

All Dried Up: The Prosecution of Water Pollution Crimes During the Trump Administration

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The Trump Administration was openly hostile to environmental regulation and sought to roll back the scope and enforcement of water pollution laws. Despite his rhetoric and efforts, few studies have examined the universe of the prosecution of water pollution laws during this period. Through content analysis of all EPA criminal investigations that lead to prosecution, we explore the broader universe of charging and sentencing patterns, whether serious crimes were prosecuted, if prosecutors were able to obtain significant penalties, and the major themes in these prosecutions. Our results show a sizable drop in activity under Trump. Prosecutors were still able to continue to pursue crimes involving significant harm and culpable conduct, particularly cases of unpermitted discharges under the Clean Water Act, win a handful of large penalty verdicts, obtain over \$67 million in monetary penalties, 228 years of probation, and 25 years of incarceration. We conclude with practical remedies for the Biden Administration to improve environmental criminal enforcement with a focus on prioritizing environmental justice communities.

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I. INTRODUCTION

Only “little tidbits” would Donald Trump promise to the U.S. Environmental Protection Agency (EPA).¹ By appointing Scott Pruitt to lead the agency and a series of other actions, Trump worked to ensure that environmental law enforcement agencies, and subsequently their

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1. Elgie Holstein, *The Severe, Real-World Casualties of Trump’s EPA Budget Cuts*, ENV’T DEF. FUND (Mar. 3, 2017), <https://www.edf.org/blog/2017/03/03/severe-real-world-casualties-trumps-epa-budget-cuts>; Rebecca Beitsch & Rachel Frazin, *Trump Budget Slashes EPA Funding*, ENVIRONMENTAL PROGRAMS, THE HILL (Feb. 10, 2020), <https://thehill.com/policy/energy-environment/482352-trump-budget-slashes-funding-for-epa-environmental-programs>.

enforcement efforts, would be lean.² He also made many public statements claiming climate change was a hoax, blaming environmental laws for hurting the economy, and supporting the fossil fuel industry.³ Like many of his Republican predecessors in the White House, Trump was hostile to strong environmental enforcement.⁴ Whether it is empirically true that Republican presidents are antagonistic to enforcement of environmental and Democratic presidents supportive is another story altogether.⁵

Responding to public backlash against the backdrop of growing environmental calamities in the United States and a lack of strong and concerted federal action, Richard Nixon created the EPA.⁶ During the Reagan Administration, Anne Gorsuch served as Administrator of the EPA and did significant damage to its enforcement presence and agency morale.⁷ George H.W. Bush began shutting career staff out of the decision-making process in favor of political insiders and favored less federal oversight and enforcement.⁸ Bill Clinton failed to champion the environment as expected and both budgets and staffing increases expected under Barack Obama failed to materialize because of other financial challenges and priorities.⁹

The broader picture of the impact of presidents on environmental enforcement outcomes is still an open question. Counterintuitive pictures can emerge, such as the George W. Bush Administration often supporting the Department of Justice's efforts to prosecute environmental crime.¹⁰

2. Elizabeth Bomberg, *The Environmental Legacy of President Trump*, 42 POL'Y STUDIES 628 (2021).

3. Richard J. Lazarus, *The Super Wicked Problem of Donald Trump*, 6 VAND. L. REV. 1811, 1841-1843 (2020).

4. Jessica Hejnay, *The Trump Administration and Environmental Policy: Reagan Redux?*, 8 J. OF ENV'T STUD. AND SCI. 197 (2018).

5. *See All Things Considered: Republican Presidents on Environment*, NAT'L PUB. RADIO (June 3, 2007), <https://www.npr.org/templates/story/story.php?storyId=10687339>.

6. Brett Milano, *The Evolution of American Environmental Law from Nixon to Trump*, HARV. LAW TODAY (Nov. 7, 2017), <https://today.law.harvard.edu/evolution-american-environmental-law-nixon-trump/>.

7. JOEL A. MINTZ, ENFORCEMENT AT THE EPA: HIGH STAKES AND HARD CHOICES 648-651 (2012).

8. Joel A. Mintz, *Treading Water: A Preliminary Assessment of EPA Enforcement During the Bush II Administration*, 34 ENV'T L. REP. 10912, 10915 (Oct. 2004).

9. Joel A. Mintz, *Neither the Best of Times Nor the Worst of Times: EPA Enforcement During the Clinton Administration*, 35 ENV'T L. REP. 10390 (2005). For environmental policing and prosecution budgets, see DOJ, BUDGET AND PERFORMANCE SUMMARY ENRD (VARIOUS YEARS), available at <https://www.justice.gov/doj/budget-and-performance>; see also EPA, EPA'S BUDGET AND SPENDING, available at <https://www.epa.gov/planandbudget/budget>.

10. David M. Uhlmann, *Strange Bedfellows: The Expansion of the Environmental Crimes Program during the Bush Administration*, 25 ENV'T L. FORUM 40 (2008).

Some research shows that prosecutors brought a similar number of cases under the Bush and Obama Administrations.¹¹

Another way to examine this question is to ask whether presidents can have a singular impact on enforcement outcomes or if those outcomes are tempered by agency prerogatives and bureaucratic inertia. Research shows that EPA and DOJ, the agencies primarily tasked with policing and prosecuting federal environmental crime, manage to persist in their efforts, despite presidential opposition.¹² Historical analysis argues that career staffers often face significant challenges under unfriendly presidential regimes, but have managed to persist in their efforts, trading on professional autonomy, administrative wrangling, inertia, and other factors but often fail to receive the expected support from Democratic presidents and sometimes find unlikely support from Republicans.¹³ Additional analysis argues that decades of political fighting has left enforcement agencies “running on fumes” and more broadly, environmental law itself has fallen “in arrears,” becoming calcified after previous decades of policy innovation.¹⁴

It is hard to deny that the Trump Administration had a significant impact on environmental agencies and their outcomes, but we still know very little about environmental enforcement efforts during this period.¹⁵ We explore this question by focusing on water pollution prosecutions during the Trump Era. We gather data on all criminal investigations undertaken by EPA that led to criminal prosecution. Our approach allows us to explore the frequency of prosecutions, number of defendants, charging and sentencing patterns, and whether investigators and

11. David M. Uhlmann, *Prosecutorial Discretion and Environmental Crime Redux: Charging Trends, Aggravating Factors, and Individual Outcome Data For 2005-2014*, 8 MICH. J. OF ENV'T & ENERGY L. 297, 313 (2019).

12. Joshua Ozymy, Bryan Menard, & Melissa L. Jarrell, *Persistence or Partisanship: Exploring the Relationship between Presidential Administrations and Criminal Enforcement by the U.S. Environmental Protection Agency, 1983-2019*, 81 PUB. ADMIN. REV. 49 (2021).

