

FAILURE TO NOTIFY: EXPLORING CHARGING AND SENTENCING PATTERNS IN SUPERFUND CRIMINAL PROSECUTIONS

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The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)¹ was established in 1980. Also referred to as Superfund, the legislation empowers the U.S. Environmental Protection Agency (EPA) to create a master fund to clean up hazardous waste that is abandoned, spilled, or otherwise released into the environment. The Act gives the Agency the authority to create the fund, seek out responsible parties to pay for cleanup and remediation of hazardous waste sites, recover the costs of remediation from responsible individuals and companies when possible, or to remediate orphan sites when no responsible parties can be located.

The Superfund Amendments and Reauthorization Act was passed in 1986, which allowed CERCLA to continue and authorized the Emergency Planning and Community Right-to-Know Act (EPCRA).² EPCRA is meant to help communities protect themselves and the environment from chemical hazards and to plan for chemical emergencies. The law requires states to appoint state emergency response commissions, which then divide their state into local emergency planning committees.³

The Office of Superfund Remediation and Technology Innovation currently administers the Superfund program, as well as the national priorities list (NPL) that prioritizes for remediation sites contaminated by the known release of hazardous waste. Currently, 1,335 sites have been placed on the NPL and 51 sites are currently proposed to be added to the list.⁴ EPA uses the Hazard Ranking System

to assess the threat to human health or the environment of potential hazardous waste sites to decide whether to propose placing them on the NPL. Unfortunately, Superfund was paid for with a tax on businesses that expired in 1995. As that fund dwindled and was not reinstated by the U.S. Congress, the ability of EPA to remediate orphan sites has since diminished.

EPA must engage in compliance monitoring to ensure regulated entities obey the law when it comes to enforcing rules and regulations it developed to comply with its CERCLA mandates. When companies and individuals break the law, EPA must undertake investigations of the infractions and engage in possible enforcement actions. More often than not, enforcement actions center on civil remedies. These include a variety of administrative actions or civil judicial actions, such as injunctive relief, monetary penalties, settlements or administrative orders of consent, mitigation plans, or supplemental environmental projects that require the violator to perform some agreed-upon set of actions.⁵

The practice of enforcement, however, typically begins at the state level, with state environmental agencies issuing permits and engaging in monitoring, investigation, and enforcement actions. EPA involvement in the investigative process more often than not results from these state actions, rather than prompting them. EPA investigations involve cooperation and significant collaboration with state and local agencies, law enforcement, prosecutors, laboratories, and even elected officials.⁶

Facing the specter of serious and willful violations of their regulations, the Agency realized there was a need to institutionalize a process for the criminal prosecu-

1. 42 U.S.C. §§9601-9675, ELR STAT. CERCLA §§101-405.
2. 42 U.S.C. §§11001-11050, ELR STAT. EPCRA §§301-330. U.S. EPA, *Summary of the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund)*, <https://www.epa.gov/laws-regulations/summary-comprehensive-environmental-response-compensation-and-liability-act> (last updated Aug. 15, 2019).
3. U.S. EPA, *Summary of the Emergency Planning & Community Right-to-Know Act*, <https://www.epa.gov/laws-regulations/summary-emergency-planning-community-right-know-act> (last updated Dec. 27, 2018).
4. U.S. EPA, *Superfund: National Priorities List (NPL)*, <https://www.epa.gov/superfund/superfund-national-priorities-list-npl> (last updated June 4, 2018).

5. U.S. EPA, *Basic Information on Enforcement*, <https://www.epa.gov/enforcement/basic-information-enforcement> (last updated July 1, 2020).
6. THEODORE M. HAMMETT & JOEL EPSTEIN, *LOCAL PROSECUTION OF ENVIRONMENTAL CRIME* xiv (National Institute of Justice 1993). This book is a good introduction to the process of prosecuting environmental crime. It provides case studies and examples for prosecuting at the local level.

tion of some categories of more serious environmental crimes. EPA's Office of Environmental Enforcement, since renamed the Office of Enforcement and Compliance Assurance (OECA), was created in 1981 in order to institutionalize an enforcement presence.⁷ The U.S. Department of Justice's (DOJ's) Environmental Crimes Section (ECS) was founded in 1982 to help with the criminal prosecution of environmental offenders.⁸ Congress granted EPA full law enforcement authority in 1988.⁹ The Office of Criminal Enforcement, Forensics, and Training investigates violations of environmental law and provides forensic support in both civil and criminal cases. Today, criminal enforcement agents working in the Criminal Investigation Division (CID) are stationed at some 40 locations throughout the United States. In 2019, the Division employed 145 criminal enforcement agents, which has fallen from 175 in 2012 and 189 in 2005, although the agency maintains many more enforcement-focused employees.¹⁰

The Agency cannot directly prosecute cases and must rely on either the U.S. attorneys or DOJ to charge and prosecute offenders. The creation of these offices institutionalized a process for dedicating staff and resources to investigating and enforcing federal environmental statutes via a criminal process.¹¹ Prior to the early 1980s, the federal

government only prosecuted 25 environmental crimes.¹² Given the nature of most crimes and the cost of prosecution, the vast majority of violations of federal environmental statutes are still handled through civil remedies.¹³

There is significant research literature that has studied the civil enforcement process, but we still have a poor understanding of how the Agency uses its criminal enforcement tools to enforce compliance with CERCLA.¹⁴ We work to fill this gap by exploring charging and sentencing patterns in federal CERCLA prosecutions. By exploring the Agency's prosecution case summaries from 1983-2019, we are able to chart the evolution of how CERCLA has been used by EPA investigators and federal prosecutors to pursue criminal sanctions, the overarching themes of those investigations and prosecutions over the past 37 years, as well as the totality of those sanctions.

I. Data and Method

We collected our data from the EPA Summary of Criminal Prosecutions database.¹⁵ We searched the database by fiscal year starting with the initial case in the data set in 1983 through the last case as of January 1, 2020. We coded the following categories of data using content analysis of these case summaries: summary information on the crime, year, docket number, state, major environmental and non-environmental charging statutes used, number of defendants, whether the defendants were companies or individuals, penalties assessed, and whether each case involved a death or injury to humans or animals that was clearly discussed in the prosecution narratives. If the case was prosecuted under CERCLA, we selected it for analysis. We analyzed 2,588 cases, which yielded 77 CERCLA prosecutions for the analysis. The OECA and ECS were founded in 1981 and 1982, respectively, which makes this a fairly strong representation of Superfund criminal prosecutions.

