

# Environmental Crimes Section

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NOVEMBER 2, 2023



# Who are those guys?

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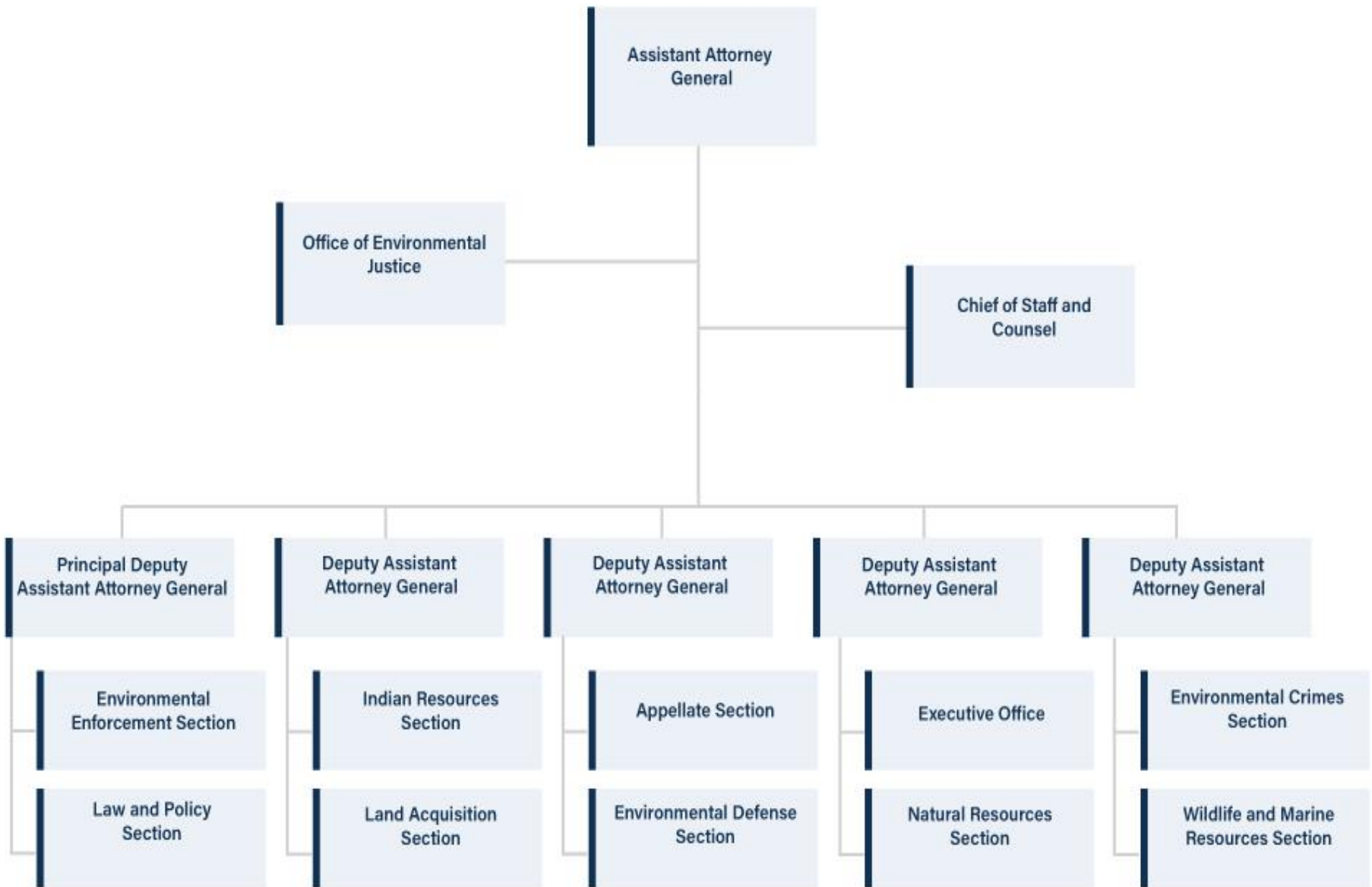


# What We Do...

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- Environmental Crimes
- RINS Fraud
- Wildlife Crimes
- Worker Safety Crimes
- PHMSA Violations
- Animal Welfare Crimes
- Criminal Code Violations
- Training
- International Capacity Building