13. See Mintz, *supra* note 8 at 10912; Mintz, *supra* note 9 at 10390; Uhlmann, *supra* note 10 at 40-43.

14. Joel A. Mintz, *Running on Fumes: The Development of New EPA Regulations in an Era of Scarcity*, 46 ENV'T L. REP. 10510 (2016); Richard Lazarus, *Environmental Law has fallen 'in arrears,'* HARV L. TODAY (May 3, 2013), <https://today.law.harvard.edu/richard-lazarus-environmental-law-has-fallen-in-arrears-video/>; Richard Lazarus, *Environmental Law Without Congress*, 30 J. OF LAND USE AND ENV'T L. 15 (2014).

15. Early research on environmental crime prosecutions during the first half of the Trump Administration shows a significant decline in output. See David M. Uhlmann, *New Environmental Crimes Project Data Shows that Pollution Prosecutions Plummeted During the First Two Years of the Trump Administration* (Env't Crimes Project Rpt., U. of Mich. Pub. L. Rsch. Paper No. 685, 2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3710109#maincontent.

prosecutors were able to pursue crimes involving significant harm and culpable conduct, as well as obtain large penalties at sentencing.¹⁶ Our findings help tell us how EPA and DOJ pursued investigations and prosecutions during this era and helps us to show whether and how these patterns developed under Trump. They will also speak to the broader issue of how agencies persist under antagonistic presidential regimes.

II. ENVIRONMENTAL LAW ENFORCEMENT

The vast majority of environmental violations are managed using civil remedies.¹⁷ Such efforts attempt to bring violators into compliance with regulations and can take on a number of civil or judicial actions such as Administrative Orders of Consent (AOC), mitigation plans, Supplemental Environmental Projects (SEPs), restitution, or other forms of injunctive relief.¹⁸ Criminal enforcement focuses on generating a deterrent effect with its efforts.¹⁹ Overall, environmental law enforcement agencies embody a deterrence-based organizational culture and focus their efforts on crimes involving significant harm and culpable conduct.

After a series of environmental catastrophes that spawned public awareness of environmental hazards, the legal landscape of environmental regulation changed drastically with the passage and implementation of pollution control statutes. This growing public awareness led to a series of sweeping amendments to the Federal Water Pollution Control Act, creating the modern statute commonly known as the Clean Water Act.²⁰ In 1974, Congress passed the Safe Drinking Water Act to protect Americans from drinking contaminated drinking water.²¹

Enhancing penalties for environmental crimes came on the heels of Congressional action to increase penalties for most federal crimes.²² While it now seems somewhat implausible, for a time, Congress complained that prosecutors were not penalizing environmental criminals enough. This led to an expansion of resources devoted to environmental crime fighting and

16. See Joshua Ozymy & Melissa L. Jarrell, *Illegal Discharge: Exploring the History of the Criminal Enforcement of the U.S. Clean Water Act*, 32 FORDHAM ENV'T L. REV. 195 (2021).

17. Evan J. Ringquist & Craig E. Emmert, *Judicial Policymaking in Published and Unpublished Decisions: The Case of Environmental Civil Litigation*, 52 POL. RES. Q. 12 (1999).

18. EPA, BASIC INFORMATION ON ENFORCEMENT, available at <https://www.epa.gov/enforcement/basic-information-enforcement>.

19. Michael J. Lynch, *The Sentencing/Punishment of Federal Environmental/Green Offenders, 2000-2013*, 38 DEVIANT BEHAV. 991 (2017).

20. 33 U.S.C. § 1251 *et seq.* (1972).

21. 42 U.S.C. § 300f *et seq.* (1974).

22. 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, 901 (1991).

then subsequent backlash that prosecutors were overreaching in their use of these expanded statutes.^{23, 24} The exercise of prosecutorial discretion has always been a central and important part of the debate among political principals for supporting or opposing the criminal enforcement apparatus.²⁵

Efforts to use prosecutorial resources to remedy environmental crimes can be traced to 1909 with the founding of the DOJ'S Public Lands Division, which evolved to the current Environmental and Natural Resources Division (ENRD).²⁶ In 1982, the Environmental Crimes Section (DOJ-ECS) was created to focus enhanced resources on prosecuting environmental crimes, along with the Environmental Enforcement Section (EES) that handles civil cases.²⁷ At present, DOJ-ECS employs about forty-three prosecutors and a dozen support staff.²⁸

Environmental policing resources were institutionalized within EPA with the founding of the Office of Enforcement in 1981, which evolved into the modern Office of Compliance Assurance (OECA).²⁹ The following year criminal investigators were hired and from 1984-1988 were deputized as Special Deputy U.S. Marshalls, until 1988 when Congress granted them full law enforcement powers.³⁰ Some 145 criminal

23. One issue was holding corporate officials liable for crimes committed within the organization that was nearly impossible with hazardous waste crimes, until criminal provisions were added to RCRA. This prompted a discussion of whether this change was too expansive. See David T. Barton, *Corporate Officer Liability Under RCRA: Stringent but not Strict*, 1991 BYUL REV. 1547 (1991).

24. One example of expanded resources was The Pollution Prosecution Act of 1990 that created a statutory minimum at 200 criminal investigative staff for EPA. For alternative positions on the exercise of prosecutorial discretion here and its consequences see Richard J. Lazarus, *Assimilating Environmental Protection into Legal Rules and the Problem with Environmental Crime*, 27 LOY. L. REV. 867 (1994).

25. 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. 590 (1995).

26. DOJ, ENRD, HISTORY (2019), available at <https://www.justice.gov/enrd/history>; DOJ, ECS, HISTORICAL DEVELOPMENT OF ENVIRONMENTAL CRIMINAL LAW (2015), available at <https://www.justice.gov/enrd/about-division/historical-development-environmental-criminal-law>.

27. DOJ, ENRD, ENVIRONMENTAL ENFORCEMENT SECTION (EES): AN OVERVIEW OF OUR PRACTICE (2015), available at <https://www.justice.gov/enrd/overview-our-practice>.

28. DOJ, ENVIRONMENTAL CRIMES SECTION (2015), available at <https://www.justice.gov/enrd/environmental-crimes-section>.

29. EPA, ABOUT THE OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE (OECA) (2020), available at <https://www.epa.gov/aboutepa/about-office-enforcement-and-compliance-assurance-oeca>.

