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Green Crimes in the Empire State: Analyzing the Criminal Enforcement of Environmental Law in New York

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ARTICLE

**GREEN CRIMES IN THE EMPIRE STATE: ANALYZING
THE CRIMINAL ENFORCEMENT OF ENVIRONMENTAL
LAW IN NEW YORK**

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ABSTRACT

Ensuring compliance with federal and state environmental laws and deterring future offenses can require the application of criminal enforcement tools. Yet we have a limited understanding of how the criminal enforcement of environmental laws has progressed historically in The Empire State. To explore this phenomenon, we undertake content analysis of federal prosecution summaries for all environmental crime prosecutions stemming from U.S. Environmental Protection Agency criminal investigations from 1983 to 2019. We explore which federal environmental laws were violated, determine which charging statutes were used, analyze sentencing patterns, and illustrate the broader themes that emerge in such prosecutions over 37 years. Our findings show that total penalties assessed to all defendants included some \$264 million in monetary penalties, almost 7,000 months of probation, and 4,757 months of

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incarceration. We find that 26 percent of prosecutions center on air pollution crimes, 18 percent on water pollution crimes, 12 percent on hazardous waste crimes, and 18 percent on state-level offenses. We conclude with forward-looking ways to improve the criminal enforcement of environmental laws, including enhancing resources, community policing, and public salience.

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Introduction – The Case of Martin Kimber

Martin Kimber had had enough. After arguing with officials at the Albany Medical Center over unfair medical bills, he decided to take it upon himself to exact his own unique form of justice. Between March 2011 and March 2012, Kimber evened the score by contaminating the hospital with liquid mercury.¹ On multiple occasions, Kimber contaminated the hallway outside the Post-Operative Care Unit, Triage area of the emergency room, the pedestrian ramp to the parking garage, the men’s bathroom, and even the salad bar.² Nary an apple, banana, toaster, or even the chicken tenders were safe from Kimber’s wrath.³

The Albany Police Department, along with investigators from the U.S. Environmental Protection Agency’s (EPA) Criminal Investigation Division (EPA-CID) and the U.S. Food and Drug Administration’s Office of Criminal Investigations, worked with emergency responders that painstakingly recovered some two pounds of mercury from the facility that was shipped for analysis to the EPA’s National Enforcement Investigations Center (NEIC).⁴ An investigation by the U.S. Federal Bureau of Investigation (FBI) on March 29, 2012 found mercury containers at Kimber’s home and in his car, and a forensics investigation of his computer revealed that he searched within webpages “where more mercury could be purchased.”⁵ On April 25,

¹ United States v. Kimber, No. 12-CR-506 (LEK) (N.D.N.Y. Nov. 29, 2012). See also *Summary of Criminal Prosecutions*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2488 [https://perma.cc/PY9N-ND6Z].

² *Id.*

³ *Id.* (The defendant pled guilty to a chemical weapon attack using mercury at the Albany Medical Center).

⁴ NAT’L ENFORCEMENT INVESTIGATIONS CTR., EPA, CASE RESULTS – MARTIN KIMBER: RCRA KNOWING ENDANGERMENT CRIMINAL CASE, <https://www.epa.gov/sites/production/files/2019-05/documents/martin-kimber.pdf> [https://perma.cc/X7Y5-LKD5]. See also *Summary of Criminal Prosecutions*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2488 [https://perma.cc/PY9N-ND6Z].

⁵ *Summary of Criminal Prosecutions*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2488 [https://perma.cc/PY9N-ND6Z].

2012, EPA-CID Special Agents arrested Kimber.⁶ He admitted to his desire to cause panic at the hospital, which he imaged would lead to lost customers and eventual shutdown.⁷ On May 16, 2012, prosecutors with the U.S. Department of Justice (DOJ) charged Kimber.⁸ He subsequently pleaded guilty on November 29, 2012 to use of a chemical weapon, possession of a chemical weapon, and consumer product tampering.⁹ Kimber was sentenced to 168 months' incarceration, 60 months' supervised release, forfeiture of his home and car, and restitution to the Center totaling \$200,451.¹⁰

The case of Martin Kimber is one of many serious, chronic, and knowing environmental crimes prosecuted in New York State. Such crimes include criminals dumping toxic waste near neighborhoods, factories illegally emitting harmful air emissions, contractors exposing workers to asbestos, explosions at industrial facilities causing mass evacuations, and racketeering and organized crime.¹¹ In all of these scenarios, criminal enforcement tools are applied to serious violations of state and federal environmental laws. Yet we know little about the history of environmental

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Summary of Criminal Prosecutions*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2488 [https://perma.cc/PY9N-ND6Z]; see also Bryan Fitzgerald, *Nazi Backer Gets Prison for Mercury Attack at Albany Med*, TIMES UNION (Sept. 19, 2013), <https://www.timesunion.com/local/article/Nazi-backer-gets-prison-for-mercury-attack-at-4827126.php> [https://perma.cc/4UX6-XDJE] (Prosecutors wanted to show that Kimber knowingly caused harm. His confession, and likely his vocation as a pharmacist, helped make the case. The choice to prosecute him for possession and use of a chemical weapon helped to explain the stiff sentence. Another overriding factor was that investigators found child pornography on his computer. Kimber also refuted apparent characterizations of the prosecution that he was an ardent racist and Nazi sympathizer.).

¹¹ *United States v. Kimber*, No. 12-CR-506 (LEK) (N.D.N.Y. Nov. 29, 2012). See also *Summary of Criminal Prosecutions*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2488 [https://perma.cc/PY9N-ND6Z].

criminal enforcement in the State of New York.¹² We address this limitation by examining patterns in charging and sentencing, as well as drawing out major themes in environmental criminal prosecutions in the state. We do so through content analysis of prosecution summaries of all EPA criminal investigations that led to prosecution that occurred in New York State from 1983 to 2019. We discuss the evolution of federal criminal environmental enforcement below, followed by our approach, analysis, and suggestions for improving broader criminal enforcement outcomes.

The Evolution of Criminal Enforcement of Environmental Law

Early efforts to codify criminal penalties in federal environmental law began at the dawn of the 20th century in the United States.¹³ The first federal environmental laws to include misdemeanor provisions include the Rivers and Harbors Act and the Lacey Act, passed in 1899 and 1900, respectively.¹⁴ The former made it a crime to illegally discharge or alter the navigable waters of the United States and the latter banned the unpermitted interstate trade in wildlife.¹⁵ The Migratory Bird Treaty Act (MBTA) of 1918 followed, prohibiting the illegal taking, trading, or transport of migratory birds without prior approval under U.S. Fish and Wildlife Service regulations.¹⁶

The next major step in the evolution of federal criminal enforcement of environmental laws was to stiffen penalties for environmental offenders, as well as institutionalize

¹² See Michael J. Lynch, *The Sentencing/Punishment of Federal Environmental/Green Criminal Offenders, 2000-2013*, *DEVIANT BEHAVIOR*, Oct. 2016, at 12–13, 16–17

¹³ *Historical Development of Environmental Criminal Law*, U.S. Dep't of Just., <https://www.justice.gov/enrd/about-division/historical-development-environmental-criminal-law> [https://perma.cc/38ES-9T9H] (May 15, 2015) [hereinafter *Historical Development of Environmental Criminal Law*]

¹⁴ Rivers and Harbors Act of 1899, 33 U.S.C. § 403; The Lacey Act of 1900, 16 U.S.C. § 3375. See also *Historical Development of Environmental Criminal Law*, *supra* note 13.

¹⁵ *Historical Development of Environmental Criminal Law*, *supra* note 13.

¹⁶ Migratory Bird Treaty Act of 1918, 16 U.S.C. § 703.

prosecutorial and policing resources. The Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act in 1984 created the first felony provisions in federal environmental law.¹⁷ Expanding federal environmental laws beginning in the 1970s with the passage and amendment of major Acts such as the Clean Water Act (CWA), Clean Air Act (CAA), Toxic Substances Control Act (TSCA), Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Acts (CERCLA) enhanced the range of misdemeanor violations in federal environmental law.¹⁸ Following RCRA, Congress upgraded the felony provisions of the CWA in 1987 and the CAA in 1990, following Guidelines that the U.S. Sentencing Commission issued, which suggested enhancing penalties for a variety of federal offenses that also touched environmental law.¹⁹ These changes were part of a broader global movement to increase penalties for actions that caused environmental harm.²⁰ Today, felony provisions are common in federal environmental statutes.²¹

What is now the DOJ's Environment and Natural Resources Division (ENRD) was organized in 1909 as the

¹⁷ David M. Uhlmann, *Environmental Crime Comes of Age: The Evolution of Criminal Enforcement in the Environmental Regulatory Scheme*, 4 UTAH L. REV. 1223, 1227, (2009); *Summary of the Resource Conservation and Recovery Act*, EPA, (Sept. 28, 2021), <https://www.epa.gov/laws-regulations/summary-resource-conservation-and-recovery-act> [https://perma.cc/X2FZ-7QCR];

¹⁸ Uhlmann, *supra* note 17 at 1227.

¹⁹ WASHINGTON LEGAL FUND, ENVIRONMENTAL PROTECTION AGENCY CRIMINAL ENFORCEMENT POLICIES 2–3 <https://s3.us-east-2.amazonaws.com/washlegal-uploads/upload/Chapter2EPA.pdf> [https://perma.cc/QBZ6-J59T].

²⁰ *See generally* Michael R. Pendleton, *Beyond the Threshold: The Criminalization of Logging*, 10 SOC'Y & NAT. RES. 181, 181–82 (1997) (addressing the socio-natural basis for the criminalization of logging in British Columbia, Canada stating that "[s]ince the mid-1980s there has been a worldwide trend toward establishing significant criminal sanctions to address environmental harm.").

