Countering Environmental Crimes

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COUNTERING ENVIRONMENTAL CRIMES

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Widespread public recognition of the need to eliminate pollution in its various forms is of comparatively recent origin. Manifested in the environmental statutes passed or amended over the past decade at every level of government and in many countries, this recognition has grown because of the disruptive and often irreversible effects of pollution. This heightened public sensitivity is not an historical accident. It is an inevitable result of the technological revolution that has swept industrialized nations, and, in varying degrees, the entire world during the twentieth century. By every measure, man’s exploitation of the limited resources available to him has risen by startling and unprecedented proportions. Due to a combination of rising production and falling death rates, population figures continue to climb at astronomical rates. With increased numbers, moreover, come increased demands on resources, energy and the natural environment that must continue to support these inhabitants.

Environmental protection statutes were enacted to address these demands. These statutes seek to establish a balance between industrialization and the equally important goal of protecting the public health and welfare while preserving natural resources. They reflect a new and widespread public ethic that demands a strong response to environmental abuse. In the United States, Congress recognized the public’s concern by providing criminal sanctions for violations of

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environmental laws and by providing substantial penalties, including incarceration, as one method to ensure that the goals of the legislation are achieved.¹

I. HISTORY OF REGULATION BY CRIMINAL SANCTION

The first comprehensive effort to establish a federal program to prosecute environmental crimes began in 1982. Our collective experience therefore remains fairly limited. In a remarkably short period of time, however, this program has moved into uncharted areas and achieved recognizable success by any objective standard. An enforcement presence has been established in nearly every geographic area of the country through our investigative activity and prosecution of selected cases.² Investigators and prosecutors have been hired and, along with their counterparts in the scientific fields, have been trained in the nuances of this legally, technically, and scientifically complex area of the law. Moreover, these efforts are centrally coordinated as part of a comprehensive effort to focus on the most serious cases of environmental abuse.

Before the criminal program was initiated, the federal government had no systematic program for investigating and prosecuting environmental crimes. A few, isolated criminal cases involving the violation of environmental laws evolved from discrete events, but they were sporadic and did not reflect a cohesive, deliberate effort. There were no investigators to pursue environmental criminals and no specialized group of attorneys to prosecute them. As a result, most of the cases referred to the Department of Justice for prosecution were declined — usually because they lacked merit, were insufficiently investigated, or did not receive the staff support necessary to bring them to trial.³ Since the development of this program, the situation

¹ In a recently published public opinion poll, 60,000 people were asked to rank the severity of particular crimes. In seventh place, after murder, but ahead of heroin smuggling and skyjacking, was environmental crime. According to the study, industrial criminal polluters are considered to be worse in the public's eye than armed robbers or those who bribe public officials. U.S. Department of Justice, Bureau of Justice Statistics Bulletin, January 1984.

² Currently there are 35 EPA criminal investigators, with offices in each of the 10 EPA Regions.

has changed. For instance, last year only a handful of cases were declined for prosecution, compared to a declination rate as high as 60% in prior years — proof that the capability to identify and investigate quality cases has increased.

In early 1981, the Land and Natural Resources Division of the United States Department of Justice and the United States Environmental Protection Agency (EPA), which is charged with responsibility for administering most of the environmental protection statutes, began to coordinate a program to investigate and prosecute environmental crimes. Any success enjoyed by this program can be largely attributed to these two organizations working together with established common goals and a clear recognition by each of the importance of the other.

In October, 1982 the first criminal investigators were hired by EPA. Following the theory that lawyers do not make cases, only worthy investigators do, the decision was made consciously to create EPA's own single-purpose, specialized group of agents to investigate allegations and to evaluate evidence of environmental crimes. Few of the investigators who came to EPA arrived with any environmental background; most came as experienced criminal investigators — one with over 20 years of investigative experience. Many investigators came from major metropolitan police departments; others were formerly employed by federal or state law enforcement agencies.