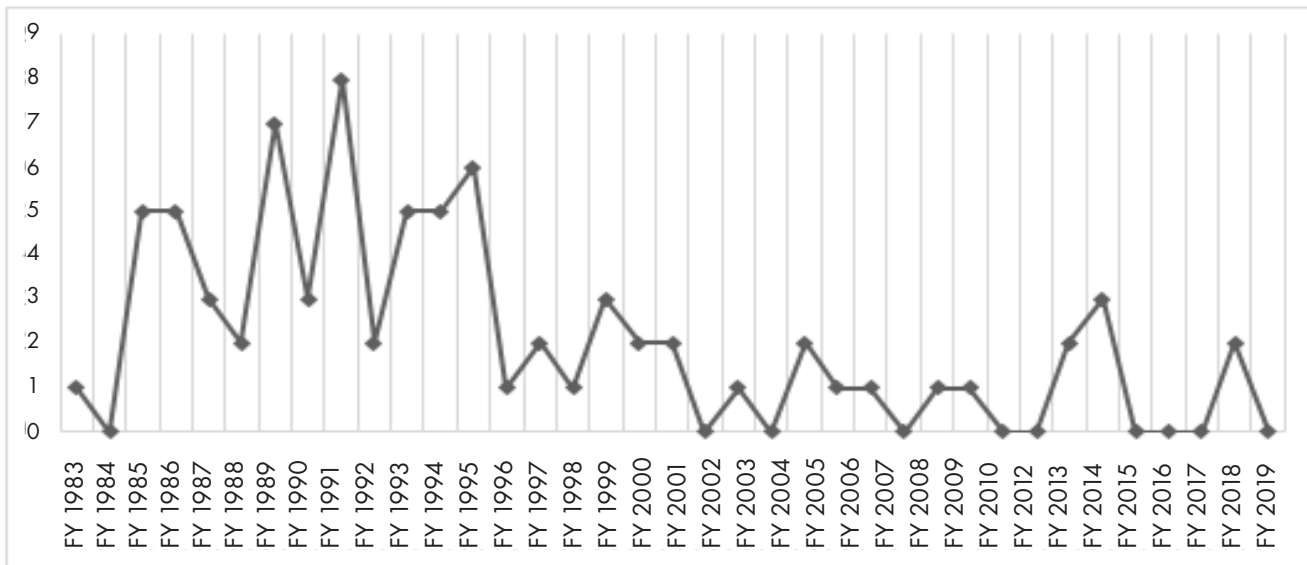
Our major limitation with the data and analysis is that we can only analyze cases EPA entered into the database. If they did not include a case in the database, those prosecutions are not included in the analysis. Other agencies may undertake criminal prosecution, but these are not

7. The OECA includes the Office of Administration and Policy, which provides policy recommendations on compliance and enforcement and other administrative functions; Office of Civil Enforcement, which sets priorities for enforcement and assists EPA regional offices with civil and judicial cases; Office of Criminal Enforcement, Forensics, and Training, which includes the Criminal Investigation Division; Office of Compliance, which establishes enforcement initiatives; Office of Environmental Justice, which addresses unequal environmental protection in low-income and communities of color; Office of Federal Activities, which reviews whether environmental impact statements comply with the National Environmental Policy Act; Federal Facilities Enforcement Office, which is charged with ensuring federal facilities are in compliance with federal environmental statutes; and Office of Site Remediation Enforcement, which is charged with hazardous waste cleanup oversight at EPA for Superfund, the Resource Conservation and Recovery Act, the Oil Pollution Act, and underground storage tanks. U.S. EPA, *About the Office of Enforcement and Compliance Assurance (OECA)*, <https://19january2017snapshot.epa.gov/aboutepa/about-office-enforcement-and-compliance-assurance-oeca.html> (last updated Dec. 27, 2016).
8. John F. Cooney, *Multi-Jurisdictional and Successive Prosecution of Environmental Crimes: The Case for a Consistent Approach*, 96 J. CRIM. L. & CRIMINOLOGY 435, 436 (2006) (a useful overview of the process of prosecuting environmental crimes); Earl E. Devaney, *The Evolution of Environmental Crimes Enforcement at the United States Environmental Protection Agency*, presentation at the Third International Conference on Environmental Enforcement (Apr. 25, 1994), <https://www.inece.org/library/show/57a8be53a90ea>. A former enforcement administrator, Earl Devaney provides a history of criminal enforcement efforts undertaken by EPA.
9. U.S. EPA, *Basic Information on Enforcement*, <https://www.epa.gov/enforcement/basic-information-enforcement> (last updated July 7, 2020).
10. Public Employees for Environmental Responsibility (PEER), *EPA CID Agent Count*, https://www.peer.org/wp-content/uploads/2019/11/11_21_19-Federal_Pollution_EPA_CID_Agent_Count.pdf (last updated July 7, 2020). Joshua Ozymy & Melissa L. Jarrell, *Wielding the Green Stick: An Examination of Criminal Enforcement at the EPA Under the Bush and Obama Administrations*, 24 ENVTL. POL. 71-89 (2015).
11. Kathleen F. Brickey, *Environmental Crime at the Crossroads: The Intersection of Environmental and Criminal Law Theory*, 487 TUL. L. REV. 494-95 (1996) (an early and important study of criminal enforcement); Michael O'Hear, *Sentencing the Green-Collar Offender: Punishment, Culpability, and Environmental Crime*, 95 J. CRIM. L. & CRIMINOLOGY 133 (2004). Criminal liability, unlike civil liability, considers intent in the violation. If found guilty under a civil standard, a defendant may face a monetary penalty or injunctive relief to fix the problem or take additional steps to remedy the

problem. If convicted of a criminal violation, a defendant can additionally face incarceration. U.S. EPA, *supra* note 5.

12. CELIA B. CAMPBELL-MOHN, *SUSTAINABLE ENVIRONMENTAL LAW* (West Publishing Co. 1993). This book provides a good overview of early efforts to develop and enforce federal environmental statutes.
13. Kathleen F. Brickey, *Charging Practices in Hazardous Waste Crime Prosecutions*, 62 OHIO ST. L.J. 1077 (2001) (an early study of the criminal prosecution of hazardous waste crimes).
14. Michael J. Lynch, *The Sentencing/Punishment of Federal Environmental Green Criminal Offenders, 2000-2013*, 38 DEVIANT BEHAV. 1008 (2017) (study uses the EPA database to examine the deterrent value of criminal enforcement across select statutes); Joshua Ozymy & Melissa L. 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. POL'Y RES. 72 (2016) (article uses the EPA database to predict prosecution outcomes, 2001-2011); Wayne B. Gray & Jay P. Shimshack, *The Effectiveness of Environmental Monitoring and Enforcement: A Review of the Empirical Evidence*, 5 REV. ENVTL. ECON. & POL'Y 1-23 (2011) (article provides a useful overview of studies examining the effects of civil enforcement remedies).
15. U.S. EPA, *Summary of Criminal Prosecutions*, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm (last updated July 7, 2020).

