



1-1-1990

Commanding Respect: Criminal Sanctions for Environmental Crimes.

Eva M. Fromm

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Recommended Citation

Eva M. Fromm, *Commanding Respect: Criminal Sanctions for Environmental Crimes.*, 21 ST. MARY'S L.J. (1990).

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COMMANDING RESPECT: CRIMINAL SANCTIONS FOR ENVIRONMENTAL CRIMES

EVA M. FROMM*

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* Participating Associate, Fulbright & Jaworski, Houston, Texas; B.S. Chem. E., Syracuse University; J.D., University of Houston.

I. INTRODUCTION

The first of all laws is to respect the laws: the severity of penalties is only a vain resource, invented by little minds in order to substitute terror for that respect which they have no means of obtaining.¹

Rousseau made this observation over two centuries ago; nevertheless, no present day quotation more accurately describes the brandishing of criminal sanctions by agencies to force compliance with environmental statutes. For many years, government agencies primarily used civil penalties to punish violators of environmental laws. These agencies now feel that the mere imposition of fines is largely ineffective; thus resulting in the onset of criminal sanctions. The threat of possible incarceration for violations of environmental statutes has terrorized many environmental managers and commanded their previously unattainable respect.

A review of reported cases² reveals that, at least until recently, most federal and state prosecutors appear to seek criminal sanctions in only the most egregious situations. By far the vast majority of the reported cases involved illegal discharges or improper disposal of waste material which potentially threatened the public health or the environment. The bulk of the remaining cases appear to have been filed because the company was a habitual violator of environmental laws, and the imposition of criminal sanctions was necessary to obtain the company's compliance.

The United States Department of Justice (DOJ) has actively prosecuted environmental crimes since approximately 1982. From 1983 through January 1990, the DOJ has tallied 606 indictments resulting in 461 guilty pleas and convictions.³ These pleas and convictions resulted in over \$26,000,000 in fines and approximately 286 years in jail

1. THE INTERNATIONAL THESAURUS OF QUOTATIONS 522 (1970), quoting ROUSSEAU, A DISCOURSE ON POLITICAL ECONOMY (1758)(G.D.H. Cole trans.).

2. Note that the vast majority of the cases reviewed are unpublished. Many of these cases are referenced in The Bureau of National Affairs *Environment Reporter*. The *Environment Reporter* provides a weekly service discussing pollution control and environmental management problems.

3. Interoffice memorandum from Peggy Hutchins to Joseph G. Block, Chief Environmental Crimes Section, United States Department of Justice (Jan. 26, 1990)(available at *St. Mary's Law Journal* office). Appendix 1 provides a breakdown of the indictments, pleas, convictions, fines imposed, jail terms and the actual confinement of defendants convicted of environmental crimes.

terms.⁴ Of the 286 years in prison terms, only 104 years actual confinement resulted.⁵ Consequently, the average guilty defendant barely spent six months in prison.⁶ Unfortunately, this statistic questions whether substantial criminal penalties are being imposed as frequently as the public is being led to believe.⁷ Thus, Rousseau's premise may now be modified—it is the threat of severe penalties, not the imposition of them, which commands compliance with these laws.

Regardless of the conviction record tallied by the DOJ to date, the regulatory climate is rapidly changing. Many agencies have stated they intend to use criminal sanctions more frequently and for a wider variety of wrongdoings. Criminal prosecutions garner public attention and makes appealing headlines. Public pressure is causing agencies to seek criminal enforcement when administrative or civil actions were previously deemed sufficient in similar situations. Zealous and politically motivated prosecutors see such cases gaining the rapt attention of the public and, unfortunately, sometimes view them as a means of enhancing their careers. Prosecutors have broad discretion in determining whether a case will be brought as a civil or criminal action.

An excellent example of a case which should not have been brought as a criminal action is *Ohio v. Stimkorb*.⁸ The defendant, John Stimkorb, was the operations manager of a hazardous waste facility.⁹ He ordered employees to pump rainwater into a ditch; the rainwater had allegedly come into contact with hazardous wastes in the landfill.¹⁰ The pumping was necessary because of an extremely heavy rainfall.¹¹ The judge determined that the rainwater was hazardous under the "mixture rule" and found that "Stimkorb acted recklessly by not obtaining disposal instructions from the Ohio Environmental Protection Agency Inspector, who happened to be on vacation during

4. *Id.*

5. *Id.*

6. *Id.* Note that many state, county and city prosecutors are also actively pursuing environmental crimes with resultant jail terms often being significantly higher than the federal average. Thus, the federal numbers do not include those conviction records from the many state and city prosecutions.

7. One recent notable exception to this is the significant penalties being brought against Exxon resulting from the *Exxon Valdez* incident.

8. Hazardous Waste Lit. Rep. (Andrews) 17,591 (July 17, 1989).

9. *Id.*

10. *Id.*

11. *Id.* at 17,592.

the week of pumping."¹² The Ohio Attorney General's office cited the case as an important decision in a statement issued after the hearing.¹³ However, it does not appear that the rainwater actually contained hazardous wastes, or that any harm actually resulted to the environment.¹⁴

A prime example of public pressure resulting in criminal indictments is evidenced in the *Exxon Valdez* incident. Exxon has been accused of violating the following federal statutes: the Clean Water Act, the Refuse Act, the Migratory Bird Treaty Act, the Ports and Waterways Act, and the Dangerous Cargo Act.¹⁵ Estimated fines in this case could reach \$700 million.¹⁶ Most of the statutes that the federal government is using against Exxon require "willful or knowing" violations, yet it stretches the imagination to even infer that Exxon had the intent to willfully or knowingly spill the oil. Under the Migratory Bird Treaty Act, Exxon is essentially being charged as a poacher, by having killed migratory birds without a permit. Arguably, this statute was not intended to cover birds perishing as the result of an accidental spill. Obtaining convictions can certainly not be the intent of the prosecutors in this case; appeasing the public appears to be the intended result.

As a consequence of the heightened activity and public pressure, it is imperative that every practitioner who advises clients in this area become familiar with the provisions utilized by agencies in prosecuting environmental crimes. This article addresses the most frequently encountered criminal provisions, including those found in the major federal environmental laws and several non-environmental laws. It presents representative cases brought under these statutes and identifies several Texas statutes which contain criminal provisions.

II. FEDERAL ENVIRONMENTAL LAWS CONTAINING CRIMINAL PROVISIONS

The federal government has enacted numerous statutes to address a myriad of pollution matters. Most of these statutes are mutually exclusive. They generally do not have overlapping areas of jurisdiction;

12. *Id.*

13. *Id.*

14. *Id.*

15. Sanders, *Battling Crimes Against Nature*, TIME, Mar. 12, 1990, at 54.

16. *Id.*

to illustrate, it would generally not be necessary to obtain an air permit under the Clean Air Act¹⁷ in order to operate a hazardous waste disposal facility permitted under the Resource Conservation and Recovery Act.¹⁸ However, improper handling of wastes may give rise to liability under several statutes. A person or corporation who illegally discharges hazardous wastes into a stream, for example, could violate several statutes: the Resource Conservation and Recovery Act, for disposing of wastes without a hazardous waste permit;¹⁹ the Clean Water Act, for discharging wastes without a permit or violating permit requirements;²⁰ and the Comprehensive Environmental Response, Compensation and Liability Act, for failing to report an unpermitted release.²¹ Thus, civil and criminal penalties could arise under several statutes, with the resultant fines or penalties being cumulative in nature. Therefore, an attorney should possess a working knowledge of the statutes identified below.

A. *The Resource Conservation and Recovery Act*

While the Resource Conservation and Recovery Act (RCRA)²² was enacted to address the problem of solid waste disposal in general, the initial emphasis of the Act has been on the management of hazardous waste.²³ The statute was designed to provide “cradle-to-grave” management of hazardous waste by imposing numerous requirements on generators and transporters of hazardous waste, stor-

17. 42 U.S.C. §§ 7401-7428 (1982 & Supp. V 1987).

18. 42 U.S.C. §§ 6901-6987 (1982 & Supp. V 1987).

19. *Id.* § 6925. This section of the Resource Conservation and Recovery Act (“RCRA”) directed the Administrator of the Environmental Protection Agency (the “EPA”) to “promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste . . . to have a permit issued pursuant to this section.” *Id.* § 6925(a) (Supp. V 1987).

20. 33 U.S.C. §§ 1341-1345 (1982 & Supp. V 1987). Section 1342 of the Act established the National Pollutant Discharge Elimination System. *Id.* § 1342. These sections also detail the requirements for ocean discharges, permits for dredged or fill material, and the disposal or use of sewage sludge. *Id.* §§ 1343-1345.

21. 42 U.S.C. §§ 9601-9675 (1982 & Supp. V 1987). The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) regulates hazardous substance releases and provides a statutory plan for liability and compensation. *Id.* §§ 9605-9626. CERCLA also provides numerous miscellaneous provisions and sections dealing with pollution insurance. *Id.* §§ 9651-9675.

22. 42 U.S.C. §§ 6901-6987 (1982 & Supp. V 1987).

23. *See* 40 C.F.R. §§ 261.1-.33 (1989). Part 261 of the Code of Federal Regulations identifies and lists hazardous wastes. *See id.* Wastes may be considered hazardous if they meet certain characteristics or are specifically listed in the regulations. *See id.* §§ 261.20-.33.

age, treatment, and disposal facilities.²⁴ RCRA primarily governs active facilities, as opposed to abandoned or inactive facilities, which in many cases must obtain a permit to comply with the Act. RCRA contains serious criminal enforcement provisions which provide in certain instances for up to 15 years imprisonment for a "knowing endangerment" conviction under the Act.²⁵ Prosecutors commonly utilize RCRA to prosecute persons who illegally dispose of hazardous wastes.

RCRA imposes criminal penalties on any person who:

- (1) "knowingly transports or causes to be transported any hazardous waste to" an unpermitted facility;²⁶
- (2) "knowingly treats, stores, or disposes of any hazardous waste" without a permit, "in knowing violation of any material condition or requirement of [a] permit," or a "knowing violation of any material condition or requirement of" the interim status regulations;²⁷
- (3) "knowingly omits material information or makes any false statement or representation in any" record or document requirement to be maintained under the regulations or submitted to the Environmental Protection Agency (EPA) or any state which is authorized to run the RCRA program;²⁸
- (4) knowingly generates, treats, stores, exports, or disposes of hazardous waste and destroys, alters, conceals, or fails to file any record or other document required under the Act;²⁹
- (5) knowingly transports hazardous waste or causes hazardous waste to be transported without a manifest;³⁰
- (6) knowingly exports a hazardous waste to another country without its consent or in violation of an agreement between the United States and the government of the receiving country;³¹ or
- (7) knowingly treats, stores, disposes or transports or otherwise handles any used oil in knowing violation of a permit or "any material condition or requirement of any applicable regulations or standards"

24. See 40 C.F.R. §§ 260-268, 270-272 (1989)(federal regulations dealing with hazardous wastes).

25. 42 U.S.C. § 6928(e) (Supp. V 1987).

26. *Id.* § 6928(d)(1).

27. *Id.* § 6928(d)(2)(A)-(C).

28. *Id.* § 6928(d)(3).

29. *Id.* § 6928(d)(4).

30. *Id.* § 6928(d)(5).

31. *Id.* § 6928(d)(6).

established under RCRA.³²

A conviction under the foregoing provisions is a felony punishable by a fine of up to \$50,000 per day, per violation, and imprisonment of between two and five years.³³ A second conviction could result in the doubling of penalties with respect to both the fine and imprisonment.³⁴

RCRA imposes even more stringent felony sanctions upon any person who knowingly "transports, treats, stores, disposes of, or exports" any RCRA-listed or identified hazardous waste in violation of the above-delineated provisions, if the person "knows at the time that he . . . places another person in imminent danger of death or serious bodily injury."³⁵ This section is commonly referred to as the "knowing endangerment" provision. A violation of section 6928(e) could subject the offender to a fine of up to \$250,000 or imprisonment of up to 15 years, or both.³⁶ If the offender is an organization, fines can be as much as \$1,000,000 upon conviction.³⁷

Violators of any environmental law can also be subject to alternative fines under title 18³⁸ of the United States Code, which provides for higher fines in certain instances. This statute provides for fines of up to \$250,000 for an individual found guilty of a felony and up to \$500,000 in fines for a corporation found guilty of a felony.³⁹ How-

32. *Id.* § 6928(d)(7).