# ECS Staff

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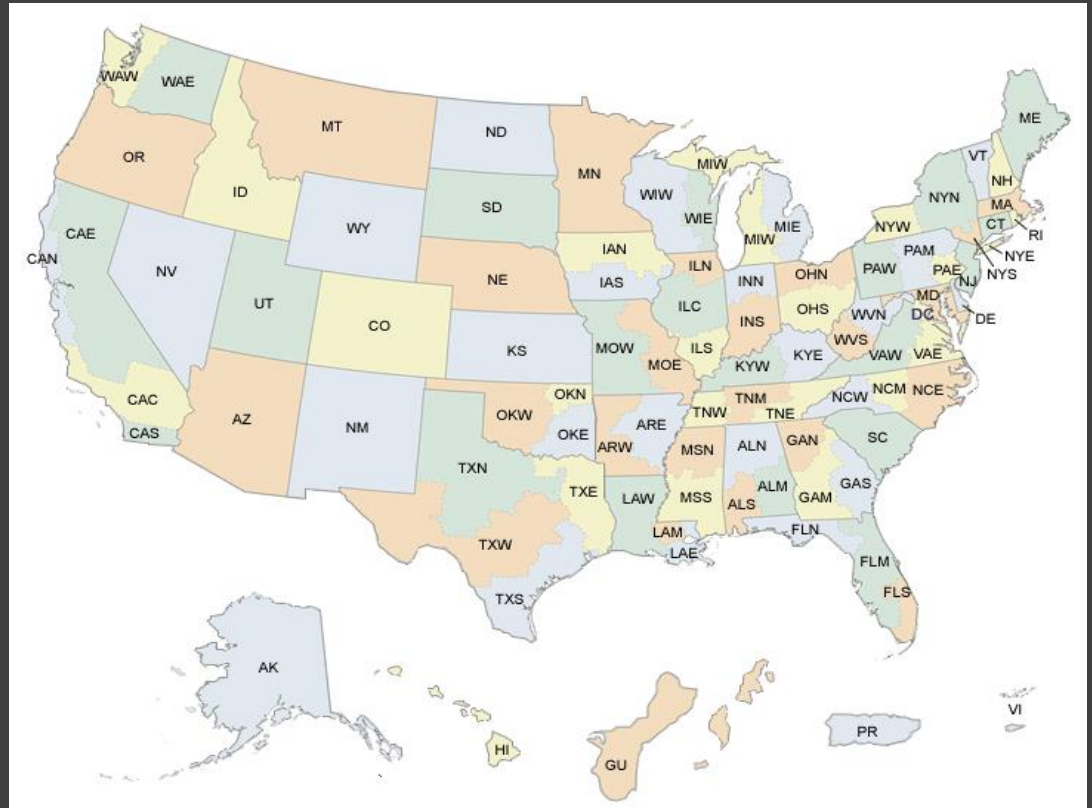
- Chief
- Deputy Chief
- 4 Assistant Section Chiefs
- 2 Senior Litigation Counsel
- 2 Senior Counsel
- 25 Senior Trial Attorneys and Trial Attorneys
- 6 Paralegals
- 5 Admin Professionals

# Case Work

## ➤ 93 U.S. Attorneys' Offices

- Joint
- Solo
- Assist

## ➤ USAM 5-11.104



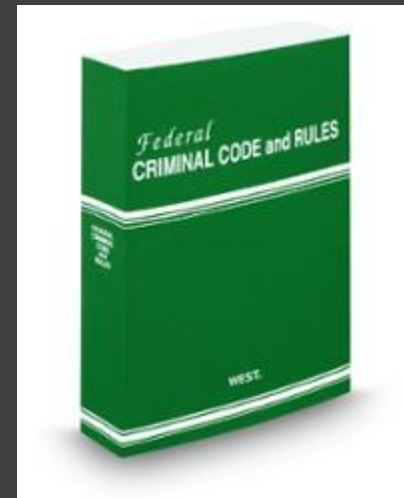
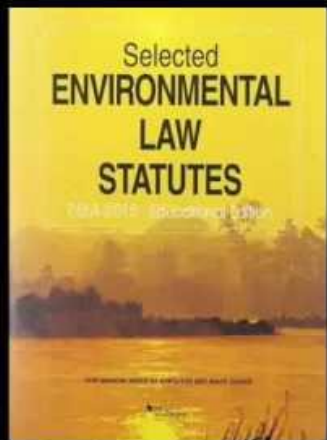
# Law Enforcement Partners

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- EPA-CID
- Fish & Wildlife Service
- U.S. Coast Guard
- NOAA
- FBI
- Dept of Transportation
- Dept of Agriculture
- OSHA / DOL IG
- FDA
- State Agencies

# Environmental & Related Criminal Statutes

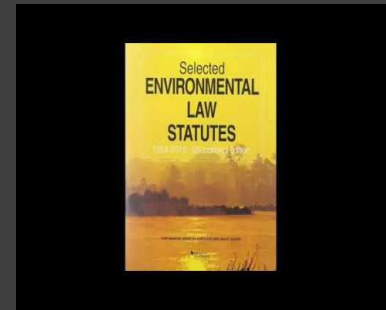
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# Environmental Statutes Enforced

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CWA

CAA

RCRA

TSCA

SDWA

CERCLA

FIFRA

APPS

MARPOL

OSH Act

## What is an **Environmental** Crime?

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The *negligent, knowing* or *willful* violation of an environmental statute or regulation

# Civil vs. Criminal

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## **Mental State**

- Knowingly (CWA, RCRA, CAA, TSCA, FIFRA)
- Knowing Endangerment (CWA, RCRA, CAA)
- Willfully (TSCA, SDWA, EPCRA)
- Negligently (CWA, CAA) (misdemeanors)

## **Standard of Proof**

- Each Element (Clause) Beyond a Reasonable Doubt

# Mental States Defined

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**“Knowingly”** = Knowledge of the facts that constitute the crime, not of the law

- Put another way, defendant knew of the conduct that constituted the violation
- Acts must be voluntary and not the result of accident or a mistake.