One of the many reasons for hiring investigators with these backgrounds was to bring to the field of environmental crimes the investigative expertise and law enforcement experiences that traditionally had been brought to bear on other criminal enterprises.

An Environmental Crimes Unit was organized in the Land and Natural Resources Division at the Department of Justice. It was staffed by attorneys with both criminal and environmental law experience in order to handle the increasing number of cases developed by these investigators. The primary purpose of this Unit has been to prosecute cases and seek substantial penalties, including incarceration in certain cases: (1) to afford an adequate deterrence against other potential misconduct and environmental abuse; (2) to promote respect for this nation's environmental laws; (3) to seek a just pun-

4 The enforcement of some environmental statutes is within the jurisdiction of other agencies. The Army Corps of Engineers, for example, administers the granting of permits to dredge or fill under Section 404 of the Federal Water Pollution Control Act, 33 U.S.C. § 1344 (1982). In addition, other federal agencies, such as the Department of Defense, Department of Transportation, the Customs Service and the Federal Bureau of Investigation often participate in the development of environmental criminal cases.
ishment of the offenders and (4) to remove the competitive advantage and economic incentive realized when a defendant disregards the requirements of the environmental statutes.

The objective results of these joint efforts have been impressive, particularly considering the very short time that has elapsed since this program was instituted. From October, 1983 to March, 1986, nearly 180 indictments have been returned and approximately 130 convictions or guilty pleas have been obtained. Only 50 entities have been charged in their corporate capacity; the remaining bulk have been against managerial level officials acting in that role. Over $1.5 million in fines have been judicially imposed, and a little over ten accumulated years of actually-served jail time has been meted out.

Our experience has shown that the conduct of the typical defendant in our cases is no different and no less serious than the conduct of one who has been convicted of the more traditional felonies—whether committed by a “white-collar” or “street crime” offender. The acts are generally willful, deliberate, rational, premeditated and committed with some forethought over a long period of time. There are seldom any mitigating circumstances such as signs of provocation, misperceptions of a need for self-defense, or acting in the heat of passion. In fact, no perceptible defense is generally offered — except that compliance was too expensive. As a consequence, it usually can be said that the government was willfully cheated and the public betrayed — both in terms of the harm to the environment and the cost to the public treasury — often by educated and privileged people who abuse their positions in society. Individuals who commit environmental crimes — particularly those involving hazardous wastes — commonly demonstrate a complete disrespect for the law and disregard for the safety of others, and are motivated by a desire to enjoy the substantial profits that can be derived from such illegal activities.

The overriding objective in prosecuting these cases is the deterrence of such conduct through the use of strong sanctions, including incarceration, for which Congress has provided. This criminal conduct usually reflects a conscious choice to violate anti-pollution laws, rather than to comply with the law, simply because it is cheaper to pay a fine as a mere cost of doing business. Often the crime is exacerbated by a cover-up and concealment which was planned, prepared, and agreed to in a business-like fashion after a cost/benefit

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5 See discussion of criminal sanctions under RCRA, TSCA, CERCLA and CWA, infra notes 16–51 and accompanying text.
analysis was done. At the outset, the financial profit that motivated the illegal act must be removed by sentences imposed, or the conduct will in the end have been "worth it." If these profits are not removed, non-compliance will be viewed simply as a less expensive way of doing business. Fines therefore must exceed, by a substantial amount, the illegal gain; incarceration must be used to punish as well as to deter.

For every case of criminal pollution that is detected and prosecuted, dozens, even hundreds, continue undetected and unabated. The penalty must, therefore, be large enough to deter others who ill-advisedly run the risk that their illegal activity will go undetected and unpunished.