33. *Id.* § 6928(d).

34. *Id.*

35. *Id.* § 6928(e).

36. *Id.*

37. *Id.* Section 6928(f) of RCRA enumerates the special rules which relate to the knowing endangerment section. *Id.* § 6928(f) (1982). In particular, an organization is defined as "a legal entity, other than a government, established, or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons." *Id.* § 6928(f)(5). The special rules also address a person's state of mind, the level of knowledge required, affirmative defenses, the applicability of general criminal defenses, and the term "serious bodily injury." *Id.* § 6928(f)(1)-(4), (6).

38. *See* 18 U.S.C. § 3571 (1988)(applicable fines for defendants found guilty of offenses); *see also id.* § 3551 (authorized sentences). This section of title 18 states that "a defendant who has been found guilty of an offense described in any Federal statute . . . shall be sentenced in accordance" with this chapter. *Id.* § 3551(a). It covers both individuals and organizations. *Id.* § 3551(b)-(c).

39. *Id.* § 3571(b)-(c). Note that this statute also permits a fine of twice the gross gain or gross loss if any person derives a pecuniary gain from the offense or if the offense results in a pecuniary loss to a person other than the defendant. *Id.* § 3571(d). It is this provision under which the prosecutors are allegedly seeking the bulk of the penalties against Exxon in the

ever, a prosecutor may seek imposition of the fines under the environmental statute if the offense under the statute is a continuing offense where fines would be imposed for each day of violation. For example, a criminal violation of a RCRA regulation that continues for thirty days could result in a fine of \$1,500,000 [thirty days times \$50,000 per day]. Thus, under this example, a prosecutor who seeks to impose a fine on violators would be more attracted to the penalties available under RCRA than applicable fines under title 18.

In general, in order to obtain a RCRA conviction the government must prove that: (1) a person, (2) knowingly disposes or treats or stores, (3) a hazardous waste, (4) without a permit or in violation of a permit.⁴⁰ RCRA defines a "person" to mean "an individual, trust, firm, joint stock company, coporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body."⁴¹ In *United States v. Johnson & Towers, Inc.*,⁴² the Third Circuit held that the term "person," as specified under RCRA section 6928(d), extends to employees as well as owners and operators of a facility.⁴³ Consequently, RCRA liability may apply even if a person does not control or have charge of the overall operation.

The element of knowledge is much more difficult to define. Various courts have struggled over whether the word "knowingly," as used in section 6928(d), refers exclusively to the acts of treating, storing, or disposing (*i.e.*, in violation of certain provisions), or whether the person must also have express knowledge that the waste material is hazardous.⁴⁴ The courts have generally determined that it is not

Exxon Valdez incident. The prosecutors are purportedly trying to recover twice the economic loss caused to others. Another Political Prosecution? Wall St. J., Mar. 5, 1990 at A10, col.1.

40. 42 U.S.C. § 6928(d)(2) (Supp. V 1987). Somewhat different elements apply in the case of transportation to unpermitted facilities, false statements, destruction of records, exportation of hazardous wastes, and knowing endangerment. *Id.* § 6928(d)(1), (3)-(7).

41. *Id.* § 6903(15) (1982).

42. 741 F.2d 662, (3d Cir. 1984), *cert. denied sub nom.* Angel v. United States, 469 U.S. 1208 (1985).

43. *Id.* at 664. In this case, the government sought criminal prosecutions against Johnson & Towers, Inc. and two corporate employees. *Id.* The government brought criminal charges against a foreman and a trucking department service manager. *Id.* The court held that the employees fell within the criminal sanctions of RCRA as a "person." *Id.* at 664-65. RCRA defines a "person" as "an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body." 42 U.S.C. § 6903(15) (1982).

44. *See, e.g.*, *United States v. Hoffin*, 880 F.2d 1033, 1039 (9th Cir. 1989)(defendant must

necessary to prove that the defendant was aware that the waste material was a listed hazardous waste.⁴⁵ In *United States v. Hayes International Corp.*, the court examined this issue in detail, holding that it was not a defense for the defendant to claim that he was unaware that the particular waste in question was a hazardous waste within the meaning of the regulations.⁴⁶ In addressing this issue, two other appellate courts reviewed the jury instructions given by the trial courts to determine whether a defendant must have express knowledge that the waste in question was a listed hazardous waste under the regulations.⁴⁷ In both cases, the trial courts used essentially the same elements in their instructions which asked the jury to determine whether the defendant had: (1) *knowledge* that the chemical waste “had the potential to be harmful to others or the environment, and, in other words, it was not an innocuous substance like water”;⁴⁸ and (2) that the wastes were “listed or identified by the United States [Environmental Protection Agency] as a hazardous waste pursuant to” RCRA.⁴⁹ Based on these cases, it may be said that a defendant must know that a waste is potentially harmful, which is arguably an easy requirement to prove. A defendant does not, however, have to know that the waste is a listed hazardous waste under the regulations.

Courts have also struggled over the issue whether the defendant must know about the lack of a permit where the alleged violation is knowingly treating, storing, or disposing of a hazardous waste without having obtained a RCRA permit. In *United States v. Johnson & Towers, Inc.*, the court examined RCRA section 6928(d), which applies to any person who:

know material is hazardous), *cert. denied*, __ U.S. __, 110 S. Ct. 1143, __ L. Ed. 2d __ (1990); *United States v. Greer*, 850 F.2d 1447, 1450 (11th Cir.) (defendant must know material could be harmful to environment or others), *reh'g denied*, 860 F.2d 1092 (1988); *United States v. Hayes Int'l Corp.*, 786 F.2d 1499, 1503 (11th Cir. 1986) (defendant had knowledge waste was hazardous).

45. See *Hayes*, 786 F.2d at 1503 (no defense to claim lack of knowledge that paint waste was listed hazardous substance); see also *Hoflin*, 880 F.2d at 1039 (prosecution had to prove waste was listed hazardous waste but not that defendant knew it was listed); *Greer*, 850 F.2d at 1450 (defendant did not have to know hazardous waste was listed or identified by EPA).

46. *Hayes*, 786 F.2d at 1503.

47. See, e.g., *Hoflin*, 880 F.2d at 1039; *Greer*, 850 F.2d at 1450.

48. *Greer*, 850 F.2d at 1450 (quoting from trial court's jury charge); *Hoflin*, 880 F.2d at 1039 (trial court used identical language in jury charge).

49. *United States v. Hoflin*, 880 F.2d 1033, 1039 (9th Cir. 1989), *cert. denied*, __ U.S. __, 110 S. Ct. 1143, __ L. Ed. 2d __ (1990); *United States v. Greer*, 850 F.2d 1447, 1450 (11th Cir.), *reh'g denied*, 860 F.2d 1092 (1988).

“(2) knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subchapter either—

(A) without having obtained a permit under Section 6925 of this title . . . or

(B) in knowing violation of any material condition or requirement of such permit.”⁵⁰

In this case, the defendant sent waste off-site to an unpermitted facility.⁵¹ The court required the defendant to have knowledge that the facility did not have the proper permit in order for the government to obtain a conviction under the statute.⁵² The court nevertheless upheld the conviction stating that knowledge may be inferred upon a person who does not have actual knowledge where that person holds a responsible position within the corporation and should have had such knowledge.⁵³

However, the court in *United States v. Hoflin* specifically declined to follow *Johnson & Towers*, even though the facts of the two cases were similar.⁵⁴ The court stated:

Had Congress intended knowledge of the lack of a permit to be an element under subsection (A) it easily could have said so. It specifically inserted a knowledge element in subsection (B), and it did so notwithstanding the “knowingly” modifier which introduces subsection (2) . . . To adopt the Third Circuit’s interpretation of subsection (A) would render the word “knowing” in subsection (B) mere surplusage.⁵⁵

While *Hoflin* appears more logical than *Johnson & Towers*, it is clear that the courts are not settled in this area.

An individual may also be convicted of illegally disposing hazardous waste where that individual has simply told others to “keep the drum count down” or to “handle” the waste.⁵⁶ In *United States v. Greer*, the defendant was accused of causing the disposal of hazardous

50. *United States v. Johnson & Towers, Inc.*, 741 F.2d 662, 665 (3d Cir. 1984)(quoting 42 U.S.C. § 6928(d) (1982)), *cert. denied sub nom. Angel v. United States*, 469 U.S. 1208 (1985)(emphasis added).

51. *Id.* at 664. The defendants pumped toxic chemicals into a nearby ditch. *Id.*

52. *Id.* at 669.

53. *Id.* at 670.

54. *United States v. Hoflin*, 880 F.2d 1033, 1038 (9th Cir. 1989), *cert. denied*, ___ U.S. ___, 110 S. Ct. 1143, ___ L. Ed. 2d ___ (1990).

55. *Id.* at 1038.

56. *United States v. Greer*, 850 F.2d 1447, 1451 (11th Cir.), *reh'g denied*, 860 F.2d 1092 (1988).

waste in violation of 42 U.S.C. § 6928(d).⁵⁷ The trial court overruled the jury's guilty verdict and acquitted the defendant.⁵⁸ Greer, the defendant, had allegedly told his plant manager to "keep the drum count down" and to "handle" the waste.⁵⁹ The waste was subsequently disposed of on the ground.⁶⁰ The evidence revealed that Greer knew the chemical had the potential to harm others or the environment.⁶¹ Since Greer was aware that the site did not have adequate storage facilities to handle the materials, he was found guilty of violating RCRA.⁶²

One of the most serious convictions ever obtained under RCRA came under the "knowing endangerment" provision of the Act.⁶³ In *United States v. Protex Industries*, the defendant, Protex, was charged "with knowingly placing three of its employees in imminent danger of death or serious bodily injury."⁶⁴ The evidence revealed that certain employees who worked in the drum recycling facility were not supplied with sufficient protection against exposure to toxic chemicals.⁶⁵ Some of the employees suffered from solvent poisoning and exhibited certain serious maladies.⁶⁶ The government's experts testified that three individuals had an increased risk of developing cancer because of their prolonged exposure to the chemicals.⁶⁷ The trial judge ordered Protex to establish a \$950,000 trust fund to compensate endangered employees, and to pay \$440,000 in fines.⁶⁸ Originally, a fine of \$7,600,000 was imposed, most of which was subsequently suspended, and the company was placed on probation.⁶⁹ One of the probation

57. *Id.* at 1450.

58. *Id.* at 1453.

59. *Id.* at 1451.

60. *Id.*

61. *Id.* at 1452. The chemical dumped on the ground was a listed hazardous waste containing 1,1,1-trichloroethane. *Id.* at 1450.

62. *Id.* at 1451-53.

63. *United States v. Protex Indus., Inc.*, 874 F.2d 740, 742 (10th Cir. 1989). Section 6928(e) of RCRA provides for fines of up to \$1 million for an organization, \$250,000 for a person, and/or imprisonment of up to 15 years. 42 U.S.C. § 6928(e) (Supp. V 1987)(knowing endangerment section of RCRA).

64. *Protex Indus.*, 874 F.2d at 742.

65. *Id.*

66. *Id.*

67. *Id.*

68. *United States v. Protex Indus., Inc.*, 18 Env't Rep. (BNA) 2353 (D. Colo. Mar. 18, 1988), *aff'd*, 874 F.2d 740 (10th Cir. 1989).

