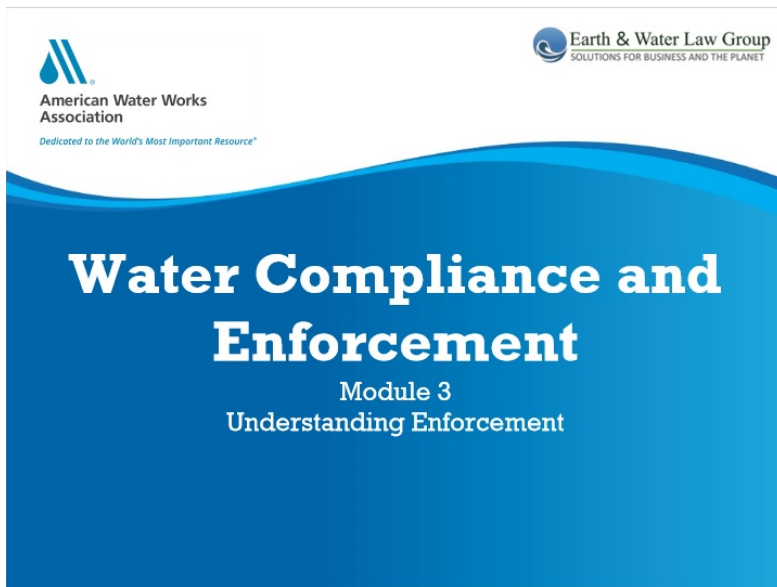


Water Compliance and Enforcement – Module 3

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1.1 Understanding Enforcement



Notes:

On behalf of the American Water Works Association, welcome to “Water Compliance 101.”

In this presentation I’ll lead you through the rules of the road when it comes to complying with our water laws as well as some insights on how others have found themselves in trouble - and how you all can apply best practices to remain in compliance.

The first step to ensuring compliance is understanding the primary laws and regulations that impact the water industry. The goal of this training is not to make you an expert in every detail of water law, but simply to understand the most relevant parts of these laws and how you can both avoid the mis-steps that others have made and take the actions you need to stay on the right side of the compliance line.

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1.2 Purpose

Purpose

- Recognize the critical enforcement triggers in the water sector – and how to avoid them.
- Understand how actual enforcement provide a “reverse” road map to assist you in maintaining compliance.



Notes:

The purpose of this section of the training is to identify the type of conduct that can lead to enforcement scrutiny, understand what specific factors were present in these enforcement cases, and use those lessons (from both the specific conduct and broader cases) “in reverse” to help you maintain compliance. Experience tells us that understanding how things are done the wrong way can often help us do things the right way. We’ll also share some of the not so obvious costs of non-compliance that you can face when under such scrutiny.

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1.3 Learning Objectives

Learning Objectives

- Recognize actions that lead to enforcement scrutiny
- Understand the elements that contributed to actual enforcement
- Recognize the implications of non-compliance



Notes:

Coming out of this module, you will understand the critical triggers and patterns of conduct that can lead to enforcement, how those actions played out in actual enforcement cases and the implications of non-compliance.

1.4 Agenda

Agenda

- Identifying the enforcement triggers
- Applying those to completed enforcement cases
- Lessons from enforcement for your duties
- The costs of non-compliance



Notes:


In terms of what we'll cover, we'll start with the top five enforcement triggers, then move to some actual cases where we can apply the lessons of what "not to do" to your day to day work. We'll wrap up with some of the ramifications of non-compliance and some of the challenges you may face as operators and managers in this sector.

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1.5 What are enforcement triggers?

What are enforcement triggers?

- False or misleading conduct
- Significant environmental harm
- Public health impacts
- Operating unpermitted facilities
- Repetitive violations



Notes:

When we take a look at what leads to enforcement in the water sector, you can see common themes in these investigations and enforcement actions. The single greatest attribute is some level of false or misleading conduct in required reporting. As the earlier modules discussed, the foundation of the Clean Water Act and Safe Drinking Water Act include self-monitoring and voluntary compliance. When these principles are violated through false reporting, it is viewed as having a corrosive affect not just on the specific facility or community but in many respects across the water sector. As a result, Investigators, prosecutors and regulators take a very hard line on such conduct to both enforce against the specific incident or practice, and to send a strong deterrent message to the broader water sector.