30. See Memorandum from John Peter Suarez, Assis. Admin., Management Review of the Office of Criminal Enforcement, Forensics and Training (Dec. 15, 2003), available at <https://www.epa.gov/sites/production/files/documents/oceft-review03.pdf>.

investigators, also known as special agents are tasked with investigating federal environmental crimes and are housed within the Criminal Investigation Division (EPA-CID).³¹ Agents have historically enjoyed a degree of professional autonomy, typically working out of field offices and building cases in conjunction with other agencies, receiving information for cases from civil inspectors, formal reports or other documents, or former employees of companies that witness wrongdoing.³² When Agents find sufficient evidence of a crime they typically approach attorneys within DOJ-ECS or the U.S. Attorneys' Office to file a criminal information in District Court or convene a grand jury.³³

Research is mixed on whether environmental law enforcement agencies possess sufficient resources to deter environmental criminals from breaking the law. Some argue that resources are simply spread too thin to provide general deterrence effects.³⁴ Calls for enhancing resources have been ongoing for many years.³⁵ As an example, the most comprehensive study to date has shown that prosecutions resulting from EPA-CID investigations may number less than 2,600 since 1983.³⁶ Other research confirms that prosecutors do target serious crimes with aggregating factors, such as chronic offending, deceptive conduct, or operating outside the boundaries of the regulatory system.³⁷ Research on the impact of presidential administrations on enforcement outcomes has shown the ability of law enforcement agencies to persist in their efforts, despite significant presidential opposition.³⁸

31. EPA, CRIMINAL ENFORCEMENT PROGRAM: AMERICA'S ENVIRONMENTAL CRIME FIGHTERS (2020), available at <https://www.epa.gov/sites/production/files/documents/oceftbrochure.pdf>.

32. See Mintz, *supra* note 8 at 10912.

33. Joel A. Mintz, *Some Thoughts on the Interdisciplinary Aspects of Environmental Enforcement*, 36 ENV'T L. REP. 10495, 10497 (2006).

34. For a discussion and analysis on the probability of being punished for an environmental crime and the subsequent prospects for deterrence see Michael J. Lynch et al., *The Weak Probability of Punishment for Environmental Offenses and Deterrence of Environmental Offenders: A Discussion Based on USEPA Criminal Cases, 1983-2013*, 37 DEVIANT BEHAV. 1096 (2016).

35. Jennifer Koons, *Wanted: Environmental Crime Fighters*, SCI. AM. (July 30, 2009), <https://www.scientificamerican.com/article/environmental-law-enforcement-crimes-epa/>.

36. This number includes some state prosecutions and may not include environmental crime prosecutions undertaken without EPA collaboration, meaning the real number is likely higher, but it is difficult to know the degree. See Ozymy et al., *supra* note 12 at 49-60.

37. For two important empirical studies here, see David M. Uhlmann, *Prosecutorial Discretion and Environmental Crime*, 38 HARV. ENV'T L. REV. 159 (2014); see also Uhlmann, *supra* note 11 at 312-316.

38. Ozymy et al., *supra* note 12 at 38-45; Joshua Ozymy & Melissa Jarrell, *Why Do Regulatory Agencies Punish? The Impact of Political Principals, Agency Culture, and Transaction*

Trump's threat to enforcement comes on the heels of significant underinvestment of resources over the past few decades and inaction by Congress to update and expand major federal environmental laws.³⁹ Surviving the Reagan and G.W. Bush Administrations may have been possible with pockets of support found in both administrations, the hope for revitalization during Clinton and Obama never materialized.⁴⁰ The bleaker picture now for criminal enforcement agencies is whether they can still persist after structural inattention for so many years, paired with an aggressively hostile presidential regime, as well as the 2009 Financial Crisis and ongoing COVID-19 pandemic.⁴¹

Our approach allows us to explore these issues within the context of the Trump Administration. We are able to analyze whether prosecutorial outputs were steady, if they pursued crimes involving significant harm and/or culpable conduct, if they were able to secure substantial penalties across all cases and large-penalty cases, as well as charging patterns to show the broader universe of water pollution prosecutions during this period. These lines of empirical inquiry speak to a number of previously considered issues in the literature regarding the ability of environmental law enforcement agencies to persist under hostile presidential regimes, whether they pursue serious crimes, and if they can achieve significant penalties to produce some deterrent effect.

III. DATA

Data is collected from the EPA's *Summary of Criminal Prosecutions Database*.⁴² The database provides prosecution summaries for environmental crime prosecutions resulting from EPA-CID criminal

Costs in Predicting Environmental Criminal Prosecution Outcomes in the United States, 33 REV. OF POL'Y RES. 71, 73 (2016); Mintz, *supra* note 7 at 645-655.

39. Budgetary data for ENRD or EPA show a lack of expansion to even keep up with real inflation over the years, not to mention expanded responsibilities. Searching the DOJ's Budget and Performance Summary for fiscal years and scrolling for the ENRD budget can be found here, with the years prior to FY 2015 found in the Archives. See DOJ, BUDGET AND PERFORMANCE SUMMARY ENRD (VARIOUS YEARS), available at <https://www.justice.gov/doj/budget-and-performance>. EPA budget and staffing numbers show a decline in inflation adjusted dollars from the early 1980s and stagnant staff prior to Trump. See EPA, EPA'S BUDGET AND SPENDING, available at <https://www.epa.gov/planandbudget/budget>.

40. Joshua Ozymy & Melissa Jarrell, *Administrative Persistence in the Face of a Hostile Regime: How the EPA Can Survive the Trump Administration*, 10 ENV'T JUST. 1 (2017).

41. For a discussion of the ability of administrative culture to persist within increasing scarcity, even prior to COVID or Trump's full term in office, see Mintz, *supra* note 14 at 10510-19.

42. *Summary of Criminal Prosecutions Database*, EPA, available at <https://www.epa.gov/enforcement/summary-criminal-prosecutions>.

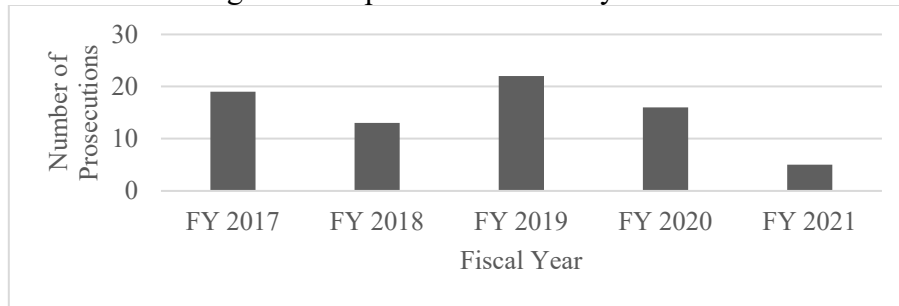
investigations. This publicly searchable database contains valuable information including a narrative summary of each investigation, a timeline and information for each investigation, indictment, and sentencing information for all named defendants in each case. We searched the Database by EPA fiscal year (FY) that runs from October 1 to September 30. We examined each case and selected all cases that were sentenced and adjudicated during the Trump Administration. This period ran from January 20, 2017, to Joe Biden's inauguration on January 20, 2021. Our search of the database yielded 282 total prosecutions that were adjudicated during the Trump Administration. We then analyzed each case, selecting prosecutions that focused on water pollution crimes. Our final selection resulted in seventy-five prosecutions for our analysis herein.