69. *Id.*

conditions required the company to pay the clean-up costs of the site, which was estimated at \$2,100,000.⁷⁰

A number of unreported cases demonstrate the type of sentences being imposed upon persons who have been convicted or who have pled guilty to RCRA violations. These cases involve activities ranging from illegal transportation of hazardous wastes to illegally disposing of hazardous wastes without a permit. The sentences in these cases range from suspended sentences up to three years in jail.⁷¹

70. *Id.*

71. *See* *United States v. Greer* 17 *Env't Rep.* (BNA) 832, 832 (M.D. Fla. Oct. 3, 1986)(defendant received jail sentence and fine), *aff'd*, 850 F.2d 1447 (11th Cir.), *reh'g denied*, 860 F.2d 1092 (1988). In a 30-count indictment, defendant Greer was charged with "mislabeling hazardous chemicals, requiring employees at the waste handling facilities to sniff waste drums to determine their contents, allowing hazardous waste to be spilled on the ground, falsifying identification test reports, failing to report hazardous waste spills, and endangering workers at disposal sites by exposing them to dangerous conditions." *Id.* Greer received a 90 day sentence and a \$23,000 fine. *Id.*

In *United States v. Taylor Laboratories, Inc.*, the defendant was sentenced to serve one year and one day in prison on three counts and ordered to pay fines. 20 *Env't Rep.* (BNA) 1338, 1338 (N.D. Ga. Oct. 24, 1989). Mr. Taylor and his company, Taylor Laboratories, Inc., were convicted in the Georgia court of illegal transportation of hazardous waste without a manifest. *Id.* In a different case, *United States v. Taylor Laboratories, Inc.*, the defendants were convicted in a Tennessee court on additional charges. 20 *Env't Rep.* (BNA) 1338, 1338 (E.D. Tenn. Oct. 24, 1989). Mr. Taylor and his company were prosecuted in both Tennessee and Georgia federal district courts for environmental violations occurring in the two jurisdictions. *Id.* The Tennessee convictions were based on guilty pleas to transportation of hazardous substances without a manifest. *Id.* Mr. Taylor was sentenced to serve time in jail in the Tennessee convictions, but the court suspended those sentences. *Id.*

For additional cases, see, e.g., *United States v. McKiel*, 20 *Env't Rep.* (BNA) 520, 520 (D. Mass. July 7, 1989)(court ordered defendant Robert McKiel to serve four months in prison and son Scott three months in prison for discharging electroplating wastes into sewer system and violating RCRA by storing hazardous wastes at facility for more than 90 days); *United States v. Trembley*, 19 *Env't Rep.* (BNA) 1291, 1291 (E.D. Pa. Nov. 4, 1988)(contractor who illegally disposed of hazardous wastes sentenced to five years probation).

In *United States v. Denver Sanitary Co.*, a vice president and two supervisors were given probated sentences and fined between \$2,500 and \$7,500. 18 *Env't Rep.* (BNA) 2353, 2353 (D. Colo. Mar. 11, 1988). The defendants pled guilty to violations of RCRA and the Clean Water Act because they illegally discharged hazardous wastes into the municipal sewer system and transported hazardous wastes to an unpermitted facility. *Id.*

The court in *United States v. Wisconsin Barge Lines & Reidy Terminal, Inc.*, required Reidy Terminal to pay \$250,000 plus interest after a felony conviction. 18 *Env't Rep.* (BNA) 1329, 1329 (E.D. Mo. Sept. 11, 1987). Reidy Terminal was convicted of the felony of illegally disposing of hazardous waste without a permit. *Id.* The company performed barge cleaning operations in which chemically contaminated waste streams were discharged into the Mississippi River. *Id.*; *see also* *United States v. Harwell*, 17 *Env't Rept.* (BNA) 1573, 1573 (N.D. Ga. Jan. 16, 1987)(Harwell sentenced to three years in prison and \$20,000 fine). Mr. Harwell was the former president of a bankrupt waste disposal company. *Id.* He was convicted of disposing of hazardous wastes without a permit and making false statements. *Id.* Mr. Har-

B. *Comprehensive Environmental Response, Compensation and Liability Act*

Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act, usually referred to as "CERCLA" or "Superfund,"⁷² primarily to address the problem of abandoned hazardous waste sites. While RCRA provides for a "cradle-to-grave" management system for active disposal sites, CERCLA provides a management system for addressing the remediation of abandoned disposal sites. CERCLA also contains provisions that regulate uncontrolled releases of hazardous substances into the environment.⁷³ These provisions require notification to federal and state agencies when there has been a "release" of a "reportable quantity" of a listed "hazardous substance."⁷⁴ Failure to notify the appropriate authorities of a release as defined under the Act or submitting in such notification information known to be false or misleading is punishable by a fine and imprisonment.⁷⁵

It is important to realize that CERCLA broadly defines release to include any "spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels . . .) . . . any hazardous substance or pollutant."⁷⁶ Section 9601(14) of CERCLA defines and identifies the list of "hazardous substances" which when released must be reported to the appropriate authorities.⁷⁷ This list has been called the "list of lists," inasmuch as it refer-

well's company mixed hazardous wastes generated at an Army Depot with non-hazardous wastes and disposed of the resultant mixture into the local sewer system. *Id.*; *United States v. Rad Servs., Inc.*, 17 Env't Rep. (BNA) 1471, 1471-72 (W.D. Ken. Dec. 26, 1986)(both defendants received jail sentences). In this case the two defendants received two year sentences and two years probation; however, one defendant was only sentenced to serve 30 days and another six months of jail time. *Id.* The defendant corporate officers pled guilty to conspiracy and illegally transporting 47 truck loads of lead and cadmium emission control dust to an abandoned strip mine in Kentucky. *Id.*

72. 42 U.S.C. §§ 9601-9675 (1982 & Supp. V 1987).

73. *Id.* § 9603.

74. *Id.*; see also *id.* § 9601 (definition section of CERCLA).

75. 42 U.S.C. § 9603(b) (Supp. V 1987).

76. *Id.* § 9601(22).

77. *Id.* § 9601(14). The statute defines the term "hazardous substance" to mean: (A) any substance designated pursuant to section 1321(b)(2)(A) of title 33, (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not in-

ences substances designated under other acts, including the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, and RCRA.⁷⁸ Currently, over 700 substances are identified as hazardous substances, under the Act.⁷⁹ A "reportable quantity" corresponds with each substance, and when a substance is released at or above this quantity, the proper authorities must be notified.⁸⁰

This provision of CERCLA does not contain any "knowing" requirement, thus the mere failure to notify can result in a violation of the Act.⁸¹ Potential criminal sanctions for violating the reporting requirements include imprisonment of up to three years, or five years in the case of a second or subsequent conviction, and fines under title 18 of the United States Code.⁸² As previously noted, title 18 provides for fines of up to \$250,000 per individual and \$500,000 per organization in the case of a felony conviction.⁸³

In *United States v. Greer*, the defendant, Greer, ordered the "handling" of certain waste materials on his property without a disposal permit.⁸⁴ Greer was found guilty of violating RCRA by engaging in unpermitted disposal activities.⁸⁵ He was also found guilty of violating CERCLA because he failed to notify the agency of the release.⁸⁶ The instructions in the jury charge required proof:

cluding any waste the regulation of which under the Solid Waste Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 1317(a) of title 33, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 2606 of title 15. The term does not include petroleum including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

Id.

78. *Id.* § 9601(14).

79. 40 C.F.R. §§ 302.4 (1989).

80. *Id.* § 302.6.

81. *Id.*; see also *United States v. Greer*, 850 F.2d 1447, 1453 (11th Cir. 1988)(court affirmed convictions for defendants failure to report release).

82. 42 U.S.C. § 9603(b) (1982 & Supp. V 1987); 18 U.S.C. § 3571 (1988); see also *supra* notes 38-39 and accompanying text (discussion of alternative fines under title 18).

83. See *supra* notes 38-39 and accompanying text.

84. *Greer*, 850 F.2d at 1453.

85. *Id.*

86. *Id.* at 1452-53.

- (1) That Greer 'was, in fact, in charge of the facility at which the release occurred';
- (2) That . . . [in excess of the reportable quantity of the chemical was released] . . . ;
- (3) That Greer 'knew of such release'; and
- (4) That Greer, 'after learning of the release[,] . . . failed to immediately notify the National Response Center of the United States Coast Guard.'⁸⁷

Thus, the court in *Greer* determined that the statute only requires knowledge of the release. It was not necessary for the violator to have been aware of the notification requirement and to have knowingly elected not to report.

Presumably, the notification provision CERCLA was written without a knowing requirement because of the potential danger to humans or the environment from the release of hazardous substances at or above the reportable quantity. The reportable quantities for hazardous substances were set with the possible resultant danger in mind. Consequently, the lack of reporting would arguably defeat the purpose of the statute, and could result in serious harm.

Section 9603 of CERCLA also requires that the person "in charge" of a facility notify the appropriate agency of the release as soon as he has such knowledge.⁸⁸ The statute does not define the term "in charge."⁸⁹ At least one court has held that the term "in charge" extends to persons of relatively low rank.⁹⁰ The defendant in *United States v. Carr* was a maintenance foreman at an army installation.⁹¹ He instructed several workers to dispose of cans of waste paint in a pit which was filled with water.⁹² The workers noted that some of the paint cans were leaking and told Carr that they believed that dumping into ponds was illegal.⁹³ He continued to permit the disposal and two weeks later, Carr ordered one of the workers to cover up the pit with earth.⁹⁴ On appeal, the Second Circuit upheld Carr's conviction,

87. *Id.* at 1453.

88. 42 U.S.C. § 9603(b)(3) (1982 & Supp. V 1987).

89. *Id.*

90. *United States v. Carr*, 880 F.2d 1550, 1554 (2d Cir. 1989).

91. *Id.* at 1551.

92. *Id.*

93. *Id.*

94. *Id.* at 1551. Mr. Carr was subsequently investigated after a worker told his brother-in-law about the disposal of the paint cans. *Id.* Unfortunately for Mr. Carr, the brother-in-law was a special agent with the Department of Defense. *Id.* Mr. Carr's conduct resulted in a 43-

equating the term "in charge" with "responsible."⁹⁵ The court further found the person must have had some supervisory control over the facility but need not have been the sole person in charge of the facility.⁹⁶

Section 9603(c) of CERCLA also provides for criminal sanctions. This provision required certain persons to notify the EPA within 180 days after the enactment of CERCLA of the existence of facilities which had been used for the treatment, storage or disposal of hazardous substances.⁹⁷ This statute was one of the primary methods used by the EPA in selecting its original Superfund List. A knowing violation of this provision subjected the person to a maximum fine of \$10,000, or imprisonment of not more than one year, or both.⁹⁸ Although the statute is not clear on this point, some EPA officials have interpreted section 9603(c) to impose a continuing obligation on a company should it later discover that it presently owns or previously operated such a facility and did not notify the EPA. Consequently, if such a situation arises, it is advisable to notify the EPA of the past disposal areas and avoid the possible imposition of penalties.

CERCLA also provides for felony sanctions for any person who knowingly destroys, mutilates, erases, disposes of, conceals, or otherwise renders unavailable or unreadable, or falsifies any records to be provided to the EPA.⁹⁹ This section most often arises in connection with Superfund sites. When the EPA finds it necessary to obtain information from Potentially Responsible Parties (PRPs) who may be connected with a specific site, it will ordinarily send out what is known as a section 104(e) letter.¹⁰⁰ This letter requests that the company in question turn over copies of old records and documents in its constructive possession.¹⁰¹ Should the company destroy such records after receiving a request for them from the EPA, criminal penalties could arise. Conviction under this provision could result in imprison-

count indictment. *Id.* The jury convicted the defendant on two of the counts which resulted in one year of probation. *Id.*

95. *Id.* at 1554.

96. *Id.* at 1555.

97. 42 U.S.C. § 9603(c) (1982). Only those hazardous substances as defined in section 9601(14)(C) are included. This section refers to those substances which are designated as hazardous wastes under RCRA. *Id.*

98. *Id.*

99. 42 U.S.C. § 9603(d)(2) (Supp. V 1987).

100. *See id.* § 9604(e).

101. *Id.* § 9604(e)(2).

ment of up to three years, and/or a fine in accordance with the provisions of title 18.¹⁰² A related provision of CERCLA provides for criminal sanctions where a person knowingly “gives or causes to be given any false information” as part of a claim against the Superfund.¹⁰³ A person convicted under this section can be fined in accordance with the provisions of title 18 or imprisoned for up to three years, or both.¹⁰⁴

In 1986, the Superfund Amendments and Reauthorization Act of 1986 (SARA) reauthorized CERCLA.¹⁰⁵ In the SARA amendments, a new subtitle was added to address the problems associated with incidents such as the release of toxic chemicals in Bhopal, India. These provisions are found in subtitle III, also known as the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA).¹⁰⁶ EPCRA contains criminal sanctions for a knowing and willful failure to report a release of a reportable quantity of certain chemicals identified under the Act.¹⁰⁷ Punishment for a violation of this provision could result in a fine of up to \$25,000 and imprisonment of up to two years.¹⁰⁸

The final notable provision of CERCLA is section 9609(d). This section allows the President of the United States to award up to \$10,000 to any individual who provides information leading to the arrest and conviction of any person for any criminal penalty under CERCLA.¹⁰⁹ This has become known as the “bounty hunter” provision of CERCLA.