²¹ *See, e.g.*, Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d). *See also Criminal Provisions of Water Pollution*, EPA, (Aug. 21, 2020), <https://www.epa.gov/enforcement/criminal-provisions-water-pollution> [https://perma.cc/8EF2-AYPS]; *Criminal Provisions of the Clean Air Act*, EPA, (Feb. 9, 2021), <https://www.epa.gov/enforcement/criminal-provisions-clean-air-act> [https://perma.cc/F9MZ-322K].

Public Lands Division.²² Further investment in institutionalizing prosecution resources came in 1982 with the development of the Environmental Crimes Section (ECS) of ENRD, which was further strengthened when it became an “independent” unit in 1987, alongside its civil counterpart, the Environmental Enforcement Section, which oversees civil-judicial cases.²³ DOJ-ECS currently employs some forty-three prosecutors and a dozen support staff to prosecute environmental crimes, which it can undertake by or in conjunction with attorneys in the U.S. Attorney’s Office.²⁴

Criminal investigative tools were also institutionalized in the 1980s. The Office of Enforcement was founded in 1981 and is now referred to as The Office of Enforcement and Compliance Assurance (OECA).²⁵ Criminal investigators were hired the following year and were deputized as Special Deputy U.S. Marshalls in 1984 when their lack of law enforcement authority hindered their ability to police environmental crimes.²⁶ This process was renewed until 1988, when Congress granted criminal investigators full law enforcement powers.²⁷ In 2019, the EPA’s Criminal Investigation Division (EPA-CID) employed 145 criminal investigators across the United States to investigate

²² *History*, U.S. DEP’T OF JUST. (May 18, 2021),

<https://www.justice.gov/enrd/history> [https://perma.cc/XJ5E-EMKB].

²³ *Historical Development of Environmental Criminal Law*, *supra* note 13. See also *Environment and Natural Resources Division: an Overview of our Practice*, U.S. DEP’T OF JUST. (May 14, 2015), <https://www.justice.gov/enrd/overview-our-practice> [https://perma.cc/A4TH-EMHW].

²⁴ *Compare, Environmental Crimes Section*, U.S. DEP’T OF JUST. (July 2, 2021), <https://www.justice.gov/enrd/environmental-crimes-section> [https://perma.cc/MKD7-3Y3E]), with *EPA CID Agent Count*, PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY, [https://www.peer.org/wp-content/uploads/2019/11/11_21_19-Federal Pollution EPA CID Agent Count.pdf](https://www.peer.org/wp-content/uploads/2019/11/11_21_19-Federal%20Pollution%20EPA%20CID%20Agent%20Count.pdf) [https://perma.cc/46J2-UYDF].

²⁵ WASHINGTON LEGAL FUND, *supra* note 19, at 2–2.

²⁶ EPA, U.S. ENVIRONMENTAL PROTECTION AGENCY REVIEW OF THE OFFICE OF CRIMINAL ENFORCEMENT, FORENSICS AND TRAINING 5, 7 (2003), <https://www.epa.gov/sites/production/files/documents/oceft-review03.pdf> [https://perma.cc/3LUB-ZEXT] [hereinafter REVIEW OF THE OFFICE OF CRIMINAL ENFORCEMENT, FORENSICS, AND TRAINING].

²⁷ *Id.* at 7.

environmental crimes.²⁸ In 1995, the Office of Criminal Enforcement, Forensics and Training (OECFT) was organized to undertake investigative and forensics for criminal cases and house EPA-CID.²⁹ Investigations typically source information from official documents, civil inspectors that notice problems, and former employees.³⁰ Criminal investigators may pursue prosecution when enough evidence warrants approaching specialized attorneys in ECS or the U.S. Attorney's Office to either convene a grand jury or file an information in the appropriate district court.³¹

Congress showed interest in enhanced criminal enforcement in the late 1980s and early 1990s. Not only did Congress increase penalties in major federal environmental statutes and bolster resources for prosecution and policing, but it also held hearings questioning why DOJ had not prosecuted more cases.³² Opposition to enhanced criminal enforcement soon grew louder with the Republican Revolution of 1994. Congress increased statutory penalties in a manner that gave prosecutors broad discretion to apply criminal sanctions in cases that were previously considered misdemeanors, sparking criticism of overreach.³³ As a matter

²⁸ Kirsten Stade, *Federal Pollution Prosecutions Continue to Fall*, PUB. EMPS. FOR ENV'T RESP. (Nov. 21, 2019), <https://www.peer.org/federal-pollution-prosecutions-continue-to-fall/> [<https://perma.cc/S7V6-3EUU>].

²⁹ See REVIEW OF THE OFFICE OF CRIMINAL ENFORCEMENT, FORENSICS AND TRAINING, *supra* note 26, at 9.

³⁰ See CRIM. ENF'T PROGRAM, EPA, AMERICA'S ENVIRONMENTAL CRIME FIGHTERS 5, 7, <https://www.epa.gov/sites/production/files/documents/oceftbrochure.pdf> [<https://perma.cc/9M27-2MP2>]; JOEL A. MINTZ, ENFORCEMENT AT THE EPA: HIGH STAKES AND HARD CHOICES 11 (2d ed. 2012).

³¹ See MINTZ, *supra* note 30, at 11 (2d ed. 2012); Joel A. Mintz, *Some Thoughts on the Interdisciplinary Aspects of Environmental Enforcement*, 36 ENVTL. L. REP. 10495, 10497 (2007) (discussing the process of formal prosecution).

³² Richard J. Lazarus, *Assimilating Environmental Protection into Legal Rules and the Problem with Environmental Crime*, 27 LOY. L.A. L. REV. 867, 872 (1994). See also Pollution Prosecution Act of 1990, 42 U.S.C. 42 U.S.C. § 4321 note (EPA Office of Criminal Investigation) (enhancing policing resources by increasing the statutory minimum of criminal investigators to 200 staff. EPA subsequently increased such staff beyond the statutory minimum by the mid-1990s).

³³ See Richard J. Lazarus, *Assimilating Environmental Protection into Legal Rules and the Problem with Environmental Crime*, 27 LOY. L.A. L. REV. 867, 870, 872 (1994); KATHLEEN F. BRICKEY, ENVIRONMENTAL CRIME: LAW, POLICY, PROSECUTION 8 (2008).

of historical practice, there has always been both support and opposition in Congress, as well as in the legal and regulated communities, for the authority to apply tools for criminal enforcement.³⁴ As a consequence, resources for policing and prosecuting environmental crimes have always been limited, and the approach to prosecution has necessitated a strategic focus on crimes involving significant harm and culpable conduct.³⁵

To place these efforts in context, by some estimates, only about 2,588 environmental prosecutions resulting from EPA-CID investigations may have been adjudicated since 1983.³⁶ Yet the goals of applying criminal enforcement tools to environmental crimes are to punish and deter future offenses so that the costs of offending outweigh the benefits of polluting.³⁷ The probability of detection must also be sufficient to deter crime. Given the limited number of investigative staff and prosecutors at the federal level, the possibility of deterrence seems nominally low.³⁸ However, we know little about how this process has unfolded in New York State since the 1980s. It is difficult to tell if achieving these goals of criminal enforcement are plausible, given that we

³⁴ See Judson W. Starr, *Turbulent Times at Justice and EPA: The Origins of Environmental Criminal Prosecutions and the Work that Remains*, 59 GEO. WASH. L. REV. 900, 910–12 (1991); Theodora Galactos, *The United States Department of Justice Environmental Crimes Section: A Case Study of Inter- and Intra-branch Conflict over Congressional Oversight and the Exercise of Prosecutorial Discretion*, 64 FORDHAM L. REV. 589, 589–92 (1995).

³⁵ See Memorandum from Earl E. Devaney, Dir., Office of Crim. Enf't, EPA, to All EPA Emps. Working in or in Support of the Crim. Enf't Program 3 (Jan. 12, 1994), <https://www.epa.gov/sites/production/files/documents/exercise.pdf> [<https://perma.cc/3FL2-4WV7>]

³⁶ Joshua Ozymy et al., *Persistence or Partisanship: Exploring the Relationship Between Presidential Administrations and Criminal Enforcement by the U.S. Environmental Protection Agency*, 81 PUBLIC ADMIN. L. REV. 49, 49 (2020)

³⁷ See REVIEW OF THE OFFICE OF CRIMINAL ENFORCEMENT, FORENSICS AND TRAINING, *supra* note 26, at 57 (discussing deterrence value of criminally enforcing environmental crimes).

³⁸ See Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169, 204–05 (1968) (discussing deterrence effect); Richard A. Posner, *An Economic Theory of the Criminal Law*, 85 COLUM. L. REV. 1193, 1204–07 (1985) (discussing levels of punishment and effects on deterrence).

know so little about basic patterns of charging and sentencing.³⁹ We work to fill this gap below.⁴⁰

Data and Research Methods

The EPA's *Summary of Criminal Prosecutions Database* supplies the data for our analysis.⁴¹ The Database provides a rich source of data on all EPA-CID criminal investigations that led to prosecution. We analyze all cases in the database by EPA fiscal year (FY). We begin with the very first case in FY 1983 and analyze all cases to the end of calendar year 2019, which constitutes a total of 2,588 prosecutions over roughly 37 years. From these prosecutions, we select all cases occurring in New York State, and analyze the 169 cases remaining under that category. We manually coded the following variables from the database for each prosecution: docket number, brief narrative case summary, number of defendants, presence of at least one company as a primary defendant in the case, major environmental charging statutes used, state or federal environmental laws, presence of criminal charges in the case (such as obstruction, conspiracy, or false statements), and total penalties assessed to all individual and company defendants. We measured

³⁹ See Jeremy Firestone, *Agency Governance and Enforcement: The Influence of Mission on Environmental Decisionmaking*, 21 J. POL'Y. ANALYSIS AND MGMT. 409, 409 (2002) (discussing theories on how EPA chooses a venue of enforcement).