Figure 1. Total Superfund Criminal Prosecutions by Fiscal Year, 1983-2019



Source: U.S. EPA, *Summary of Criminal Prosecutions*, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm (last updated July 7, 2020).

part of the analysis. The role of investigators, prosecutors, or judges in the cases is unknown in the summaries. The U.S. government’s fiscal year runs October-September, so we do not have all the data for fiscal year 2019. We ended the analysis on January 1, 2020. One can use various search criteria to explore the database, including state, statute, year, and so on, but we found searching by fiscal year going case-by-case was the most methodical and accurate method to catalog all of the Resource Conservation and Recovery Act (RCRA)¹⁶ cases. For example, a search of the database using statutes (CERCLA) at the time of writing revealed 40 cases. When the database was analyzed using our method, we found 77 total prosecutions.

We developed our coding protocols by examining criminal prosecutions through fiscal year 2005. For four weeks, we piloted protocols with two coders until inter-coder reliability reached above 90%. Two individuals coded cases independently with one of the authors reviewing for discrepancies, which were then discussed among the group to find consensus. The most common disagreements came with complex sentences. The level of total agreement for the full analysis was approximately 95% by dividing the agreed-upon items by total items coded in the data set.¹⁷

II. Results

Figure 1 displays total CERCLA prosecutions by EPA fiscal year, 1983-2019. We identify 77 total prosecutions during this time period. Many years (1984, 2002, 2004, 2008, 2011, 2012, 2015-2017, and 2019) show no prosecutions. We count 23 prosecutions settled in the 1980s, 36 in the 1990s, 10 in 2000-2009, and 8 in 2010-2019. The high point for annual prosecutions was eight in 1991, with a slow tapering off thereafter.

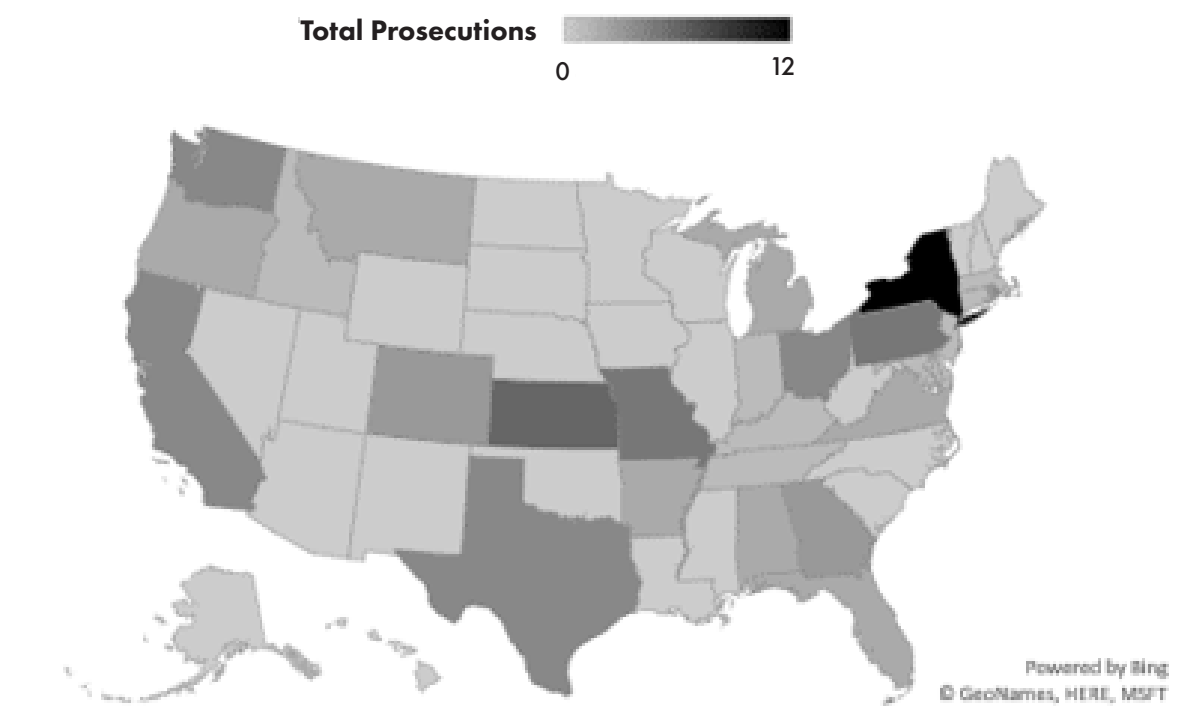
The overall pattern seems to rise as one might expect for EPA, which was undergoing a learning process to use CERCLA statutes in investigations and send them to federal prosecutors to pursue criminal action, but those prosecutions drop, and annual prosecutions never rise above three after 1999. Prosecutions can take multiple years from charging to sentencing, so the total cases settled in one year should be considered with this fact in mind. The overall trend is that criminally prosecuting Superfund violations is not a frequent occurrence over time.

Figure 2 displays total CERCLA prosecutions by U.S. state, 1983-2019. The darker the shading in the figure, the greater the number of prosecutions relative to other states. There are many instances of zero CERCLA prosecutions in a state over this 37-year time period. We find 23 states with no prosecutions (i.e., Alaska, Arizona, Hawaii, Illinois, Iowa, Louisiana, Maine, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina,

16. 42 U.S.C. §§6901-6992k, ELR STAT. RCRA §§1001-11011.

17. OLE R. HOLSTI, *CONTENT ANALYSIS FOR THE SOCIAL SCIENCES AND HUMANITIES* (Addison Wesley 1969).

Figure 2. Total Superfund Criminal Prosecutions by U.S. State, 1983-2019



Source: U.S. EPA, *Summary of Criminal Prosecutions*, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm (last updated July 7, 2020).

South Dakota, Utah, Vermont, West Virginia, Wisconsin, and Wyoming). This leaves all 77 prosecutions within 27 states, of which New York (12), Kansas (6), Missouri (5), and California (4) make up 35% of total prosecutions since 1983.

Table 1 explores total Superfund prosecutions per state plus other major environmental charging statutes to show how prosecutors used Superfund in conjunction with the Clean Water Act (CWA),¹⁸ Clean Air Act (CAA),¹⁹ Toxic Substances Control Act (TSCA),²⁰ RCRA, and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).²¹ The dominant theme that emerges from this table is that CERCLA is used in conjunction with other federal environmental charging statutes for failure to notify of the release of a hazardous substance.