We coded the following information for the prosecution summaries: a short narrative of the primary crime in the case, the docket number, number of named defendants, primary defendant name, presence of at least one company or corporation in the prosecution, presence of criminal charges, such as false statements, fraud, smuggling, or other such charges, whether defendants were charged under state environmental laws, federal environmental laws violated, and penalties. We captured penalties by all individual defendants in each case and all company defendants in a case. We measured monetary penalties as fees, fines, assessments, restitution, or any monetary penalties assessed at sentencing. We captured probation in total months to all individual and company defendants. We measured incarceration in total months and community service in total hours.

IV. RESULTS

We begin our analysis with a Figure 1, which provides an overview of the number of water pollution prosecutions undertaken during the Trump Administration. We find that in FY 2017, nineteen prosecutions were adjudicated. In FY 2018, there were thirteen adjudicated and in FY 2019, twenty-two prosecutions were adjudicated. In FY 2020 sixteen prosecutions were adjudicated and five in the remainder of FY 2021 before Biden took office. We estimate there were seventy-five water pollution prosecutions adjudicated during this period that resulted from EPA-CID investigations. The average number of prosecutions adjudicated per year was fifteen prosecutions.

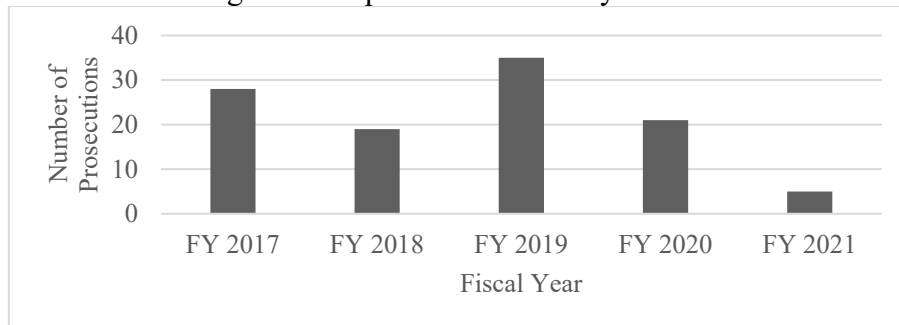
Figure 1. Total Water Pollution Prosecutions Adjudicated During the Trump Administration by Fiscal Year



Source: EPA Summary of Criminal Prosecutions Database

In Figure 2, we explore the number of defendants prosecuted per fiscal year during the Trump Administration. In FY 2017, we estimate there were twenty-eight defendants prosecuted and nineteen in FY 2018. In FY 2019, we estimate that thirty-five defendants were prosecuted in water pollution prosecutions and twenty-one in FY 2020. In the remaining months of FY 2021, we estimate five defendants were prosecuted. Our estimates suggest that cumulatively, 108 defendants were prosecuted during Trump, with an average of about twenty-two annually.

Figure 2. Total Defendants Prosecuted in Water Pollution Cases During the Trump Administration by Fiscal Year



Source: EPA Summary of Criminal Prosecutions Database

In Figure 3, we show charging patterns for water pollution prosecutions during the Trump Era. Prosecutions were dominated by the CWA during this time period. About eighty-three percent or sixty-two prosecutions centered on using criminal provisions of the CWA to charge defendants for water pollution crimes. These prosecutions tended to focus on unpermitted discharges from companies or individuals that failed to

obtain a permit or violated their National Pollution Discharge Elimination System (NPDES) permit.⁴³ Others involved falsifying reports on discharge monitoring reports (DMRs) or other official documents or engaging in fraudulent testing or monitoring.⁴⁴ A few cases involved altering wetlands of waterways without a 404 permit.⁴⁵ For example, David Lee Flury was prosecuted for dumping 11,000 gallons of waste water into a tributary of the San Gabriel River in Santa Fe Springs, California and was prosecuted for the unpermitted discharges under the CWA.⁴⁶

Stephen Fritz was prosecuted as part of a case involving MAB Environmental Services and its owner Matthew Brozena. The company contracted with wastewater treatment plants to test samples of discharges for the plants to ensure the companies were in compliance with its permits. Brozena instructed employees, including Fritz, to discard samples showing the companies exceeded their permit limits. Subsequently, the defendants were prosecuted for fraudulent testing under the CWA.⁴⁷ David Wayne Obermeyer was a real estate developer that illegally filled in wetlands despite warnings from the U.S. Army Corp of Engineers. He was prosecuted for violations of the CWA for filling in wetlands without a permit.⁴⁸

In four percent of cases or three prosecutions, defendants were charged criminally with violations of the Safe Drinking Water Act

43. NPDES permits are the primary mechanism EPA uses under the CWA to regulate pollution from point sources that discharge into the waters of the United States. *See* 33 U.S.C. § 1342.

44. DMRs are water pollution reports required by entities permitted under NPDES that require sampling and monitoring of discharges. *See* 40 C.F.R. § 122.2 (2020).

45. Dredging or filling in wetlands or other waters of the United States requires a Section 404 permit (i.e., under the CWA) be issued by the U.S. Army Corp of Engineers. The Corp evaluates permits and EPA sets guidelines and helps enforce 404 provisions. *See* 33 U.S.C. § 1344.

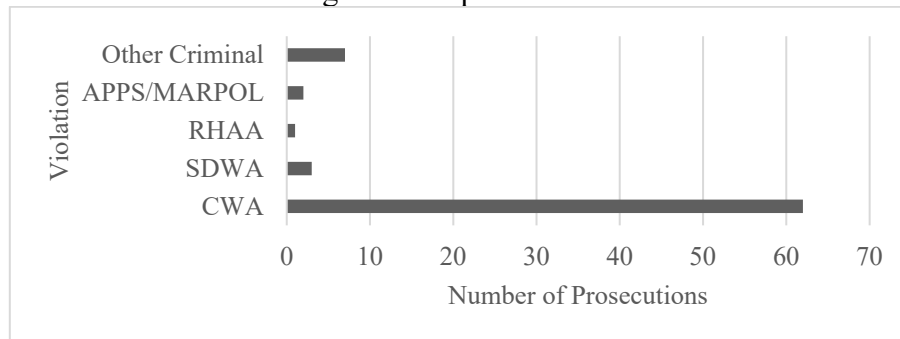
46. *Summary of Criminal Prosecutions: David Lee Flury*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2989 (accessed April 13, 2022).