The majority of convictions under CERCLA stem from the failure to report a release. As previously noted, both *United States v. Greer* and *United States v. Carr* involved the failure to report a release under CERCLA.¹¹⁰ Recently, a felony conviction for a release of asbestos under CERCLA was obtained. In *United States v. Derektor*, the

102. *Id.* § 9603(d)(2) (1982 & Supp. V 1987).

103. *Id.* § 9612(b)(1) (Supp. V 1987).

104. *Id.*

105. Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986)(codified at 42 U.S.C. §§ 9601-9675 (Supp. V 1987)).

106. 42 U.S.C. §§ 11001-11050 (Supp. V 1987).

107. *Id.* § 11045(b)(4).

108. *Id.*

109. 42 U.S.C. § 9609(d) (Supp. V 1987).

110. See *United States v. Greer*, 850 F.2d 1447, 1453 (11th Cir.)(defendant convicted of violating CERCLA), *reh'g denied*, 860 F.2d 1092 (1988); *United States v. Carr*, 880 F.2d 1550, 1554 (2d Cir. 1989)(CERCLA violations resulted in conviction).

company pled guilty to failure to report a release of asbestos which occurred during ship repair operations—a violation of CERCLA.¹¹¹ The company was fined \$600,000 for the CERCLA violation and accompanying violations of the Clean Air Act and the Clean Water Act.¹¹²

C. Toxic Substances Control Act

The Toxic Substances Control Act (TSCA)¹¹³ allows the EPA to require testing of both old and new chemical substances to which the public or the environment may become exposed. TSCA was enacted because of numerous chemicals entering into the marketplace which could have potentially carcinogenic (cancer causing), teratogenic (birth defect causing), and mutagenic (genetic damaging) effects. TSCA provides a mechanism whereby the EPA can: (1) prohibit the manufacture, processing, or distribution of a substance, (2) prohibit certain uses of a substance, or (3) regulate the manner or method of disposal.¹¹⁴ In addition, the EPA Administrator has the authority to promulgate regulations which could impose labeling or reporting requirements upon manufacturers of chemicals.¹¹⁵ Under TSCA, the EPA has regulated a group of chemicals known as polychlorinated biphenals (PCBs).¹¹⁶ These regulations have effectively barred the manufacture of PCBs and have established complicated requirements related to the storage, transport, and disposal of these chemicals.¹¹⁷

The criminal provisions found under TSCA are not as stringent as some of the other acts, inasmuch as the criminal provisions result in misdemeanor and not felony convictions. Under TSCA, it is a misdemeanor to knowingly or willfully violate any of the Act's provisions or the regulations promulgated pursuant to the Act.¹¹⁸ Specifically, a person commits a misdemeanor if he knowingly or willfully violates regulations promulgated pursuant to: TSCA section 2603 (testing of chemical substances and mixtures); section 2604 (pre-market manu-

111. 17 *Env't Rep.* (BNA) 1540, 1541 (D.R.I. Jan. 9, 1987).

112. *Id.*

113. 15 U.S.C. §§ 2601-2671 (1988).

114. *Id.* § 2605.

115. *Id.*

116. *See generally* 40 C.F.R. §§ 761.1-.193 (1989)(sections govern manufacturing, processing, distributing and use of PCBs).

117. *Id.*

118. 15 U.S.C. § 2615(b) (1988).

facturing and processing notices); and section 2605 (the regulation of "hazardous substances and mixtures" which may present an unreasonable risk of injury to the public health or the environment).¹¹⁹ Criminal penalties also accrue for violations of subchapter II of the Act (asbestos hazards).¹²⁰ Consequently, knowingly or willfully violating any one of the numerous regulations promulgated under the foregoing sections could result in the imposition of criminal penalties.

Regulations promulgated pursuant to section 2605 of TSCA include various requirements for the labeling, storage and disposal of PCBs.¹²¹ Since many industries and companies not otherwise subject to environmental regulations have PCB-containing electrical transformers on-site, these regulations are often overlooked. Commonly violated regulations which could give rise to liability under the criminal provisions of TSCA, where such acts are done knowingly or willfully, include:

- (1) Failure to place warning labels on PCB articles, containers, storage areas or transport vehicles pursuant to 40 C.F.R. § 761.40;
- (2) Improper disposal of PCB articles, liquids, or contaminated soils as required pursuant to 40 C.F.R. § 761.60;
- (3) Storage of any PCB article or container for over a year, storage of any PCB article or liquid in an improper storage container or areas, and/or failure to date stored PCB articles or containers as required pursuant to 40 C.F.R. § 761.65; and
- (4) Failure to keep proper records of removal, storage, or disposal of PCB articles or containers as required pursuant to 40 C.F.R. § 761.180.¹²²

It is also a misdemeanor under TSCA to fail or refuse to establish or maintain records, submit reports, notices, or other information, or permit access to or copying of records as required by the Act.¹²³ Ad-

119. *Id.*; see also *id.* §§ 2603-2605.

120. 15 U.S.C. § 2615(b) (1988). This section provides criminal penalties for the violation of enumerated prohibited acts. *Id.*; see also *id.* § 2614 (section defining prohibited acts); §§ 2641-2655 (requirements relating to asbestos hazards).

121. *Id.* § 2605(e).

122. 15 U.S.C. § 2615(b) (1988). This section lists the criminal penalties for violating a provision of 15 U.S.C. § 2614. *Id.* Section 2614 details the prohibited acts in TSCA. *Id.* § 2614. Prohibited acts include the violation of sections 2604-2606 and 2610. *Id.* The applicable sections in the Code of Federal Regulations have been enacted pursuant to TSCA. 40 C.F.R. Part 761 (1989).

123. 15 U.S.C. §§ 2614, 2615(b) (1988). Section 2614 defines the prohibited acts under TSCA. *Id.* § 2614.

ditionally, a person can commit a misdemeanor by failing or refusing to permit entry or inspection as required by the Act.¹²⁴ Finally, it is a misdemeanor to use for commercial purposes a chemical substance or mixture which a person "knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 2604 or 2605," or an order issued under sections 2604 and 2606 of TSCA.¹²⁵ Conviction under section 2615(b) of the TSCA could result in a fine of up to \$25,000 per day per violation and/or imprisonment of up to one year.¹²⁶

In *United States v. Ward*, the defendant was convicted for the unlawful disposal of PCBs under 15 U.S.C. §§ 2614, 2605 and 40 C.F.R. § 761.01(b).¹²⁷ The defendant, Ward, owned a transformer company which removed PCB-containing oils from used transformers.¹²⁸ Ward and another party sold the used oil back to dealers for use in reconditioned transformers.¹²⁹ When it became obvious to Ward and his associate that the business was not going to be profitable, they devised a scheme to dispose of the oil by spraying it on the ground.¹³⁰ Ward was subsequently convicted by the trial court and his conviction was upheld on appeal.¹³¹

In *United States v. Derecktor*, Derecktor allegedly removed three PCB-containing transformers from a shipyard and buried them at his residence.¹³² The four violations of TSCA Derecktor pled guilty to included improper storage and disposal of PCBs, failure to label PCB containing transformers, and failure to maintain records.¹³³ Robert E. Derecktor and his firm, Robert E. Derecktor of Rhode Island, Inc. were fined \$600,000.¹³⁴

There appears to be a significant lack of criminal TSCA convictions other than those described above. Perhaps this can best be explained by the fact that the criminal penalties which can be imposed under the Act are relatively inconsequential in comparison to the applicable

124. *Id.* §§ 2614-2615.

125. *Id.* §§ 2614(2), 2615.

126. *Id.* § 2615(b).

127. 676 F.2d 94, 96-97 (4th Cir.), *cert. denied*, 459 U.S. 835 (1982).

128. *Id.* at 95.

129. *Id.*

130. *Id.*

131. *Id.* at 94, 97.

132. 17 Env't Rep. (BNA) 1540, 1541 (D.R.I. Jan. 9, 1987)

133. *Id.*

134. *Id.*

civil fines. In fiscal year 1988, civil complaints under TSCA comprised 41.6 percent of all of the cases brought by the EPA and resulted in over \$5,000,000 in fines.¹³⁵

D. *The Federal Water Pollution Control Act and Related Water Laws*

Congress has promulgated several laws designed to establish a regulatory framework for protecting the quality of the nation's waters. The most prominent of these laws is the Federal Water Pollution Control Act, more commonly known as the Clean Water Act (CWA).¹³⁶ The CWA regulates the sources of water pollution, which are commonly referred to as "point sources." A permit system provides the mechanism for controlling point source discharges. Under the CWA, any person discharging a pollutant into the nation's waters must obtain a national pollutant discharge elimination system (NPDES) permit.¹³⁷

Another act designed to protect the nation's waters is the Safe Drinking Water Act (SDWA).¹³⁸ This Act seeks to ensure a safe drinking water supply and to protect the nation's drinking water aquifers. SDWA also regulates the underground injection of certain substances in order to protect all aquifers from contamination, regardless of whether they are used for drinking water purposes.¹³⁹

Additionally, the Marine Protection, Research, and Sanctuary Act of 1972 (MPRSA) regulates disposal of materials in waters.¹⁴⁰ This Act, commonly known as the Ocean Dumping Act, regulates the dumping of materials in the territorial ocean waters of the United States.¹⁴¹ The regulations promulgated pursuant to the Act effectively prevent or strictly limit the dumping of any materials into the ocean waters which would "adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or eco-

135. 20 Chem. Reg. Rep. (BNA) 660, 660 (Aug. 18, 1989).

136. 33 U.S.C. §§ 1251-1376 (1982 & Supp. V 1987).

137. *See id.* §§ 1311(a), 1342. Section 1311(a) of the Act prohibits pollution discharges except those that comply with applicable regulations. *Id.* § 1311(a) (1982). Section 1342 outlines the National Pollutant Discharge Elimination System (NPDES). *Id.* § 1342 (1982 & Supp. V 1987).

138. 42 U.S.C. §§ 300f-300j-10 (1982 & Supp. V 1987).

139. *See id.* § 300h (minimum requirements and restrictions for protection of underground sources of drinking water).

140. 33 U.S.C. §§ 1401-1445 (1982 & Supp. V 1987).

141. *Id.* § 1401 (1982).

conomic potentialities."¹⁴²

The Clean Water Act, Safe Drinking Water Act, and the Ocean Dumping Act all contain criminal enforcement provisions. Convictions are most frequently obtained under the CWA, which provides some of the more stringent enforcement provisions of the water laws. Section 1319(c) of title 33 enumerates several items which can result in a misdemeanor or felony conviction.¹⁴³ If the provisions of this section are violated "negligently," the first resulting conviction would be a misdemeanor.¹⁴⁴ Whereas, violation of these provisions with a "knowing" intent could result in a felony conviction.¹⁴⁵

Under section 1319(c), it is an offense to violate any of a multitude of sections of the CWA.¹⁴⁶ Violations which could result in a conviction include, but are not limited to:

- (1) an unpermitted discharge of any pollutant into the waters of the United States;¹⁴⁷
- (2) a discharge of any pollutant into a publicly owned treatment works in violation of a pre-treatment standard;¹⁴⁸ or
- (3) the introduction into a publicly owned treatment works a pollutant or hazardous substance with knowledge that the substance could cause personal injury or property damage.¹⁴⁹

A "negligence" conviction for violation of any of these offenses could result in a fine of up to \$25,000 per day and/or imprisonment for up to one year.¹⁵⁰ A second offense under this section may result in a felony conviction, which would double the foregoing penalties.¹⁵¹ If any of the provisions set forth in section 1319(c) are violated "knowingly," the resulting conviction will constitute a felony.¹⁵² A knowing violation is punishable by a fine of up to \$50,000 per day and/or imprisonment for up to three years.¹⁵³ Under this provision,

142. *Id.* § 1401(b).

