



What is an Environmental Crime?



ENVIRONMENTAL VIOLATIONS



- **Accidents (Administrative, Civil)**
- **Negligence (Administrative, Civil, Criminal)**
- **Knowing Behavior (Criminal)**



What is an Environmental Crime?

Knowing violations of environmental statutory and regulatory provisions

A violation is deemed to be “*knowing*” if the person committing the violation was aware of his or her conduct and it was not the result of a mistake, accident or negligence

Negligence and strict liability may be a basis for criminal prosecution in certain instances



Knowledge Requirement

- General intent crime
 - Person does not need to be aware of the law or specific regulation that is being violated
- Person does not need to have intended to violate the law
- “Ignorance of the law is neither a defense nor an excuse.”

What Makes a Case Criminal?

LYING

CHEATING

STEALING



Environmental Crimes Are Like Any Other Crime:

- ✓ **Lying:** To Regulators or Customs Officials
- ✓ **Cheating:** Not incurring costs paid by businesses disposing waste properly
- ✓ **Stealing:** From the customer who paid for proper disposal



But in other ways environmental crime is very different...

- Victims can include whole communities and ecosystems.
- The violation might be local, but the impacts could be felt long distances away.
- The violation might be committed today, but the impacts might not be felt or understood for many years.
- Some impacts may be irreversible.



CHARACTERISTICS THAT MAY TRIGGER A CRIMINAL INVESTIGATION:

- ❑ KNOWING VIOLATIONS OF LAW
- ❑ NEGLIGENCE ACTIONS (CWA)
- ❑ FALSE OR FRAUDULENT REPORTING
- ❑ INTENT (General v. Specific)
- ❑ PRIOR CIVIL/ADMINISTRATIVE ACTIONS FOR SIMILAR ACTIVITIES
- ❑ DECEPTION
- ❑ SIGNIFICANT ACTUAL OR POTENTIAL HARM TO THE ENVIRONMENT
- ❑ SIGNIFICANT ACTUAL OR POTENTIAL HARM TO INDIVIDUALS OR WILDLIFE
- ❑ EVIDENCE OF CRIMINALITY IS USUALLY SUBTLE. IF FIRST RESPONDERS OBSERVE ANYTHING SUGGESTING CRIMINAL BEHAVIOR, CONSULT WITH EPA-CID



Red Flags That May Indicate Possible Criminality

- ❏ **CONFLICTING DATA:** TWO SETS OF BOOKS OR INCONSISTENT MONITORING REPORTS ON THE SAME INCIDENT.
- ❏ **CONFLICTING STORIES:** AN INSPECTOR IS LED TO BELIEVE ONE THING AND SEES SOMETHING DIFFERENT IN RECORDS OR THROUGH OBSERVATIONS.
- ❏ **UNSUBSTANTIATED DATA:** MONITORING AND OTHER RECORDKEEPING AND REPORTING DATA LACK CREDIBILITY.
- ❏ **DELIBERATE ACTIONS:** AN EMPLOYEE SAYS HE WAS TOLD TO DO SOMETHING THE INSPECTOR KNOWS IS ILLEGAL.
- ❏ **CLAIMS OF IGNORANCE ABOUT REQUIREMENTS:** COPIES DEMONSTRATING KNOWLEDGE ARE DISCOVERED IN THE RECORDS, OR STATEMENTS DURING INTERVIEWS DEMONSTRATE KNOWLEDGE.



Prosecution Goals

- Protect human health and the environment
- Punish and deter the most egregious environmental offenders
- Eliminate economic incentives for non-compliance
- Complement civil and administrative enforcement efforts

Prosecutorial Discretion

- General Factors to consider
 - Prima Facie
 - Reasonable probability of conviction
 - “Should we prosecute”



Investigative and Prosecutorial Discretion Factors to Consider

- Significant harm to environment or human health
- History of repeated violations
- Deliberate misconduct resulting in violation
- Concealment of misconduct or falsification of records
- Tampering with monitoring /control equipment
- Lying to regulators

Examples of Harm Arising From Environmental Crime

- Threats to the air we breathe, the water we drink, the food we eat;
- Killing or trafficking in endangered species;
- Pollution of waterways that we swim, fish and boat;
- Destruction of habitat; and
- Ground and groundwater pollution.