Additional factors seen in these cases include significant environmental harm or negative public health impacts. This could include anything from a fish kill caused by a discharge to the very serious public health impacts seen in the Flint, Michigan situation. You will also see facilities that were either operating outside of the regulatory system through unpermitted discharges at their facility or by engaging in persistent, repeat violations that were not corrected.

Collectively, these are the primary enforcement triggers. We'll talk more about some sub categories of these triggers, but if you can stay away from these types of conduct, you can largely remain in compliance and off of the enforcement radar.

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1.6 Deceptive and false conduct

Deceptive and False Conduct

- Record keeping violations
- Improper reporting
- Failure to report
- Selective sampling
- Tampering with monitoring equipment
- Concealment of misconduct



Notes:

When it comes to the water sector, there are many opportunities to demonstrate compliance every day and unfortunately many ways to mislead as well. You should understand that any time you are reporting to a government oversight agency related to your position that you are often reporting that information under the penalty of a possible felony. Examples of deceptive conduct include falsified data, an upset at your plant that is reported inaccurately, active concealment of misconduct, selective (or non-representative) sampling, and tampering with monitoring equipment. The majority of criminal enforcement cases have some element of false or misleading conduct associated with them, so job #1 remains being honest, accurate, and timely in your reporting.


1.7 Knowledge Checkpoint

(Multiple Choice, 10 points, 3 attempts permitted)

Knowledge Checkpoint

Enforcement triggers include:

- False or misleading conduct
- Poor housekeeping
- Failure to train staff
- Lack of source water protection



Correct	Choice
X	False or misleading conduct
	Poor housekeeping
	Failure to train staff
	Lack of source water protection

Feedback when correct:

That's right! You selected the correct response.

Feedback when incorrect:

You did not select the correct response.

Notes: Let's pause and check in on what we've learned thus far. As we discussed, false or misleading conduct is the biggest trigger for enforcement within our water laws.

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1.8 Operating outside of a regulatory system

Operating outside of a regulatory system

- Not obtaining required permits
- Not maintaining required records
- Not monitoring required activities
- Failing to report reportable events
- Non-certified operators



Notes:

The overwhelming majority of facilities in your sector operate with appropriate permits and certification. But you need to still be vigilant as you evaluate this area of your work. Areas to focus on include ensuring all applicable permits are in place, maintaining required records, monitoring required activities, reporting applicable events, and ensuring staff is appropriately certified. It's worth running through a check list on a periodic basis and asking:

Have you ensured you have all permits, and they are up to date?

Are you maintaining required records and reporting required events in a timely fashion?

Are you and your staff appropriately certified and maintaining that certification?

It's important to note that unintentional, minor permit renewal lapses or similar situations are not necessarily a precursor to criminal enforcement. Such conduct could lead to a notice of violation or a similar administrative sanction, but absent some meaningful intent to violate the law, such lapses should not lead to the most significant sanctions.

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1.9 Harm

Harm

- Harm almost never required to pursue enforcement
- But...can be a significant driver
 - Actual environmental harm (i.e. fish kill)
 - Actual public health impacts (impaired drinking water and resulting impacts)
 - Impaired waterways
 - Oil and chemical discharges



Notes:

Except in very rare cases, harm is not an element of the violations of our water laws. The exceptions would be in the exceedingly rare categories of knowing endangerment cases - where the government must prove that an individual essentially faced death or serious bodily injury or in cases of serious tampering with the water supply with the intent of harming people.

That being said, if harm is identified in any of the above situations- from fish kills or oil discharges to clear impairments of waterways - you can expect that your operations will come under scrutiny. So, work to prevent such actions, report upsets in a timely manner and never try and conceal your actions to try and cover up such an incident. That would simply make a bad problem worse.