143. 33 U.S.C. § 1319(c) (Supp. V 1987).

144. *Id.* § 1319(c)(1).

145. *Id.* § 1319(c)(2)-(3).

146. *Id.* § 1319(c)(1)-(3). Those sections reference violations of several other provisions under the Act, including sections 1311-1313, 1316-1318, 1328, and 1345. *Id.*

147. *Id.* § 1319(c)(1)-(2) (Supp. V 1987).

148. *Id.*

149. *Id.*

150. *Id.* § 1319(c)(1).

151. *Id.*

152. *Id.* § 1319(c)(2).

153. *Id.*

penalties are once again doubled for repeat offenders.¹⁵⁴

Like RCRA, the CWA also has a knowing endangerment provision.¹⁵⁵ Upon conviction, any person who knowingly violates CWA provisions and knows at the time that he places another person in imminent danger of death or serious bodily injury may be subject to a fine of up to \$250,000 or imprisonment of up to 15 years, or both.¹⁵⁶ Furthermore, a defendant which is an "organization" can receive a fine of up to \$1,000,000.¹⁵⁷

The CWA also imposes felony penalties upon "a person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained [under the Act] or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained" under the Act.¹⁵⁸ A conviction under this provision can result in a fine of up to \$10,000 and/or imprisonment of up to two years.¹⁵⁹

The Safe Drinking Water Act (SDWA) also contains criminal enforcement provisions.¹⁶⁰ Criminal offenses under the SDWA include the willful violation of any requirement of an applicable underground injection control program;¹⁶¹ tampering with the public water system;¹⁶² or tampering or threatening to tamper with a public drinking water system.¹⁶³ A violation of any of these provisions may result in imprisonment of between three and five years.¹⁶⁴ A fine in accordance with title 18 may also be imposed.¹⁶⁵

Finally, the Ocean Dumping Act also contains criminal penalties for violations of the Act's provisions.¹⁶⁶ Any person who knowingly violates Subchapter I of the Act, regulations promulgated pursuant to

154. *Id.*

155. *Id.* § 1319(c)(3).

156. *Id.*

157. *Id.*

158. *Id.* § 1319(c)(4).

159. *Id.*

160. 42 U.S.C. §§ 300h-300h-4 (1982 & Supp. V 1987).

161. 42 U.S.C. § 300h-2(b) (Supp. V 1987).

162. *Id.* § 300i-1(a).

163. *Id.* § 300i-1(b).

164. *Id.* §§ 300h-2(b), 300i-1.

165. *Id.*; see also 18 U.S.C. § 3571 (1988) (statutes concerning applicable fines under title 18); see *supra* notes 38-39 and accompanying text.

166. 33 U.S.C. § 1415(b) (1982).

the Act, or a permit issued under the Act, could be fined up to \$50,000 and/or imprisoned for one year.¹⁶⁷ Additionally, a fine of up to \$250,000 and/or imprisonment for up to five years could result for activities involving the disposal of medical wastes into the ocean waters.¹⁶⁸

The majority of the cases arising under the water statutes are brought under the CWA based on two categories of violations: illegal discharges into waters of the United States and illegal filling of wetlands. In *United States v. Ashland Oil, Inc.*,¹⁶⁹ a federal district court refused to dismiss charges against Ashland Oil for violating sections 1311(a) and 1319(c)(1) of the CWA.¹⁷⁰ Ashland was charged with negligently discharging oil into waterways during the process of demolishing an oil tank.¹⁷¹ In *United States v. Frezzo Brothers*,¹⁷² a mushroom processor was found guilty of violating the same sections of the CWA.¹⁷³ The Third Circuit upheld the conviction, holding that the defendant's mushroom composting operation was manufacturing in nature and, thus, subject to the requirements of the CWA.¹⁷⁴ There are also many unreported cases where the United States has prosecuted individuals and companies for discharging materials into the waters of the United States.¹⁷⁵

167. *Id.*

168. 33 U.S.C.A. § 1415(b)(2)(A) (West Supp. 1989).

169. 705 F. Supp. 270 (W.D. Pa. 1989).

170. *Id.* at 271. Section 1311(a) of the CWA concerns the allowable effluent limitations and section 1319(c) provides the criminal penalties. 33 U.S.C. §§ 1311(a), 1319(c) (1982 & Supp V 1987)(applicable sections of Clean Water Act).

171. *Ashland Oil*, 705 F. Supp. at 272-73. In this case, Ashland was charged with the violations and sought to have the charges dismissed because of misconduct by the prosecutors. *Id.* at 271. The court denied the motion to dismiss. *Id.* at 277.

172. 703 F.2d 62 (3d Cir.), *cert. denied*, 464 U. S. 829 (1983).

173. *Id.* at 63. The defendants were charged and convicted of "willfully and negligently discharging pollutants into waterways of the United States in violation of 33 U.S.C. §§ 1311(a) and 1319(c)." *Id.* at 62. The defendants claimed that their composting operation was agricultural in nature, thus exempt from the criminal sanctions in the Clean Water Act. *Id.* at 63.

174. *Id.*

175. *See, e.g.*, *United States v. McKiel*, 20 Env't Rep. (BNA) 520, 520 (D. Mass. June 29, 1989)(officials of electroplating company sentenced to jail for illegally discharging electroplating process wastes into sewer system and river); *United States v. Ocean Spray Cranberries, Inc.*, 19 Env't Rep. (BNA) 1781, 1781 (D. Mass. Dec. 20, 1988)(company fined \$400,000 after pleading guilty to 21 counts of violating Clean Water Act by disposing of acidic waste water and cranberry peelings into local sewer system); *United States v. Apodaca*, 19 Env't Rep. (BNA) 1291, 1291 (C.D. Cal. Oct. 3, 1988)(electroplating company fined \$50,000 after pleading guilty to 10 counts of illegally discharging zinc and cyanide-containing waste water into public sewer system); *United States v. McIntyre*, 18 Env't Rep. (BNA) 1299, 1299-1300 (D.

Illegally filling wetlands also constitutes a violation of the CWA. In *United States v. Marathon Development Corp.*, the defendants appealed a decision in which they pled guilty to violations of the Clean Water Act.¹⁷⁶ Marathon purportedly deposited fill materials into wetlands after the Army Corps of Engineers, which administers certain aspects of the Clean Water Act, informed the company that it could not do so without obtaining a permit from the Corps.¹⁷⁷ The company was fined \$100,000, and a senior vice president received a six month suspended sentence, one year of probation, and a \$10,000 fine.¹⁷⁸ The defendants pled guilty and preserved for appeal the issue of whether the headwaters nationwide permit applied in Massachusetts.¹⁷⁹ The appellate court upheld the convictions.¹⁸⁰ In a recent unreported case, *United States v. Pozsgai*, the defendant, Pozsgai, was convicted of filling wetlands in violation of the CWA.¹⁸¹ Pozsgai received three years in jail and a \$202,000 fine.¹⁸² He had received repeated warnings from the Corps of Engineers that his activity required a section 404 permit, but he "continued filling the site even after receiving a cease and desist court order."¹⁸³ As can be seen, the government does not hesitate to seek harsh penalties under the CWA.¹⁸⁴

Ariz. Aug. 31, 1987)(two men fined \$7500 each for discharging untreated sewage into Colorado River after refusal of permit by State Health Department); *United States v. DeJohn*, 18 Env't Rep. (BNA) 1329, 1329 (E.D. Mo. July 31, 1987)(vice president of Wisconsin barge lines sentenced to 3 years probation, 200 hours of cleaning service, and \$50 court costs for illegally discharging pollutants from barge cleaning operation); *United States v. White*, 18 Env't Rep. (BNA) 502, 502 (W.D. Ark. May 22, 1987)(three men convicted of Clean Water Act violations for discharging heptachlor-contaminated waste water into drainage ditches); *United States v. Derecktor*, 17 Env't Rep. (BNA) 1540, 1541 (D.R.I. Dec. 29, 1986)(company pled guilty to 24 discharge violations under Clean Water Act, CERCLA and TSCA, resulting in \$600,000 fine).

176. 867 F.2d 96, 98 (1st Cir. 1989).

177. *Id.* at 97.

178. *Id.* at 98.

179. *Id.* The Headwaters nationwide permits are issued by the Army Corps of Engineers and regulate "the discharge of dredged or fill materials under the Clean Water Act. *Id.*; see also 33 C.F.R. § 330.5(a)(26) (1989)(nationwide permits regulation).

180. *Marathon*, 867 F.2d at 102.

181. 20 Env't Rep. (BNA) 579, 579 (E.D. Pa. July 21, 1989). The government brought a 41-count indictment against Mr. Pozsgai. *Id.* He was convicted on all 41 counts. *Id.*

182. *Id.*

183. *Id.*

184. See *United States v. Mills*, 19 Env't Rep. (BNA) 2633, 2633 (N.D. Fla. Apr. 21, 1989)(two men sentenced to 21 months in prison for illegally filling wetlands and excavating canal on their property). Mr. Mills and his son were ordered to serve the jail sentence without

E. *The Clean Air Act*

The first Clean Air Act, passed in 1963, provided for grants to air pollution control agencies and established a pollution abatement conference procedure.¹⁸⁵ The Clean Air Act has been amended many times. One of the most significant amendments was the Clean Air Act Amendments of 1970.¹⁸⁶ This Act created the motor vehicle control program which adopted numerous emission standards to be implemented in subsequent years. In 1977, Congress added numerous provisions designed to prevent deterioration of air quality.¹⁸⁷ In its present form, the Act generally provides a mechanism by which the EPA can control air emissions from numerous sources.¹⁸⁸

The Clean Air Act provides criminal sanctions for any person who knowingly violates various requirements of the Act, or administrative orders pursuant to the Act.¹⁸⁹ Prohibited acts include: violating any requirements of state implementation plans; violating, failing or refusing to comply with any order under certain sections of the Act; violating new source performance standards; and violating emission standards for various new and old sources.¹⁹⁰ Under these provisions, it would be illegal to remove asbestos or demolish asbestos-covered structures in violation of asbestos work practice standards.¹⁹¹ The Act also prohibits the release of other designated hazardous air pollutants in disregard of emission standards.¹⁹²

parole. *Id.* They also received a one year probated sentence "and must restore the wetlands within 90 days of being released from prison." *Id.* Officials of the EPA stated that they were "truly gratified" with the length of the sentence and that "the substantial penalty would send a strong message across the country that those who knowingly violate environmental laws are going to jail." *Id.*

185. Clean Air Act of 1963, Pub. L. No. 88-206, 77 Stat. 392 (1963)(codified as amended at 42 U.S.C. §§ 7401-7491 (1982 & Supp. V 1987)).

186. Clean Air Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1676 (1970)(codified as amended at 42 U.S.C. §§ 7401-7491 (1982 & Supp. V 1987)).

187. Act of Aug. 7, 1977, Pub. L. No. 95-95, 91 Stat. 685 (codified as amended 42 U.S.C. §§ 7419-7428, 7450-7459, 7470-7479, 7491, 7501-7508, 7548-7551 (1982 & Supp. V 1987)). These amendments enacted, among other sections, the motor vehicle emission and fuel standards and the aircraft emission standards. 42 U.S.C. §§ 7521-7551 (1982 & Supp. V 1987).

188. 42 U.S.C. §§ 7401-7491, 7521-7574 (1982 & Supp. V 1987). The regulations provide for air quality and emission limitations, ozone protection, maintenance of present air quality, and emission standards from moving sources. *Id.*

189. *Id.* § 7413(c) (1982).

190. *Id.*

191. *Id.* § 7413(c)(1)(C).