⁴⁰ For additional scholarship that attempts to identify patterns and factors in environmental criminal enforcement, see generally Kathleen F. Brickey, *Charging Practices in Hazardous Waste Crime Prosecutions*, 62 OHIO ST. L. J. 1077 (2001); David M. Uhlmann, *Prosecutorial Discretion and Environmental Crime*, HARV. ENV'T. L. REV. 159 (2014); Joshua Ozymy & Melissa Jarrell, *Why do Regulatory Agencies Punish? The Impact of Political Principals, Agency Culture, and Transaction Costs in Predicting Environmental Criminal Prosecution Outcomes in the United States*, 33 REV. POLY. RSCH. (2016); Mathew J. Griefe et al., *Corporate Environmental Crime and Environmental Justice*, 28 CRIM. JUST. POL'Y. REV. 327 (2017).

⁴¹ *Summary of Criminal Prosecutions*, EPA, <https://www.epa.gov/enforcement/summary-criminal-prosecutions> [<https://perma.cc/89WF-F9PM>].

“penalties” as total months of probation and incarceration, as well as hours of community service. We analyzed “monetary penalties” as all fines, assessments, fees, restitution, community service payments, or other monetary penalties assessed to defendants.

We acquired the data that we analyze directly from the Database. While we consulted web articles and other materials to describe some cases below to enhance the analysis, we did not use outside sources to determine or verify the accuracy of the EPA’s data. We wanted to avoid conflicting data sources on this point to generate reliable data and, to do so, we had to create a basic bottom-line for all cases. Reading the prosecution summaries was a relatively straightforward process, and we did not seek to discern deep meaning from the cases. Rather, we intended only to quantify and assess the important values over such an extensive amount of time and space in a reliable manner. Values are based on independent coder judgements derived from our team’s process of reading cases and then discussing discrepancies until reaching consensus. This collaborative process typically occurred while analyzing complex cases with multiple defendants that generated complex sentencing patterns. If there are limitations to our approach, they come from EPA failing to include cases in the database, our inability to assess the impact of changes in environmental laws, or our oversight of key actors in the investigations or prosecutions. These facts do not significantly limit our approach, as they do not conflict with our ultimate goals for this article.

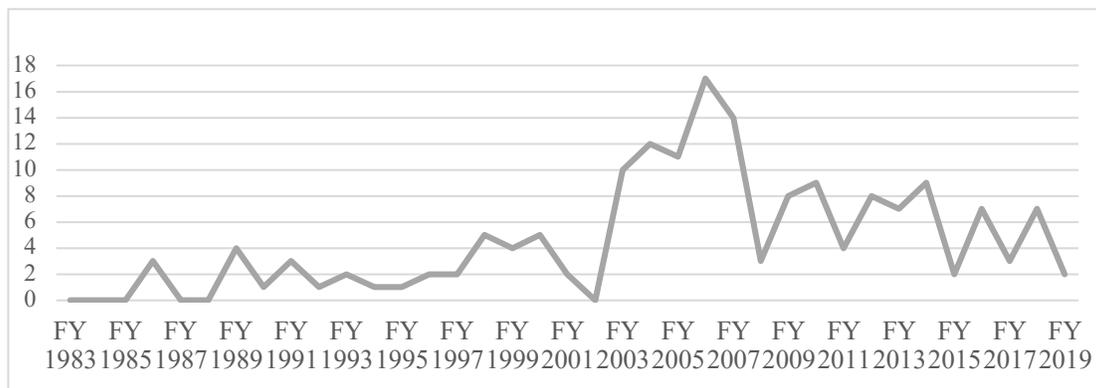
We began coding the cases for four weeks with two coders, assessing cases through FY 2015. Once we saw patterns in the data and our inter-coder reliability exceeded 90 percent, we proceeded to code the data for later years. Each coder analyzed the data independently before the lead author reviewed for discrepancies, and we subsequently met to find consensus on values. Total inter-coder reliability was about 95 percent for the entire dataset.⁴²

⁴² OLE R. HOLSTI, *CONTENT ANALYSIS FOR THE SOCIAL SCIENCES AND HUMANITIES* 140 (1969); EARL R. BABBIE, *THE PRACTICE OF SOCIAL RESEARCH*, 148, (Mitchell et al., 13th ed., 2013).

Results

In Figure 1, we illustrate the total number of annual environmental crime prosecutions in our data that were adjudicated in the State of New York from 1983 to 2019, by EPA fiscal year (FY). We do not see a prosecution adjudicated until FY 1986. Through the 1980s, we find that seven cases were adjudicated. Twenty-two cases were prosecuted in the 1990s, and 82 were prosecuted and adjudicated from 2000 until 2009. A total of 58 cases were adjudicated from 2010 through 2019. FY 2006 was the high point for annual prosecutions (17) and total prosecutions over these 37 years equaled 169, with an annual average of 4.6.

Figure 1. Total Annual Environmental Crime Prosecutions in the State of New York by EPA Fiscal Year, 1983-2019.



Source: EPA Summary of Criminal Prosecutions Database

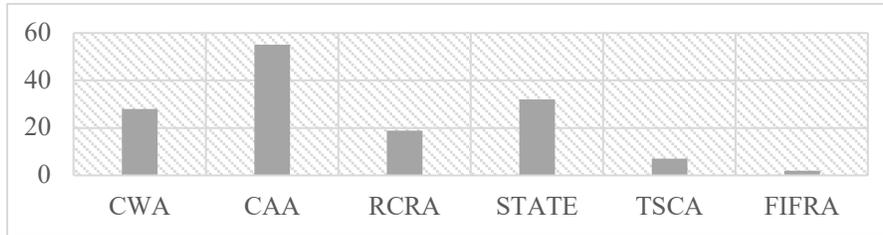
In Figure 2, we examine charging patterns in environmental crime prosecutions in New York from 1983 to 2019. We explore prosecutions by the number of cases in which a defendant is charged under a major federal statute, such as the CWA, CAA, RCRA, TSCA, or FIFRA. We also

catalog the number of prosecutions in which at least one defendant was charged with state-level environmental offenses.

The most common charging statute was the CAA. We found that in 55 cases, or about 33 percent of the prosecutions, at least one defendant was charged under this statute. In 28 cases, or about 16 percent of total prosecutions, at least one defendant was charged under the CWA. In 19 cases, or about 11 percent of prosecutions, prosecutors charged under RCRA. FIFRA and TSCA were used less-frequently, at 7 and 2 cases, respectively. In 32 cases, or 19 percent of all prosecutions, at least one defendant was charged under state environmental laws, which is the second most common charging pattern we see in the data. Given that the database records all EPA-CID criminal investigations and related prosecutions, the inclusion of these state-law cases in the database and their abundance in overall charging patterns implies that a significant number, almost one in five prosecutions, involved some level of cooperation between state and federal agencies. While defendants can be charged and often are under more than one statute, depending on the crime, these patterns demonstrate an emphasis on air pollution cases and state-level offenses relative to other charges, which is a trend that has continued over almost four decades.⁴³

⁴³ See *infra* Fig. 2, sourcing data from *Summary of Criminal Prosecutions*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm [<https://perma.cc/YQ22-54CN>]. While about 84 percent of all cases could be attributed to these charging statutes, because defendants can be charged under more than one statute per case, this percentage is not substantively meaningful. The overall number of cases using these statutes does show the dominance of air pollution prosecutions, which we will revisit in Figure 5, *infra*.

Figure 2. Charging Patterns in Environmental Crime Prosecutions in the State of New York, 1983-2019.



Source: EPA Summary of Criminal Prosecutions Database

In Figure 3, we illustrate trends in charging patterns for a variety of criminal offenses in environmental crime prosecutions in New York from 1983 to 2019. The most common non-environmental criminal offense in these prosecutions was conspiracy.⁴⁴ In 33 cases, or about 19.5 percent of all prosecutions, defendants were charged with conspiracy. The second most common non-environmental criminal offense was giving false statements to investigators, on forms or other documents.⁴⁵ In 18 percent of all prosecutions, at least one defendant was charged with false statements. In 16 cases, or about 9 percent of all prosecutions, at least one defendant was charged with fraud.⁴⁶ In three cases, defendants were charged under the Racketeer Influenced and Corrupt Organizations Act (RICO).⁴⁷

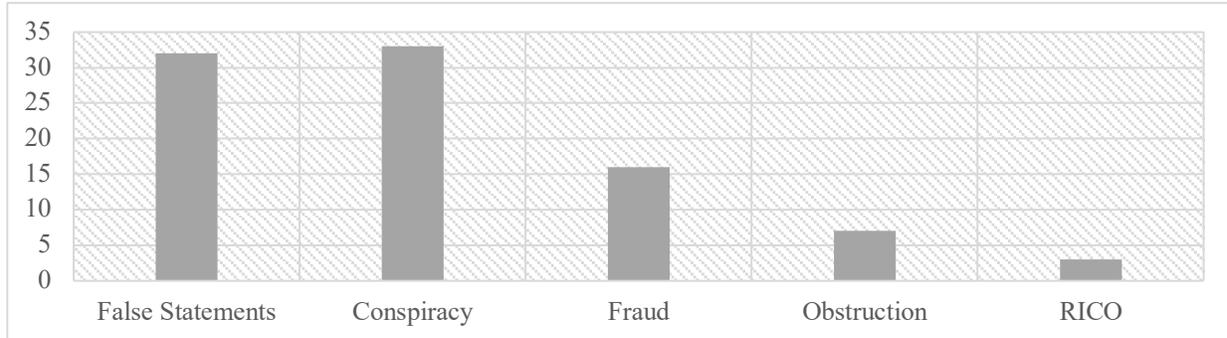
⁴⁴ See *infra* Fig. 3, sourcing data from *Summary of Criminal Prosecutions*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm [<https://perma.cc/YQ22-54CN>]. We code each prosecution by the major charging statutes, including whether at least one defendant was charged with a related or stand-alone criminal offense. Due to vagaries associated with entering the prosecution summaries and the charging process (i.e. charges can be dropped, or the defendant(s) found innocent), we simply coded for whether a defendant was charged in the case with conspiracy, fraud, etc., not for how many times all defendants were charged with any offense.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*; see 18 U.S.C. §§ 1961-1968.