Our experience has shown that steady movement has been made toward imposition of periods of incarceration for corporate officials. A number of factors have influenced this trend. First, there is a heightened public interest and concern for the environment and for the enforcement of environmental laws. Second, through the joint efforts of the Justice Department and the Environmental Protection Agency, prosecutors have gained more experience in seeking periods of incarceration as a means of deterrence and, where appropriate, have submitted detailed sentencing memoranda. Finally, because the numbers of such cases have climbed, courts are less reluctant to impose jail as a form of punishment. Admittedly, the imposition of criminal sanctions has a great impact on a defendant's personal life. This is particularly the case given the profile of the typical defendant—a "successful" businessman, or otherwise prominent citizen without a prior criminal record or other public blemish. For this reason, it is often difficult for courts to impose jail sentences, particularly where the harm to the environment and the public or any clearly perceptible victim is not immediately apparent or measurable. However, the nature of pollution is that, in even the most egregious cases, the harm will often not appear for years, or decades. In addition, single acts, incidents, or episodes of pollution may not, in and of themselves, cause devastating damage. In combination with other pollution, however, the damage to the environment and the public's health and welfare is clear.

The gravity of this cumulative threat to the environment was a decisive factor in *United States v. Distler*, when Judge Allen sentenced the defendant for dumping hazardous materials into the sewer system that served a major metropolitan area:

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6 No. 77-00108-L (W.D. Ky. 1979).
If the reckless disposal of pollutants is allowed to continue unchecked, it is this Court's fear that irreparable damage to our planet will result. Contamination will result in the eventual and predictable disappearance of visual land, water and other natural resources, causing an ecological imbalance which could result in the death of our world as we know it.

The Court considered at length the question of probation as against imprisonment . . . . It was and is the opinion of this court that businessmen and industries who pollute our environment are guilty of grave crimes against man, nature and themselves . . . . Such crimes, if allowed to continue, will soon reach the point where their effects are irreversible by any known technology . . . .

The Court is of the opinion that the offenses committed by the defendant were of such a serious nature that it would unduly deprecate or depreciate their seriousness if a sentence or probation were not imposed.7

More recently, in *United States v. Lanigan,*8 Judge Van Artsdalen made the following comments upon sentencing the company's president to a year in jail for allowing leachate to enter a nearby river from his landfill:

However, the laws of the United States and particularly the environmental laws are very important and have been so considered by all of the citizens of the United States. It is clear that in this type of situation where there is a business that is producing injury to the environment that the responsible officials will not pay attention, there are not many of them, will not comply with the law unless they are forced to do so and it is for that reason that the law provides very serious criminal penalties . . . . For instance, under the Federal Water Pollution Control Act which is involved in this case, a maximum fine of up to $25,000 per day of a continuing violation may be imposed . . . . I think it is necessary therefore and because of the purpose of the law there be a very strict limit of deterrence in any sentence that is imposed in a case of this sort wholly aside from any question of rehabilitation or personal punishment . . . . As to the defendant there are two types of effective deterrence. One of course is the imprisonment of the responsible official. The other is the law provides either or both, in cases of this sort, if the only punishment is a fine, a person might be inclined to violate the law and tend to look at it as simply being a bad business investment and they may pay a fine and thereafter can forget about any other type of restraint upon them.9

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7 Id.
9 Id.
II. FEDERAL ENVIRONMENTAL STATUTES

Before analyzing the specific environmental laws, some observations are in order. First, there is generally no such thing as a pure "environmental crime" case. Violation of environmental laws usually leads to evidence of more widespread violations of general criminal laws. More often than not, cases include such offenses as mail and wire fraud, false statements, false claims, and conspiracy. Second, to know and understand the environmental laws is to understand only a limited portion of what goes into prosecuting environmental cases. Beneath the surface of what appears to be fairly simple and straightforward laws lies the infrastructure of agency-created regulations, as well as the attendant problems of administrative procedure. Finally, only a few appellate courts have been called upon to review these cases, thus resulting in somewhat speculative statutory interpretation. In part this is due to the confusion within the defense bar as to how its attorneys approach these cases. Are these environmental cases? The answer is definitely an affirmative one; however, the general criminal defense attorney, unfamiliar with the complexities of environmental laws and its scientific and technical aspects, has little time to master these subjects before trial. Of course, the more cases we do, the more cases there are to defend and the more specialized the defense bar will become. There is every indication that such a speciality is growing.