1.10 CS: Drinking water violations

Case Study

Drinking water violations, civil/administrative case

- Private facility did not respond to information request
- Served more than 25 people
- Inspection followed by EPA and state
- Non-potable water identified by inspection
- Compliance delays followed
- Large monetary penalty issued



Notes:

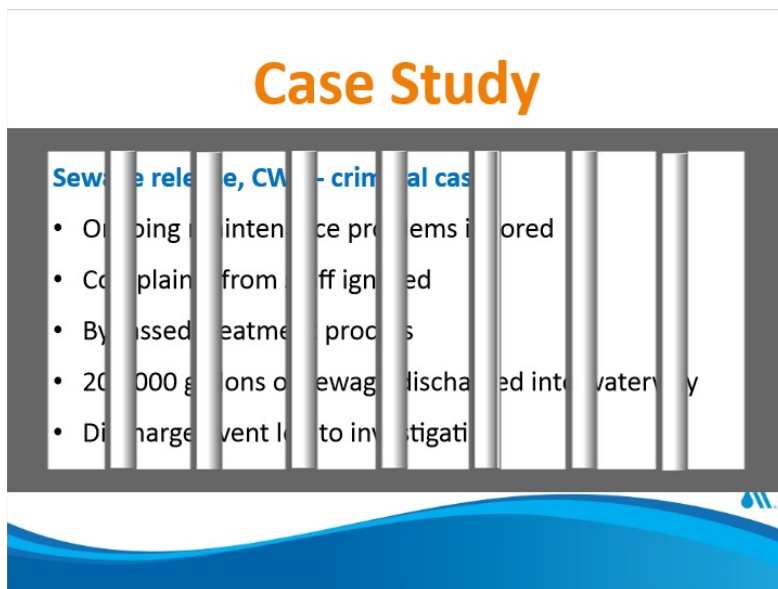
Now let's move on to some actual enforcement cases to illustrate how violations of the standards we just discussed can lead to the most serious consequences.

In this first case, a large private facility operating in Louisiana was ultimately given a nearly \$400,000 penalty for violations of the Safe Drinking Water Act. This settlement was reached after years of information requests, inspection, and delays by the company in question. Now, the first thing to note is that this took place not within a municipality's drinking water system, but at a large industrial facility. Because it provided drinking water to more than 25 people, its operations were regulated by the Safe Drinking Water Act.

In this instance, an information request was sent and not responded to promptly by the company. With this lack of response and questions remaining about the facility's compliance, an inspection occurred which identified a series of violations, including the use of non-potable wells serving as drinking water supplies. This investigative process took place over several years until the EPA and state reached an agreement that included correction of the violations, establishment of a plan to ensure certified operators oversaw the system, and a large fine. It's likely that earlier attention to the government's information requests and timely corrective actions would have resolved this matter more quickly and less expensively.

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1.11 CS: Sewage release



Case Study

Sewage release, CWA - criminal case

- Operating maintenance problems ignored
- Complaint from staff ignored
- Bypassed treatment process
- 200,000 gallons of sewage discharged into waterway
- Discharge event led to investigation

Notes:

Now let's take a look at how lack of attention to maintenance, deceptive conduct, and a large release of pollution can lead to serious enforcement. In this case out of Washington state, a waste treatment manager was ultimately convicted of violating the Clean Water Act based on his actions that led to the illegal discharge of some 200,000 gallons of sewage into a nearby river.

This case was initiated when co-workers and subordinates noticed the large sewage discharge and reported it to regulators. This had followed them raising earlier concerns about lack of maintenance at the facility which they believed could end up causing just such a problem. Specifically, the investigation found that the manager failed to stop the build-up of solid waste in the treatment plant, which clogged filters and disabled the advanced treatment portion of the plant.

But instead of fixing the problem, he bypassed the advanced treatment section of the plant, allowing minimally treated sewage to be dumped directly into the river, according to court records. When the manager left work for a few days prior to the sewage release, he did not log the bypass into the log book nor did he inform his co-workers of the bypass or the problem. As a result, some 200,000 gallons of minimally treated sewage flowed into the nearby river.

He was sentenced to a period of incarceration, a fine, probation and he also agreed not to seek employment in any job related to wastewater treatment for five years, and will not seek certifications, licenses or permits related to wastewater or drinking water treatment for the rest of his life.

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1.12 CS: Misleading conduct

Case Study

Misleading conduct, CWA – Criminal Case

- Pennsylvania wastewater treatment plant
- Violation of NPDES permit limits
- Discrepancies between lab results and DMRs
- Provided false DMRs to state agency
- Violations found during county inspection
- State park and beaches near outfall



Notes:

This next case involves a Pennsylvania wastewater treatment plant which operated pursuant to a National Pollutant Discharge Elimination System (or “NPDES”) permit with specific limitations. This allowed the plant to discharge its treated effluent into a nearby waterway which was approximately 2 miles from Lake Erie. During an inspection by a county health department, inspectors reviewed laboratory reports and found discrepancies between the water sampling test results which were reported, and the actual sample test results obtained from a contracted laboratory. The matter was referred to the Pennsylvania Department of Environmental Protection for further inquiry, and a criminal investigation referral was made to the EPA. After the investigation was completed, the matter was referred to federal prosecutors.