In 13 cases, Superfund is used in conjunction with the CWA. A case example of CERCLA + CWA is a case against Burlington Northern Railroad and co-defendant Neal Carlton. The company owned a railcar-cleaning facility in Cherryville, Missouri. An estimated 40,000 tons of lead concentrate was illegally dumped at the cleaning site and various locations around the area. The company was

charged for the illegal disposal and release under the CWA and CERCLA for failure to notify.²²

In 14 cases, CERCLA is used in conjunction with the CAA. A CERCLA + CAA example is DAR Construction. The company was sentenced in 1989 in New York for illegal removal of asbestos-containing materials (ACMs). It was charged under the CAA for the illegal removal and CERCLA for failure to notify of the release of a hazardous substance.²³ Nicholas LaPenta was prosecuted in New York and sentenced in 2000 for illegal abatement of asbestos at his restaurant, false statements for lying to investigators regarding the abatement, and failure to notify (CERCLA).²⁴

18. 33 U.S.C. §§1251-1387, ELR STAT. FWPCA §§101-607.

19. 42 U.S.C. §§7401-7671q, ELR STAT. CAA §§101-618.

20. 15 U.S.C. §§2601-2692, ELR STAT. TSCA §§2-412.

21. 7 U.S.C. §§136-136y, ELR STAT. FIFRA §§2-35.

22. *United States v. Burlington N. R.R.*, No. 4:98CR515 CDP (E.D. Mo. Aug. 13, 1999). The company was fined \$7 million and ordered to pay \$12 million in cleanup costs. Carlton was sentenced to 24 months probation and a \$1,000 fine. *United States v. Gary Prods.*, No. CR-92-17M (N.D. Ind. Mar. 18, 1993). A similar case settled in Indiana against Gary Products in 1993 for storage tankers that leaked at least 5,000 pounds of hydrochloric acid. They were charged under the CWA for the illegal release without a permit and CERCLA for failure to notify of a release of a hazardous substance.

23. *United States v. DAR Constr.*, No. 88-CR-65 (S.D.N.Y. Apr. 7, 1989). The company was ordered to pay a \$50,000 fine and a \$600 assessment. Co-defendant and site foreman Maurice Dieyette was sentenced to 90 days incarceration and 36 months probation.

24. *United States v. NPLA Corp.*, No. 00-CR-67 (N.D.N.Y. Feb. 14, 2000). The defendant paid a \$5,000 fine and his company, NPLA Corporation, was ordered to pay a \$20,000 fine. *United States v. Conklin*, No. CR 98 CR-428 (W.D.N.Y. Apr. 23, 1999). We see the same use of CERCLA (failure to notify that a hazardous substance was released) in another asbestos

Table 1. Total Superfund Criminal Prosecutions by U.S. State and Territory Plus Additional Charging Statutes, 1983-2019

State	CERCLA	CWA	CAA	TSCA	RCRA	FIFRA
AK	0	0	0	0	0	0
AL	2	1	0	0	1	0
AR	2	2	0	1	2	0
AZ	0	0	0	0	0	0
CA	4	2	0	0	2	0
CO	3	0	0	0	2	0
CT	1	0	0	0	1	0
DE	1	0	0	0	1	0
FL	2	0	0	0	2	0
GA	3	1	0	0	3	0
HI	0	0	0	0	0	0
IA	0	0	0	0	0	0
ID	1	0	0	0	0	0
IL	0	0	0	0	0	0
IN	1	1	0	0	0	0
KS	6	0	0	1	2	0
KY	1	0	1	0	0	0
LA	0	0	0	0	0	0
MA	1	0	0	0	1	0
MD	1	0	0	0	0	0
ME	0	0	0	0	0	0
MI	2	0	0	0	2	0
MN	0	0	0	0	0	0
MO	5	2	0	0	2	0
MS	0	0	0	0	0	0
MT	2	0	1	0	0	0
NC	0	0	0	0	0	0
ND	0	0	0	0	0	0
NE	0	0	0	0	0	0
NH	0	0	0	0	0	0
NJ	1	0	0	0	1	0
NM	0	0	0	0	0	0
NV	0	0	0	0	0	0
NY	12	1	5	0	3	0
OH	4	0	2	0	1	0
OK	0	0	0	0	0	0
OR	2	0	0	1	0	0
PA	5	0	3	1	1	0
RI	3	1	1	2	1	0
SC	0	0	0	0	0	0

(cont'd on next page)

State	CERCLA	CWA	CAA	TSCA	RCRA	FIFRA
SD	0	0	0	0	0	0
TN	1	0	0	0	1	0
TX	4	1	0	1	1	0
UT	0	0	0	0	0	0
VA	2	0	0	0	0	0
VT	0	0	0	0	0	0
WA	4	1	0	1	1	0
WI	0	0	0	0	0	0
WV	0	0	0	0	0	0
WY	0	0	0	0	0	0
DC	0	0	0	0	0	0
PR	1	0	1	0	0	0
Total	77	13	14	8	31	0

Source: U.S. EPA, *Summary of Criminal Prosecutions*, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm (last updated July 7, 2020).

We found eight prosecutions involving CERCLA + TSCA charges in the data. Inman & Associates and vice president John McMichen were indicted in Texas for replacing an electrical switching station at the Naval Air Station Corpus Christi that contained polychlorinated biphenyl (PCB). The company illegally disposed of the regulated hazardous chemicals on the grounds of the navy base. They were charged under TSCA for the illegal disposal and CERCLA for failure to notify of the release of a hazardous substance.²⁵

Superfund was used to charge defendants in conjunction with RCRA more times than any other federal environmental statute (31 prosecutions). The pattern for charging with CERCLA for failure to report/notify is prevalent here as well. Charles Hassler was sentenced in Florida in 1990 for illegal disposal of hazardous waste (RCRA) and failure to notify (CERCLA). Larry West was sentenced in Michigan in 1994 for illegal release and failure to notify.²⁶ We found no cases using CERCLA + FIFRA in the data.

case against Terry Conklin, who was sentenced in New York in 1999 to 10 months incarceration and a \$12,000 fine. *United States v. Mancuso*, No. 08-CR-00611 (N.D.N.Y. June 9, 2010). We see the same pattern used in the prosecution of Lester Mancuso in New York, who was sentenced in 2010 for illegal asbestos abatement and disposal and failure to notify under CERCLA. This pattern of prosecution helps to explain the high number of prosecutions in New York in the data set. A significant number of asbestos-related prosecutions, many targeted at organized crime, occurred in New York City and across the state. In some cases, prosecutors used CERCLA in this manner in conjunction with the CAA to prosecute offenders for failure to notify.