A. The Resource Conservation and Recovery Act

The majority of cases focus on the illegal transportation, storage or disposal of hazardous waste. In simple terms, hazardous waste is the unwanted harmful byproduct of day-to-day industrial processes. It is the result of the manufacture of goods and services that we

14 The one exception is United States v. Johnson & Towers, 741 F.2d 662 (3d Cir. 1984), holding that the hazardous waste statute that prohibits disposal without a permit, 42 U.S.C. § 6928(d)(2)(A) (1982), applies to employees and not simply the company owners or operators. The most recent case is United States v. Hayes International, Civ. No. 84-7796 (11th Cir. Apr. 21, 1986).
15 Criminal cases are governed by the Speedy Trial Act, 18 U.S.C. §§ 3161–3174 (1982), which establishes specific time limits to ensure that the various stages of a criminal proceeding progress properly. Frequently, defense attorneys in multi-defendant cases are retained only after the indictment because it is often not until that time that conflicts of interests become apparent. Consequently, there is even less time to develop an expertise.
consumers demand. No one produces hazardous waste per se, but it is generated by towns and cities, dry cleaners, auto body repair shops, hospitals any many other mundane—and necessary—enterprises.

Current estimates place the annual production of hazardous waste in the United States at 150 million metric tons. Most of this is generated by chemical and allied products industries; the remaining roughly 40% is distributed among such other industries as non-electric machinery, primary metals, paper and allied products, stone, clay and glass products and others. Nearly 80 percent of the hazardous waste generated by such industries is believed to be disposed of on the property of these generators in pits, ponds, lagoons, landfills or incinerators. To be legally disposed of, however, the generator must either obtain a permit and comply with rigid regulatory standards, or the hazardous waste must be transported by a licensed transporter from the generator to a permitted treatment, storage, or disposal facility. Some of those places are secure landfills, incinerators, deep well injections, or recovery and neutralization processors. Only a comparatively few facilities operate legitimately, and these facilities must meet stringent standards. The cost of transportation may thus be high since the facility is often far from the generator.

The primary statute regulating hazardous waste is the Resource Conservation and Recovery Act (RCRA),16 passed by Congress in 1976 and amended in 1980 and 1984. The purpose of RCRA is to track hazardous waste from cradle to grave, from generation to disposal, through a system of manifests and permits. Under this scheme, a generator is required to notify EPA of any hazardous waste it generates, to obtain an identification number for manifesting purposes and to arrange for the proper disposal of its waste.17 The statute sets standards for transporters and requires them to follow a manifest system. Additionally, transporters must comply with the applicable Department of Transportation (DOT) regulations regarding the transportation of hazardous materials. Failure to act in conformity with DOT regulations may result in felony prosecution under the Hazardous Materials Transportation Act.18 A facility that treats, stores, or disposes of hazardous waste is required to obtain a permit that establishes certain standards for handling the waste.

17 A manifest is the form used to identify the quantity, composition, origin, routing and destination of hazardous waste during its transportation from point of generation to the point of disposal, treatment or storage. 42 U.S.C. § 6903(12) (1982).
The manifesting system requires the generator to identify the waste and to supply a manifest indicating its intended disposal site. Next, the transporter, who may be only a truck hauling firm, signs the manifest indicating receipt of the wastes. Thereafter, the manifest is signed at the disposal site to which the waste is delivered, and a copy is returned to the generator whose duty it is to reconcile any discrepancies and report any errors.