47. *Summary of Criminal Prosecutions: Stephen Fritz*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2983 (accessed April 13, 2022). Fritz was sentenced to three years of probation, a \$1,000 fine, and 100 hours of community service. The company was sentenced to five years of probation and a \$50,000 fine. Brozena was sentenced to three years of probation, six months home confinement, and a \$100,000 fine, as well as a requirement he publish an article in a trade journal describing his conduct.

48. *Summary of Criminal Prosecutions: David Wayne Obermeyer*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3035 (accessed April 13, 2022). Obermeyer was sentenced to three months of probation, three months home confinement, a \$25,000 fine, and to work with EPA to develop wetlands restoration plan.

(SDWA).⁴⁹ An example would be the prosecution of Christopher Dale Miller. The defendant was employed by the town of Cary, North Carolina as a distribution technician responsible for collecting and testing drinking water samples. He made false statements by claiming to collect water samples from a variety of sources when in fact he only chose a few locations. Evidence suggested that Miller falsified at least 278 samples. Miller was prosecuted for making false statements under the SDWA.⁵⁰

Figure 3. Charging Patterns in Water Pollution Prosecutions During the Trump Administration



Source: EPA Summary of Criminal Prosecutions Database

In three percent of cases, defendants were primarily charged with violations of the Act to Prevent Pollution from Ships (APPS) and in one case the RHAA.⁵¹ *W. Bockstiegel Reederei GmbH & CO. KG* discharged oily residue and machinery waste from the vessel *Nils B.*⁵² The company was prosecuted for failing to keep an accurate Oil Record Book in violation of the APPS.⁵³ In nine percent of prosecutions, or seven cases,

49. The Act empowers EPA to set drinking water quality standards in the United States, particularly for every public water system. The Act does not regulate private wells or bottled water. See 42 U.S.C. § 300f.

50. *Summary of Criminal Prosecutions: Christopher Dale Miller*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2967 (accessed April 13, 2022). Miller was sentenced to one year of probation, 120 hours community service, and \$14,437 in restitution.

51. 33 U.S.C. §§ 1905-1915. The Act regulates pollution from ships and implements provisions of The International Convention for the Prevention of Pollution from Ships (MARPOL).

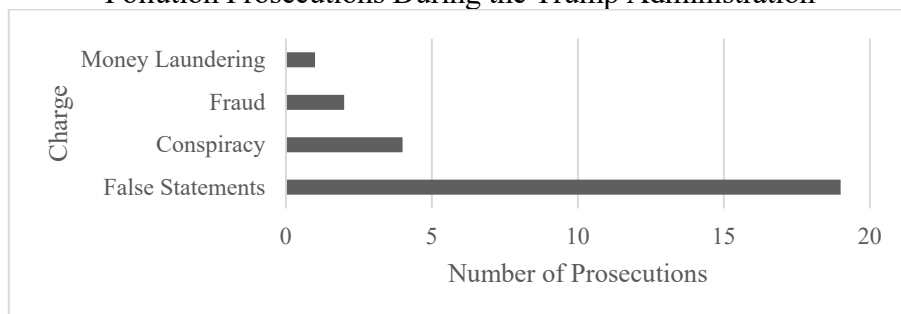
52. *Summary of Criminal Prosecutions: W. Bockstiegel Reederei GmbH & CO. KG*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2993 (accessed April 13, 2022). The defendants were sentenced to pay a \$500,000 fine and make \$250,000 in community service payments.

53. The Oil Record Book is required under the Act and is a useful mechanism to prosecute ocean dumping. An operator is required to keep a log of what is produced and disposed of, and discrepancies must be noted in the Book. Given this would indicate oil wastes were dumped in the

defendants were primarily charged with Title 18 violations or other criminal acts, rather than under one of these federal environmental statutes.⁵⁴

Figure 4 explores common Title 18 and other criminal charges occurring in the data. The most common charge we find is false statements. In twenty-five percent of cases, or nineteen prosecutions, at least one defendant was charged with making false statements to officials, giving false statements on official reports, or related offenses. In five percent of prosecutions, or four cases, at least one defendant was charged with conspiracy. In three percent of cases at least one defendant was charged with fraud and in one case money laundering. Overall, in twenty-five prosecutions, or about a third of all prosecutions in our data, at least one defendant was charged with one or more of these offenses, suggesting a significant number of cases dealt with serious crimes.

Figure 4. Common Criminal Charges in Water Pollution Prosecutions During the Trump Administration



Source: EPA Summary of Criminal Prosecutions Database

In Table 1, we turn to the total penalties assessed to defendants in water pollution prosecutions during the Trump Administration. We categorize these penalties by the aggregate punishments meted out to all individual and all company defendants in the prosecutions. In the upper-left quadrant of the Table, we show the total aggregate monetary penalties assessed to all individual and company defendants in our data. These penalties include all fines, assessments, restitution, community service payments, or other monetary penalties in nominal dollars. Aggregate penalties assessed to individuals in our estimation totaled \$880,350 over thirty-nine prosecutions, with an average penalty of \$11,738. Total

ocean, a defendant would, by keeping an accurate Book, essentially admit to such a crime or, the act of omitting it is also a crime. See 40 C.F.R. Part 112, Subpart A (2002).

54. Title 18 is the primary criminal code of the government of the United States.

monetary penalties assessed to companies at sentencing exceeded \$66 million. Companies received monetary penalties at sentencing in twenty-nine prosecutions, with an average penalty of \$881,875 per prosecution.