25. *United States v. Inman & Assocs.*, No. C-90-29 (S.D. Tex. Apr. 6, 1990). McMichen was ordered to pay a fine of \$5,000 and a \$25 special assessment. The corporation was fined \$80,000, placed on 36 months supervised probation, and ordered to pay a \$200 special assessment.
26. *United States v. Hassler*, No. 90-58-CR-ORL-18 (M.D. Fla. Nov. 21, 1990). Hassler was a former public works director and engineer for the city of Longwood, Florida. According to the case summary, this case was the first prosecuted under land disposal restrictions amended to RCRA in 1984 that prohibits the land disposal of untreated hazardous wastes. Hassler was

Table 2 explores common criminal charges in Superfund prosecutions, 1983-2019. In this table, we explore other charging patterns for Title 18 violations or similar violations under the U.S. federal criminal code. While it is difficult to ascertain if all of these prosecutions are for serious, chronic, or willful offenses as intended in criminal prosecutions, we find quite a few examples in the data of these criminal charges being used in conjunction with CERCLA charges to prosecute offenders.

In 29% of cases, defendants were charged with conspiracy. A typical example was defendants that colluded to engage in illegal storage, transport, or disposal (typically a RCRA scenario), or conspired to falsify logs or reports, or colluded to lie to authorities about a crime. In 21% of cases, defendants were charged with false statements. This typically occurred if defendants lied to investigators about a crime, falsified logs or other paperwork, or fabricated required logs, records, or other paperwork.

A case example using conspiracy and false statements to charge defendants is HCI Chemtech. The company was prosecuted and sentenced in Missouri in 1997 for spilling 20,000 pounds of sodium hydroxide. Workers spent six days washing the chemicals away, causing 13,000 pounds of the chemical to be spilled into the Missouri River. The defendants illegally stored the waste, misreported the size of the spill, and did not report it to authorities in a timely

prosecuted for illegal disposal of hazardous waste (RCRA) and failure to notify (CERCLA). Hassler was sentenced to three months community confinement, a \$50 special assessment, and a \$500 fine. *United States v. West*, No. 1:93-CR:123 (W.D. Mich. Jan. 14, 1994). West abandoned 99 barrels of hazardous waste at Clark Cassopolis Plant in Cassopolis, Michigan. He was prosecuted under RCRA for illegal storage and disposal of hazardous waste and failure to report the release of a hazardous substance under CERCLA. The defendant was sentenced to four months home confinement, 24 months supervised release, a \$10,000 fine, and \$40,000 in restitution to EPA.

Table 2. Common Criminal Charges in Superfund Criminal Prosecutions, 1983-2019

Statute	Number of Cases	Percentage of Total
Conspiracy	22	29%
False Statements	16	21%
Mail Fraud	4	5%
Racketeering	2	3%
Obstruction	2	3%

Source: U.S. EPA, *Summary of Criminal Prosecutions*, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm (last updated July 7, 2020).

manner. The company was charged with conspiracy, false statements, the illegal discharge, and failure to notify under CERCLA.²⁷

In 5% of cases, defendants were charged with mail fraud. These charges came as part of complex Racketeer Influenced and Corrupt Organizations Act (RICO) cases, such as Charles Arcangelo, MacDonald & Watson Waste Oil Company, or illegal disposal cases.²⁸ In two cases,

27. *United States v. HCI Chemtech*, No. 4:76 CR00156-001 (W.D. Mo. Oct. 1, 1997). The company was sentenced to 36 months probation, a fine of \$175,000, and restitution of \$21,200. Co-defendant Andre Rober was sentenced to 24 months probation, a \$1,000 fine, and a \$25 special assessment fee. Co-defendant Fred Garner was sentenced to four months incarceration, a fine of \$100, and a special assessment of \$100. Co-defendant Marc Peterson was sentenced to 36 months probation and fined \$1,000.

28. *United States v. Arcangelo*, No. N-88-43TFGD (D. Conn. May 31, 1989). The case against Charles Arcangelo and nine other co-defendants was a large probation and incarceration case that resulted in a cumulative total of 420 months of probation assessed to individuals and 564 months incarceration. The defendants were involved in numerous illegal activities, including sale, receipt, and transportation of stolen vehicles, transportation and harboring illegal aliens, illegal disposal of hazardous waste (RCRA), failure to notify of the release of a hazardous substance (CERCLA), and mail fraud. They were charged under RICO. *United States v. MacDonald & Watson Waste Oil Co.*, No. CR-88-032-(01-07)-T (D.R.I. Jan. 26, 1990). The MacDonald & Watson Waste Oil Company, along with co-defendants Eugene K. D'Allesandro, Faust Ritarossi, and Fran Slade, were charged in a 53-count indictment under RICO for a variety of crimes related to transportation, storage, and treatment of hazardous waste under RCRA and failure to notify under CERCLA, as well as false statements and other crimes. The company was sentenced to pay \$175,000 in fines (\$25,000 suspended upon payment of \$25,000 in restitution to the state of Rhode Island Environmental Response Fund), \$10,052.22 in restitution, \$3,900 in special assessments, and to serve 24 months probation. The company voluntarily surrendered its hazardous waste license to the state of Rhode Island. Ritarossi was sentenced to 12 months incarceration (suspended), ordered to pay a \$20,000 fine (\$10,000 suspended), \$10,000 in restitution to the Rhode Island Environmental Response Fund, a \$100 special assessment, and to serve 36 months probation and 150 hours of community service. Slade was sentenced to pay a \$10,000 fine, and to serve 12 months incarceration (all but one month suspended) and 12 months probation. D'Allesandro was not found guilty and sentenced in the summary. *United States v. Greer*, No. 85-00105 (M.D. Fla. Nov. 23, 1988). The defendant, Arthur J. Greer, owned four hazardous waste handling companies in Orlando, Florida. Greer endangered employees by directing them to test hazardous chemicals by sniffing samples or lighting them in soft drink cans. He illegally disposed of approximately 1,000 gallons of waste, primarily 1,1,1-trichloroethane, and mislabeled drums of hazardous waste. He was charged with numerous

Table 3. Supplementary Data in Superfund Criminal Prosecutions, 1983-2019

Case Description	Total	Percentage of Total
Cases With Individuals Killed or Injured	3	4%
Defendants Prosecuted	183	-
Cases With Companies as Primary Defendant	41	53%
Cases With Non-Environmental Criminal Charges	34	44%