Failure to comply with any of the requirements of RCRA can lead to administrative, civil or criminal enforcement remedies. The statute makes it a crime for any person knowingly to transport hazardous waste to a facility without a permit or knowingly to treat, store, or dispose of any hazardous waste without having obtained a permit, or to knowingly violate a permit condition. Violation of any of these requirements is a felony with penalties ranging up to a $50,000 fine and/or five years imprisonment. Additionally, the statute subjects a violator to a maximum of a year's imprisonment and/or a $50,000 fine for knowingly filing documents containing false material statements, or for knowingly destroying, altering or concealing any reports required to be maintained under the law. Finally, if by violating any of these requirements one knowingly places another person in imminent danger of death or serious bodily injury, the violator is subject to fifteen years imprisonment and/or $250,000 in fines. If the conduct manifests an extreme indifference to human life, the penalties may range up to five years imprisonment and/or $250,000. Corporations may be fined up to one million dollars.

There are certain notable exemptions to the application of the RCRA requirements. For instance, the so-called domestic sewer exemption excludes from regulation any hazardous waste discharged as domestic sewage. Facilities that recycle, reuse, or reclaim their hazardous waste for use in some other capacity are also exempted from some of the requirements, as are “small quantity generators.”

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26 Id.
27 Id.
29 Id. § 261.4(a)(6)(7) (1986).
30 The EPA promulgated a regulation on May 19, 1980, to create an exemption from certain
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B. The Toxic Substances Control Act

In 1976 Congress enacted the Toxic Substances Control Act\textsuperscript{31} (TSCA) to regulate the hundreds of new chemicals that enter the marketplace each year. The Act provides EPA with authority to generally regulate toxic chemicals. Included within this, is the authority to require testing of existing chemical compounds suspected of being harmful. EPA may also require a manufacturer to give notice to the EPA ninety days prior to manufacturing a new chemical or marketing it for a new use.\textsuperscript{32} The EPA is given the authority to promulgate rules and regulations regarding the manufacturing, processing, distributing, and disposing of these chemicals.

Among the chemical substances about which Congress was concerned, polychlorinated biphenyls (PCBs) received special treatment. The manufacture, processing, distribution in commerce, and use of PCBs in other than a totally enclosed manner is prohibited except as provided under the regulations.\textsuperscript{33} Before certain activities are permitted, the Administrator of the EPA must make a finding that the activity would not present an unreasonable risk of injury to health or to the environment.\textsuperscript{34}

The criminal provisions of TSCA make it a crime knowing or willfully to violate any of the regulations implementing the Act.\textsuperscript{35}

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\textsuperscript{34} PCBs have been found to cause chloracne, skin and eye irritation, nausea, edema of the face and hands, liver disorders, as well as digestive disorder and abdominal pain in persons who are chronically exposed to it at concentrations ordinarily encountered in the workplace. There is substantial experimental epidemiological evidence that PCBs also pose a carcinogenic risk to humans. Furthermore, PCBs are very persistent in the environment; that is, they resist destruction by the physical, chemical or biological agents in nature. They accumulate in the tissues of humans, animals (especially fish), birds, and plants. PCBs, unless properly disposed of, will thus be around to work their ill effects upon mankind in the natural environment for generations to come. U.S. Environmental Protection Agency, \textit{Support Document Voluntary Environmental Impact Statement: PCB Manufacturing, Processing, Distribution in Commerce, and Use Ban Regulation: Economic Impact Analysis} 2 (Apr. 1979).
Most of the cases under TSCA involve the complex regulatory scheme governing the storage and disposal of PCBs and items containing PCBs during the transitional years when their use is being phased out. PCBs and PCB items not in use must be stored in accordance with requirements designed to ensure safe storage prior to disposal.\(^{36}\) Additionally, except as provided by regulation, PCBs and PCB items must be disposed of by high temperature incineration.\(^ {37}\) In some cases, alteration and incineration may be acceptable; such methods include chemical waste land fills,\(^ {38}\) high-efficiency boilers, and other methods approved by EPA.