192. *Id.*

Failure to comply with the foregoing provisions can subject the offender to a fine of not more than \$25,000 per day per violation and/or imprisonment for not more than one year.¹⁹³ The Act also makes it a felony for any person to knowingly make any false statement in any documents to be filed and maintained under the Act, or to falsify, tamper with, or knowingly render inaccurate any monitoring device required to be maintained under the Act.¹⁹⁴ Upon conviction, a violation of this provision could result in a fine of up to \$10,000 and/or imprisonment of up to six months.¹⁹⁵

Many of the early convictions under the Clean Air Act related to gray-market vehicle emission problems.¹⁹⁶ More recently, violations of federal asbestos regulations have become a greater concern. In *United States v. DAR Construction, Inc.*, a contracting firm and one of its foremen were found guilty under the Clean Air Act because they violated federal asbestos removal and handling regulations.¹⁹⁷ The indictment was brought when health and safety officials attempted to stop an asbestos removal project after one of the defendants directed workers to conceal asbestos waste materials.¹⁹⁸ In a similar case, a company and four of its managers pled guilty to conspiracy to violate the Clean Air Act asbestos standards.¹⁹⁹

193. *Id.* § 7413(c)(1).

194. *Id.* § 7413(c)(2).

195. *Id.*

196. *See, e.g.*, *United States v. Import Certification Labs., Inc.*, 18 *Env't Rep.* (BNA) 1993, 1993 (C.D. Cal. Jan. 8, 1988)(company president and employees sentenced to prison terms or probation for filing false reports certifying imported vehicles tested by company complied with air pollution laws); *United States v. Custom Eng'g, Inc.*, 18 *Env't Rep.* (BNA) 466, 466 (C.D. Cal. May 4, 1987)(company received probation and its president six months in jail and five years probation for reporting false testing results).

197. 20 *Env't Rep.* (BNA) 21, 21 (S.D.N.Y. Apr. 7, 1989).

198. *Id.* The defendant construction company and its foreman, Maurice Dieyette, were charged with violating provisions of the Clean Air Act. *Id.* The charges were filed because they removed dry asbestos from building pipes and dropped it 25 feet to the ground, releasing clouds of asbestos. *Id.* DAR Construction pled guilty to three violations and was ordered to pay over \$50,000 in fines. *Id.* Mr. Dieyette was convicted by a jury and sentenced to 90 days in jail and three years probation. *Id.*

199. *United States v. Cuyahoga Wrecking Co.*, 19 *Env't Rep.* (BNA) 1289, 1289 (C.D. Cal. Oct. 11, 1988); *see also* *United States v. Schwab*, 19 *Env't Rep.* (BNA) 1289, 1289 (E.D.N.Y. Oct. 19, 1988)(president of Cuyahoga Wrecking convicted of bribing EPA official responsible for monitoring asbestos abatement projects). Mr. Schwab faces up to 30 years in jail. *Id.*

F. *Other Environmental Statutes*

Criminal provisions are also found in several other federal statutes not addressed in this article. However, the following criminal provisions should be reviewed when attempting to discern whether a criminal act has occurred. These provisions include: the Rivers and Harbors Appropriations Act,²⁰⁰ the Hazardous Materials Transportation Act,²⁰¹ and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).²⁰²

III. ENFORCEMENT OF ENVIRONMENTAL CRIMES UNDER TITLE 18 OF THE UNITED STATES CODE

In order to effectuate longer sentences for persons committing environmental crimes, prosecutors have begun using several traditional criminal statutes. Often included in the indictment are counts of conspiracy,²⁰³ false statements,²⁰⁴ mail fraud,²⁰⁵ wire fraud,²⁰⁶ aiding and abetting,²⁰⁷ and violations of the Racketeer Influenced Corrupt Organization Act (RICO).²⁰⁸

A. *Conspiracy*

Under 18 U.S.C. § 371, a felony is committed when two or more persons conspire to commit an offense against the United States or

200. 33 U.S.C. § 411 (1982). This section of the Rivers and Harbors Appropriations Act contains the penalty provisions "for [the] wrongful deposit of refuse; use of or injury to harbor improvements, and obstruction of navigable water[s]" The section states:

Every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize, or instigate a violation of the provisions of sections 407, 408, and 409 of this title shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$2,500 nor less than \$500, or by imprisonment (in the case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction.

Id.

201. 49 U.S.C. § 1809(b) (1982). This statute provides criminal penalties for any person who willfully violates a provision of the Hazardous Materials Transportation Act. *Id.* Criminal penalties for each offense can result in a fine up to \$25,000 and/or imprisonment up to 5 years. *Id.*

202. 7 U.S.C. § 136(j)(A)(1), (2) (1988)(unlawful acts as defined under FIFRA).

203. 18 U.S.C. § 371 (1988).

204. *Id.* § 1001.

205. *Id.* § 1341.

206. *Id.* § 1343.

207. *Id.* § 2.

208. *Id.* §§ 1961-1963.

any agency of the United States, and one or more of the persons commits an act to effect the object of the conspiracy.²⁰⁹ Violations of this statute are often alleged where two or more persons have conspired to violate environmental laws (i.e., illegally dispose of hazardous wastes). Punishment for a conviction under this statute can result in imposition of a fine of up to \$10,000 and/or imprisonment of up to five years.²¹⁰ However, if the offense which is the object of the conspiracy is punishable as a misdemeanor, then the punishment for the conspiracy cannot exceed the punishment for the misdemeanor.²¹¹

In *United States v. Import Certification Laboratories, Inc.*, three laboratory managers pled guilty to charges of conspiracy to defraud the United States.²¹² The managers and the company president purportedly filed false statements certifying that the imported vehicles complied with air pollution control laws.²¹³ Over a period of three years, the company reported that almost 8,000 vehicles had met emission standards when they clearly had not.²¹⁴ In this case, the convictions obtainable under the conspiracy statute were more severe than those allowable under the Clean Air Act.²¹⁵

B. *False Statements*

Another statute frequently used in connection with environmental crimes relates to the making of false statements under 18 U.S.C. § 1001. This statute makes it a felony to “knowingly and willfully” falsify, conceal, or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statements or representations, or make or use any “false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.”²¹⁶ The statute applies to any matter within the jurisdiction of any department or agency of the United States.²¹⁷ This statute would

209. *Id.* § 371.

210. *Id.*

211. *Id.*

212. 18 Env't Rep. (BNA) 1993, 1993 (C.D. Cal. Jan. 8, 1988).

213. *Id.*

214. *Id.*

215. *Id.* In this case the federal conspiracy statute provided for imprisonment of up to 5 years, whereas, the Clean Air Act only provides for criminal penalties of up to 1 year for a first conviction. Compare 18 U.S.C. § 371 (1988)(criminal conspiracy sanctions under statute) with 42 U.S.C. § 7413(c)(1) (1988)(criminal sanctions under Clean Air Act).

216. 18 U.S.C. § 1001 (1988).

217. *Id.*

be useful where the environmental statute violated did not contain criminal provisions for making false statements to an agency. For example, no criminal provisions exist within the Underground Storage Tank regulations promulgated pursuant to RCRA.²¹⁸ However, 18 U.S.C. § 1001 could be used to punish false statements made to the EPA in connection with the Underground Storage Tank regulations, if such statements were made knowingly or willfully. A conviction under this statute could result in imprisonment of up to five years and/or a fine of up to \$10,000.²¹⁹

Several cases have been brought under the foregoing statute. Pollution Control Industries, an Indiana hazardous waste treatment company, was recently fined \$200,000 for making false statements to an agency in connection with the illegal disposal of benzene.²²⁰ The company had contracted to remove benzene from tanks at an abandoned steel mill and transport it to Texas for disposal.²²¹ Instead, the company diverted the material to its facility for treatment and disposal.²²² In *United States v. Import Certification Laboratories, Inc.*, the company, its president, managers and employees, pled guilty to knowingly making false statements in connection with test reports for vehicle emission certifications.²²³ The defendants had falsely certified that imported automobiles which the company had tested complied with air pollution control statutes.²²⁴

C. Mail Fraud and Wire Fraud

Title 18 also contains criminal penalties for anyone who attempts to

218. 42 U.S.C. § 6991 (Supp. V 1987)(enabling statute for underground storage tank regulations); see also 40 C.F.R. §§ 280.10-.74, .90-.111 (1989)(federal regulations for underground storage tanks). See generally Comment, *LUST—Deep in the Heart of Texas: Federal EPA Regulations Affecting Underground Storage Tanks—The Texas Statutory and Regulatory Counterparts*, 21 ST. MARY'S L.J. 401, 408-42 (1989)(discussion of underground storage tank regulations).

219. 18 U.S.C. § 1001 (1988).

220. *United States v. Pollution Control Indus. of Am., Inc.*, 20 Env't Rep. (BNA) 579, 579 (N.D. Ind. June 19, 1989).

221. *Id.*

222. *Id.* The company made the false statements to the government agency when Pollution Control represented that they would dispose of the benzene in Texas. *Id.*

223. 18 Env't Rep. (BNA) 1993, 1993 (C.D. Cal. Jan. 8, 1988). The president of Import Certification Lab received a one year prison sentence without parole, \$50,000 fine and five years probation. *Id.* He was also enjoined from working "in the automotive compliance, repair, or testing business." *Id.*

224. *Id.*

defraud any person by sending materials through the United States mail, or by transmitting materials by means of wire, radio, or television communication in interstate or foreign commerce.²²⁵ Conviction under these sections can result in imprisonment of up to five years and a fine of up to \$1,000.²²⁶ In two unreported cases, defendants pled guilty to counts of mail fraud relating to the illegal certification of gray-market vehicles under the Clean Air Act.²²⁷ Both cases involved the forwarding of false certifications to the EPA by use of the United States mails in violation of title 18.²²⁸

D. *Aiding and Abetting*

Under 18 U.S.C. § 2, anyone who aids or abets a crime or procures its commission can be prosecuted as a principal.²²⁹ In a very recent case, *United States v. Hoflin*, the defendant, Hoflin, was the Director of Public Works for the City of Ocean Shores, Washington.²³⁰ Hoflin instructed a plant employee to haul drums containing paint waste to a sewage treatment plant and bury them.²³¹ Hoflin was convicted of aiding and abetting the disposal of the wastes in violation of RCRA and 18 U.S.C. § 2.²³²

E. *Racketeer Influenced Corrupt Organization Act*

Although this statute was initially directed at racketeering operations, prosecutions under the statute have not been limited to the typical racketeering operations. The Racketeer Influenced Corrupt Organization Act (RICO) basically prohibits persons from acquiring or operating an enterprise through a pattern of racketeering activ-

225. 18 U.S.C. §§ 1341, 1343 (1988).

226. *Id.*

227. *United States v. Carlson*, 18 Env't Rep. (BNA) 2080, 2080 (C.D. Cal. Jan. 29, 1988)(defendant sentenced to three years probation after pleading guilty to mail fraud charges); *United States v. Customs Eng'g, Inc.*, 18 Env't Rep. (BNA) 466, 466 (C.D. Cal. May 29, 1987)(company and its president pled guilty to mail fraud).

228. *Carlson*, 18 Env't Rep. (BNA) at 2080; *Customs Eng'g*, 18 Env't Rep. (BNA) at 466.

229. 18 U.S.C. § 2 (1988).

230. 880 F.2d 1033, 1034 (9th Cir. 1989), *cert. denied*, ___ U. S. ___, 110 S. Ct. 1143, ___ L. Ed. 2d ___, (1990).

231. *Id.* at 1035.

232. *Id.* at 1036. Hoflin was also convicted of violating 42 U.S.C. § 6928(d). *Id.* See also *United States v. Ward*, 676 F.2d 94, 96-97 (4th Cir.)(defendant convicted of unlawful disposal of PCBs, and aiding and abetting under 18 U.S.C. § 2), *cert. denied*, 459 U.S. 835 (1982). For a discussion of the *Ward* case, see *supra* notes 127-31 and accompanying text.

ity.²³³ A pattern of racketeering activity may be established by two or more violations of certain offenses including mail fraud or wire fraud.²³⁴ Consequently, multiple mailings of correspondence between company employees containing some environmental reports which include untrue or false information could potentially result in a conviction under RICO. Indeed, the potential criminal sanctions of a legal conviction are extremely far-reaching because an offender convicted under this statute shall be subject to the forfeiture of certain property and face up to 20 years imprisonment.²³⁵ Consequently, RICO becomes an extremely attractive statute for use in the conviction of environmental crimes.