Source: U.S. EPA, *Summary of Criminal Prosecutions*, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm (last updated July 7, 2020).

defendants were charged with obstruction. Both were New York cases against DAR Construction and Mazza & Sons for illegal asbestos abatement and disposal. Mazza & Sons was charged with the illegal dumping of thousands of tons of construction and demolition debris containing asbestos. The company was charged with forging their environmental permit and the name of a New York State Department of Environmental Conservation official on the permit, and obstructing justice by destroying and concealing documents in response to a grand jury subpoena. The defendants were charged with false statements, obstruction, and failure to notify under CERCLA.²⁹

In Table 3, we provide supplemental data from the cases. In three cases, we have CERCLA prosecutions that are very serious in nature, as they involve injuries to human victims. James Blair was prosecuted and sentenced in Texas in 1995 for the Smith Tank Company's illegal disposal of hazardous waste that was dumped and burned. An employee was

crimes in a 33-count indictment, including mail fraud, illegal disposal and mislabeling of hazardous waste (RCRA), failure to notify (CERCLA), and false claims. Greer was sentenced to 60 months incarceration (all but three months suspended), 48 months probation, 1,000 hours of community service, and a \$23,000 fine. Greer appealed and was sentenced for violating one count under RCRA and CERCLA and ordered to serve 13 months incarceration. *United States v. Drum Recovery, Inc.*, No. 84-00005 (D. Or. Feb. 19, 1985). Defendants include Drum Recovery, Charles Tuttle, Eugene F. Tienken, and Gary Van Lom. Charges against the company were later dropped. Tuttle was sentenced to 60 months probation and ordered to pay one-third of the cleanup and court costs and to perform 100 hours community service, as well as to refrain from employment in the hazardous waste industry during probation. Van Lom was sentenced to one year incarceration, 60 months probation, to pay one-third of the cleanup costs, and to refrain from employment in the hazardous waste industry during probation. Tienken was sentenced to 90 days incarceration and 60 months probation, and ordered to pay one-third of the cleanup costs.

29. *United States v. Mazza & Sons, Inc.*, No. 5:11CR264DNH (N.D.N.Y. June 19, 2013). The company was sentenced to 60 months probation and a \$100,000 fine. Co-defendant Dominick Mazza was sentenced to 51 months incarceration and a \$75,000 fine. Co-defendant Cross Nicastro was sentenced to 33 months incarceration, and ordered to pay a \$25,000 fine and restitution joint and several with the other defendants in the amount of \$492,494.

Table 4. Total Penalties Assessed in Superfund Criminal Prosecutions, 1983-2019

Penalty	Number of Cases	Total(s)
Individual Fines (\$)	54	3,318,604
Individual Probation (Months)	50	2,840
Incarceration (Months)	34	1,692
Company Fines (\$)	37	47,483,595
Company Probation (Months)	20	810w
Home Confinement (Months)	13	64
Community Service (Hours)	17	7,165

Source: U.S. EPA, *Summary of Criminal Prosecutions*, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm (last updated July 7, 2020).

injured during one of these illegal disposal episodes. Smith was charged under CERCLA for failure to notify.³⁰

In May 2012, AIREKO Construction Company engaged in illegal abatement of ACM and dumped the materials behind an office building in Puerto Rico. The company and its vice president were charged, as was defendant Kenneth Baez-Alers under the CAA for the illegal abatement and disposal and CERCLA for failing to notify.³¹ Dyno Nobel, Inc. was sentenced in Oregon in 2018 for discharging six tons of anhydrous ammonia in 2015. Local residents complained the discharges resulting from multiple attempts to restart the urea plant caused them eye irritation and difficulty breathing in nearby Columbia City, Oregon.³²

Total defendants prosecuted in the data set equaled 183 across all 77 cases, or about 2.4 defendants per prosecution. We found that 53% of cases have a company listed as the primary defendant and 47% of cases list individuals as the primary defendant. In 44% of cases, at least one defendant is charged with a series of related criminal charges, as well as charged under CERCLA.

Table 4 summarizes the total penalties assessed to individuals and companies, 1983-2019. We coded incarceration and probation as the total months assessed to individual and company defendants per case, and aggregated those across 77 cases in the table. Fines to both companies and individuals are total fines for each per relevant prosecution aggregated across all cases in nominal dollars. We also list alternative punishments, such as home confinement (months), community corrections (months), and community service (hours) in the table.

In 54 cases, or 70% of the CERCLA prosecutions in our data set, individuals were assessed fines and special monetary assessments at sentencing. Total fines for individual defendants equaled more than \$3.3 million in the data set. In 50 cases, individual defendants were assessed probation at sentencing totaling 2,840 months. In 34 cases (44% of total cases), individuals were sentenced to be incarcerated for a total of 1,692 months. In 37 cases (48% of total cases), companies were assessed fines or monetary assessments at sentencing totaling more than \$47 million. In 20 cases (26% of total cases), companies were assessed probation totaling 810 months. In 13 cases, individuals were sentenced to home confinement totaling 64 months and in 17 cases, community service totaling 7,165 hours of service mandated across all cases (421 hours per case on average).

A large individual fine case involved defendants John Donnelly, Harris Goldman, and Kenneth Laughlin. GCL Corporation, located in Sidney, New York, was in the business of treating railroad ties with creosote. Goldman was the owner, Laughlin the president, and Donnelly a supervisor (principal defendant). They were indicted for releasing hazardous substances (Safe Drinking Water Act³³) and failure to notify (CERCLA).³⁴ A large corporate fine case involved Koch Industries, which was prosecuted in Texas in 2001 for venting benzene into the ambient air. The company and Koch Petroleum were indicted on nine counts for false statements, and unspecified charges under national emission standards for hazardous air pollutants and CERCLA for venting benzene.³⁵

In Figure 3, we provide further content analysis of the CERCLA cases in order to develop a typology of defendants and charging patterns, 1983-2019.³⁶ In all 77 CERCLA prosecutions, defendants are charged for failure of an

30. *United States v. Blair*, No. 6-94 CR (E.D. Tex. May 17, 1995). The defendant was sentenced to 12 months probation and a \$10,000 fine.

31. *United States v. Baez-Alers*, No. 3:15CR871 (D.P.R. Apr. 12, 2018). Kenneth Baez-Alers, project manager, was sentenced to 12 months probation. In a related case, the company was sentenced to pay a \$1.5 million fine and serve three years probation. The company was ordered to pay \$172,020 to fund medical examinations and follow-up tests for victims exposed to asbestos fibers as the result of their illegal activities. Vice president Edgardo Albino was sentenced to pay a \$15,000 fine and serve three years probation (*United States v. AIREKO Constr. Co.*, No. 3:15CR448 (D.P.R. Aug. 16, 2017) and *United States v. Albino*, No. 3:15CR527 (D.P.R. Sept. 27, 2016)).