C. The Comprehensive Environmental Response, Compensation and Liability Act

In addition to these laws, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), commonly referred to as "Superfund," is the other primary environmental statute that focuses on hazardous and toxic waste activity. Superfund was enacted in 1980 to complete the circle in the field of hazardous waste and toxic substance regulation. This law delegates to EPA the authority to respond to releases or threatened releases of hazardous waste into the environment and creates a mechanism to deal with problems arising from past disposal practices. The Superfund itself is a fund set up to pay for the clean-up of hazardous waste sites and is financed by taxes on the manufacture or importation of certain chemicals. The Act also establishes procedures for recovering the cost of any cleanup undertaken by the government.

Superfund's two criminal provisions involve sanctions for failing to notify the government when certain acts have occurred. The first provision requires any person in charge of a vessel or facility to notify the government when he or she learns of a release into the environment of a hazardous substance.\(^ {39}\) In order to avoid reports of *de minimis* amounts, the statute requires proof that more than one pound of the substance was released.\(^ {40}\) The statute defines a release as a leaking, pouring or dumping. This provision of the

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\(^{36}\) See 40 C.F.R. 761.60 (1986).

\(^{37}\) Id.

\(^{38}\) The 1984 Amendments to RCRA contain a section prohibiting the land disposal of liquid wastes containing 50 ppm or greater of PCBs after July 9, 1987.

\(^{39}\) 42 U.S.C. § 9603(b) (1982).

\(^{40}\) See generally 40 C.F.R. § 302.4 (1986).
statute is most often invoked where there has been a failure to notify of a disposal, resulting in violation of RCRA, as well as Superfund.

The other criminal provision covers owners and operators of facilities where hazardous wastes were treated, stored or disposed, and requires that notification be given to the government by June, 1981 of the existence of any such facility. The purpose of this requirement is to provide an inventory of former hazardous waste facilities. Violation of a single criminal section of the statute results in a misdemeanor punishable by up to a year's incarceration and/or up to a $10,000 fine.

D. The Clean Water Act

The other environmental law most frequently encountered in criminal cases is the Clean Water Act. Enacted as the Federal Water Pollution Control Act of 1972, and since amended three times, the basic structure of the Clean Water Act has remained the same. The Act set up a program, administered by EPA, whereby any "point" (for example, a sewage treatment plant or a factory) that discharges any pollutant into the waters of the United States is required to apply for and receive a permit. The permit is important because it restricts the amount of pollution that a permit holder may discharge. Permit holders are also required to monitor each pipe through which pollutants are discharged to determine whether the permit holder exceeded the pollution limits specified in the permit. The permit holder must submit reports showing the amount of pollution discharged by a facility.

The criminal provisions of the Act provide misdemeanor penalties of up to one year's incarceration and/or a $25,000 fine per day of violation for the willful or negligent discharge of a pollutant from a point source into the nation's waterways without a permit or in violation of a permit condition. Misdemeanor penalties are also provided for anyone who knowingly makes a false statement in any document required to be filed or maintained under the Act, or who tampers with any device required to be maintained under the Act. The other sanctions are applied for failing to notify the government.

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when oil or a hazardous substance is spilled from a vessel or facility into any navigable waterways.\textsuperscript{45}

In \textit{United State v. A.C. Lawrence Leather Company},\textsuperscript{46} the company and five corporate officers were charged with violations of the Clean Water Act and other criminal laws. The A.C. Lawrence Leather Co., which operates four tanneries, each located in a different state, processes raw animal hides into finished leather products for sale to manufacturers in the United States and abroad. One of its facilities in the State of New Hampshire is the third largest shearling tannery in the world, and the largest in the United States. It accounts for approximately 35\% of our country's shearling leather market. The facility tans and finishes shearling (sheepskins and wool left on) for use in garments, car seat covers, medical and industrial applications. Approximately 230 people are employed at the facility, which produces roughly 3,000 skins per day, 250 days per year.