Potential Defendants

- Individuals
- Corporations and their employees
- Quasi-governmental entities
- State and municipal officials/
employees



Typical Offenses

- Clean Water
- Clean Air
- Resource Conservation and Recovery Act
- Other crimes

Clean Water Act Violations



Clean Water Act

- 33 U.S.C. § 1319 – Enforcement provision
- Among other things, CWA prohibits the discharge of pollutants from a point source into waters of the U.S. either without a permit or in violation of a permit
- CWA prohibits discharges of pollutants to POTW in violation of pretreatment requirements or prohibitions
- CWA prohibits illegal dredging or filling of wetlands

CWA Criminal Cross - References

- § 1311 – Prohibits the discharge of pollutants except in compliance with a NPDES/402 permit issued under § 1342 or a dredge and fill 404 permit issued under § 1344.
- § 1317 – Provides the statutory basis for pretreatment standards and makes the operation of a source in violation of those standards unlawful.
- § 1318 – Covers monitoring, recordkeeping and reporting as well as inspections and access to records.
- § 1321(b)(3) – Prohibits discharges of harmful quantities of oil or hazardous substances into navigable water or onto adjoining shorelines. (EPA has defined a harmful quantity of oil as any discharge of oil that violates water quality standards or causes a film, sheen, discoloration, emulsion, or sludge.)”
- “Knowing endangerment:” § 1319(c)(3) -- “Knowing violation, combined with the defendant’s knowledge that his or her violation places another person in danger of death or serious bodily injury.”
- “False Statements” § 1319(c)(4) -
 - i. “Knowingly making a false material statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained under the Clean Water Act.”
 - ii. “Knowingly falsifying, tampering with, or rendering inaccurate a monitoring device or method required to be maintained under the Act.”
- “Oil & Hazardous Substance Liability” § 1321(b)(5) – “Failure of the person in charge of a vessel or onshore or offshore facility to notify the National Response Center immediately of the discharge of oil or a hazardous substance in violation of 33 U.S.C. § 1321(b)(3).