F. *The Federal Sentencing Guidelines*

Jail sentences in environmental cases will undoubtedly increase because much of the discretion previously available in sentencing defendants has been eliminated by the issuance of the Federal Sentencing Guidelines.²³⁶ The guidelines contain separate parts relating to offenses involving the environment and offenses involving public safety.²³⁷ These guidelines will require judges in federal cases to impose specific sentences on defendants who plead guilty or are found guilty, leaving little room for prosecutorial discretion. The likelihood of receiving jail terms for first offenses will increase and for the second offense, is almost certain. A practitioner should consult the Federal Sentencing Guidelines Manual to determine its applicability in dealing with a criminal environmental matter.

IV. TEXAS STATUTES CONTAINING CRIMINAL PROVISIONS

In addition to liability under federal criminal provisions, facilities located in Texas may also be subject to criminal provisions under various state statutes. The Texas regulatory scheme includes an intricate

233. See 18 U.S.C. § 1962 (1988)(unlawful to engage in racketeering activity).

234. *Id.* § 1961(1), (5) (defines racketeering activities and pattern of racketeering activity). A "pattern of racketeering activity requires at least two acts of racketeering activity, [as defined in 18 U.S.C. § 1961(1)] one of which occurred after the effective date of this chapter . . . and the last . . . within ten years . . ." *Id.* § 1961(5).

235. *Id.* § 1963.

236. FEDERAL SENTENCING GUIDELINES MANUAL (West 1990).

237. *Id.* Offenses involving the environments are contained in Part Q. *Id.* at 161-67. Federal sentencing guidelines involving public safety, more specifically the transportation of hazardous materials is contained in part K. *Id.* at 135.

series of statutes, rules and regulations pertaining to the environment. Several state agencies exercise enforcement responsibilities over water resources, solid and hazardous waste management programs, state "Superfund" programs, air programs, asbestos matters, oil and gas operations, and a myriad of other areas. These agencies have announced their intention to use these provisions more frequently in the future for situations which warrant criminal prosecution. Although only one published decision brought under these provisions could be located, many state agencies have announced their intention to use these provisions more frequently in the future, where the situations warrant criminal prosecution.²³⁸

A. *Texas Solid Waste Disposal Act*

The state equivalent of both the federal RCRA and CERCLA programs can be found in the Texas Solid Waste Disposal Act (TSWDA).²³⁹ The regulations promulgated under the TSWDA which relate to hazardous wastes adopt by reference most of the federal RCRA regulations. The Texas regulations provide somewhat broader coverage in certain instances than the federal RCRA regulations. Inasmuch as the state RCRA program mirrors the federal program, it will not be discussed in detail.

As stated above, the Texas Solid Waste Disposal Act also contains the state equivalent of the federal Superfund statute. However, unlike the state RCAA regulations, the state Superfund statute differs substantially from the federal statute. The statute covers the state participation in the Federal Superfund program. The state submits lists of abandoned and/or uncontrolled sites to the EPA for consideration for Superfund remedial action. If sites qualify for listing on the EPA's National Priority List (NPL) of disposal sites eligible for federally funded clean-up, they become federal Superfund sites.²⁴⁰ In addition to state involvement with the federal Superfund program, Texas has enacted a "state Superfund" which addresses sites not eligible for federal clean-up. The Texas Superfund statute is embodied in chapter

238. See *infra* footnote 259.

239. TEX. HEALTH & SAFETY CODE ANN. §§ 361.001-.345 (Vernon Supp. 1990).

240. TEX. WATER CODE ANN. § 26.304 (Vernon 1988). The Texas Legislature created a disposal facility response fund to pay the state's share of funds required by the federal government or federal laws to pay for removal and remedial action with regard to disposal facilities. *Id.*

361 of the Texas Solid Waste Disposal Act.²⁴¹ Like its federal counterpart, the Texas Superfund statute establishes the procedure for listing sites eligible for clean-up, identifies categories of private parties who may have liability for cleaning up contaminated sites, and provides the state with the authority to issue administrative orders and sue private parties to compel the clean-up of sites.²⁴² Many of the provisions of the Texas Superfund statute mirror CERCLA; however, there are significant differences contained within the Texas statute which the practitioner should consult.

The TSWDA only provides a few criminal penalties. These penalties can be imposed for a person who knowingly:

- (1) Transports, or causes to be transported, for storage, processing, or disposal, any hazardous waste to any location that does not have a permit as required by the [TWC] exercising jurisdiction under this Chapter [361];
- (2) Stores, processes, or disposes of, or causes to be stored, processed, or disposed of, any hazardous waste without a permit as required by the [TWC] . . . under this Chapter [361] or in knowing violation of any material condition or requirement of a permit or of an applicable interim status rule or standard;
- (3) Omits or causes to be omitted material information or makes or causes to be made any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used to comply with any requirement of this Chapter [361] applicable to hazardous wastes;
- (4) Generates, transports, stores, processes, or disposes of, or otherwise handles, or causes to be generated, transported, stored, processed, disposed of, or otherwise handled, hazardous wastes, whether the activity took place before or after September 1, 1981, and who knowingly destroys, alters, conceals, or does not file, or causes to be destroyed, altered, concealed, or not filed, any record, application, manifest, report, or other document required to be maintained or filed to comply with the rules adopted by the [TWC] under this Chapter [361]; or
- (5) Transport without a manifest, or cause to be transported without a

241. TEX. HEALTH & SAFETY CODE ANN. §§ 361.181-203, 361.271-280, 361.341-345 (Vernon Supp. 1990). Sections 361.181 through 361.203 detail the applicable statutes relating to the registration and cleanup of hazardous waste facilities. *Id.* §§ 361.181-203. Sections 361.271 through 361.280 discuss the enforcement and administrative provisions of the TSWDA. *Id.* §§ 361.271-203. Finally, subchapter L lists the cost recovery statutes. *Id.* §§ 361.341-345.

242. *Id.* §§ 361.181-203, 361.271-280, 361.341-345.

manifest, any hazardous waste required by the rules adopted by the [TWC] under Chapter 361 to be accompanied by a manifest.²⁴³

The above provisions basically are equivalent to those found in section 6928(d) of RCRA.²⁴⁴ The available penalties in the Texas statute are identical to those imposed under RCRA and provide for a fine of up to \$50,000 per day, per violation and imprisonment of between two and five years.²⁴⁵ Penalties may be doubled with respect to both fine and imprisonment for second convictions.²⁴⁶

The TSWDA also contains a knowing endangerment provision similar to that found in RCRA.²⁴⁷ This provision provides for the imposition of penalties of up to \$250,000 and imprisonment for up to 15 years if the person:

knowingly transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, hazardous wastes in violation of [Chapter 361] and the person knows at the time that the person by the person's conduct places another person in imminent danger of death or serious bodily injury.²⁴⁸

Once again, a person other than an individual that commits any offense under this section is subject upon conviction to a fine of up to \$1,000,000.²⁴⁹

The provisions of the TSWDA relating to the state Superfund program do not contain any independent criminal provisions. Moreover, the state Superfund statute does not contain release notification requirements as does the federal statute. As previously discussed, most of the convictions under CERCLA stem from failure to report a release. Consequently, this is not a concern under the state Superfund

243. *Id.* § 361.221.

244. *Compare* 42 U.S.C. § 6928(d) (Supp. V 1987)(criminal penalties under RCRA) *with* TEX. HEALTH AND SAFETY CODE ANN. § 361.221 (Vernon Supp. 1990)(Texas criminal penalties under TSWDA).

245. TEX. HEALTH & SAFETY CODE ANN. § 361.221(b).

246. *Id.* § 361.221(c).

247. *Id.* § 361.222. *Compare id.* (Texas knowing endangerment criminal penalties) *with* 42 U.S.C. § 6928(e) (Supp. V 1987)(criminal penalties for knowing endangerment under RCRA).

248. TEX. HEALTH & SAFETY CODE ANN. § 361.222(a), (b) (Vernon Supp. 1990).

249. *Id.* § 361.222(c); *see also id.* § 361.222(g) (definition of "person"). The statute states that "[i]n this section, 'person' means an individual, corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of individuals." *Id.*

statute (although federal reporting must certainly be accomplished) because there are no criminal penalties for a failure to notify.

B. *Texas Water Code*

The Texas Water Commission (TWC) has primary authority under the Texas Water Code to protect the waters of the state.²⁵⁰ The TWC regulates two of the most comprehensive water programs—the waste water discharge program and the injection well program. Additionally, the TWC is responsible for establishing and policing numerous other regulations, such as the regulations implementing water quality standards, the domestic sewage discharge regulations, and the oil and hazardous material spill response regulations.

The Texas Railroad Commission exercises responsibility for water programs relating to oil and gas activities. The Railroad Commission regulates the waste water discharge program²⁵¹ and the injection well program.²⁵² The Railroad Commission program requirements are similar to the TWC program requirements.

Subchapter D of chapter 26 of the Texas Water Code sets forth the enforcement authority for violations of chapter 26 or any rule, permit, or order of the TWC.²⁵³ Certain additional penalties are set forth in chapter 26 in connection with violations relating to the failure to clean up or report spills under the Texas Hazardous Substances Spill Prevention and Control Act.²⁵⁴ Section 26.121 of the Water Code expressly prohibits: (1) unauthorized discharges of sewage, municipal waste, recreational waste, agricultural or industrial waste into or adjacent to any water in the state;²⁵⁵ (2) the discharge of other wastes into or adjacent to any water in the state that may cause pollution;²⁵⁶ and (3) any other acts that may cause pollution in any water of the state.²⁵⁷ Therefore, section 26.121 grants broad authority over any type of pollution affecting the “water in the state.” The term “water in the state” means:

250. TEX. WATER CODE ANN. § 5.012 (Vernon 1988).

251. Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.8 (West 1989)(water protection).

252. *Id.* §§ 3.9, 3.46, 3.71 (injection wells, fluid injection and underground hydrocarbon storage regulations).

253. TEX. WATER CODE ANN. §§ 26.121-.136 (Vernon 1988).

254. *Id.* § 26.268.

255. *Id.* § 26.121(a)(1) (section effective until delegation of NPDES permit authority).

256. *Id.* § 26.121(a)(2).

257. *Id.* § 26.121(a)(3).

groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.²⁵⁸

Thus, the broad definition of waters of the state empowers the TWC and the Railroad Commission to control nearly every conceivable discharge into state waters.

Section 26.212 delineates the type of offense which may result in a criminal conviction under the Act,²⁵⁹ providing:

- (a) No person may discharge or cause or permit the discharge of any waste into or adjacent to any water in the state which will cause water pollution unless the waste is discharged in compliance with a permit or order issued by the [TWC] or the Railroad Commission of Texas . . . [and]
- (b) No person to whom the [TWC] has issued a permit or other order authorizing the discharge of any waste at a particular location may discharge or cause or permit the discharge of the waste in violation of the requirements of the permit or order.²⁶⁰

A practitioner should note that the foregoing provisions do not require a knowing or willful act for liability under this section. However, a violation of section 26.212 is only a misdemeanor, and conviction is punishable only by a fine of up to \$10,000.²⁶¹ The statute further provides that each day that a violation occurs constitutes a separate offense under this section.²⁶²

The foregoing sections are effective until the state has received Na-

258. *Id.* § 26.001(5) (Vernon Supp. 1990).

259. *Id.* § 26.212. This section will remain effective until the delegation of NPDES permit authority by the federal government. *Id.* Upon delegation of this authority, the alternative criminal offense section will become effective. *Id.* Only one criminal case brought under these provisions could be located. In *American Plant Food Corp. v. Texas*, the defendant, American Plant Food, was convicted of discharging pollution into the waters of the state in violation of section 21.552 of the Texas Water Code (now TEX. WATER CODE ANN. § 26.212 (Vernon 1988)). 587 S.W.2d 675, 681-82 (Tex. Crim. App. 1979). The Texas Court of Criminal Appeals affirmed the conviction. *Id.* at 686.

260. TEX. WATER CODE ANN. § 26.212(a)-(b) (Vernon Supp. 1990).

261. *Id.* § 26.213 (Vernon 1988)(provision effective until NPDES delegation).