Figure 3. Common Criminal Charges in Environmental Crime Prosecutions in the State of New York, 1983-2019.



Source: EPA Summary of Criminal Prosecutions Database

In Figure 4, we show the total penalties assessed to all defendants in New York State from 1983 to 2019. In the figure, we aggregate all of the penalties assessed to every individual defendant, and every corporation/company defendant, over time.⁴⁸ In the upper-left quadrant, we aggregate total monetary penalties to all individuals and companies.⁴⁹ Penalties here include all assessments, fines, fees, restitution, and other monetary penalties. In total, individuals were sentenced to pay, by our estimates, over \$108 million in penalties over these 37 years. Companies were assessed a grand total exceeding \$155 million.

We measured probation and incarceration in total months assessed to all individual and all company defendants. In the upper-right quadrant, we show that individuals were collectively sentenced to some 5,502 months of probation.⁵⁰ Companies were sentenced to serve 1,488 months of probation.⁵¹ We find a total of 4,757 months' incarceration assessed to all defendants.⁵² Our analysis also

⁴⁸ See *infra*, Figure 4.

⁴⁹ *Id.*

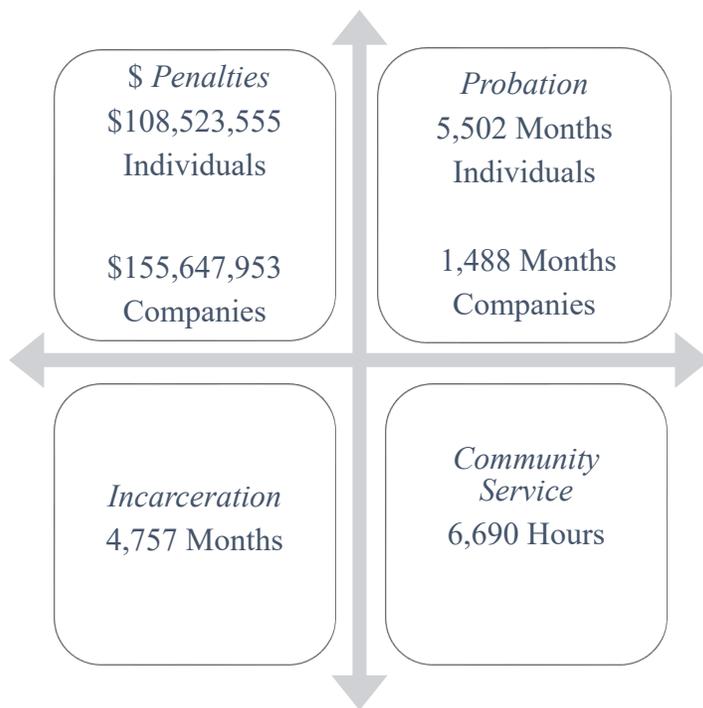
⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

shows that defendants were cumulatively sentenced to serve 6,690 hours of community service.⁵³

Figure 4. Total Penalties Assessed in Environmental Crime Prosecutions in the State of New York, 1983-2019.



Source: EPA Summary of Criminal Prosecutions Database

To bring some context to the penalty totals in Figure 4, we provide in examples in Table 1 of some of the larger monetary penalties assessed to companies found in the data. First, A&A Land Development, Vulpis Brothers, Ltd. and its owners Angelo Paccione and Anthony Vulpis, along with multiple defendants, were prosecuted in a RICO case related to the dumping of “thousands of tons of medical waste, asbestos and other hazardous materials in an illegal landfill

⁵³ *Id.*

on Staten Island.”⁵⁴ The Old Arlington railroad yard was used as an illegal 70 acre dumping ground for some 500,000 tons of waste.⁵⁵ A&A was sentenced to pay \$22 million in fines and a special assessment of \$1,400 on October 10, 1990; Vulpis Brothers, Ltd. was sentenced to pay the same.⁵⁶

Table 1. Large Monetary Penalties Assessed to Corporate Defendants in Environmental Crime Prosecutions in the State of New York.

Year	Company
1991	A&A Land Development
2001	Iroquois Pipeline
2007	AAR Contractor
2010	IMS Safety, Inc.
2014	Tonawanda Coke Corporation

Source: EPA Summary of Criminal Prosecutions Database.

Additionally, Iroquois Pipeline Operating Company was prosecuted for constructing a 370-mile natural gas pipeline from Canada to New York and Connecticut and violating a number of environmental regulations in the

⁵⁴The Associated Press, *2 S.I. Trash Haulers Get 12-Year Terms For Illegal Dumping*, N.Y. TIMES (Oct. 4, 1990), <https://www.nytimes.com/1990/10/04/nyregion/2-si-trash-haulers-get-12-year-terms-for-illegal-dumping.html> [https://perma.cc/XU3R-GHJG]; *United States v. Paccione*, 751 F. Supp. 368, 382 (S.D.N.Y. 1990), *aff'd*, 949 F.2d 1183 (2d Cir. 1991).

⁵⁵The Associated Press, *2 S.I. Trash Haulers Get 12-Year Terms For Illegal Dumping*, N.Y. TIMES (Oct. 4, 1990), <https://www.nytimes.com/1990/10/04/nyregion/2-si-trash-haulers-get-12-year-terms-for-illegal-dumping.html> [https://perma.cc/XU3R-GHJG].

⁵⁶*See United States v. Paccione*, SSS 89 Cr. 446 (CBM) (S.D. N.Y. 1990); *Summary of Criminal Prosecutions*, EPA, [https://perma.cc/QP7J-UDAW].

process, including improper crossing of streams and wetlands; failing to clean up the right of way, wetlands, and streams; and failure to maintain erosion control devices.⁵⁷ The company was charged with knowing violations of the CWA and sentenced on May 23, 1996 to pay a \$22 million federal fine.⁵⁸

In one of the most extensive prosecutions in our dataset, the owners of AAR Contractors, Inc., Alexander Salvagno and Raul Salvagno, were prosecuted for an asbestos fraud case.⁵⁹ The Salvagnos and AAR provided falsified laboratory analyses for numerous asbestos abatement operations throughout New York State.⁶⁰ AAR engaged in illegal remediation and disposal of asbestos over a ten-year period at some 1,550 facilities in the state, including schools, military installations, and the New York State Legislature Office Building.⁶¹ The Salvagnos were handed the stiffest prison sentences in our data (25 years and 19 ½ years, respectively).⁶² AAR was sentenced to pay a \$4,400 special assessment fee, forfeit \$2,033,457.70 and pay \$22,875,575.46 in restitution jointly and severely with the Salvagnos.⁶³

IMS Safety, Inc. was prosecuted for an extensive operation that involved the issuance of false asbestos training certificates.⁶⁴ From 2006 to 2008, the company made false representations to the New York City Department of Environmental Protection (NYC-DEP) for training certain

⁵⁷See *United States v. Mango*, 199 F.3d 85, 88, 88 n.2 (2d Cir. 1999) (No. 96-CR-327); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/448C-2GDN>]; see also William Glaberson, *Pipeline Concern Draws \$22 Million Fine*, N.Y. TIMES (May 24, 1996), [<https://www.nytimes.com/1996/05/24/nyregion/pipeline-concern-draws-22-million-fine.html>] [<https://perma.cc/2DWJ-EAWJ>].

⁵⁸See *United States v. Mango*, 199 F.3d 85, 88 n.2 (2d Cir. 1999) (No. 96-CR-327); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/448C-2GDN>].

⁵⁹*United States v. Salvagno*, 5:02-CR-51 (N.D.N.Y. 2006); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/C4T2-CJDA>].

⁶⁰*Id.*

⁶¹*Id.*

⁶²*Father and Son Sentenced to Longest U.S. Jail Terms for Environmental Crimes*, EPA (Dec. 23, 2004), [https://archive.epa.gov/epapages/newsroom_archive/newsreleases/324c5937dc68015a85256f7e0076a213.html] [<https://perma.cc/4PJE-4ESD>].

⁶³*Id.*; see also *United States v. Salvagno*, 5:02-CR-51 (N.D.N.Y. 2006); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/C4T2-CJDA>].

⁶⁴See *United States v. IMS Safety, Inc.*, 7:09-CR-533 (S.D.N.Y. 2010).

employees.⁶⁵ IMS was charged with fraud and conspiracy and sentenced on December 14, 2009 to 60 months of probation, a \$500,000 federal fine, and restitution to NYC-DEP and the U.S. Army Corp of Engineers of \$1,117,765 jointly and severely with the co-defendants in the case, including owner Joseph Mazzurco.⁶⁶ The Tonawanda Coke Corporation was sentenced on March 19, 2014 to pay a “\$12.5 million penalty and \$12.2 million in community service payments” for violating the CAA.⁶⁷ The company vented benzene into the ambient air through an “unreported pressure relief valve” and operated a coke-quenching tower without proper pollution control devices, resulting in emissions of particulate matter.⁶⁸ Employees conspired to cover up the violations and “illegally stored, treated, and disposed of hazardous waste.”⁶⁹

In Table 2, we illustrate some of the larger incarceration sentences handed down to defendants. The largest sentences were in the cases of AAR Contractor, Alex and Raul Salvagno, and a related case against Eric Farbent.⁷⁰ In the case against Farbent and his co-conspirators, we catalog some 746 months’ incarceration assessed to all defendants.⁷¹ Additionally, Angelo Paccione

⁶⁵ See *id.*; *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/8FSH-VGQ2>] (Oct. 22, 2021); Press Release, United States Att’y, S.D.N.Y. (Dec. 15, 2009), <https://www.justice.gov/archive/usao/nys/pressreleases/December09/mazzurcoios ephsentencingpr.pdf> [<https://perma.cc/Z57T-MPWU>].