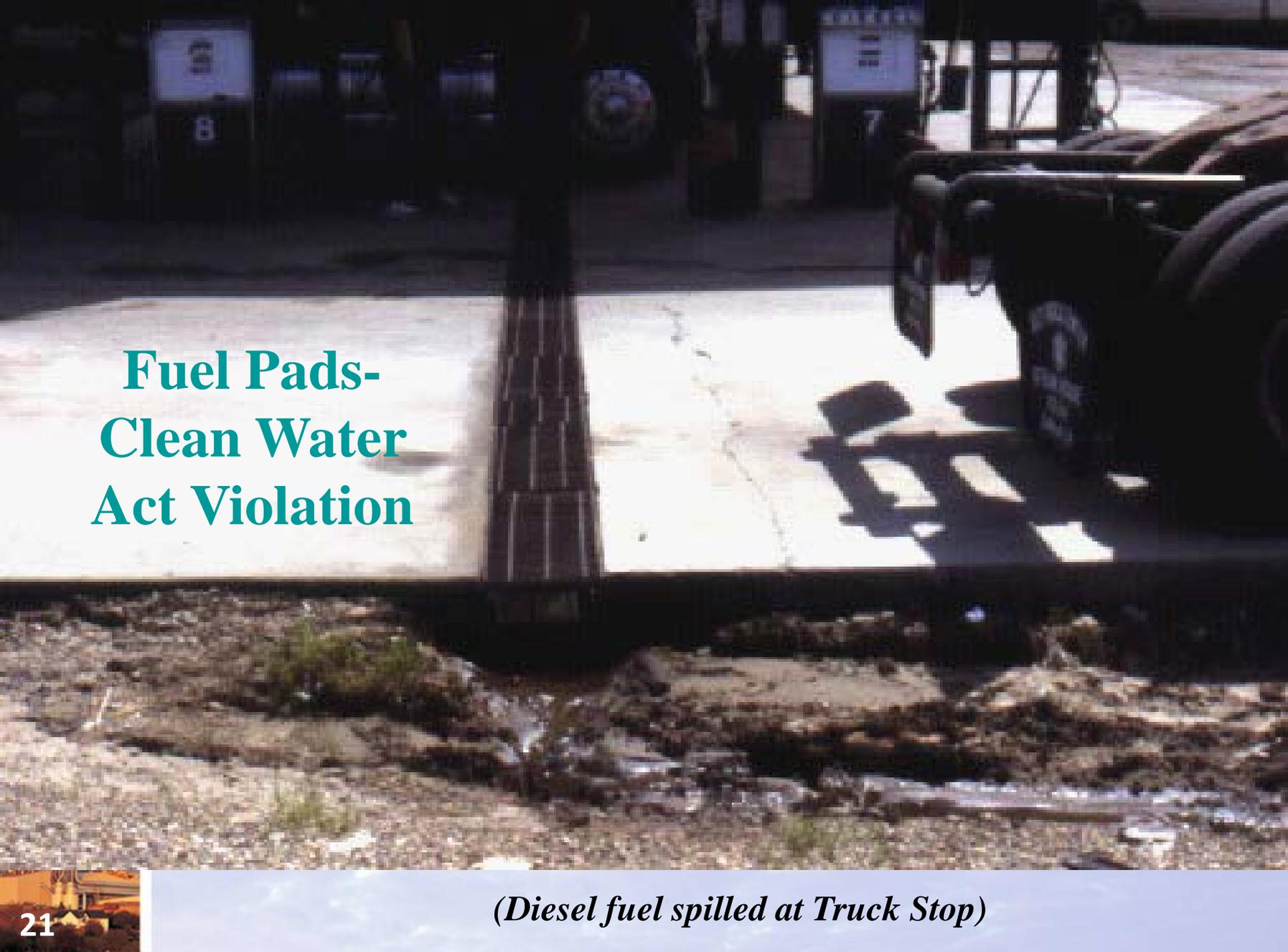
Clean Water Act Violations

- Types of Violations
 - Discharges to streams or sewers
 - Illegal dredging or filling of streams or wetlands
- Examples:
 - Industrial users
 - Sewage haulers
 - Metal finishing operations



Clean Water Act – Criminal Penalties

- 33 U.S.C. § § 1319(c)
 - Negligent violation is up to a 1-year misdemeanor with \$2,500 to \$25,000 per day fine
 - Knowing violation is up to a 5-year felony with \$5,000 - 50,000 per day fine
 - Knowing endangerment violation is up to 15-year felony with up to \$250,000 fine



**Fuel Pads-
Clean Water
Act Violation**

(Diesel fuel spilled at Truck Stop)



