

Contents

<i>Preface</i>	xv
<i>Acknowledgments</i>	xix
Chapter 1. Why Environmental Crime?	1
A. Real Life Examples	1
B. The Legal Response to These Examples	2
C. Introducing the Criminal Enforcers of Environmental Law	4
D. The Debate Over Criminal Environmental Enforcement	5
1. The Nature of Environmental Law	5
Kathleen F. Brickey, <i>Environmental Crime at the Crossroads: The Intersection of Environmental and Criminal Law Theory</i>	5
2. Core Criminal Concepts	7
Kathleen F. Brickey, <i>Environmental Crime: Law, Policy, Prosecution</i>	7
3. The Relationship Between Criminal and Civil Environmental Enforcement	10
John C. Coffee, Jr., <i>Does “Unlawful” Mean “Criminal”?: Reflections on the Disappearing Tort/Crime Distinction in American Law</i>	10
David M. Uhlmann, <i>Prosecutorial Discretion and Environmental Crime</i>	13
Chapter 2. Prosecutorial Discretion and Charging	17
A. Investigatory Discretion	17
<i>Environmental Protection Agency: The Exercise of Investigative Discretion</i>	18
B. Prosecutorial Discretion	22
<i>Justice Manual: Principles of Federal Prosecution</i>	22
<i>Justice Manual: Principles of Federal Prosecution of Business Organizations</i>	27
<i>Factors in Decisions on Criminal Prosecutions for Environmental Violations in the Context of Significant Voluntary Compliance or Disclosure Efforts by the Violator</i>	31
C. The Federal Grand Jury	34
1. The Nature and Composition of the Grand Jury	35
2. The Grand Jury’s Investigatory Powers	36
3. The Grand Jury’s Indictment Authority	36
<i>United States v. Navarro-Vargas</i>	37
Chapter 3. Mens Rea in Environmental Crimes	49
A. Willful	50
	ix

<i>United States v. Henderson</i>	50
<i>United States v. Hairston</i>	54
B. Knowing	56
1. Knowledge of the Facts	57
<i>United States v. Ahmad</i>	57
<i>United States v. Kelley Technical Coatings, Inc.</i>	62
2. Knowledge of Jurisdictional Facts	66
<i>United States v. Cooper</i>	66
3. Knowledge of the Law	69
<i>Liparota v. United States</i>	69
<i>United States v. Sinsky</i>	77
4. Willful Blindness	82
<i>United States v. Wasserson</i>	83
5. Collective Knowledge	87
<i>United States v. Pacific Gas & Electric Co.</i>	88
C. Criminal Negligence	92
<i>United States v. Ortiz</i>	93
D. Strict Liability	97
<i>United States v. Corrow</i>	97
Chapter 4. Theories of Liability for Individuals and Organizations	99
A. Theories of Individual Liability	100
1. Principal Liability	100
<i>Case Study: Spearmint Smuggling</i>	100
<i>United States v. Wasserson</i>	101
2. Conspirator Liability	105
<i>United States v. Wells</i>	105
3. Responsible Corporate Officer	111
<i>United States v. Park</i>	111
<i>United States v. Iverson</i>	119
B. Corporate Liability	123
1. Scope of Authority	124
<i>United States v. Hilton Hotels Corp.</i>	124
2. Benefit of the Corporation	126
<i>United States v. Gold</i>	126
<i>Preet Bharara, Corporations Cry Uncle and Their Employees Cry Foul: Rethinking Prosecutorial Pressure on Corporate Defendants</i>	130
Chapter 5. Water Pollution	135
A. Direct Discharges	139
1. Pollutant	140
2. Point Source	140
<i>United States v. Plaza Health Laboratories, Inc.</i>	141

3. Navigable Waters	148
<i>United States v. Rapanos</i>	148
4. Mens Rea and the Permit Requirement	165
<i>United States v. Weitzenhoff</i>	165
B. Publicly Owned Treatment Works	170
1. Pretreatment Standards	171
a. Owner and Operator of a Source	171
b. In Violation of Pretreatment Standards	172
<i>Case Study: Dirty Trucks</i>	173
<i>EPA's Specific Prohibitions</i>	174
<i>United States v. Hajduk</i>	175
<i>Affirmative Defenses to the General and Some Specific Prohibitions</i>	178
<i>POTW Specific Prohibitions</i>	179
<i>United States v. Iverson</i>	180
2. POTW Requirements	182
<i>Case Study: Big Gold</i>	183
3. The POTW and Sewer System Catchall	184
<i>Case Study: Bad Bio-diesel in the Sewer</i>	184
C. Wetlands	185
<i>Case Study: Shovel Party in Illinois</i>	187
D. Knowing Endangerment	187
<i>United States v. Borowski</i>	188
E. Dishonest Acts	193
<i>United States v. Sinskey</i>	194
 Chapter 6. Air Pollution	 199
A. The Dual Mens Rea	200
<i>United States v. Fern</i>	201
B. National Ambient Air Quality Standards	204
C. New Source Review	206
D. New Source Performance Standards	209
<i>Case Study: Incinerators in the World's Biggest Little City</i>	210
E. National Emission Standards for Hazardous Air Pollutants	211
1. NESHAP Enforcement: Asbestos	211
<i>United States v. Dipentino</i>	212
<i>United States v. San Diego Gas & Electric Co.</i>	215
2. Knowing and Negligent Endangerment	220
<i>United States v. Hamilton</i>	221
F. Atmospheric Ozone Protection	223
<i>Case Study: Air Conditioner Theft Gone Wrong</i>	224
G. Title V Permits	224
<i>United States v. Tonawanda Coke Corporation</i>	225
H. Dishonest Acts	228