⁶⁶ See Press Release, United States Att’y, S.D.N.Y. (Dec. 15, 2009), <https://www.justice.gov/archive/usao/nys/pressreleases/December09/mazzurcoios ephsentencingpr.pdf> [<https://perma.cc/Z57T-MPWU>]; *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/8FSH-VGQ2>].

⁶⁷ See *United States v. Tonawanda Coke Corporation*, 1:10-CR-00219 (WMS) (W.D.N.Y. 2014); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/9BTJ-TV4L>].

⁶⁸ *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/9BTJ-TV4L>].

⁶⁹ *Id.*

⁷⁰ See *infra* Table 2.

⁷¹ EPA’s database lists the cases against Eric Farbent in FY 2007 and AAR, Inc. in FY 2005 separately. Compare *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/EA52-T4P9>] (classifying Farbent as a “principal defendant” in FY 2007), with *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/RUQ5-WXAR>] (Oct. 22, 2021) (classifying AAR as a “principal defendant” in FY 2005). The database incorrectly includes Salvagnos’ prison sentences in both cases, although they are not listed defendants in the Farbent

was a defendant in the previously-mentioned case against A&A Land Development – our analysis catalogs some 604 months of incarceration assessed to Paccione in that case.⁷² Further, Charles and Jack Colbert operated a chemical trading company in Mount Vernon.⁷³ The company shipped a “recycled chlorinated solvent mixture” to a chemical import company in Zimbabwe in an international “bait and switch” fraud.⁷⁴ The defendants and their co-defendants, SCI Equipment and Technology and Signo Trading International, were charged with wire fraud, mail fraud, false claims, obstruction, and transportation of false securities.⁷⁵ On July 28, 1986, both Colberts were sentenced to 13 years of incarceration each, as well as fines.⁷⁶ Harold Julio Fargas was prosecuted for operating a large cocaine manufacturing laboratory for the Cali Drug Cartel in Minden New York.⁷⁷ The facility exploded in 1985, after “eleven days in operation,” leaving behind some “250 55-gallon barrels of ethyl ether.”⁷⁸ Fargas fled and “remained at large” in the

case. See *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/EA52-T4P9>].

⁷² See *Paccione*, 751 F. Supp. at 371; *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/N2HE-6V83>] (indicating Angelo Paccione was charged with two counts of racketeering under RICO and six substantive counts of mail fraud. Paccione received a sentence of 604 months’ incarceration.)

⁷³ See *United States v. Colbert*, No. 87 CIV. 4789 (MGC), 1991 WL 183376 (S.D.N.Y. Sept. 11, 1991); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/9EXD-33SP>].

⁷⁴ See *id.*; Edward Hudson, *A Federal Jury Finds 2 Brothers Guilty of Fraud*, N.Y. TIMES (June 16, 1986), <https://www.nytimes.com/1986/06/16/nyregion/a-federal-jury-finds-2-brothers-guilty-of-fraud.html> [<https://perma.cc/RYG4-8HSD>].

⁷⁵ See *United States v. Colbert*, No. 87 CIV. 4789 (MGC), 1991 WL 183376 (S.D.N.Y. Sept. 11, 1991); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/9EXD-33SP>].

⁷⁶ Valentina O. Okaru, *The Basel Convention: Controlling the Movement of Hazardous Wastes to Developing Countries*, 4 FORDHAM ENV’T L. REV. 137, 138 (2011); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/9EXD-33SP>].

⁷⁷ See *Environmental Charges Stem from Illegal Cocaine Lab*, EPA (Oct. 28, 1999), https://archive.epa.gov/epapages/newsroom_archive/newsreleases/d5b73dfdfa7e10ce85256818005e6af8.html [<https://perma.cc/7K86-7SJY>]; *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/48U5-YVLB>].

⁷⁸ See *Environmental Charges Stem from Illegal Cocaine Lab*, EPA (Oct. 28, 1999),

drug scheme for years until being recaptured in 1999.⁷⁹ On December 16, 1999 Fargas was sentenced to 180 months' incarceration for violating RCRA and the Drug Abuse Prevention and Control Act.⁸⁰

Table 2. Large Incarceration Sentences Assessed to Defendants in Environmental Crime Prosecutions in the State of New York.

Year	Primary Defendant
1986	Charles Colbert
1991	Angelo Paccione
2000	Harold Julio Fargas
2005	Alex and Raul Salvagno
2007	Eric Farbent

Source: EPA Summary of Criminal Prosecutions Database

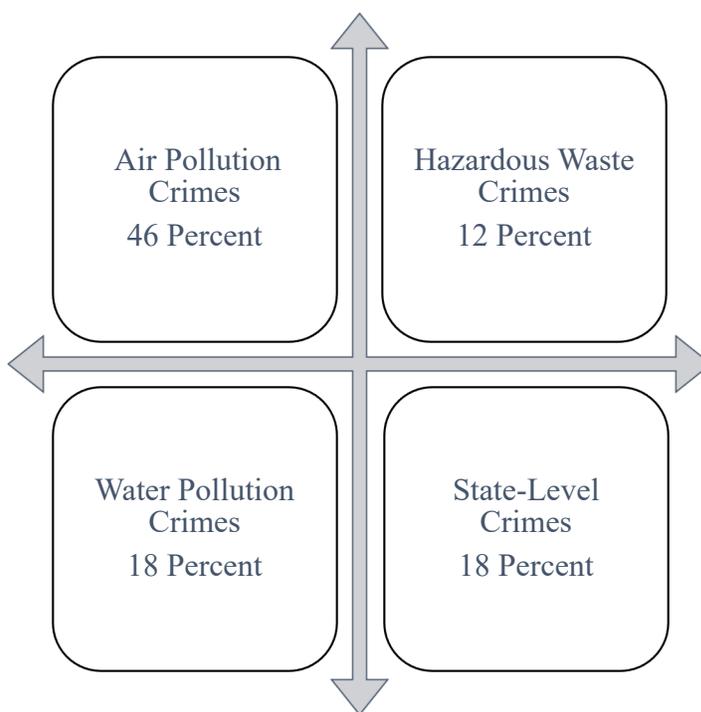
https://archive.epa.gov/epapages/newsroom_archive/newsreleases/d5b73dfdfa7e10ce85256818005e6af8.html [<https://perma.cc/7K86-7SJY>]; *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/48U5-YVLB>].

⁷⁹See *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/48U5-YVLB>] (Oct. 22, 2021) (the defendant pled guilty to two counts of violating RCRA and the Drug Abuse Prevention Act through the construction and operation of a cocaine manufacturing laboratory and “was sentenced to 180 months of incarceration.”); *United States v. Fargas*, 99–CR–537 (N.D.N.Y. 2000). See also *Environmental Charges Stem from Illegal Cocaine Lab*, EPA, (Oct. 28, 1999), https://archive.epa.gov/epapages/newsroom_archive/newsreleases/d5b73dfdfa7e10ce85256818005e6af8.html [<https://perma.cc/N54B-SZBH>] (stating that the defendant “constructed and operated” a cocaine manufacturing laboratory in New York. The fire from an explosion in the laboratory almost ignited 55-gallon drums of abandoned ethyl, which is dangerously volatile. The defendant was expected to receive a fifteen-year sentence.).

⁸⁰ *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/48U5-YVLB>].

We conclude the analysis in Figure 5, where we draw out the major themes uncovered across all prosecutions in our data. While we have illustrated charging patterns above, we return to the cases and attempt to locate, in our best judgement, the central crime that defines each prosecution. By exploring all 169 prosecutions, we are able to place the vast majority into one of four categories depicted in the figure: air pollution crimes, hazardous waste crimes, water pollution crimes, and state-level crimes.

Figure 5. Typology of Environmental Crime Prosecutions in the State of New York.



Source: EPA Summary of Criminal Prosecutions Database

The most prevalent theme in the data was the overwhelmingly large number of prosecutions for air pollution crimes. In 77 cases, or 46 percent of our data, we categorized the primary crime in the prosecution as an air pollution crime. Many of these crimes stemmed from actions

related to the illegal demolition and disposal of asbestos in violation of asbestos NESHAP standards.⁸¹ Such violations are prosecuted under the CAA because they result in the release of hazardous air pollutants into the ambient air. We categorize a series of related asbestos crimes, including falsified asbestos testing, failure to notify of asbestos removal, failure to provide proper safety measures or training for workers engaging in asbestos remediation, or selling falsified asbestos certifications. Air pollution crimes also include crimes related to the release of harmful emissions into the ambient air without a permit or in violation of a permit, the import or sale of ozone depleting substances, and bypassing emissions control devices on stationary or mobile sources. Below, we provide case examples of these asbestos crimes, overviewing the prosecution of Terry Conklin, Joseph Thorn, and Anthony Priore, Griffin International, Dov Shellef, Raj Chopra, Leonard Pugh, Hope Resources Recovery, Inc., and Surpass Chemical Company.