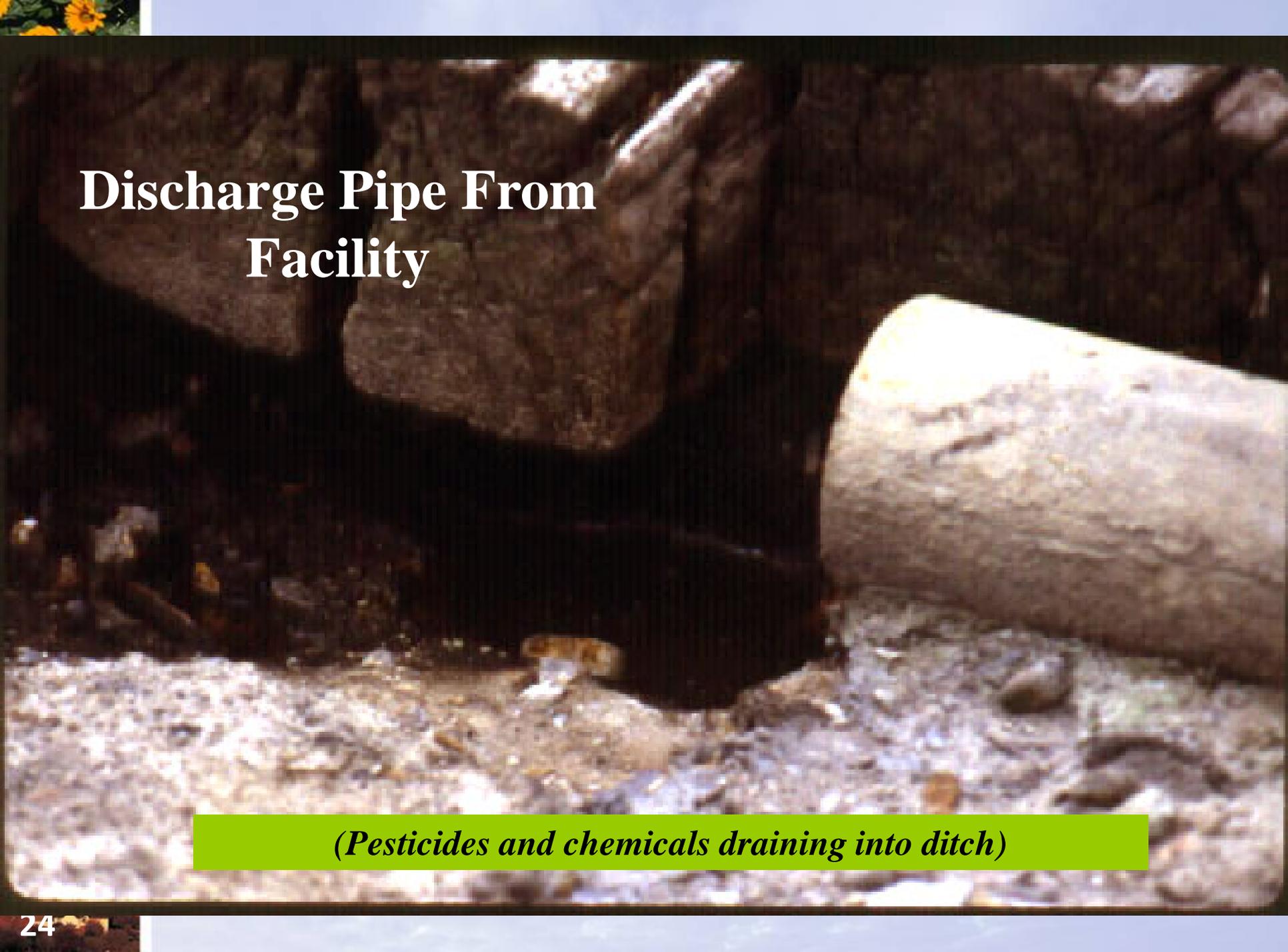
Fuel Enters Drainage Ditch





Fuel Contaminates Waters of the U. S.





Discharge Pipe From Facility

(Pesticides and chemicals draining into ditch)