<i>United States v. Fern</i>	228
<i>Case Study: Big Pipe and SO₂</i>	231
Chapter 7. Hazardous Wastes and Substances	233
A. Hazardous Waste Enforcement	234
1. Proving the Material is Hazardous Waste	235
a. Is the Material a Solid Waste?	235
b. Is the Solid Waste Hazardous?	236
<i>United States v. Richter</i>	238
<i>United States v. Self</i>	246
2. Storage, Treatment, and Disposal of Hazardous Waste	250
a. Disposal and Storage	251
<i>Case Study: There's Gold in Them Thar Barrels</i>	252
b. Treatment of Hazardous Waste	252
<i>Case Study: Blame It on the Rain</i>	253
c. Permits, Interim Status, and Mens Rea	253
<i>United States v. Laughlin</i>	253
d. Transporting Hazardous Waste Contrary to Law	258
<i>United States v. Hayes International Corp.</i>	259
3. Dishonest Acts	263
<i>Case Study: What's in the Storage Unit?</i>	264
4. Knowing Endangerment	265
<i>United States v. Protex Industries, Inc.</i>	265
B. Releases of Hazardous Substances	269
<i>United States v. Baytank, Inc.</i>	270
<i>United States v. Laughlin</i>	272
C. Insecticides, Fungicides, and Rodenticides	274
1. The Pesticide Registration Process	275
2. FIFRA's Enforcement Provisions	276
<i>United States v. Corbin Farm Service</i>	278
Michael J. McClary & Jessica B. Goldstein, <i>FIFRA at 40: The Need for Felonies for Pesticide Crimes</i>	282
Chapter 8. Wildlife Offenses	287
A. The Lacey Act	288
1. Trafficking Offenses	289
<i>United States v. Cameron</i>	289
<i>United States v. McNab</i>	294
<i>United States v. Santillan</i>	300
<i>Case Study: Hunting Without Boundaries</i>	302
2. Labeling Offenses	303
<i>Case Study: Expensive Trinkets</i>	303
B. The Endangered Species Act	304
<i>United States v. McKittrick</i>	306

<i>WildEarth Guardians v. United States Department of Justice</i>	308
C. The Migratory Bird Treaty Act	311
1. Prohibitions Against Take	312
<i>United States v. Apollo Energies, Inc.</i>	312
Solicitor of the Department of the Interior: <i>The Migratory Bird Treaty Act Does Not Prohibit Incidental Take</i>	319
2. Prohibition Against Trafficking	325
<i>United States v. Pitrone</i>	326
Case Study: <i>Extra Money for College</i>	330
D. The Bald and Golden Eagle Protection Act	330
<i>United States v. Moon Lake Electric Association</i>	332
E. Animal Welfare Act	337
<i>United States v. Berry</i>	338
<i>United States v. Gibert</i>	340
 Chapter 9. Conventional Criminal Statutes	 347
A. Mail and Wire Fraud	348
<i>United States v. Sawyer</i>	349
B. False Statements	355
1. Matters Within the Jurisdiction of the United States	
Government	357
<i>United States v. Wright</i>	357
2. Mens Rea for the Misrepresentation	359
<i>United States v. Gonsalves</i>	359
3. Materiality	361
<i>United States v. Brittain</i>	361
C. Obstruction of Justice	364
<i>United States v. McDaniel</i>	365
<i>United States v. El-Sherif</i>	367
D. Smuggling	372
1. Intent to Defraud the United States	373
<i>United States v. Menon</i>	373
<i>United States v. Ahmad</i>	378
2. Importing Merchandise Contrary to Law	382
<i>United States v. Lawson</i>	383
 <i>Table of Cases</i>	 389
<i>Table of Statutes</i>	395
<i>Index</i>	399