In December 1997, Terry Conklin illegally removed and disposed of asbestos at a location in Johnson City and then poured a new concrete floor over the disposal site.⁸² He was charged with violating the CAA and CERCLA and making false statements.⁸³ On April 23, 1999, Conklin was sentenced to 10 months' incarceration and a \$12,000 federal fine.⁸⁴ Joseph Thorn was prosecuted for illegal removal of asbestos at some 1,000 facilities throughout the state from

⁸¹ *See id*; *See generally Overview of the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP)*, EPA, (Dec. 30, 2020), <https://www.epa.gov/asbestos/overview-asbestos-national-emission-standards-hazardous-air-pollutants-neshap> [<https://perma.cc/SS58-UK97>]. National Emissions Standards for Hazardous Air Pollutants (NESHAP) apply to “control” the release of hazardous air pollutants (HAPS), such as asbestos, into the ambient air.

⁸² *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/9VES-ADAW>].

⁸³ *See United States v. Conklin*, CR 98 CR-428 (W.D.N.Y. 1998); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/9VES-ADAW>]. *See also Man Pleads Guilty to Asbestos Violations in Johnson City, New York*, EPA (Dec. 8, 1998),

https://archive.epa.gov/epapages/newsroom_archive/newsreleases/a24756937fe1beea8525726c00743eb5.html [<https://perma.cc/75DK-MMRP>].

⁸⁴ *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/9VES-ADAW>] (Oct. 22, 2021).

1990 to 1999.⁸⁵ The case was one of the more serious CAA asbestos prosecutions in our data. Thorn was prosecuted for CAA violations and money laundering and was sentenced on September 2, 2003 to 168 months of incarceration and 36 months of probation.⁸⁶ He was ordered to forfeit \$939,079, pay a \$1,000 special assessment fee, and pay \$299,593 in restitution to those harmed by his actions.⁸⁷ Anthony Priore was prosecuted along with Environmental Support Systems (ESS) for the issuance of fraudulent “asbestos training certificates to individuals in the Albany, New York area”⁸⁸ Priore was sentenced to serve 12 months of probation, a \$25 special assessment fee, and a \$500 federal fine.⁸⁹

Griffin International was hired to perform air monitoring at two asbestos abatement projects.⁹⁰ Employees provided false results to the Plattsburg Housing Authority (PHA), the company that hired Griffin to perform the analysis.⁹¹ On November 17, 2004 Griffin “was sentenced to pay a \$400 special assessment fee and \$199,303 in restitution

⁸⁵ *New York Man Sentenced for Asbestos Crimes, Money Laundering*, EPA (Sept. 17, 2003), https://archive.epa.gov/epapages/newsroom_archive/newsreleases/a300ad1abd5c10ed8525703d0067e943.html [https://perma.cc/9DK3-6LDB].

⁸⁶ *United States v. Thorn*, 5:00–CR–88–1 (N.D.N.Y. 2003); *Summary of Criminal Prosecutions*, EPA, [https://perma.cc/2K73-98Z7].

⁸⁷ *See United States v. Thorn*, 5:00–CR–88–1 (N.D.N.Y. 2003); *Summary of Criminal Prosecutions*, EPA, [https://perma.cc/2K73-98Z7]. *See also New York Man Sentenced for Asbestos Crimes, Money Laundering*, EPA (Sept. 17, 2003), https://archive.epa.gov/epapages/newsroom_archive/newsreleases/a300ad1abd5c10ed8525703d0067e943.html [https://perma.cc/9DK3-6LDB].

⁸⁸ *See United States v. Priore*, 5:99–CR–295 (N.D.N.Y. 1999); *Summary of Criminal Prosecutions*, EPA, [https://perma.cc/N9UM-PLCP]; *see also False Asbestos Certification Scheme*, EPA (July 1, 1999),

https://archive.epa.gov/epapages/newsroom_archive/newsreleases/0cddab2ceb734d34852567a1006ec755.html [https://perma.cc/JN9B-PY4T] (the defendant, along with six other men, was charged with conspiring to fraudulently obtain asbestos training certificates when none of the defendants had completed the training as required by law.)

⁸⁹ *United States v. Priore*, 5:99–CR–295 (N.D.N.Y. 1999); *Summary of Criminal Prosecutions*, EPA, [https://perma.cc/N9UM-PLCP].

⁹⁰ N.D. New York 2004–CR–52 (NAM); *Summary of Criminal Prosecutions*, EPA, [https://perma.cc/BW3E-F6ZZ].

⁹¹ N.D. New York 2004–CR–52 (NAM); *Summary of Criminal Prosecutions*, EPA, [https://perma.cc/BW3E-F6ZZ].

to the [PHA].”⁹² Dov Shellef “illegally divert[ed]” CFC-113 for the domestic market that was slated for export and “failed to report” the sale.⁹³ Shellef was charged with fraud, conspiracy, racketeering, and other charges.⁹⁴ On March 22, 2006, Shellef was sentenced to 70 months’ incarceration, 36 months’ probation, and was ordered to pay a \$8,800 special assessment fee and \$1,880,461 in restitution jointly with co-defendant William Rubenstein.⁹⁵ Raj Chopra, Sean Doctor, and Comprehensive Employee Management (CEM), were prosecuted for issuing false statements in a shipping manifest that asbestos was shipped from the Roosevelt Park Shelter in Buffalo to CEM on March 11, 2010, when the waste had been shipped before then.⁹⁶ The defendants were charged with false statements under the CAA.⁹⁷ “Doctor was sentenced to pay a \$2,000 fine and serve 12 months probation” and “CEM was sentenced to pay a \$25,000 fine and serve 12 months of probation,” while “Chopra was ordered to serve 12 months of probation.”⁹⁸

Leonard Pugh was prosecuted for hiring an unlicensed individual to demolish a building he owned in Whitesboro

⁹² N.D. New York 2004-CR-52 (NAM); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/BW3E-F6ZZ>] (Griffin International, Inc. was hired by the Plattsburgh Housing Authority to conduct air monitoring for asbestos. At trial, the defendant’s employees testified the air samples were taken illegally and produced fraudulent results.)

⁹³ *United States v. Shellef*, 03-cr-0723 (JFB) (E.D.N.Y. 2004); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/V6T5-X8TA>].

⁹⁴ *United States v. Shellef*, 03-cr-0723 (JFB) (E.D.N.Y. 2004); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/V6T5-X8TA>].

⁹⁵ *United States v. Shellef*, 03-cr-0723 (JFB) (E.D.N.Y. 2004); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/V6T5-X8TA>] (Dov Shellef, along with other defendants, was illegally diverting CRC-113 to the domestic market even though it was produced for export. The defendants failed to report their exports and the product was ultimately used for the illegal manufacture of methamphetamines by Mexican nationals.)

⁹⁶ *See United States v. Chopra*, 12-CR-308 (W.D.N.Y. 2018); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/L456-5WAC>].

⁹⁷ *See id.*

⁹⁸ *See United States v. Chopra*, 12-CR-308 (W.D.N.Y. 2018); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/L456-5WAC>]. *See also Grand Island Man, Company Sentenced for Violations of Clean Air Act Involving Asbestos*, U.S. DEPT OF JUST (Mar. 23, 2018), <https://www.justice.gov/usao-wdny/pr/grand-island-man-company-sentenced-violations-clean-air-act-involving-asbestos> [<https://perma.cc/PG46-KXGW>].

containing some 6,000 square feet of asbestos. Pugh was charged under the CAA and sentenced on January 11, 2012 to 12 months of probation and a \$5,000 fine.⁹⁹ Hope Resources Recovery, Inc. was prosecuted for operating a refuse incineration operation in Long Island City without a proper permit.¹⁰⁰ The company was sentenced on October 9, 1986 to pay a \$10,000 fine.¹⁰¹ The Surpass Chemical Company's facility in Albany experienced a tank rupture in 1997 that released a cloud of chlorine gas, which drifted over to an adjacent neighborhood, caused the hospitalization of many individuals, and required the evacuation of the area.¹⁰² The leakage discharged around 1,000 gallons of the acid into the Hudson River.¹⁰³ Prosecutors charged Surpass Chemical Company with negligently releasing a hazardous air pollutant into the ambient air under the CAA and sentenced the company on August 6, 1998 to pay \$105,000 in federal fines.¹⁰⁴

Water pollution crimes make up 18 percent of our prosecutions, or 31 cases in our data. The vast majority of these crimes involve illegal discharges into the waterways of the United States and are prosecuted under the CWA. These crimes include illegal discharges into public sewers, dumping in the ocean and waterways from vessels, bypassing pollution control devices, falsifying water sampling or other reports, and illegally altering or obstructing waterways. We provide case examples with the prosecution of Richardson Brands Corporation, Turismo Nautico Del Mar de Cortes, Nicholas Miritello, Acquest Transit, LLC.

⁹⁹ N.D. New York 5:11cr379; *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/TP2X-5A9Q>].

¹⁰⁰ E.D. New York 86-00458; *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/J56W-CPKD>].

¹⁰¹ *Id.*

¹⁰² See *United States v. Surpass Chemical Co.*, 98-CR-352 (N.D.N.Y. 1998); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/8G5D-87YR>].

¹⁰³ See *United States v. Surpass Chemical Co.*, 98-CR-352 (N.D.N.Y. 1998); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/8G5D-87YR>]. See also *EPA and OSHA Accident Investigation Report Released on Surpass Chemical Co. Spill*, EPA (Sept. 25, 1998),

https://archive.epa.gov/epapages/newsroom_archive/newsreleases/95b3c6d54c2f3c468525668d00594353.html [<https://perma.cc/6EJT-PRWL>].

¹⁰⁴ See *United States v. Surpass Chemical Co.*, 98-CR-352 (N.D.N.Y. 1998); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/8G5D-87YR>].