Pesticides / Chemicals Draining into Ditch



**NOTE: DRUMS ARE
INVERTED TO DRAIN
CONTENTS**



Hoechst 

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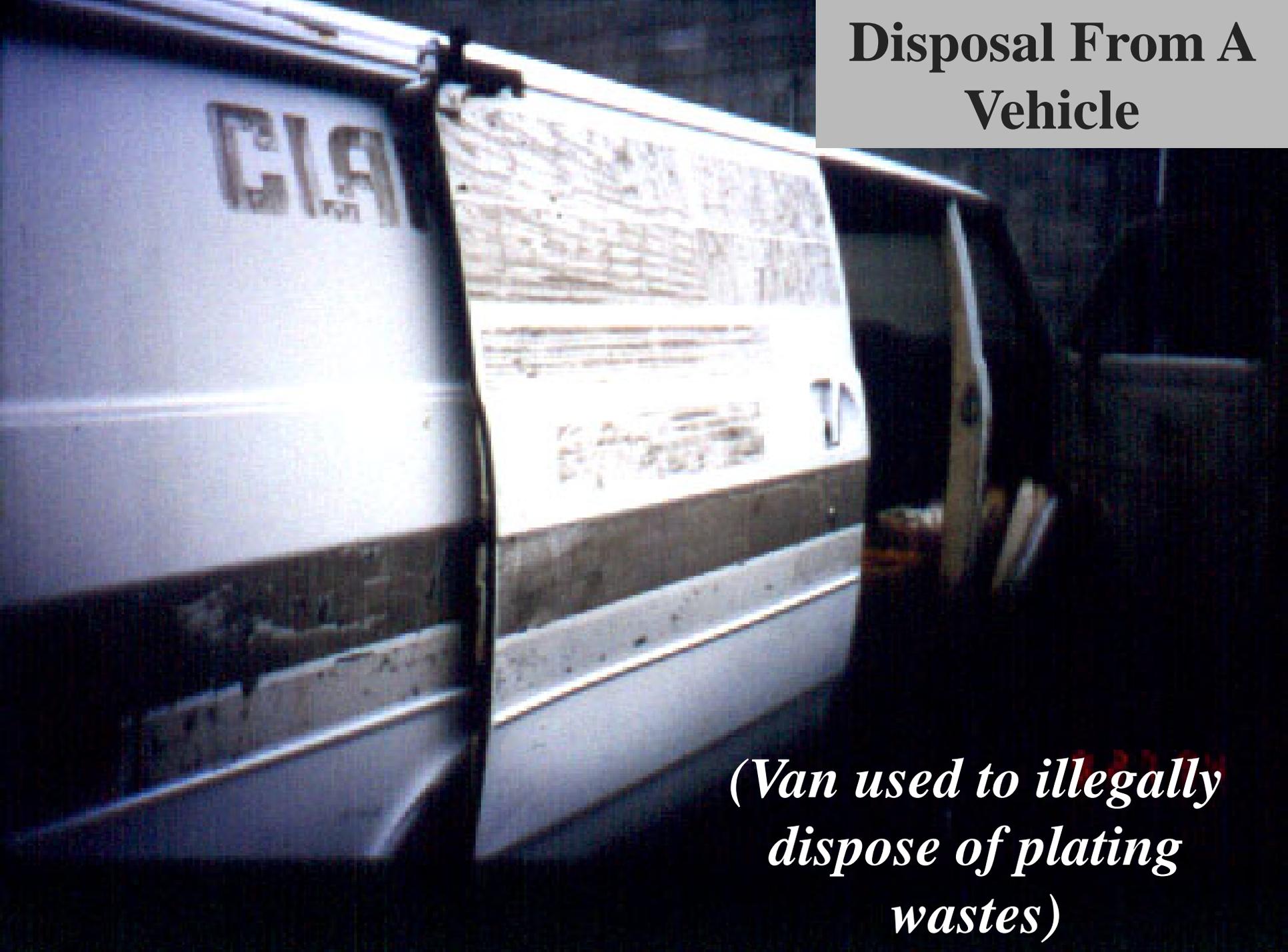


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Disposal From A Vehicle



(Van used to illegally dispose of plating wastes)



(Van customized for illegal disposal into sanitary sewer drains)

RCRA Violations





Resource Conservation and Recovery Act

- 42 U.S.C. § 6928
- RCRA generally prohibits the treatment, storage or disposal of hazardous waste without a permit or in violation of a permit
 - “Cradle to grave”
- Criminal penalties
 - All violations are felonies
 - Typically 2- or 5- year felonies and fines up to \$50,000 per day of violation



