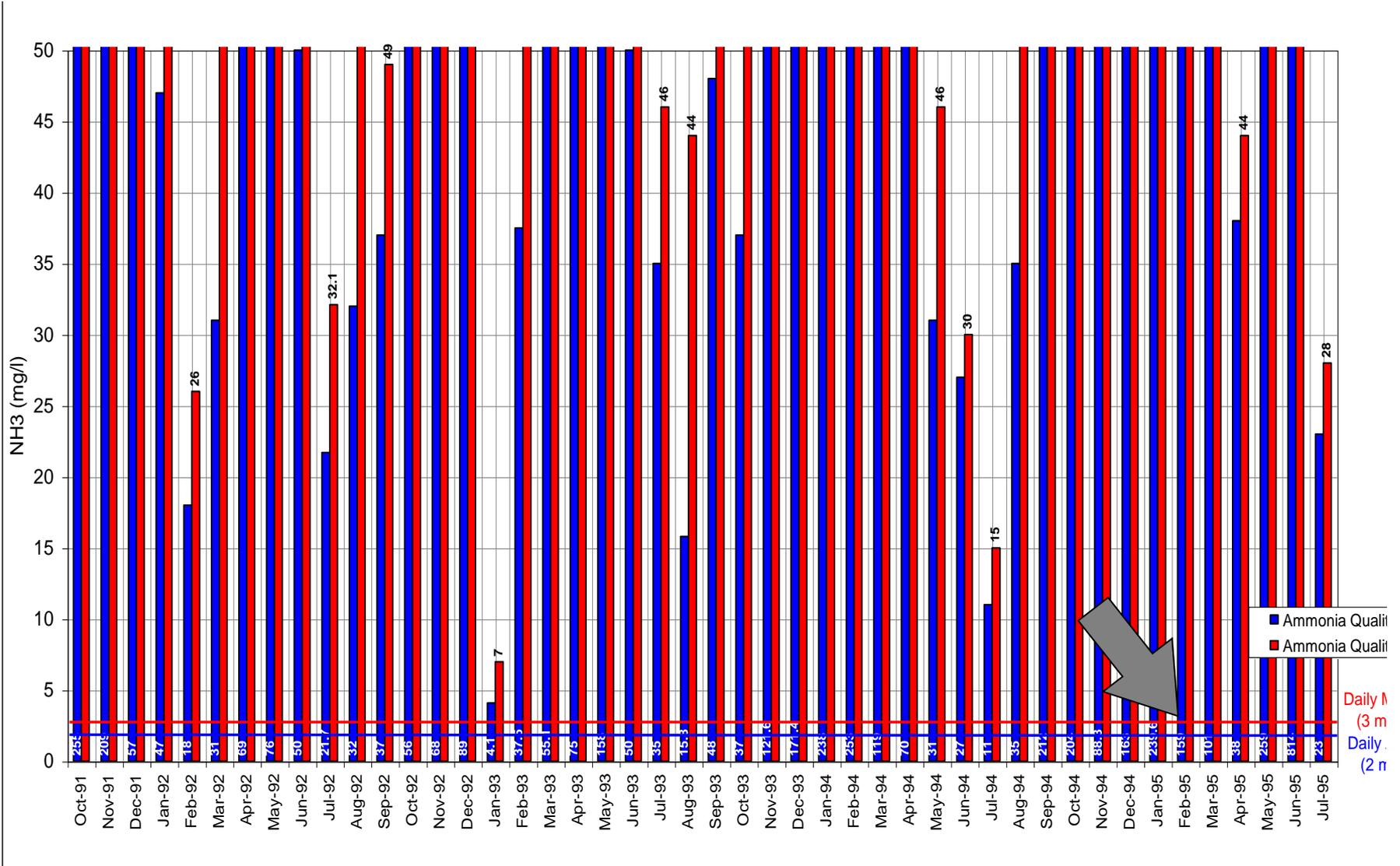


Biological Oxygen Demand





Ammonia Concentrations



Environmental Harm



Environmental Harm



Is this a Criminal Case?

- Clarity of violations
- History of violations - Flagrancy
- Civil enforcement failed to obtain compliance
- Environmental Harm
- Economic incentive to violate the law
- Who should be charged?
 - Control over and economic benefits of the violations
 - Most effective deterrence
- What criminal counts?
 - CWA discharge without or in violation of a permit
 - Conspiracy
 - CWA negligence counts

The Sentence

WE APOLOGIZE

- Central Industries, Inc. and four of its former officers and directors have pled guilty to federal criminal charges resulting from their conduct in causing pollution by Central in violation of the Clean Water Act.
- For more than 20 years leading up to the middle of 1995, Central Industries, at its chicken rendering plant in Scott County, Mississippi, on numerous occasions discharged polluted wastewater into tributaries of the Pearl River.
- For many years, the five chicken processing companies that owned Central Industries – namely B.C. Rogers Poultry, Inc., Choctaw Maid Farms, Inc., McCarty Farms, Inc., Forest Packing Company, Inc. and Marshall Durbin Farms, Inc. – each sent to Central’s rendering plant most of the chicken blood, offal, feathers, and slaughterhouse wastes resulting from the processing of chickens at their plants.
- The inability of the Central facility adequately to process the chicken blood, offal, feathers, and slaughterhouse wastes received at Central’s plant resulted in the illegal discharge of polluted wastewater into Pearl River tributaries.
- After a federal environmental investigation of Central’s activities began in 1995, Central spent the money necessary to permit its rendering plant to begin obeying the environmental laws, which have been followed since that time.
- Central Industries has been ordered to pay \$14 million in penalty to the federal government and restitution to the state of Mississippi. We hereby apologize to the citizens of Scott County and surrounding Mississippi counties for our conduct.

CENTRAL INDUSTRIES, INC.

By Its Board of Directors

This advertisement is being paid for by
Central Industries, Inc. in compliance with a criminal plea agreement
it entered with the United States Department of Justice

**\$14 Million Fine Paid to
the United States and to
the State of Mississippi**



Summary

- Environmental crimes develop from a regulatory framework established and overseen by state agencies
- The violations most appropriate for criminal enforcement are the most persistent and flagrant, with greatest environmental and regulatory impact
- Title 18 offenses are often appropriately charged with environmental crimes; they often allow the introduction of a long history of violations and evidence of fraud and deceit