Richardson Brands Corporation was prosecuted for illegally discharging waste from its plant in Canajoharie from October 1993 to June 1997, which subsequently “discharged into the Mohawk River.”¹⁰⁵ The company was charged under the CWA and was sentenced on March 13, 1998 to a \$33,000 fine.¹⁰⁶ Turismo Nautico Del Mar de Cortes was charged for operating a ship, the MV Topaz, that bypassed its oil-water separator device to discharge waste into the ocean.¹⁰⁷ An inspection by the U.S. Coast Guard uncovered the bypass device.¹⁰⁸ The company was sentenced on January 27, 2005 to thirty-six months of probation, a \$400 special assessment fee, and a \$100,000 fine.¹⁰⁹ Nicholas Miritello was in charge of testing the Catskill Lower Effluent Chamber for turbidity every four hours. He was shown in video footage to not conduct the tests and fraudulently submit records showing otherwise.¹¹⁰ He was prosecuted for false statements and sentenced on June 12, 2008 to twenty-four months of probation and a \$100 special assessment

¹⁰⁵ See *United States v. Richardson Brands Corp.*, 97–CR–255 (N.D. N.Y. 1998); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/864J-G63X>].

¹⁰⁶ See *United States v. Richardson Brands Corp.*, 97–CR–255 (N.D.N.Y. 1998); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/864J-G63X>]. See also *Florida Company Indicted for Clean Water Act Offenses*, EPA (Aug. 15, 1997), [https://archive.epa.gov/epapages/newsroom_archive/newsreleases/e866a7440133748d852564f4005b3b69.html] [<https://perma.cc/N8HW-DVWT>].

¹⁰⁷ *United States v. Turismo Nautico Del Mar de Cortes*, CR–05–027 (JAG) (S.D.N.Y. 2005); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/LMA6-5KT7>].

¹⁰⁸ *Id.*

¹⁰⁹ *United States v. Turismo Nautico Del Mar de Cortes*, CR–05–027 (JAG) (S.D.N.Y. 2005); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/LMA6-5KT7>]. The company was charged under the Act to Prevent Pollution from Ships (APPS), Navigation and Navigable Waters, 33 U.S.C. §§ 1905-1915, that implements provisions of the International Convention for the Prevention of Pollution from Ships (MARPOL). See *United States v. Turismo Nautico Del Mar de Cortes*, CR–05–027 (JAG) (S.D.N.Y. 2005); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/LMA6-5KT7>]. Companies that dump waste into the ocean are often charged under APPS and/or the CWA. Daisy de Wolff, *Hiding Behind the Flag: Jurisdictional Impediments Imposed by the Law of the Flag on the Enforcement of Violations of Annex I of MARPOL 73/78 Pursuant to the Act to Prevent Pollution from Ships*, 42 *FORDHAM INT'L L.J.* 1475, 1517–18 (2019).

¹¹⁰ *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/VVH7-K2XK>].

fee.¹¹¹ Acquest Transit, LLC headquartered in Amherst, was convicted on March 9, 2016 of contempt, fined \$250,000, and sentenced to two years of probation.¹¹² The company purchased ninety-seven acre property and illegally engaged in the filling of wetlands.¹¹³

In twenty-one cases, or twelve percent of the prosecutions, the primary offense was a hazardous waste crime. This typically manifested as illegal storage, transport, or disposal violations under RCRA and/or failure to notify charges under CERCLA. Examples of such prosecutions include Broomer Research Corporation and Douglas J. Zolner.

Broomer Research Corporation was a defense contractor engaged in the manufacturing of lenses and beam splitters.¹¹⁴ The company was prosecuted along with its owner, Thomas Kardos, for illegally disposing of radioactive waste down the drain.¹¹⁵ The defendants were charged under RCRA and sentenced on December 17, 1998.¹¹⁶ Broomer was sentenced to seventy-two months of probation and a \$100,400 fine.¹¹⁷ Kardos was sentenced to eight months of incarceration and \$10,100 in fines.¹¹⁸ Douglas J. Zolner was prosecuted for loading containers of hazardous waste onto a

¹¹¹ See generally *United States v. Miritello*, No. 07 CRIM 603, 2007 WL 4977454 (S.D.N.Y. July 3, 2007); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/VVH7-K2XK>].

¹¹² See generally *United States v. Acquest Transit LLC*, No. 09-CV-55S(F), 2016 WL 3536573 (W.D.N.Y. June, 29, 2016); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/2XWJ-4VSM>].

¹¹³ *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/2XWJ-4VSM>].

¹¹⁴ See *United States v. Broomer Rsch. Corp.*, No. 96-CR-462-ALL, (E.D.N.Y. 1998); *Summary of Criminal Prosecutions*, [<https://perma.cc/4ZPN-25SV>].

¹¹⁵ See *id.*

¹¹⁶ See *id.*

¹¹⁷ See *id.*

¹¹⁸ See *United States v. Broomer Rsch. Corp.*, No. 96-CR-462-ALL, (E.D.N.Y. 1998); *Summary of Criminal Prosecutions*, [<https://perma.cc/4ZPN-25SV>]. See also *President Of Long Island Corp. Faces Jail Time For Dumping Wastes*, EPA (Dec. 17, 1998), [https://archive.epa.gov/epapages/newsroom_archive/newsreleases/ff816bbd0b0dba358525726c0075b90a.html] [<https://perma.cc/VSJ8-9FDR>] (Broomer Research, along with its President, was fined for illegally disposing of hazardous waste from the facility, which was located directly over one of the town's sources of drinking water. Broomer Research Corporation has since shut down its business).

tractor trailer and illegally storing it in a “residential garage.”¹¹⁹ He was prosecuted for knowingly transporting hazardous waste without a manifest and was sentenced on July 30, 2004 to thirty-six months of probation, a \$100 special assessment fee, and \$96,134 in restitution payments to the EPA.¹²⁰

We find eighteen percent of prosecutions, or a total of thirty prosecutions, centered around state-level offenses. In all of these cases, state enforcement likely coordinated with EPA-CID, which is why they were included in the dataset. Nonetheless, the significant percentage of prosecutions in New York that were ultimately charged as state-level environmental offenses present an interesting finding. This speaks, at least indirectly, to the level of coordination and cooperation occurring between state and federal environmental law enforcement agencies. Most of these prosecutions revolved around the illegal disposal of asbestos or other hazardous wastes, but they but included a series of other crimes as well.

Examples include Joseph Salerno, prosecuted for dumping a total of thirty fifty-five-gallon drums of hazardous waste in Utica, New York.¹²¹ He was charged with unlawful possession of hazardous waste and sentenced on July 9, 2003 to pay \$6,000 in restitution.¹²² Denise Moreau was prosecuted for falsifying training certificates for asbestos supervisors, handlers, and hazardous waste handlers in their capacity as company officials of Alternative Environmental Services in Clayville.¹²³ Moreau was charged with filing false statements and falsifying business records and was

¹¹⁹ W.D. New York 1:04CR73, *Summary of Criminal Prosecutions*, EPA, [https://perma.cc/TG46-EM9R].

¹²⁰ *Id.*

¹²¹ *Summary of Criminal Prosecutions*, EPA, [https://perma.cc/4CL5-PVYU].

¹²² *Id.*; See also *Indictment in Oneida County Hazardous Waste Case*, N.Y. STATE OFF. OF THE ATT’Y GEN. (Apr. 3, 2003), <https://ag.ny.gov/press-release/2003/indictment-oneida-county-hazardous-waste-case> [https://perma.cc/5469-CQLC].

¹²³ See *United States v. Moreau*, NYS2002–207–SCI–S (N.D.N.Y. 2004); *Summary of Criminal Prosecutions*, EPA, [https://perma.cc/H3Z9-5H4A]. See also *Asbestos Removal Firm Faked Worker Training*, THE ONEIDA DAILY DISPATCH, (July 22, 2021), <https://www.oneidadispatch.com/2003/08/24/asbestos-removal-firm-faked-worker-training/> [https://perma.cc/XYC8-W3EZ].

sentenced on October 22, 2003 to 6 months incarceration, 60 months of probation, 200 hours of community service, and to pay a \$210 fine.¹²⁴ Signs Ink, located in Yorktown Heights, was prosecuted “for illegally discharging raw sewage and other waste into New York state waters.”¹²⁵ The company was charged under state environmental laws and sentenced on July 14, 2009 to pay a \$3,750 criminal fine.¹²⁶ Great Lakes Kraut was charged with three counts of violating its state pollution discharge elimination system (SPDES) permit.¹²⁷ The company, located in Shortsville, was discharging into the Canandaigua Outlet and the plant manager used a “fake meter on the discharge system.”¹²⁸ The company was sentenced on April 14, 2010 to pay a \$60,000 fine.¹²⁹

The final ten prosecutions in our judgment are unclassifiable in Figure 5. Many involved the improper use of pesticides or chemicals but were not properly categorized as a hazardous waste crime, state crime, water, or air pollution crime. Crimes include the previously-mentioned case against Charles Colbert that involved the illegal export of chemicals, filing false documents, running an uncertified laboratory, insurance fraud, accepting bribes, sale of unregistered pesticides, laboratory fraud, labor law violations, and sale of a home with lead paint hazards.¹³⁰

¹²⁴ United States Moreau, NYS2002-207-SCI-S (N.D.N.Y. 2004); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/H3Z9-5H4A>].

¹²⁵ *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/T2ZH-XMFF>].

¹²⁶ *Id.* (stating that after releasing raw sewage into New York waters, Signs Ink pled guilty to a misdemeanor in a New York State Case, No. 09020096, and was sentenced to pay a criminal fine).

¹²⁷ United States v. Great Lakes Kraut, LLC, 09100091 (Ont. Cnty. Ct. N.Y. 2010); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/ZQT8-7R2C>].