RCRA Violations

- Types of Violations
 - Storage of hazardous waste without a permit
 - Illegal disposal of hazardous wastes
 - Transportation without a permit
- Examples
 - Electronic Waste or E-Waste (e.g., extraction of precious metals from computers)
 - Hazardous Waste disposed on the ground (e.g., buried drums)



Requirements to be a Hazardous Waste

- Solid Waste
 - Any garbage, refuse, sludge... and other discarded material, including solid, liquid, semisolid, or contained gaseous material...”
- Listed or characteristic hazardous waste
- No exclusion applies which exempts the material from being a solid waste

Listed

- Listed in 40 C.F.R. Part 261
 - Sub-part D – Lists of Hazardous Wastes



Four Characteristics

- Ignitability (flash point < 140 degrees F)
- Corrosivity – pH less than or equal to 2, or higher than or equal to 12.5
- Toxicity – Toxicity Characteristic Leaching Procedure (TCLP) test
- Reactivity – unstable, reacts violently with water, generates toxic gases when mixed with water, explosive, etc.



Possible Types of Hazardous Waste

- Paints/sealers/lacquers
- Solvents
- Acids
- Cyanide
- Heavy metals (e.g., copper, chromium)
- Petroleum derivatives
- Pesticides/herbicides/fungicides
- Perchloroethylene (Perc)



RCRA

Regulated Entities

- **Generators**
- **Transporters**
- **“TSD” Facilities** (Treatment, Storage and Disposal)

RECOGNIZING HAZARDOUS SUBSTANCES / WASTE



CLASS 2

Division 2.2



CLASS 8



CLASS 4

Division 4.1



CLASS 7



Radioactive II



Treatment, Storage, Disposal Without Authorization



Illegal Hazardous Waste Storage Facility



Illegal Hazardous Waste Storage / Disposal

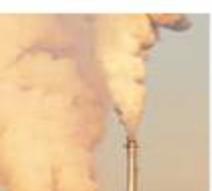




**70+ Drums will fit
into a tractor trailer**



Transporting Hazardous Waste to an Unpermitted Facility



UNIFORM HAZARDOUS WASTE MANIFEST

Generator Info →

Waste Characterization →

Transporter Info →

TSD Info →

STATE OF ARKANSAS
 Department of Pollution Control and Ecology
 P.O. Box 8913 Little Rock, Arkansas 72219-8913
 Telephone 501-682-0744

Form Approved OMB No. 2050-0039 EXPIRES 9-30-99

Please print or type. (Form designed for use on elite (12-pitch) typewriter.)

UNIFORM HAZARDOUS WASTE MANIFEST

1. Generator's US EPA ID No. _____ Manifest Document No. _____

2. Generator's Name and Mailing Address _____

3. Generator's Phone (_____) _____

4. Transporter 1 Company Name _____ 5. US EPA ID Number _____

6. Transporter 1 Phone (_____) _____

7. Transporter 2 Company Name _____ 8. US EPA ID Number _____

9. Designated Facility Name and Site Address _____ 10. US EPA ID Number _____

11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number) _____

12. Containers: no. _____ type _____

13. Total Quantity _____

14. UVI W/Vol _____

15. Waste No. _____

J. Additional Description for Materials Listed Above _____

K. Emergency Response Information: _____

If no alternate TSD, return to generator

16. Special Handling Instructions and Additional Information _____

16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations and Arkansas state regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.

Printed/Typed Name _____ Signature _____ Month _____ Day _____ Year _____

17. Transporter 1 Acknowledgement of Receipt of Materials

Printed/Typed Name _____ Signature _____ Month _____ Day _____ Year _____

18. Transporter 2 Acknowledgement of Receipt of Materials

Printed/Typed Name _____ Signature _____ Month _____ Day _____ Year _____

19. Discrepancy Indication Space _____

20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in part 19.

Printed/Typed Name _____ Signature _____ Month _____ Day _____ Year _____

EPA Form 8700-02 (Rev. 9-88) Previous edition is obsolete.



