

Enforcement for Concrete Related Activities

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Potential Criminal Violations

- Clean Air Act Violations
- Used Oil Act Violations
- Water Pollution Violations
- Hazardous Waste Violations
- Illegal Dumping Violations
- Storm Water Violations

Power to Enter Property (Review)

- No specific power to enter property pursuant to the Used Oil Act or Litter Abatement Act
- Statutory Authority
 - Water Pollution (26.014, 26.173)
 - Hazardous Waste Violations (361.032)
 - Nuisance Violations (343.024)

Once on Property

- Take Photographs and Inspect Records
- Sample Discharges in Plain View
- Sample any Suspected Contaminants
- Sample Containerized Waste in a Waste Storage Area
- Consent to Search or Search Warrant
 - Split Samples

Potential Offenses (Take Samples)

- Used Oil Act Violations
 - Discharge into Waterway or Sewer
 - Disposal on Land
 - Storage Drums not Labeled and/or Leaking
- Hazardous Waste Violations
 - Disposal Violations
- Water Pollution/Storm Water Violations
 - Discharge Into/Adjacent to Water in the State

Case Study/Williams Brothers

- 2 Sites (Market Street and Mooney Street)
- 4 Dates of Violation
- 4 Defendants
- 6 Misdemeanor Charges
- 10 Felony Charges

Case Study/Williams Brothers

- Filed Charges Against:
 - Williams Brothers (Corporation)
 - David Malaer (Plant Manager—Market St.)
 - David Welch (Asst. Prod. Mgr.—Market St.)
- Total of 12 Charges against Defendants at this site—Felonies and Misdemeanors
- Water Pollution (9)
- Hazardous Waste Disposal (3)

Case Study/Williams Brothers

- Filed Charges Against:
 - Williams Brothers (Corporation)
 - Kevin Parker (Facility Manager—Mooney St.)
- Total of 4 Charges against Defendants at this site—All Felonies
- Water Pollution (2)
- Used Oil Act Violations (2)

Williams Brothers Investigation

- March 29, 2001

- Concrete wastewater flowing from facility down driveway, across street, into storm sewer.
- Both Malaer and Welch on site and notified to stop flow of water from property
- TCEQ on site and also warned Defendants
- pH as high as 12.5 on runoff from driveway

Williams Brothers Investigation

- April 1, 2001
 - Wastewater still flowing from facility
- April 5, 2001
 - Wastewater still flowing across roadway
 - Welch at site and interviewed
 - VP states that Malaer in charge of location
 - pH measures 11.8

Williams Brothers Investigation

- July 26, 2001

- Illegal Discharge from rear of facility
- Sampled, hazardous pH of 12.6
- Flowed into Greens Bayou
- Malaer present at site and interviewed

Williams Brothers Investigation

- July 20, 2001 (Mooney St. Location)
 - HPD drives by Site and observes obvious soil contamination (site is saturated with used oil)
 - Parker appears to be in charge of location
 - Parker is briefly interviewed
 - Parker takes responsibility for violations

Williams Brothers Resolution

- Williams Brothers enters into a Pre-Trial Intervention on all Felony Cases (4)
- Agrees to pay \$500,000.00 to the Buffalo Bayou Partnership
- Pays \$9,000.00 in Restitution
- Paid \$1.3+ Million in Remediation and Structural Changes to Market St. facility
- Corporate Misdemeanors Dismissed (2)

Williams Brothers Resolution

- Both Malaer and Welch each pleaded guilty to one misdemeanor Water Pollution charge—1 Year DADJ/\$1,000.00 Fine
- 4 Felonies Dismissed
- 2 Misdemeanors Dismissed

Williams Brothers Resolution

- Kevin Parker requested a Jury Trial on his two remaining cases
- Water Pollution and Used Oil Act Violations
- Statutory Challenge—Water Pollution Omission language
- Case stressed importance of sufficiently interviewing your witnesses

Williams Brothers Resolution

- Fact issue arose as to Parker's level of responsibility at site and who was "in charge of facility"
 - Multiple Managers who "used site"
 - Argument that "no one" was in charge of site
- After State rested, Judge revisited challenge to statute

Williams Brothers Resolution

- Judge held statute was unconstitutional
- Granted Motion for Instructed Verdict
- Could not Appeal this ruling