¹²⁸ *Id.*

¹²⁹ See United States v. Great Lakes Kraut, LLC, 09100091 (Ont. Cnty. Ct. N.Y. 2010); *Summary of Criminal Prosecutions*, EPA, [<https://perma.cc/ZQT8-7R2C>]. See also *Kraut Faces Felony Pollution Charges*, FINGER LAKES TIMES (Oct. 18, 2009), https://www.fltimes.com/news/kraut-faces-felony-pollution-charges/article_44458aa8-f748-50fc-9ab4-4edb7f53d7fc.html [<https://perma.cc/TE9E-J7TJ>].

¹³⁰ See, e.g., See United States v. Colbert, No. 87 CIV. 4789 (MGC), 1991 WL 183376 (S.D.N.Y. Sept. 11, 1991); United States v. Konstandt Laboratories, Inc., 89-0563 (E.D.N.Y. 1989); United States v. Blum, 62 F.3d 63, 66 (2d Cir. 1995); United States v. Zwolak, 1:04-CR-202-001 (W.D.N.Y. 2005); N.Y. 3:09CR20 (;

While these cases all caught the attention of EPA criminal investigators and were related in some manner to an environmental offense, they fell outside the bounds of our categorization.

Conclusion

Our analysis of environmental crime prosecutions occurring in the State of New York from 1983 to 2019 yielded a few important conclusions. Our first substantive finding is that the number of prosecutions taking place from EPA-CID investigations is rather low – less than five take place annually. While there are likely prosecutions that were not captured in our data at the federal level, and certainly many at the state level, the prosecution frequency is relatively low regarding federal cases in particular. In terms of deterrence and the certainty of punishment, the number of federal prosecutions alone is probably too small to suggest this has a broad-reaching deterrent value across so many sectors of the

United States v. Redden, CR-6109 (W.D.N.Y. 2010); *Former Rochester City Employee is Sentenced to One Year and One Day for Bribery*, FED. BUREAU OF INVESTIGATION, (July 26, 2010), <https://archives.fbi.gov/archives/buffalo/press-releases/2010/bffo072610.htm> [https://perma.cc/D6WU-6Y9A]; United States v. Hui Yang, CR-00-000 (S.D.N.Y. 2012); *HSI Investigation Leads to the Arrest of Shop Owners Selling Illegal Pesticides in New York City*, U.S. IMMIGR. & CUSTOMS ENFT (Sept. 19, 2011), <https://www.ice.gov/news/releases/hsi-investigation-leads-arrest-shop-owners-selling-illegal-pesticides-new-york-city> [https://perma.cc/2PDK-PRP2]. See United States v. Upstate Lab'ys, Inc., No. 5:13-CR-229 (N.D.N.Y. 2014); *Upstate Laboratories, Inc. Was Sentenced Following its Guilty Plea to Committing Mail Fraud Related to the Falsification of Over 3,300 Laboratory Results from 2008 through 2010*, U.S. DEP'T OF JUST. (Jan. 8, 2014), <https://www.justice.gov/usao-ndny/pr/syracuse-new-york-upstate-laboratories-inc-was-sentenced-following-its-guilty-plea> [https://perma.cc/DUM7-K7ND]; United States v. Naranjo, CR-13-MAG-0685/351 (S.D.N.Y. 2014); *Demolition Company Operators Sentenced In Manhattan Federal Court For Scheme To Underpay Employees In Violation Of Federal Prevailing Wage Law*, U.S. DEP'T OF JUST. (Apr. 9, 2014), <https://www.justice.gov/usao-sdny/pr/demolition-company-operators-sentenced-manhattan-federal-court-scheme-underpay> [https://perma.cc/KXV2-A4E8]; United States v. Walck, 17-MJ-1103 (W.D.N.Y. 2018); *Realtor Sentenced For Violating Lead-Based Paint Disclosure Rules*, U.S. DEP'T OF JUST. (Jan. 9, 2018), <https://www.justice.gov/usao-wdny/pr/realtor-sentenced-violating-lead-based-paint-disclosure-rules> [https://perma.cc/K8P4-ZW5E].

economy. Federal deterrence of environmental crimes in this vein is best thought of as strategic where specific prosecutions are based on the circumstances and availability of resources in a resource-constrained environment. In our judgement, this pattern presents itself as a series of intentional prosecutions that were planned and others that resulted from visible crimes, such as the discovery of illegally dumped hazardous waste, explosions, or emissions events. A good percentage of these cases were deferred for state-level prosecution, suggesting a significant level of cooperation between state and federal environmental law enforcement agencies.

When we examine penalties relative to the offenses, we see a significant amount of total monetary fines (over a quarter of a billion dollars in monetary penalties) and almost 7,000 hours of probation and some 4,757 months by our estimates of incarceration assessed to defendants.¹³¹ When you deduct large-penalty cases, these numbers are severely reduced. We suspect that penalties may have some deterrent effect on environmental crimes. However, the small amount of large penalty cases against major corporations or polluters, given the scale of manufacturing and industrialization in the state, suggests there is a relatively small chance of being caught and criminally prosecuted with substantial financial consequences, particularly for large corporations. The deterrent effect may come in specific instances, as well as a broader perceptual effect across certain industries.¹³²

Our second major finding is that prosecutions lean heavily towards air pollution crimes, with a significant

¹³¹ See *infra* Figure 4.

¹³² See Paul B. Stretesky & Jackie Gabriel, *Self-Policing and the Environment: Predicting Self Disclosure of Clean Air Act Violations Under the U.S. Environmental Protection Agency's Audit Policy*, 18 SOC'Y & NAT. RES. 871, 877–78, 884–85 (2005). In this sense, it is hard to estimate a broad deterrent effect of environmental policing and prosecution, given myriad inputs, *see id.* at 87 (discussing effect of “variations in traditional regulatory efforts, organizational factors (such as company size), corporate economic environment, and/or case characteristics”) However, treated in isolation, the number of prosecutions and the sentencing outcomes in New York State would suggest this effect is small. Nonetheless, it may be the case that there is a broader perceptual effect that occurs from the willingness of prosecutors to pursue still penalties and the availability of such penalties.

number focusing on asbestos violations. Forty-six percent of all prosecutions center on air pollution, but the vast majority involve illegal demolition and disposal of asbestos or charges relating to failure to notify, testing fraud, or improper certification, training, or protection of workers. In all of these cases, unlike criminally prosecuting unpermitted emissions from industrial facilities that emit harmful air toxics into the ambient air, asbestos NESHAP charging statutes give prosecutors the significant ability to prosecute a range of crimes with much less ambiguity. The presence of physical evidence also makes it much easier for EPA-CID agents to investigate such crime; both factors likely explain the heavy emphasis on prosecution of such crimes in New York State.

Our suggestions for enhancing the reach and substance of environmental policing are three-fold. The first is an increase in resources. EPA-CID currently has less than 150 criminal investigators for the entire country.¹³³ This number is very low and falls below the statutory minimum.¹³⁴ EPA should hire the minimum number of staff and beyond, given that the 200-staff standard was established some 30 years ago, and since then both the size and complexity of the U.S. economy and EPA-CID's obligations have grown exponentially.

A second remedy for an agency with limited staff and resources is to rely on additional community policing. The communities most affected by environmental pollution are those environmental justice communities living near the fenceline of major industrial facilities. Strewn across the state, if any group of the population deserves a greater environmental police presence, arguably these communities would qualify. Many already involve themselves in the stakeholder participation process through the EPA's Office of Environmental Justice (OEJ) and the Office provides grants

¹³³ Kirsten Stade, *Federal Pollution Prosecutions Continue to Fall*, PUB. EMPS. FOR ENV'T RESP. (Nov. 21, 2019), <https://www.peer.org/federal-pollution-prosecutions-continue-to-fall/> [https://perma.cc/S7V6-3EUV]; *EPA CID Agent Count*, PUB. EMPS. FOR ENV'T RESP., [https://www.peer.org/wp-content/uploads/2019/11/11_21_19-](https://www.peer.org/wp-content/uploads/2019/11/11_21_19-Federal_Pollution_EPA_CID_Agent_Count.pdf)

Federal_Pollution_EPA_CID_Agent_Count.pdf [https://perma.cc/7SM7-Z767].

¹³⁴ Pollution Prosecution Act of 1990, 42 U.S.C. § 4321 note (EPA Office of Criminal Investigation) (setting the statutory minimum at 200 investigative staff).

for a variety of public health studies in these communities. Expanding their presence in community policing, and taking their concerns seriously as evidence of a potential crime rather than chronic regulatory violations, would go far in helping to both include them in a process that has life or death stakes for their community, affirm the substantive mission of the OEJ, and help with environmental law enforcement activities.¹³⁵

A final remedy for improving environmental law enforcement is to draw increased salience to its activities. The public often fails to see environmental crime as “real crime” and the mass media rarely reports on such crimes.¹³⁶ Without the public and policymakers conceptualizing these crimes as having serious and irreversible health effects, there will be little need to increase resources to enhance a police presence in the state, particularly in fenceline communities that are most vulnerable and in need.

¹³⁵ For example, the EPA’s “Report a Violation Website” resulted in 35 cases being opened, with six were referred for successful prosecution in the first decade of the Program’s existence; this process could be expanded. See EPA, EPA PUBL’N NO. 310-K-11-001, CRIMINAL ENFORCEMENT PROGRAM OVERVIEW 6 (2011), <https://19january2017snapshot.epa.gov/sites/production/files/documents/oceft-overview-2011.pdf> [https://perma.cc/ZJ7X-VQND].

¹³⁶ Melissa L. Jarrell, *Environmental Crime and Injustice: Media Coverage of a Landmark Environmental Crime Case*, 6 SW. J. CRIM. JUST. 25, 27-28 (2009).