32. *United States v. Dyno Nobel, Inc.*, No. 3:18-CR-63-SI (D. Or. Feb. 23, 2018). The company was charged under CERCLA for the release and sentenced to pay a \$250,000 fine and serve two years probation.

33. 42 U.S.C. §§300f to 300j-26, ELR STAT. SDWA §§1401-1465.

34. *United States v. Donnelly*, No. 91-CR-59 (N.D.N.Y. Apr. 30, 1993). Goldman was sentenced to 40 months incarceration and ordered to pay restitution totaling \$606,868. Donnelly was sentenced to six months incarceration (suspended) and 12 months probation, and ordered to perform 150 hours of community service. Laughlin was sentenced to six months incarceration, 12 months probation, 100 hours of community service, and a fine of \$2,500.

35. U.S. EPA, *National Emission Standards for Hazardous Air Pollutants Compliance Monitoring*, <https://www.epa.gov/compliance/national-emission-standards-hazardous-air-pollutants-compliance-monitoring> (last updated Jan. 17, 2020). *United States v. Koch Indus.* (S.D. Tex. Apr. 9, 2001). Koch was sentenced to 60 months probation, a \$10 million fine, and to fund \$10 million in a community project.

36. In one case in Quadrant I and one in Quadrant III, the nature of the CERCLA violation cannot be determined, but it is likely failure to notify (*United States v. Koch Indus.* (S.D. Tex. Apr. 9, 2001) and *United States v. Powell County Museum & Arts Found.*, No. CR-95-3-BU-PGH (D. Mont. July 10, 1995)).

Figure 3. Typology of Superfund Criminal Prosecutions, 1983-2019



Source: U.S. EPA, *Summary of Criminal Prosecutions*, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm (last updated July 7, 2020).

official to notify authorities of a release. What we show in this figure is how prosecutors used that power exclusively without other major environmental statutes in Quadrant I, how it was used with TSCA in Quadrant II, the CAA in Quadrant III, the CWA in Quadrant IV, and RCRA in Quadrant V. In these cases, we try to code a case in this category by the principal offense. In many cases, defendants are charged under more than two environmental statutes, but we attempt to place them accordingly in the typology and define the crimes.

In Quadrant I, we code 23 prosecutions as exclusive CERCLA charging cases. In these cases, prosecutors used the failure to notify provision to charge and prosecute

defendants. These data show CERCLA was used in this manner in about 30% of cases. In 11 cases, individuals are the principal defendant and in 12 cases, companies are the principal defendants. Overall, we define this category as negligent individual or company actions related to failure to properly notify officials of the release of a hazardous substance under CERCLA.

An individual case example is Alan Franko, prosecuted and sentenced in Virginia in 1985. The defendant held a contract to remove and dispose of asbestos pipe insulation at the U.S. Naval Observatory in Washington, D.C. As the former vice president of AMF Insulation Company, Franko failed to properly notify or report to officials of the

removal and was charged under CERCLA.³⁷ An example of a case with a company as the principal defendant in this category is Owyhee Construction, sentenced in Idaho in 2014 for failure to report the presence of a hazardous material (asbestos) in a 5,000-linear-foot waterline renovation project. The company spread the material to businesses and homeowners as clean fill throughout the area, but it contained the hazardous asbestos debris.³⁸

In Quadrant II, we code four cases as stemming from CERCLA + TSCA violations. We define these as negligent individual or company actions related to the illegal labeling, storage, or disposal under TSCA + failure to notify under CERCLA. We found two cases with individuals as principal defendants and two cases with companies as principal defendants. The individual cases involved William Kirkpatrick, sentenced in Kansas in 1995 for instructing employees to illegally dispose of nine electrical capacitors containing PCB in the city of Stafford's landfill. He was charged under TSCA for the illegal disposal and CERCLA for failure to notify officials.³⁹ Drum Recovery and Inman & Associates were prosecuted as primary defendants under TSCA + CERCLA, both for improper disposal of PCBs and failure to notify.⁴⁰

In Quadrant III, we code 14 cases (18% of the total cases in the data set) as being prosecuted under the CAA + TSCA. Nine of these cases involved individuals as the principal defendant and five have companies as the principal defendant. All of these cases are asbestos-related. We define cases in this category as negligent individual and company actions related to the illegal abatement and disposal of asbestos under the CAA + failure to notify under CERCLA.⁴¹ RAL Properties was sentenced in Ohio in 1993 along with owner Michael Laska and Steve Howell (Laska's assistant) for the illegal removal and disposal of asbestos. The defendants were charged under the CAA and CERCLA for the illegal removal and failure to notify, as well as conspiracy.⁴²

37. *United States v. Franko*, No. 85-1146-M (E.D. Va. Feb. 12, 1985). Franko was sentenced to 30 days suspended sentence and six months probation, and ordered to pay a \$150 fine.

38. *United States v. Owyhee Constr. Inc.*, No. CR 14-0044-CEJL (D. Idaho May 21, 2014). The company was sentenced to 36 months probation, a fine of \$100,000, ordered to implement a compliance and ethics program, and to pay restitution.

39. *United States v. Kirkpatrick*, No. 94-10094-01 (D. Kan. Sept. 11, 1995). The defendant was sentenced to 18 months probation, a \$3,000 fine, \$50 special assessment fee, and ordered to attend mandatory substance abuse counseling. *United States v. Catucci*, No. 93-009P (D.R.I. Oct. 8, 1993). Giacomo Catucci was prosecuted under TSCA and CERCLA for similar violations in Rhode Island for illegally disposing of transformers containing PCBs.

40. *United States v. Drum Recovery, Inc.*, No. 84-00005 (D. Or. Feb. 19, 1985); *United States v. Inman & Assocs.*, No. C-90-29 (S.D. Tex. Apr. 6, 1990). Defendants included the company and vice president John McMichen. The company was sentenced to a \$80,000 fine (\$40,000 suspended), 36 months probation, and to pay a \$200 special assessment. McMichen was sentenced to pay a \$5,000 fine and a \$25 special assessment.

41. *United States v. Hilton*, No. 02-CR-295 (NAM) (N.D.N.Y. Nov. 12, 2014). Arthur Hilton was prosecuted and sentenced in New York in 2004 to six months incarceration, 60 months probation, 200 hours of community service, a \$30,000 fine, and \$36,000 in restitution to EPA. Hilton instructed workers to illegally remove and dispose of asbestos at Hilton Industrial Park in Rensselaer, New York.