According to information presented in court, the plant permit set discharge limits for pollutants, including, for example, Total Suspended Solids (TSS), Fecal Coliform, Total Phosphorus, pH, Dissolved Oxygen (DO), and Total Residual Chlorine (TRC). And it was alleged that for a four year period, the operator engaged in violations of the NPDES permit in part, by 1) failing to treat the wastewater by not adding adequate amounts of chemical reagents to disinfect the pollutants; 2) failing to properly test for pH, Dissolved Oxygen (DO) and/or Total Residual Chlorine (TRC) by taking a daily grab sample as required under the permit; 3) falsifying sampling results for pH, DO and TRC when no daily samples were collected; 4) falsifying analytical laboratory results for the weekly 24-hour composite sample for phosphorus; 5) failing to use a required sampling method by substituting an 8-hour composite sampler for the required 24-hour composite sampler to collect phosphorus samples; 6) falsifying analytical laboratory results for the weekly grab sample for fecal coliform; 7) falsifying weekly 24-hour composite sample for Total Suspended Solids (TSS); and, 8) discharging pollutants into waters of the United States in violation of numerical permit limits.

Yes, that is a lot of falsifying...

To cover up his failure to properly operate and maintain the plant in accordance with the permit, he routinely submitted false sampling results in monthly Discharge Monitoring Reports (DMRs) to the Pennsylvania Department of Environmental Protection. The operator ultimately pled guilty to tampering with a monitoring method and making false statements to the government. He also surrendered his operating license.



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1.13 CS: Misleading conduct

Case Study

Misleading conduct, SDWA – criminal case

- Supplemented water from Lake Michigan
- Used local well to supplement
- Concealed this from regulators
- Done to save money
 - leakage in system
- Didn't properly monitor for contaminants



Notes:

Let's now talk about a case involving deceptive conduct that led to convictions for two municipal employees related to substantive violations of the Safe Drinking Water Act.

According to the Department of Justice's statement on the matter and related government records, this case was initiated when a local citizen called the EPA to report concerns about the water being distributed in a municipality near Chicago. An investigation was initiated, and it was determined that town employees were drawing water from Lake Michigan, via purchase from a nearby community that was originally purchased from Chicago. This water originated from Lake Michigan and was treated and tested by the city of Chicago pursuant to state and federal environmental regulations. But evidence also showed that since all the way back to the early 1980s, the municipality regularly supplemented the Lake Michigan water with water drawn from an underground aquifer through a nearby well. Management within the municipality found it necessary to supplement the Lake Michigan water with water pumped from this well, in part, because of substantial leakage in its water distribution system, which the same officials failed to adequately repair.

According to the Department of Justice, two municipal officials were found to have concealed that the village's drinking water was supplemented, in part by drawing water from this well which was not treated pursuant to requirements of the Safe Drinking Water Act. One employee was responsible for ensuring that water distributed by the municipality met all federal and state regulations, including filing annual Consumer Confidence Reports (CCRs); obtaining the raw data that was used to complete the Monthly Operation and Chemical Analysis Reports (known as MORs); transmitting raw data for the MORs to the other employee so that they could complete them and submit them to the Illinois EPA; and serve as a point of contact for IEPA with respect to drinking water compliance issues. What this led to were falsified consumer confidence

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reports being issued to the local citizens and false monthly operating reports being submitted to the state environmental regulator. This was done while the employees knew untreated water was being distributed to the local citizens.

Because the City of Chicago tested and treated Lake Michigan water for contaminants, municipalities that purchased water directly or indirectly from Chicago, were excused from monitoring its Lake Michigan water for certain contaminants. But due to the municipality's use of this supplemental well, an unmonitored and unreported water source, the responsible officials should have periodically tested its drinking water for organic contaminants, inorganic contaminants, and radiological contaminants beginning in the 1970s.