16. GENERATOR'S
classified, packed,
government regu.

If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.

Printed/Typed Name
ROBERT E. BAKER

Signature



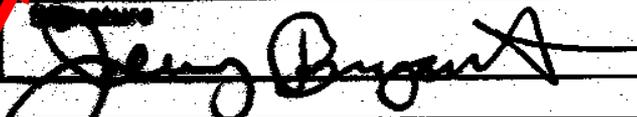
Month Day Year
3 15 88

Date

17. Transporter 1 Acknowledgement of Receipt of Materials

Printed/Typed Name
JERRY BRYANT

Signature



Month Day Year
3 22 88

Date

18. Transporter 2 Acknowledgement of Receipt of Materials

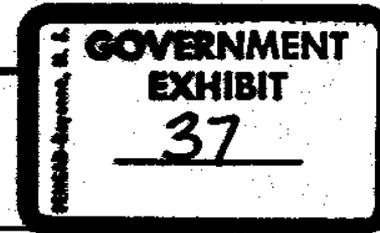
Printed/Typed Name

Signature



Month Day Year

19: Discrepancy Indication Space

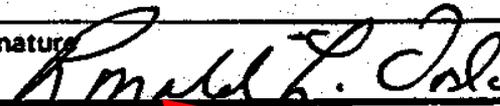


20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in item 19.

Printed/Typed Name

RONALD L. VOSE

Signature



Date
Month Day Year
10 3 22 88

White - Original, Pink - TSD E... Yellow - Transporter, Green - Generator's first copy

Example of Manifest Falsification

(Each of these signatures were forged)



Illegal Drum / Chemical Dump



Clean Air Act Violations





Clean Air Act

- 42 U.S.C. § 7413(c)
- CAA prohibits a broad range of conduct concerning a number of air pollutants in order to minimize or prevent dispersion into the ambient air
- Criminal Penalties
 - Knowing violations or negligent endangerment
 - Term of imprisonment of up to 5 years and criminal fine

Clean Air Act Violations

- Types of Violations
 - Tampering with pollution control or monitoring devices
 - Failure to notify DEQ/MDE/EPA as required by CAA
 - Illegal removal and/or disposal of asbestos
- Examples:
 - Asbestos
 - RMP – Section 112r