One of the conditions of the company's permit under the Clean Water Act prohibited any bypasses or diversions around its wastewater treatment plant. The evidence accumulated, however, by the federal prosecutor established that from 1977, when its wastewater treatment plant became operational, to 1981, when it was caught, A.C. Lawrence bypassed its wastewater treatment plant as a standard operating practice and regularly discharged raw, untreated wastes into a nearby river. The president and vice-president of the company were charged with failing to seek out, discover and stop this practice under the responsible corporate officer theory. Pursuant to this theory, corporate officials may be responsible for wrongdoings affecting the public health and welfare if the government can prove that the official was in a position to seek out, discover and stop the illegal act and failed to do so. Actual knowledge of the act is not required.\textsuperscript{47} Three other officials at the facility were charged with actually ordering the bypassing. Further, when officials applied for a permit, the existence of a bypass pipe was concealed even though the information was requested. Finally, none of the discharge monitoring reports included any of the raw, untreated industrial waste

\textsuperscript{45} 33 U.S.C. § 1311 (1982).

\textsuperscript{46} Cr. No. 82-01-07-L (D.N.H. 1982).

\textsuperscript{47} The doctrine of "the responsible corporate official" as used in criminal cases involving violations of public health and welfare statutes has its genesis in United States v. Park, 421 U.S. 658 (1975), and United States v. Dotterwich, 320 U.S. 277 (1943). It was applied in both \textit{Frezzo Brothers, supra} note 3, and \textit{Johnson & Towers, supra} note 13. This doctrine is available to prosecutors when the evidence indicates some wilfullness by the executive who seeks to "blind" himself from the occurrence of illegal acts performed within his bailiwick.
being discharged into the river through the bypass mechanism, although the law required reports on all discharges.

During the period of time when the bypassing was concealed from the authorities, the company had applied for, and was receiving, nearly a quarter of a million dollars from the EPA to study how effective its wastewater treatment plant could be in removing pollution from the industrial waste generated by the facility. As a requirement of the grant, the company was required to file reports to be used to develop pollution standards for the whole leather tanning industry. Needless to say, the bypassing operation, which was concealed from the authorities, rendered useless the information the government had paid for.

Based upon these acts, the company and the five officials, were charged with violating the Clean Water Act, with felonies for submitting false statements and false claims to the federal government, with using the mail to further their fraudulent scheme, and with conspiring to defraud the government. After the government’s opening statement in court, all the individuals pled guilty to various charges in the indictment. The president and vice-president pled guilty to the Clean Water Act violation after admitting that, as responsible corporate officers, they should have known what was occurring and stopped it, but failed to do so. After an eight-week jury trial, the corporation was convicted of all the charges in the indictment.

Before sentencing, many of the same individuals and the company also pled guilty to a second indictment for violating the Resource Conservation and Recovery Act, as well as other felonies involving additional acts of concealment and false statements. During the investigation into the violations of the Clean Water Act, evidence had been obtained indicating that, although it had no RCRA permits, the company used tetrachloroethylene, a hazardous waste, at its facility to extract "animal grease" from the sheepskins prior to treatment. This animal grease, it was learned, was drained off into 55-gallon drums and then stored on the premises after portions were distilled and re-used. Knowing as early as 1979 that these stored drums were going to be subject to the pending regulations implementing the Resource Conservation and Recovery Act, a company management team sought ways to dispose of the accumulated drums before those regulations became effective. After other attempts failed, a reclamation program was instituted. Much of the material, however, had solidified and, after attempts were made to remove it, approximately 600 drums of the material remained stored on the
premises. By this time, the regulations implementing RCRA had become effective and the company was required to obtain a permit for the storage and disposal of these drums. Despite their knowledge of the law, however, company officials ignored it and buried the drums on company property without a permit.

After the trial in the first case, the company and several officials entered guilty pleas to charges contained in a second indictment for illegally storing and disposing of hazardous waste without a permit and for filing statements that failed to inform the government that this particular hazardous waste was used in its processes. At sentencing, the fines against the corporation and the company totalled nearly a half million dollars. The federal district court also ordered the return of all the money obtained under the grant, and all the individuals were placed on probation.