In the upper-right quadrant we show the total number of months of probation assessed to all individual and company defendants in water pollution prosecutions. Individual defendants were assessed at sentencing some 1,862 months of probation across forty-five prosecutions, with an average penalty of about twenty-five months. Collectively, companies were assessed 876 months of probation at sentencing across eighteen prosecutions, with an average of about twelve months per case. We estimate total incarceration at 298 months across thirteen prosecutions, with an average of about four months incarceration assessed per prosecution. We estimate defendants were sentenced to some 860 hours of community service across seven prosecutions, with an average of approximately 123 hours assessed at sentencing in each case.⁵⁵

Table 1. Total Penalties Assessed to Defendants in Water Pollution Prosecutions During the Trump Administration

<i>Total Monetary Penalties</i>	<i>Total Probation</i>
Individuals- \$880,350	Individuals- 1,862 Months
Companies- \$66,140,606	Companies- 876 Months
<i>Incarceration</i>	<i>Community Service</i>
298 Months	860 Hours

Source: EPA Summary of Criminal Prosecutions Database

The significant corporate monetary penalties can be placed into context with a discussion of large penalty cases in Table 2. Wood Group Production Services and Black Elk Energy were prosecuted for an explosion at the latter's offshore oil platform at area West Delta 32 in the Gulf of Mexico. The company admitted its employees acted negligently in authorizing the hot work welding that led to an explosion, as well as

55. We also cataloged seven prosecutions where at least one defendant was sentenced to home confinement, totaling fifty-five months or an average of about eight months per prosecution. In two cases at least one defendant was sentenced to community corrections, totaling seventy-eight months or an average of thirty-nine months per prosecution.

falsifying safety inspections at the site over several years.⁵⁶ The company was ordered to pay \$9.5 million in monetary penalties. For its role in the explosion, Black Elk Energy was prosecuted under the CWA and the Outer Continental Shelf Lands Act (OCSLA) for the negligent hot work that led to the explosion, discharge of oil into the Gulf, death of three workers, and injuries to several others.⁵⁷ The company was ordered to pay \$4.2 million in monetary penalties.

Table 2. Large Penalty Water Pollution Prosecutions
During the Trump Administration

<i>Fiscal Year</i>	<i>Defendant</i>	<i>Crime</i>	<i>Monetary Penalty</i>
2017	Wood Group	Off-Shore Explosion	\$9,500,000
2017	Black Elk Energy	Off-Shore Explosion	\$4,200,000
2018	United Industries	Ocean Dumping	\$25,000,000
2019	Avin International	Ocean Dumping	\$4,000,000
2020	CG Roxane	Illegal Discharge	\$5,000,000

Source: EPA Summary of Criminal Prosecutions Database

United Industries was prosecuted for dumping railroad parts into the ocean to conceal that it was defrauding customers by performing unnecessary repairs.⁵⁸ The company was prosecuted under the RHAA for depositing refuse in the waters of the Port of Long Beach, California. The company was ordered to pay a \$5 million fine and pay \$20 million in restitution to the companies it defrauded. Avin International was prosecuted for illegal discharge under the CWA when it discharged oil into

56. *Summary of Criminal Prosecutions: Wood Group Production Services Network*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2979 (accessed April 13, 2022). The company was prosecuted for making false statements and illegally discharging oil into the Gulf as a consequence of an explosion in violation of the CWA.

57. *Summary of Criminal Prosecutions: Black Elk Energy*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3030 (accessed April 13, 2022). See also 43 U.S.C. §§ 1331-1356a.

58. *Summary of Criminal Prosecutions: United Industries, LLC*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3056 (accessed April 13, 2022).

the waters of Texas ports via the oil tanker M/T Nicos I.V.⁵⁹ The company was prosecuted under the CWA for the illegal discharge and failure to report the discharge and for obstruction. The company was ordered to pay a \$4 million fine. CG Roxanne was prosecuted for discharging some 23,000 gallons of wastewater from the company's arsenic pond, as well as illegally storing and transporting hazardous waste from its Olancho, California facility.⁶⁰ The company was prosecuted under RCRA and the CWA and was sentenced to pay \$5 million in fines.⁶¹ Cumulatively, the monetary penalties against these five companies totals \$47.7 million. If these large penalty cases are excluded, total corporate monetary penalties during the Trump Era would be approximately \$18.4 million. This number is greatly reduced from previous administrations and not that significant a total. Yet it is important to note that prosecutors were able to pursue these large penalty cases against corporations during this time period.

In our final analysis of water pollution prosecutions during the Trump Administration, in Table 3, we attempt to place all seventy-five prosecutions within one of six categories, based on our best judgment of the primary crime in the case.⁶² We begin with upper-left quadrant, where we categorize the majority of cases (sixty percent) as primarily focusing on unpermitted discharges. All discharges of pollution to the waters of the United States require a permit, meaning a significant range of examples from an individual dumping waste into a river, to a company exceeding its NPDES permit, all fall within the boundaries of CWA violations and in our judgment define water pollution prosecutions more than any other

59. *Summary of Criminal Prosecutions: Avin International*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3154 (accessed April 13, 2022).

60. *Summary of Criminal Prosecutions: CG Roxanne*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3241 (accessed April 13, 2022).

61. Two companies that were hired to transport and treat the wastewater, United Pumping Services and United Storm Water were sentenced to pay a \$375,000 fine, which we interpret as both companies were each required to pay a \$375,000 fine.

62. In fairness, this judgment is secondary to what we feel is the primary crime that precipitated the investigation and prosecution in the case, based on a range of information available in the prosecution case summary. In some of these summaries, the narratives are longer than others and provide better information to glean the primary crime at issue in the case. In others, information is limited. In a common example, defendants may have illegally discharged waste into a public wastewater system and given false statements about it to investigators or on their DMRs. We must categorize to the best of our ability, using limited information, to discern which was the primary crime. It is important to interpret the Table with this in mind, but we think the analysis is valuable for expanding our understanding of the universe of what crimes were prosecuted during this time period.

offense in the Trump Administration. In our judgement, forty-five out of seventy-five prosecutions focus on unpermitted discharges.

Table 3. Major Themes in Water Pollution Prosecutions
During the Trump Administration

<i>Unpermitted Discharge Crime</i> 60 Percent	<i>Ocean Pollution Crime</i> 15 Percent	<i>Testing/Monitoring Crime</i> 15 Percent
<i>Drinking Water Crime</i> 5 Percent	<i>Wetlands Crime</i> 4 Percent	<i>Unclassified Crime</i> 1 Percent

Source: EPA Summary of Criminal Prosecutions Database

Examples of illegal discharge cases include the prosecution of Crete Core Ingredients for exceeding its NPDES permit. An investigation showed pollutants being discharged into the municipal wastewater system to be over twice the permitted limit.⁶³ Robert Larue Webb was prosecuted for allowing more than 1,000 gallons of oil to enter a stormwater drain at the Union Pacific railyard in Portland, Oregon. Webb had previously pled guilty to violations of the CWA.⁶⁴ American Biodiesel was prosecuted for allowing industrial wastewater to discharge into the City of Stockton California's stormwater system in violation of their NPDES permit.⁶⁵

In fifteen percent of prosecutions, we categorized the case as focusing on ocean pollution. These prosecutions focused on vessels dumping oil or other hazardous wastes in the ocean, companies dumping waste in the ocean, and accidents that caused ocean pollution. For example, Avin International was prosecuted for illegally discharging oil into the ocean, failing to keep an accurate Oil Record Book, and failure to

63. *Summary of Criminal Prosecutions: Crete-Core Ingredients*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3171 (accessed April 13, 2022).2019). The company was charged with violations of the CWA and sentenced to a \$100,000 fine.