42. *United States v. RAL Props.*, No. 91 (s)-V-3-1 (N.D. Ohio Apr. 26, 1993). Laska was sentenced to seven months incarceration, seven months

In Quadrant IV, we categorize cases as illegal disposal plus failure to notify. These are cases prosecuted under the CWA + CERCLA. We define these as negligent company actions related to the illegal discharge of regulated waste and failure to notify. Five prosecutions fall within this category. An example is the prosecution of Pennwalt Corporation and Orval High, manager of its Tacoma, Washington, plant. A tank containing sodium chlorate (a bleaching agent in the pulp and paper industry) ruptured on January 2, 1985, sending an illegal discharge of the hazardous waste into Puget Sound. They were prosecuted for the negligent discharge under the CWA and failure to notify under CERCLA.⁴³

In Quadrant V, we categorize the final cases as illegal storage, transport, and/or disposal plus failure to notify. These are cases charged under RCRA + CERCLA. At 31 prosecutions, or 40% of the cases, this represents the most frequent charging strategy employed by prosecutors using CERCLA in the past 37 years. We define these as cases involving negligent individual and company actions related to the illegal storage, transport, or disposal of hazardous waste under RCRA and failure to notify under CERCLA. We code 19 cases with individuals as the principal defendant and 12 cases with companies as the principal defendant. This is the most common prosecutorial strategy, because RCRA cases involve one or a combination of illegal storage, transport, or disposal of regulated wastes. In these cases, individuals and companies that commit such crimes would never admit to these actions, so they would never have notified officials of the release under CERCLA. While we found 23 cases in Quadrant I that would often fit this categorization, prosecutors chose a CERCLA-only strategy.

Albert Tumin rented a truck and then abandoned three 55-gallon barrels of ethyl ether in an empty lot in Rockaway, Queens, New York. He was indicted for illegal transport and disposal (RCRA) and failure to notify (CERCLA). Welco Plating and J.C. Collins Jr. (president) were sentenced in Alabama in 1988. Welco was a metal coating and plating company located in Woodville, Alabama. They were charged with illegal transport and disposal under RCRA, illegal release of hazardous wastes into Cobb Creek under the CWA, and failure to notify under CERCLA.⁴⁴

of home detention, a \$3,000 fine, and a special assessment fee of \$100. Howell was sentenced to 24 months probation and to pay a special assessment fee of \$50.

43. *United States v. Pennwalt Corp.*, No. CR-88-55T (W.D. Wash. May 30, 1989). The company was ordered to pay a \$500,000 fine and to pay \$600,000 to an environmental trust fund for the U.S. Coast Guard. High was ordered to pay a \$5,000 fine and to serve 24 months probation.

44. *United States v. Tumin*, No. 87-488 (E.D.N.Y. Oct. 21, 1988). The defendant was sentenced in 1988 to 60 months incarceration. *United States v. Welco Plating, Inc.*, No. CR-88-H-0019NE (N.D. Ala. Apr. 27, 1988). The company was sentenced to 50 months probation and to pay estimated cleanup costs of \$1.3 million. Collins was ordered to pay a \$200,000 fine, to serve 18 months incarceration, 60 months probation, and 300 hours community service, and to pay \$14,472.20 restitution to the Alabama Department of Environmental Management and an assessment of \$300 to the Crime Victims Fund.

III. Conclusion

Our analysis of 37 years of EPA criminal prosecutions has yielded distinct themes that define how federal prosecutors have used Superfund as a prosecutorial tool. The first major finding is that CERCLA criminal prosecutions are decidedly rare. With only 77 prosecutions over 37 years, many states did not witness any prosecutions since 1983. In many fiscal years in our data set, EPA failed to prosecute a CERCLA case criminally. New York has by far the largest number of prosecutions, at 12 settled during this time period, but most were charged in conjunction with illegal asbestos abatement cases.

The second major theme is that CERCLA prosecutions come under the banner of failure-to-notify provisions. In 23 cases, prosecutors used it exclusively to prosecute individuals and companies for failing to properly notify officials of the release of a hazardous substance. More prevalent, however, were the 40% of cases where we find the primary thrust of the prosecution was to charge for illegal storage, transport, and/or disposal under RCRA plus using the failure to notify of a hazardous release under CERCLA as a companion statute. We found that failure to notify was primarily used in 14 CAA prosecutions related to the illegal removal and disposal

of asbestos. Six of these cases occurred in New York, making up 50% of CERCLA prosecutions in that state over the past 37 years. Using CERCLA + CWA occurred in only five cases, involving companies that illegally discharged hazardous substances and failed to notify.⁴⁵ In four cases, prosecutors used a combination of TSCA with failure to notify for illegal disposal of regulated chemicals. In three of these cases, the issue was the illegal disposal of PCBs.⁴⁶

The third major theme we uncovered is that many of these CERCLA prosecutions involve serious crimes. Defendants are charged with conspiracy in 29% of cases, as well as false statements in 21% of cases. In almost half of cases (44%), prosecutors charge defendants with related criminal charges in addition to CERCLA. Most of these charges come when defendants lie to investigators about the crime or file falsified logs or reports (false statements) or collude to cover up the crime (conspiracy). While these are not perfect indicators of a serious crime, they do convey intent. While we can only identify three cases where individuals are directly injured as the result of these crimes, the longer-term effects of releasing hazardous waste into the environment on human, animal, and environmental health is much farther-reaching and unable to be ascertained by examining criminal prosecutions.

45. *Pennwalt Corp.*, No. CR-88-55T; *United States v. Gary Prods.*, No. CR-92-17M (N.D. Ind. Mar. 18, 1993); *United States v. HCI Chemtech*, No. 4:76 CR00156-001 (W.D. Mo. Oct. 1, 1997); *United States v. Burlington N. R.R.*, No. 4:98CR515 CDP (E.D. Mo. Aug. 13, 1999); *United States v. Pacific Tank Cleaning Inc.*, No. 14CR0395-H (S.D. Cal. July 24, 2014).

46. *United States v. Drum Recovery, Inc.*, No. 84-00005 (D. Or. Feb. 19, 1985); *United States v. Inman & Assocs.*, No. C-90-29 (S.D. Tex. Apr. 6, 1990); *United States v. Catucci*, No. 93-009P (D.R.I. Oct. 8, 1993); *United States v. Kirkpatrick*, No. 94-10094-01 (D. Kan. Sept. 11, 1995).