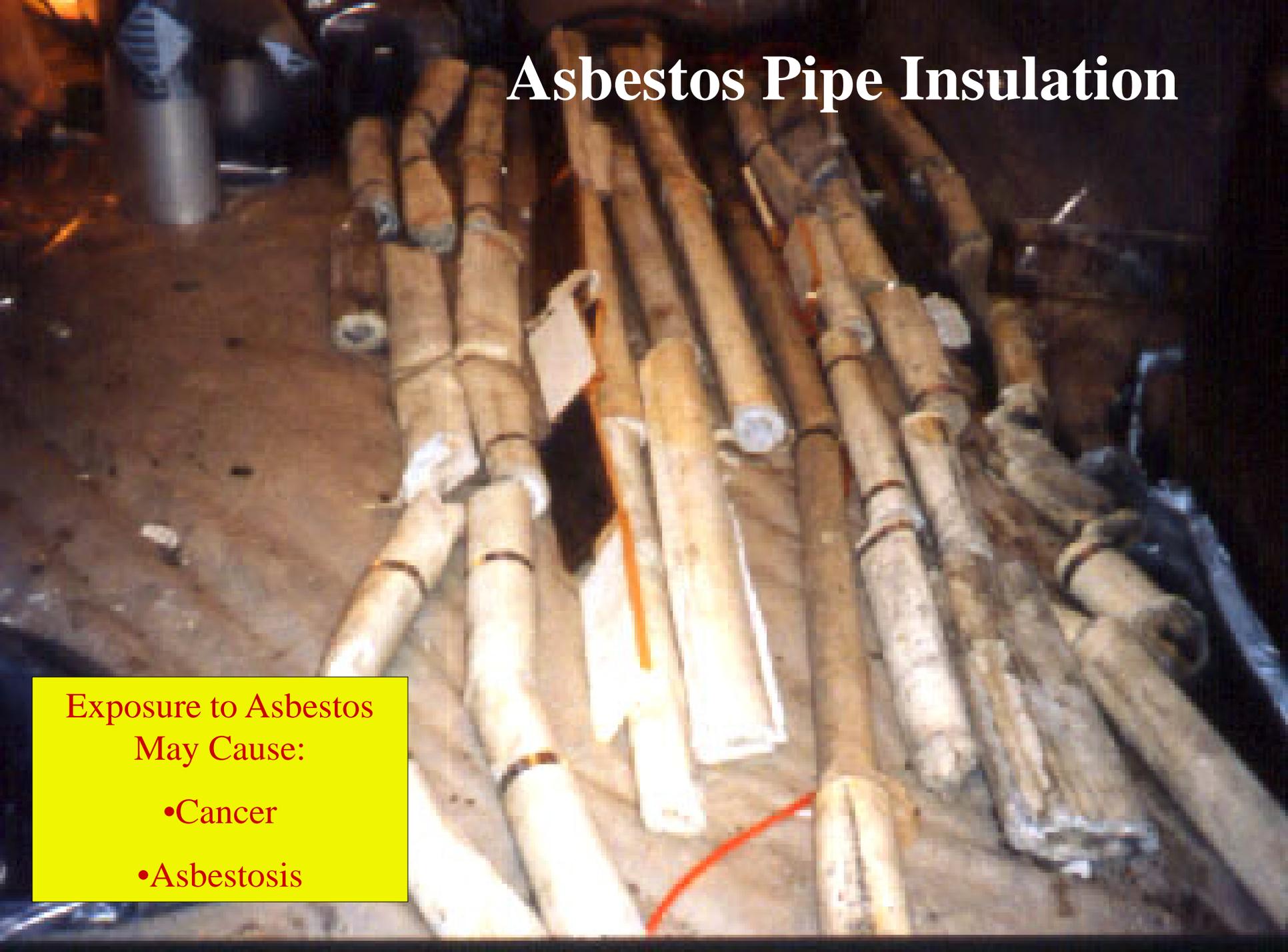
CLEAN AIR ACT

Illegal Asbestos Removals

- Workplace Standards
- Utilizing Untrained Workers



Asbestos Pipe Insulation



Exposure to Asbestos
May Cause:

- Cancer
- Asbestosis



Other Environmental Crimes

- **Toxic Substances Control Act (TSCA)**
 - Lead-base paint rule violations
- **Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)**
 - Improper use, labeling, and sale of pesticides
- **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)**
 - Failure to report a release of a hazardous substance
- **Emergency Planning and Community Right-to-Know Act (EPCRA)**
 - Failure to report a release of a hazardous substance
- **Safe Drinking Water Act**
 - Tampering with a public water supply
- **Rivers and Harbors Act**
 - Obstruction of traditionally navigable waters without a permit

Title 18 U.S.C., Federal Criminal Code



- Conspiracy (§ 371)
- Mail Fraud and Wire Fraud (§ § 1341 & 1343)
- False Statements (§ 1001)
- Obstruction of Justice (§ 1501-1517)
- Money Laundering (§ 1956)
- Smuggling (§ 545)
- RICO (§ 1961)

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS



Overall Objectives of Environmental Criminal Enforcement

- To protect human health, our natural heritage and the environment.
- General deterrence
 - More than just the cost of doing business.
 - Prosecute individuals at the highest level of organizational authority responsible for the crime.
- To punish and deter the most egregious environmental offenses.
- To level the economic playing field, which protects those who comply with the law.
- To support, and be integrated with, the overall environmental mission of the agency.

Questions?

Report an Environmental Violation

www.epa.gov/tips/

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