64. *Summary of Criminal Prosecutions: Robert Larue Webb*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3191 (accessed April 13, 2022). Webb was sentenced to two years of probation and a \$2,500 fine.

65. *Summary of Criminal Prosecutions: American Biodiesel*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3156 (accessed April 13, 2022). This is an example of a case where the company also tampered with monitoring devices, but we felt the illegal discharge was the primary reason for the prosecution. The company was sentenced to three years of probation, fined \$401,000, and ordered to pay \$256,206 in restitution.

report the discharges.⁶⁶ United Industries was prosecuted for violations of the RHAA for dumping railroad parts into the ocean and defrauding customers who supposedly paid for repairs they did not need.⁶⁷ Fishing Vessel Enterprises was prosecuted for illegal discharge of oily bilgewater.⁶⁸

Fifteen percent of prosecutions focused on monitoring or testing fraud. In these cases, companies and individuals tampered with water samples, falsified sampling data, falsified sampling reports, or tampering with water monitoring devices. Arthur Wolfe, for example, was prosecuted for submitting falsified documents for bacteriological reports in water samples.⁶⁹ Monica Borowicz was prosecuted for submitting falsified DMRs for the Wallops Flight Facility that was owned and operated by NASA.⁷⁰ Lonny Howard was prosecuted for tampering with a monitoring method and submitting falsified DMRs as the manager for the Wiegardt Brothers oyster processing facility.⁷¹

In five percent of cases, the focus of the prosecution was on drinking water crimes. These cases centered on failing to operate drinking water equipment, falsifying drinking water samples, and illegally injecting drilling waste into a well. For example, Dale Johansen managed all of the drinking and wastewater facilities for the Rouge Creek, Missouri. The lead reduction system had been offline for almost six months and Johansen lied

66. *Summary of Criminal Prosecutions: Avin International*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3154 (accessed April 13, 2022). The company was ordered to pay a \$4 million criminal fine and serve four years of probation.

67. *Summary of Criminal Prosecutions: United Industries*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3056 (accessed April 13, 2022). The company was ordered to pay a \$5 million fine and \$20 million in restitution.

68. *Summary of Criminal Prosecutions: Fishing Vessel Enterprises*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3182 (accessed April 13, 2022). The company was ordered to pay a \$1 million fine and serve five years of probation.

69. *Summary of Criminal Prosecutions: Arthur Wolfe*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3189 (accessed April 13, 2022). Wolfe was sentenced to one year probation and a \$1,000 fine.

70. *Summary of Criminal Prosecutions: Monica Borowicz*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3169 (accessed April 13, 2022). The defendant was sentenced to serve thirty-six months of probation, pay a \$5,000 fine, and restitution in the amount of \$6,717.70 to NASA.

71. *Summary of Criminal Prosecutions: Lonny Howard*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2992 (accessed April 13, 2022). Howard previously pled guilty to another CWA violation. For this violation he was sentenced to one year of probation.

to investigators that it had been offline for six to eight weeks.⁷² Jason Halek was prosecuted under the SDWA for injecting saltwater into an injection well improperly and in violation of his permit.⁷³

In three cases defendants damaged wetlands through illegal discharge of filling/altering wetlands without a 404 permit or in violation of a permit. An example here is the prosecution of Bonefish Holdings for filling in wetlands on their property after Hurricane Irma hit the Florida Keys on September 10, 2017. The company was prosecuted under the CWA for the unpermitted filling of protected wetlands.⁷⁴ James Philip Lucero was prosecuted for orchestrating the illegal dumping of 1,800 industrial-sized truckloads of construction debris and materials into a federally protected wetland without a 404 permit.⁷⁵ David Wayne Obermeyer was a real estate developer that illegally filled some seven acres of protected wetlands.⁷⁶ He previously received a cease-and-desist order from the Army Corps.⁷⁷

72. *Summary of Criminal Prosecutions: Dale Johansen*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3127 (accessed April 13, 2022). The defendant was sentenced to 36 months of probation, a \$7,500 fine, and 100 hours of community service.

73. *Summary of Criminal Prosecutions: Jason Halek*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3097 (accessed April 13, 2022). Halek was sentenced to three years supervised release, a \$50,000 fine, and \$30,000 in restitution.

74. *Summary of Criminal Prosecutions: Bonefish Holdings, LLC*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3144 (accessed April 13, 2022). The company was ordered to pay a \$50,000 fine, serve three years of probation, and restore the 3.73 acres of wetlands that were damaged.

75. *Summary of Criminal Prosecutions: James Philip Lucero*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3141 (accessed April 13, 2022). Lucero was sentenced to thirty months incarceration followed by a year of supervised release.

76. *Summary of Criminal Prosecutions: David Wayne Obermeyer*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3035 (accessed April 13, 2022). Obermeyer was sentenced to three years of probation, three months home confinement, and a \$25,000 fine.

77. The one case that resists classification is the prosecution of Mark Stafford. Stafford was responsible for decommissioning ground water monitoring wells. Stafford made false statements that he supervised the proper abandonment of the monitoring wells. This could be classified as a drinking water crime, but we left it unclassified. Stafford was sentenced to 12 months and a day incarceration and \$63,779.90 in restitution. *Summary of Criminal Prosecutions: Mark Stafford*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3256 (accessed April 13, 2022).

V. CONCLUSION

Examining water pollution prosecutions during the Trump Administration has shown the ability of prosecutors to maintain persistence in meeting their objectives, but overall output is shown to be diminished compared to previous research.⁷⁸ Our findings support a broader picture that prosecutorial efforts can persist within the current regulatory and legal apparatus, even with hostile presidential pressure against these agencies.⁷⁹ We note our primary findings and note some potential efforts to improve environmental criminal enforcement.

Our first major finding is that water pollution prosecutions were consistent, but not substantial during the Trump Era. We estimate that only seventy-five water pollution prosecutions were adjudicated during this time period and only 108 defendants prosecuted. Even considering the impact of the COVID-19 pandemic, these numbers are quite low and are reflective of preliminary evidence of broader trends occurring during this era.⁸⁰ For example, in FY 2018, only thirteen water pollution prosecutions were adjudicated, and while this increased to twenty-two in FY 2019, it decreased again to sixteen in FY 2020.

Our second finding is that the majority of defendants were charged for violations of the CWA. In eighty three percent of cases, prosecutors primarily charged offenders under the Act. The SDWA, RHAA, and APPS only amounted to about eight percent of prosecutions in the data. In nine percent of cases, defendants were primarily charged with Title 18 or related criminal violations.