In United States v. Van Lom,\(^4^8\) the defendant company’s president, vice-president and sales manager were charged in a 39-count indictment with illegally storing and disposing of PCBs, conspiracy, mail fraud, and with violations of Superfund and the Hazardous Waste Materials Transportation Act. Their company, which was in the business of transporting and disposing of hazardous wastes, accepted payments from customers who believed that the money would be spent legitimately to dispose of the wastes. Instead, the wastes were illegally disposed of along streets, playgrounds and vacant lots. Upon entry of guilty pleas, the president was sentenced to one year imprisonment while the vice-president received a 90-day period of incarceration. The judge also assessed the defendants the costs of cleaning up the illegally disposed of wastes and, in an unusual condition of probation, prohibited any of the officers from engaging in the hazardous waste industry for five years.

In United States v. Holley Electric Corporation and Otis Lynwood Holley,\(^4^9\) the president and his corporation pled guilty to unlawfully disposing of PCBs and for submitting false statements arising from a contract with the government to dispose of its PCBs. The corporation was sentenced to pay a fine of $35,000, the maximum fine available, and the president was fined $25,000. In this and other similar cases, the competition to obtain such contracts motivates contractors to resort to shortcuts to complete performance of fixed-price contracts. Among the illegal shortcuts employed is the misrepresentation of the strength of the PCBs by mislabeling the con-

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\(^{48}\) No. Cr. 84-5-Pa. (D. Or. 1984).

tainer in order to qualify for landfill disposal rather than the more expensive incineration. Other illegal methods include selling the PCB liquid as waste oil, or blending it with low grade heating fuels. In another important case, *United States v. Cairns*, a 12-count indictment was referred against the defendant Wycoff Company and four officer/employees that included illegal hazardous waste storage and disposal and conspiracy to cover up the illegal acts. Wycoff is the largest wood preserver on the West Coast; the pollutants involved included arsenic and other cancer causing chemicals. The four executives were ordered to pay stiff fines and perform community service work. The president was sentenced to one year in prison, with all but 60 days suspended, as well as two years on probation. The company was ordered to pay a $150,000 fine and to put $850,000 into a trust fund for cleaning up the environment.

Finally, in *United States v. Hedrick*, the corporation and its chief executive officer were indicted in Kentucky for conspiracy and violating the hazardous waste laws for the unpermitted treatment, storage, and disposal of a hazardous waste. Both defendants were also indicted in Tennessee for similar hazardous waste violations. The corporate official entered a plea of guilty to the hazardous waste count in both cases and was sentenced to four concurrent sentences of one year and one day.

**CONCLUSION**

Whether occurring under the cover of darkness by a typical criminal, or behind the protective barrier of corporate structures by a business school graduate, these are some of the most far-reaching, dangerous and complex crimes affecting society. They are crimes that may directly affect our health today or the health of untold generations to come. They are crimes that place an immeasurable cost on the public treasury in contending with the still undetermined effects, in cleaning-up existing sites posing substantial endangerments, and in trying to apprehend the violators.

Is the future of environmental criminal cases simply one in which more cases are brought against more defendants who are then sentenced to increasingly harsher penalties? Our brief history makes predicting the future risky. This is particularly so because what was a major case only two years ago has now become the run-of-the-mill

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50 No. Cr. 84-0008 (W.D. Ky); No. Cr. 84-0084 (H.D. Tenn.).
51 No. Cr. 84-00167 (W.D. Wash.).
case today. Following this proposition to its logical conclusion, one dares not think of the harm caused by tomorrow’s case — as with personal injury litigation, the bigger the environmental case, the more tragic the damage to our natural resources and the harm to humans. Our objective is to see that tomorrow’s case is avoided because of our efforts today.