



**The Carrot, the Stick and the Hammer:
An Overview of Criminal Enforcement
of Federal Environmental Laws**

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§ 2.01. Introduction.

[1] – Overview.

Virtually all of the contemporary environmental statutes contain strong criminal enforcement provisions and both the federal and state governments have increasingly resorted to using them. In addition, environmental prosecutions often involve traditional crimes such as conspiracy and false reports to government agencies. An understanding of these provisions is critical for everyone involved with environmental compliance, because criminal violations can lead to imprisonment for individuals and to large fines for both companies and individuals.

The current political climate strongly supports criminal enforcement of environmental laws; corporate officers and managers must consider criminal prosecution as a potential result of environmental violations.

Officers, managers and employees of companies involved in the mineral extraction industry and related industries face a real threat of criminal prosecution for violations of federal environmental laws. The U.S. Environmental Protection Agency (EPA) has implemented an enforcement program which includes compliance assistance and incentives (the carrot), civil and administrative enforcement (the stick) and criminal enforcement (the hammer).¹ The line between civil and criminal enforcement is often blurry, and enforcement officials have broad discretion in choosing between civil and criminal enforcement.

The Pollution Prosecution Act of 1990² authorized a number of enhancements to the U.S. Environmental Protection Agency's criminal enforcement program, including an increase to 200 the number of EPA criminal investigators. Staffing of the program was filled by the end of Fiscal Year 1997.³ In addition to EPA's criminal enforcement branch, the Federal Bureau of Investigation is also active in investigation of environmental crimes.

This chapter contains a survey of current trends in federal criminal environmental enforcement which are of significance to mineral extraction and related industries. It is important for attorneys who advise clients in these industries to be aware of these trends in order to assist their clients in avoiding criminal liability.⁴

¹ See, U.S. Env'tl. Protection Agency (hereinafter EPA), Enforcement and Compliance Assurance FY 98 Accomplishments Report (June 1999).

² Pub. L. 101-593, Title II, Nov. 16, 1990, 104 stat. 2962.

³ EPA, Enforcement and Compliance Assurance FY 98 Accomplishments Report 2-3 (1998).

⁴ This chapter contains only an overview. A number of reference materials are available which cover these subjects more comprehensively. *E.g.*, *Environmental Criminal Liability: Avoiding and Defending Enforcement Actions* (Donald A. Carr ed., 1995); *BNA/ACCA Compliance Manual - Prevention of Corporate Liability* (Bureau of National Affairs, Inc., 1999)(a loose-leaf service which covers environmental compliance as well as other areas of corporate compliance); *Environmental Crimes* (Christopher Harris, et al., 1996)(a two volume treatise, no longer updated, contains detailed background information through