Our third finding is that a number of these prosecutions involved contributing factors, suggesting there are many serious violations of law targeted for prosecution in our analysis.⁸¹ While we cannot know the full details of the crime and prosecution from the summaries, many defendants appear to be engaging in willful conduct, chronic violations, or other illegal acts that suggest to us more organically that investigators and prosecutors are pursuing actions involving significant harm and culpable

78. See Uhlmann, *supra* note 15 at 2-5 (analyzing environmental crime prosecutions during the first half of the Trump Era).

79. See Ozymy et al., *supra* note 12 at 49-60 (providing a broader overview of all environmental crime prosecutions across different presidential regimes).

80. See Uhlmann, *supra* note 11 at 312-320 (showing declining prosecutions in earlier eras).

81. Other research suggests some ninety six percent of defendants committing environmental crimes committed violations with one or more aggregating factors. See Uhlmann, *supra* note 11 at 312.

conduct in line with organizational goals and previous research.⁸² We can objectively say that a quarter of cases involve at least one defendant giving or making false statements. Five percent of cases involved engaging in a criminal conspiracy, and three percent of cases involved fraud.

Our fourth finding is mixed regarding the ability of prosecutors to secure large penalties at sentencing both in the aggregate and in specific cases. On the one hand, prosecutors secured large penalties from corporate offenders, such as Wood Group Production Services, Black Elk Energy, and United Industries.⁸³ The monetary penalties assessed to the five companies in Table 4 show prosecutors were able to obtain at least one large penalty water pollution case on average per fiscal year and these five cases alone total almost \$48 million. While it is impressive that prosecutors were able to secure such verdicts, compared to other big penalty cases, such as Deepwater Horizon, these seem paltry, but must be taken in context of the cases presented to prosecutors and their ability to seem them through to trial. BP's prosecution or Volkswagen AG's prosecution, the two largest penalty environmental crime cases in U.S. history, are outliers compared to the broader picture of environmental prosecutions over time.⁸⁴ These represent significant successes under the context of a hostile presidential regime. Alternatively, one can subtract these five cases and note that only about \$18.4 million in penalties were assessed to all other defendants by our estimates during this period, which does not seem as noteworthy.

We do find evidence of prosecutors pursuing serious crimes and significant penalties against polluters in our study, even in the face of presidential and organizational opposition. For these efforts to become more robust during a more sympathetic Biden Administration, we suggest the following remedies. We wish to focus these on using criminal

82. See Uhlmann, *supra* note 37 at 159.

83. *Summary of Criminal Prosecutions: Wood Group Production Services Network*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2979 (accessed April 13, 2022).); *Summary of Criminal Prosecutions: Black Elk Energy*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3030 (accessed April 13, 2022); *Summary of Criminal Prosecutions: United Industries, LLC*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3056 (accessed April 13, 2022).

84. See *Summary of Criminal Prosecutions: Volkswagen AG*, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3009 (accessed April 13, 2022). The company agreed to plead guilty and pay a \$2.8 billion criminal penalty.

enforcement to reduce environmental injustice in society, a goal the Administration has openly endorsed and is sorely needed and overdue.⁸⁵

Our first remedy is to enhance resources for criminal enforcement efforts. EPA-CID now significantly lacks investigative staff baselines set during the 1990s and has for some time. Meeting and exceeding statutory minimums for criminal investigators should be considered a good investment to enhance federal policing resources for the environment.⁸⁶ The same can be said for federal prosecutors. Forty something attorneys in DOJ-ECS is insufficient.⁸⁷ Doubling the number of specialized attorneys and support staff to engage in complex prosecutions of corporate offenders is overdue.⁸⁸

Additionally, the Biden EPA and DOJ could help move his environmental justice efforts in the right direction through specialized hires for policing and prosecution focusing on water pollution crimes near fenceline communities. Our analysis found few efforts in this direction. While focused initiatives with dedicated investigators and prosecutors cannot solve environmental injustice, an utter failure to provide this support will only encourage the status quo.

A second remedy to improve the government's relationship with fenceline communities and to enhance the policing and prosecution would be to enhance community policing efforts.⁸⁹ Environmental justice is at its heart a grassroots movement and there is important local knowledge that is often lost in the bureaucratic response system.⁹⁰ Using environmental justice groups and mobilizing communities to gather data and submit it to EPA-CID and give agents the resources to follow up would go far toward

85. Press Release, The Biden Plan to Secure Environmental Justice and Equitable Economic Opportunity (2021), available at <https://joebiden.com/environmental-justice-plan/>.

86. The Pollution Prosecution Act of 1990 created a statutory minimum at 200 investigative staff for EPA-CID. Meeting this threshold has not occurred for years. See Public Employees for Environmental Responsibility (PEER), EPA CID Agent Count (2019), available at https://www.peer.org/wp-content/uploads/2019/11/11_21_19-Federal_Pollution_EPA_CID_Agent_Count.pdf.

87. The number of prosecutors and environmental police make the probability of criminal punishment or detection terribly low. See Lynch et al., *supra* note 34 at 1096-98.

88. Public Employees for Environmental Responsibility (PEER), EPA CID Agent Count (2019), available at https://www.peer.org/wp-content/uploads/2019/11/11_21_19-Federal_Pollution_EPA_CID_Agent_Count.pdf.

89. One example is that EPA could broaden participation in its citizen reporting program targeted at fenceline communities.

90. Another effort could be to enhance the environmental justice small grants program to this end. See EPA, ENVIRONMENTAL JUSTICE SMALL GRANTS PROGRAM (2021), available at <https://www.epa.gov/environmentaljustice/environmental-justice-small-grants-program>.

building trust in government in these communities, as well as empowering them to continue helping themselves.

Our final suggestion to the Biden Administration is to take environmental crime seriously in rhetoric and practice. It is too easy for the public to view such crimes as less violent or dangerous than street crimes across the United States, but that perception is allowed to persist.⁹¹ Taking the initiative to promote the prosecution of corporations that violate the law, to shame them, and to build up communities fighting against this type of long-term harm would go far to shaping our image of environmental crime as real crime and to justify added resources being applied to these communities and the companies that harm them on a daily basis.⁹²

91. Melissa L. Jarrell, *Environmental Crime and Injustice: Media Coverage of a Landmark Environmental Crime Case*, 6 SOUTHWEST J. OF CRIM. JUST. 25 (2009).

92. A related problem is that the courts and the public often fail to see environmental crime victims as real victims of crime. See Melissa L. Jarrell & Joshua Ozymy, *Real crime, Real Victims: Environmental Crime Victims and the Crime Victims' Rights Act (CVRA)*, 58 CRIME, L. AND SOC. CHANGE 373, 374-377 (2012).