Both employees concealed the municipality's use of its well from the government and the citizens to save money. By doing so, they didn't properly monitor for contaminants that could have been introduced to the water supply, avoided having to fix its leaking water distribution system, or paying the neighboring community more money for water drawn from Lake Michigan.

The two former water department officials were ultimately found guilty of making false statements in these reports for lying repeatedly to environmental regulators for more than 20 years about using a water well to supplement the community's drinking water supply. These two individuals, a retired certified water operator, and the former water department clerk effectively thwarted the government from implementing the federal Safe Drinking Water Act's notice and testing requirements designed to ensure the safety of municipal water supplies.

The sentencing judge said the case involved a "breach of the public trust for years" and that seems to summarize the conduct in question.

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1.14 Lessons from these cases

Lessons From These Cases

- It all starts with honesty
- Access to records and inspections
- Maintenance matters
- Harm can drive interest but not required
- Understand your permits
- Saving taxpayer resources not an excuse



Notes:

These cases put a lot of what we've spoken about into perspective. As we've emphasized, a commitment to honesty, accuracy, and timeliness is critical. Each of the matters we've gone over includes shortcomings associated with those principles.

As we look at the first case out of Louisiana involving administrative violations of the Safe Drinking Water Act, the government used the information-seeking tools it is given through the law as well as the inspection authority it has, to identify the compliance status of a facility. The company in turn, did not respond in a timely manner and was ultimately found to be out of compliance when an inspection occurred.

In the case of the Washington state sewage release, the ongoing lack of maintenance, coupled with the deliberate misconduct associated with the bypass directly led to the pollution event and ultimately a felony conviction and loss of professional license for the manager in question.

The Pennsylvania case included widespread falsification, but it again demonstrated the tools government regulators have and apply in their oversight roles. Inspection authority led to a review of records which found blatant discrepancies between what was reported in its discharge monitoring reports and what actual laboratory analysis indicated was present in the plant's reportable effluent. Beyond the clear dishonesty demonstrated in this case, another lesson is to understand your permit limits, and if you exceed, then report and engage in appropriate corrective action.

And in our Illinois example, we saw the excuse of saving taxpayer money as a rationale for tapping into a water supply that did not meet the treatment mandates of the Safe Drinking Water Act. Additionally, system leakages and an unwillingness to address that problem also led these municipal officials down this path of illegal conduct.

These cases serve to both demonstrate the application of legal authorities and the interests of the government in ensuring safe and clean water. They also serve as critical reminders of your obligations and the steps to take and affirmatively avoid to remain in compliance and avoid being the subject of such an investigation.

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1.15 Knowledge Checkpoint

(Multiple Choice, 10 points, 3 attempts permitted)

Knowledge Checkpoint

Criminal investigations of the Clean Water Act are:

- Prohibited by law
- Reserved for routine violations
- Required to show harm to proceed
- Focused on the most serious violations



Correct	Choice
	Prohibited by law
	Reserved for routine violations
	Required to show harm to proceed
X	Focused on the most serious violations

Feedback when correct:

That's right! You selected the correct response.

Feedback when incorrect:

You did not select the correct response.

Notes:

Let's take a step back for a quick knowledge check point. If you answered "A" you are correct. Criminal enforcement is reserved for the most serious matters in the water sector. Harm is explicitly not required to be shown but can drive interest and evidence of it can be used in enforcement proceedings.

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1.16 Ramifications of non-compliance

Ramifications of Non-Compliance

- Civil and criminal penalties
- Environmental harm
- Employee injuries
- Public health impacts
- Licensing and career impacts
- Stress and loss of mission focus



Notes:

It's also worth hitting the pause button to reflect not simply on the enforcement process but what some of the impacts of non-compliance can be. In the most serious cases, enforcement actions can occur including criminal enforcement - and the threat of incarceration in the most extreme instances. Environmental harm and public health impacts can also occur along with injuries to plant and utility personnel. And at the end of the day, your ability to work in the industry could be on the line if your certifications are put into jeopardy through your own conduct. Another hidden cost frankly is stress and loss of operational focus. Being the subject of such an enforcement investigation can be extremely stressful, and it is more difficult to stay focused on your work and mission when this type of matter is weighing on you.