**“Willfully”** = Knowledge of the facts *and* a *general* knowledge of the unlawfulness of the act.

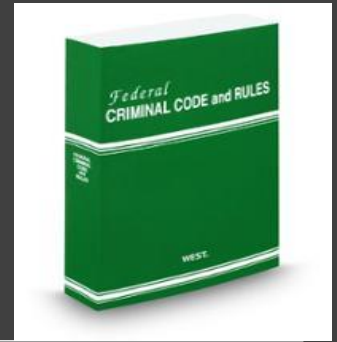
- But, gov’t not required to prove defendant knew the *specific* law violated.

**“Negligently”** = whether the defendant used reasonable care,

- The care a reasonably prudent person would use under similar circumstance.

# Associated **Criminal** Code Offenses - **Title 18**

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**Conspiracy, 18 U.S.C § 371**

**Making or Using False Statements, 18 U.S.C. § 1001**

**Obstructing Proceedings, 18 U.S.C. § 1505**

**Destruction, Altering, Falsification of Records in Federal Investigations, 18 U.S.C. § 1519**

**Mail Fraud / Wire Fraud, 18 U.S.C. § 1341**

**Fraud Conspiracy, 18 U.S.C. § 1349**

# 18 U.S.C. § 2

## Principals (& Accomplices)

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Whoever aids, abets, counsels, commands, induces, or procures the commission of *an offense against the United States* is punishable as a principal

Whoever willfully causes another to commit an act to be done which, if directly performed by him or another, would be *an offense against the United States*, is punishable as a principal.

# Corporations

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**Corporations  
are  
People  
Too!**

# Federal Criminal Investigations

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Federal prosecutor involved early in investigation

Tools in the toolbox:

- Request for records from state and federal environmental agencies
- Field interviews by agents
- Grand Jury Subpoenas
- Search Warrants (docs, sampling, interviews)
- Proffers



# DOJ Voluntary Self-Disclosure Policy (VSD)

## March 2023

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When a company becomes aware of misconduct by employees or agents before that misconduct is publicly reported or otherwise known to the government, companies may disclose that misconduct to ECS, and [if done properly] expect beneficial treatment, including reductions in charges, penalties or conditions of probation, referral for civil or administrative enforcement in lieu of criminal prosecution, and, in certain cases, non-prosecution.

Companies are encouraged to make disclosures to DOJ even if they believe the government may already be aware of the misconduct through other means. Prompt and complete self-disclosures to the government will be considered favorably, even if they do not satisfy all the VSD criteria set forth below.

# VSD Criteria

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**Voluntary**: Made voluntarily by a company about misconduct not previously known or required to be reported to the government.

**Timely**: Made *prior to*: an imminent threat of disclosure or government investigation; public disclosed or otherwise made known to the government; and within a prompt time of the company becoming aware of the misconduct,

**To ECS / USAO**: Made directly to ECS and/or the USAO in the district where the misconduct occurred.

**Substantive**: Must include all relevant facts concerning the misconduct and the individuals involved known to the company at the time of the disclosure.

# Benefit to VSD

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Absent certain aggravating factors, if the reporting company has:

- Made a VSD as defined in DOJ Policy (above)
- Fully cooperated, including cooperation against responsible individuals;
- Timely and appropriately remediated the criminal conduct;

ECS will not seek a guilty plea.

Decisions on VSD credit will be made on a case-by-case basis and at the sole discretion of ECS, in consultation with any participating USAO.

# VSD Aggravating Factors

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Aggravating factors that may warrant prosecution notwithstanding a VSD include, but are not limited to, misconduct that:

- posed a threat of serious adverse impact to the environment, public health and safety, worker safety, wildlife, or natural resources;
- 
- involved knowing endangerment of, serious injury, or death to any individual;
- 
- was deeply pervasive throughout the company;
- 
- involved concealment or obstruction of justice by senior management of the company;
- was followed by lack of full cooperation; or
- was followed by lack of timely and appropriate remediation

# Environmental Justice

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The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

# Environmental Justice

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This goal will be achieved when everyone enjoys:

- The same degree of protection from environmental and health hazards, and
- Equal access to the decision-making process to have a healthy environment in which to live, learn, and work.

The EPA and ENRD have both created Offices of Environmental Justice to facilitate achievement of this goal

# Meaningful Involvement

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- People have an opportunity to participate in decisions about activities that may affect their environment and/or health;
- The public's contribution can influence the regulatory agency's decision;
- Community concerns will be considered in the decision making process; and
- Decision makers will seek out and facilitate the involvement of those potentially affected.

# Questions?

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