262. *Id.*

tional Pollutant Discharge Elimination System (NPDES) authority pursuant to the Clean Water Act.²⁶³ The state should receive NPDES permit authority sometime in 1990. Upon delegation of NPDES permit authority, it will be a criminal offense to:

(c) [W]ilfully or negligently cause, suffer, allow, or permit the discharge from a point source, of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of [Chapter 26], or of any rule, regulation, permit, or other order of the [TWC],²⁶⁴

(d) Knowingly make any false statement, representation, or certification in any application, notice, record, report, plan, or other document filed or required to be maintained under [Chapter 26], or under any rule, regulation, permit, or other order of the [TWC],²⁶⁵

(e) [F]alsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under [Chapter 26] or under any rule, regulation, or permit, or other order of the [TWC].²⁶⁶

Anyone who violates the provisions of subsection (c), (d), or (e) of section 26.212 can be convicted of a misdemeanor.²⁶⁷ Penalties could result in a fine of up to \$25,000.²⁶⁸ However, violations of NPDES permit limitations can be punishable by a fine of up to \$10,000 with each day of violation constituting a separate offense.²⁶⁹

A person who violates section 26.031 of the Texas Water Code (relating to private sewage facilities) or an order adopted by a county under Section 26.032 of the Texas Water Code can be liable for criminal penalties.²⁷⁰ This section provides for a misdemeanor conviction punishable by a fine of between \$10 and \$200.²⁷¹ Once again, each day that a violation occurs will constitute a separate offense.²⁷²

Another water-related statute containing criminal provisions is the

263. 33 U.S.C. § 1251 (1982 & Supp. V 1987).

264. TEX. WATER CODE ANN. § 26.212(c) (Vernon 1988).

265. *Id.* § 26.212(d).

266. *Id.* § 26.212(e).

267. *Id.* § 26.213(b).

268. *Id.*

269. *Id.*

270. *Id.* § 26.214; *see also id.* §§ 26.031-. 032 (statutes governing private sewage facilities and control by county of private sewage facilities).

271. *Id.* § 26.214(a).

272. TEX. WATER CODE ANN. § 26.214(a) (Vernon 1988).

Texas Hazardous Substances Spill Prevention and Control Act.²⁷³ The statute sets forth the state's policy to prevent the spill or discharge of hazardous substances into the waters of the state and to effectuate the rapid removal of the discharges and spills.²⁷⁴ The Act promulgates regulations to govern spills or discharges of oil or hazardous substances into the waters of the state.²⁷⁵ It also imposes requirements upon responsible persons to undertake actions to remove or abate the discharges or spills.²⁷⁶ The Act provides for the imposition of criminal penalties in two instances: where "any person operating, in charge of, or responsible for a facility or vessel which causes a discharge or spill" fails to report the spill (similar to the federal CERCLA provisions), and where any person "knowingly falsifies records or reports concerning the prevention or clean-up of a discharge or spill as provided for in [Chapter 26 of the Texas Water Code]."²⁷⁷ Violation of the first provision could result in a conviction for a Class A misdemeanor, whereas a conviction under the second provision could result in a third degree felony.²⁷⁸

C. *Underground Injection Well Control*

The federal government has delegated to Texas the responsibility for the underground injection control program under the terms of the federal Safe Drinking Water Act.²⁷⁹ Pursuant to this authority, Texas injection wells are governed by the Injection Well Act set forth in chapter 27 of the Texas Water Code.²⁸⁰ The Texas Water Commission and the Railroad Commission share regulatory authority of injection wells.²⁸¹ Under the Injection Well Act, the TWC has regulatory authority over the construction and use of injection wells used for the disposal of industrial municipal waste, the extraction of minerals, and the injection of fluids.²⁸² The Railroad Commission has the regulatory authority over the construction and operation of disposal wells

273. *Id.* §§ 26.261-.268 (Vernon 1988 & Supp. 1990).

274. *Id.* § 26.262 (Vernon 1988).

275. *Id.* §§ 26.263-.265 (Vernon 1988 & Supp. 1990).

276. *Id.* § 26.266.

277. *Id.* § 26.268(c)-(d) (Vernon 1988).

278. *Id.*

279. 42 U.S.C. § 300h-1(b) (1982).

280. TEX. WATER CODE ANN. §§ 27.001-.105 (Vernon 1988 & Supp. 1990).

281. *Id.* §§ 27.011, .031 (Vernon 1988)(sections detailing TWC and Railroad Commission permit authority).

282. *Id.* § 27.011.

used for oil and gas wastes.²⁸³ "Oil and gas wastes" have been defined as:

wastes arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources, wastes arising out of or incidental to the underground storage of hydrocarbons other than storage and artificial tanks or containers, or wastes arising out of or incidental to the operation of gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants. The term includes but is not limited to saltwater, brine, sludge, drilling mud, and other liquid or semi-liquid waste material.²⁸⁴

The Texas Water Commission and the Railroad Commission have adopted numerous rules and regulations to meet their regulatory obligations under the Injection Well Act.

The Injection Well Act provides for the imposition of criminal fines for any person who knowingly or intentionally violates chapter 27 of the Texas Water Code or a rule of the Texas Water Commission or Railroad Commission, or a term, condition, or provision of a permit issued under chapter 27.²⁸⁵ A violation can result in a fine of up to \$5,000 per day per violation.²⁸⁶

Chapter 91 of the Texas Natural Resources Code also contains provisions relating to oil and gas operations.²⁸⁷ Section 91.101 requires the Railroad Commission to adopt and enforce rules and orders relating to the drilling of exploratory oil and gas wells, the production of oil and gas, and the operation, abandonment, and proper plugging of oil wells.²⁸⁸ Criminal penalties can be imposed for anyone who wilfully or with criminal negligence violates the foregoing section, or any rule, order, or permit of the Railroad Commission issued under section 91.101.²⁸⁹ Any person found guilty of violating section 91.002 can be punished by a fine of up to \$10,000 per day for each day the violation is committed.²⁹⁰

283. *Id.* § 27.031.

284. *Id.* § 27.002(6).

285. *Id.* § 27.105.

286. *Id.*

287. TEX. NAT. RES. CODE ANN. §§ 91.001-.556 (Vernon 1988 & Supp. 1990).

288. *Id.* § 91.101 (Vernon Supp. 1990).

289. *Id.* § 91.002(a).

290. *Id.* § 91.002(b).

D. *Radioactive Materials*

The state has also enacted provisions which “protect occupational and public health and safety and the environment” from sources of radiation.²⁹¹ The regulatory scheme provides a program to “permit maximum use of sources of radiation consistent with public health and safety and environmental protection.”²⁹² The program is administered by the Texas Department of Health.²⁹³ Any person who “intentionally or knowingly receives, processes, concentrates, stores, transports, or disposes of radioactive waste without a [valid] license issued under” chapter 401 commits a Class A misdemeanor under the Act.²⁹⁴ An offense under this section could result in a fine of between \$2,000 and \$100,000, and/or confinement for not more than one year in the county jail.²⁹⁵

Additional criminal penalties exist for persons who intentionally or knowingly violate a provision of chapter 401 other than the offenses described in section 401.383.²⁹⁶ An offense under this section is a Class B misdemeanor, unless the person has previously been convicted of an offense under this section, in which case the offense would be a Class A misdemeanor.²⁹⁷

V. THE ENVIRONMENTAL CRIMES ACT OF 1989 (HR 3641)

In November of 1989, Representative Charles Schumer and George Gekas introduced what is presently titled as the Environmental Crimes Act of 1989.²⁹⁸ The proposed legislation, to be codified in title 18 of the United States Code, would impose more serious criminal sanctions for those who commit an environmental crime and knowingly or recklessly cause the risk of: (1) imminent death of a human being, (2) serious bodily injury to a human being, or (3) an environment catastrophe.²⁹⁹ The foregoing proposed provision appears to be similar to the “knowing endangerment” provision provided for under

291. TEX. HEALTH AND SAFETY CODE ANN. § 401.001 (Vernon Supp. 1990).

292. *Id.* § 401.002(4).

293. *Id.* § 401.011(a).

294. *Id.* § 401.383(a)-(b).

295. *Id.* § 401.383(b).

296. *Id.* § 401.382(a).

297. *Id.* § 401.382(b).

298. 20 Env't Rep. (BNA) 1420, 1420 (Dec. 15, 1989).

299. H.R. 3641, 101st Cong., 1st Sess., 135 CONG. REC. D1338-02 (1989)(proposed amendment to 18 U.S.C. § 731).

RCRA, but would broaden such offenses to crimes under other statutes.³⁰⁰

The proposed legislation would also impose severe penalties for those criminals engaging in a series of environmental crimes (two or more) where such conduct poses a risk to humans or the environment.³⁰¹ The sentences which could be imposed for violations range from 15 years and \$250,000 fines for first violations up to 30 years in prison and \$500,000 fines for second violations.³⁰² Organizations could potentially receive fines of three to four times the stated amounts, depending on the offense.³⁰³ The House Judiciary Sub-Committee on Criminal Justice has confirmed that the proposed legislation is still under Sub-Committee review.³⁰⁴

VI. CONCLUSION

Although the number of convictions tallied to date by the Department of Justice seems fairly inconsequential in comparison to the extensive activity in the environmental arena, the trend towards obtaining criminal convictions in lieu of civil fines will undoubtedly continue. The heightened activity in this area can be likened to a feeding frenzy, with ambitious prosecutors leading the attack on environmental professionals. No longer will these prosecutors be satisfied prosecuting just the "midnight dumpers" or those with a "black heart." The latter type of convictions do not make as appealing headlines as when a corporate president is sentenced to jail.

Prosecutions will also inevitably increase at the state and local levels. More states are apt to follow the lead of California, New Jersey and Ohio, where prosecutors are seeking and obtaining longer jail terms than those imposed in similar federal matters. Texas has not followed this trend as of yet, although many state agency officials have stated their intention to seek criminal prosecutions more frequently. Since Texas agencies have historically been fairly successful in policing the industries in the state and shutting down the illegal disposers, it is questionable whether increased criminal prosecution in Texas is necessary or warranted.

300. *Id.* (proposed amendment to 18 U.S.C. § 735).

301. *Id.* (proposed amendment to 18 U.S.C. § 732).

302. *Id.* (proposed amendments to 18 U.S.C. §§ 731-732).

303. *Id.* (proposed amendments to 18 U.S.C. §§ 731-732).

304. 20 *Env't Rep.* (BNA) 1420, 1420 (Dec. 15, 1989).

Jail terms on the federal level will also increase due to the issuance of the federal sentencing guidelines. Judges and prosecutors have been virtually stripped of all discretionary power in sentencing defendants convicted of environmental crimes.

Although the resources expended by federal, state and local governments in pursuing environmental crimes could perhaps be put to better use, pressure from the public to prosecute such crimes will continue. The threat of incarceration under these statutes will undoubtedly continue to terrorize environmental professionals into compliance, eventually causing a shortage of personnel willing to take such positions. Unfortunately, increased enforcement is less likely to have any effect on the illegal disposers—those with a “black heart” who seek to profit from their actions. Yet sadly, both the middle management white collar worker and the midnight dumpers will be treated equally behind bars.

APPENDIX

CRIMINAL INDICTMENTS AND CONVICTIONS
 ENVIRONMENTAL CRIMES SECTION
 DEPARTMENT OF JUSTICE
 STATISTICS FROM FISCAL YEAR 1983 THROUGH
 JANUARY 26, 1990

	INDICTMENTS	BREAKDOWN	PLEAS/CONVICTIONS
FY 83	40		40
FY 84	43		32
FY 85	40		37
FY 86	94 (+85*)		67 (+83*)
FY 87	127		86
FY 88	124		63
FY 89	101		107
FY 90**	<u>37</u>		<u>29</u>
TOTAL	606		461

* These numbers stem from one investigation in Texas and Louisiana under FIFRA and MBTA involving pesticides and are not included in the totals.

** Through January 26, 1990

Of the 606 defendants indicted, 179 were corporations, and the remaining 427 were individuals. Of the 461 convictions, 138 have been against corporations, and the remaining 323 against individuals.

TOTALS

FINES IMPOSED	JAIL TERMS	ACTUAL CONFINEMENT
\$ 26,434,269	286 YRS., 2 MOS., 13 DAYS	104 YRS., 1 MO., 12 DAYS

Source: Interoffice memorandum from Peggy Hutchins to Joseph G. Block, Chief Environmental Crimes Section, United States Department of Justice (Jan. 26, 1990) (available at *St. Mary's Law Journal* office).