I don't know of anyone who has every enjoyed being in the middle of enforcement scrutiny by government regulators, investigators or prosecutors. The consequences and residual effects are significant to you, your facility and the public. The good news is that this whole process can be avoided with adherence to the principles of honesty, timeliness, and accuracy. And just to be clear, accuracy does **not** mean reporting the number that meets the permit, but the **actual** value you have found through analysis and sampling...

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1.17 Scenario: You lead a facility that has experienced consistent maintenance problems due to inadequate capital expenditures and an unwillingness from the community to fund repairs. As the operator, what should you do first, to meet your compliance obligations? (Multiple Choice, 10 points, 3 attempts permitted)

Scenario: You lead a facility that has experienced consistent maintenance problems due to inadequate capital expenditures and an unwillingness from the community to fund repairs.

As the operator, what should you do first, to meet your compliance obligations?

- Raise these issues with the leadership overseeing the facility and advise regulators of the situation.
- Ensure that all reporting shows the discharge meets the permit –regardless of accuracy as you don’t have authority to fix the problems that would allow you to meet the limits.
- Immediately send public notifications to the affected public advising of the inability of the facility to be compliant with water regulations.

Correct	Choice
X	Raise these issues with the leadership overseeing the facility and advise regulators of the situation.
	Ensure that all reporting shows the discharge meets the permit –regardless of accuracy as you don’t have authority to fix the problems that would allow you to meet the limits.
	Immediately send public notifications to the affected public advising of the inability of the facility to be compliant with water regulations.

Feedback when correct:

That's right! You selected the correct response.

Feedback when incorrect:

You did not select the correct response.

1.18 Assessing Compliance

Assessing Compliance

Answer: You lead a facility that has experienced consistent maintenance problems due to inadequate capital expenditures and an unwillingness from the community to fund repairs.

What steps should you take as the operator to meet your compliance obligations?

- a. Raise these issues with the leadership overseeing the facility and advise regulators of the situation.
 - Concealing is never the right thing to do. Any inappropriate pressure to simply “meet the permit” when you are unable to due to facility constraints should be reported. Never put yourself in the position of misleading regulators and the public.

b. Ensure that all reporting shows the discharge meets the permit –regardless of accuracy as you don’t have authority to fix the problems that would allow you to meet the limits.

c. Immediately send public notifications to the affected public advising of the inability of the facility to be compliant with water regulations.

Notes:

Folks, you simply should never put yourself in a position when you do anything unethical or dishonest in your role as an operator or manager in a water system. There are clearly facilities with maintenance challenges as well as facilities that are chronically underfunded. In a situation where a facility’s shortcomings are potentially preventing compliance, then those need to be documented and raised with the management of that facility - whether it be a public board or a private management group. You should also be honest and direct with regulators about any such issues.

1.19 Summary

Summary

- Know the key enforcement triggers
- Focus on honesty, accuracy and timeliness
- The government actively uses its legal authorities
- Maintenance issues are no excuse



Notes:

Folks - we come back to the principles of honesty, accuracy and timeliness as the key lessons. We've seen how instances of false and misleading conduct can lead to the most serious enforcement consequences - and can impact the livelihood of professionals in the water sector. We've also seen that the ability to request information, conduct inspections and investigations, and the requirement to maintain accurate records are not just concepts buried in the law. These tools and mandates are actively used by government regulators and enforcement personnel in their oversight role and can be applied to evaluate compliance and take enforcement action where evidence supports such an approach.

It's also important that you as operators and managers don't make decisions to cover for ongoing facility deficiencies. Yes, some plants and facilities are more challenging to operate than others, but systemic maintenance and repair issues which are out of your control should not be a reason for you to mislead or ever operate in a less than honest way in order to cover those deficiencies. Issues such as these should be professionally raised with those who have the responsibility and capability to engage in them - including public and private management and relevant regulators.

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1.20 Resources

Resources

For more information visit:

- EPA's Enforcement and Compliance News Releases

<https://www.epa.gov/newsreleases/search/subject/compliance-and-enforcement>

- EPA's Enforcement News

<https://www.epa.gov/enforcement>


- The Department of Justice Environment and Natural Resources Press Page

<https://www.justice.gov/enrd/press-room>

Notes:

List helpful resources here.

1.21 Closing

You have finished this module.
Click the  in the upper right corner to go back to the main course page.



Notes:

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