

ENVIRONMENTAL CRIMES DESKBOOK

2ND EDITION

Judson W. Starr

Amy J. McMaster

John F. Cooney

Joseph G. (Jerry) Block

David G. Dickman

ENVIRONMENTAL LAW INSTITUTE

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About the Authors

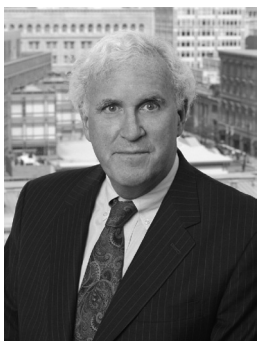
Lead Authors



Judson W. Starr has been a partner in the Washington, D.C., offices of Venable LLP since 1988. From 1982 to 1988, he was the first Director and then Chief of the Environmental Crimes Section, U.S. Department of Justice, Environment and Natural Resources Division. He has served as co-chair of various subcommittees on environmental crimes in the American Bar Association, and as a member of the Environmental Crimes Advisory Group, U.S. Sentencing Commission. For the past 17 years, he served as co-chair of the ALI-CLE (formally ALI-ABA) Criminal Enforcement of Environmental Crimes Conference. A frequent panelist and author on environmental enforcement issues, he was named by the *National Law Journal* and *Chambers* as one of the nation's leading white-collar-crime experts. He has been recognized in *Best Lawyers in America 2003–2013* and was named the *DC Environmental Lawyer of the Year for 2011*. He is a member of the Board of Directors for Medstar Georgetown University Hospital, the co-chair of the Georgetown Law School's Corporate Counsel Institute's Advisory Board and a board member for Somerset Prep DC Charter School. He is a graduate of Washington and Jefferson College and Georgetown University Law Center.



Amy J. McMaster is a partner in the Environmental practice group in Venable LLP's Washington, D.C., office. She has specialized in environmental criminal defense for over 10 years. Ms. McMaster is presently handling a criminal case related to wetlands impacted during a land development project, and recently worked on matters for a leading manufacturer of farm equipment and a major oil refinery. She also has extensive experience in civil enforcement, and focuses on providing clients with a holistic solution to their NEPA, NHPA and CWA issues. Ms. McMaster has authored several articles on wetlands and endangered species issues. She graduated with distinction from the University of Victoria and the College of William & Mary School of Law, where she was a member of Order of the Coif and an editor of the *William & Mary Law Review*.



John F. Cooney is a partner in the Washington, D.C., office of Venable LLP. He counsels clients on a broad range of regulatory issues involving federal agencies and has an active litigation practice in federal district courts, courts of appeals, and the Supreme Court. Mr. Cooney has had extensive experience in civil and criminal matters involving environmental problems, including obtaining an injunction in federal district court against the federal government's imposition of a moratorium on further deepwater drilling after the *Deepwater Horizon* explosion. Mr. Cooney previously served as Deputy General Counsel of the Office of Management & Budget, where he represented the Office of Information and Regulatory Affairs in its review of rules submitted for White House policy review, and served as an Assistant to the Solicitor General. Mr. Cooney graduated magna cum laude from Brown University and from the University of Chicago Law School, where he was a member of Order of the Coif and an editor of the *University of Chicago Law Review*.



Joseph G. (Jerry) Block is the former Chief of the Environmental Crimes Section of the U.S. Department of Justice from 1988-1991. He is a frequent author and commentator on environmental criminal issues and is a recently retired partner from Venable LLP's Environmental Group, which boasts one of the nation's preeminent environmental criminal defense practices. He received his law degree from Harvard Law School and did his undergraduate work at the University of Michigan.



David G. Dickman has been with Venable LLP since 1998 and represents clients on issues involving environmental, safety, security, and hazardous materials transportation laws and regulations, focusing primarily on the marine industry. He advises clients on international, criminal, civil, and administrative aspects of maritime and transportation legal issues. He served 24 years as an active duty officer in the United States Coast Guard. In addition to his Coast Guard legal experience, he has practical maritime law enforcement, pollution response, and port security experience, having served as a marine inspector, marine casualty investigating officer, oil and hazardous chemical pollution response officer, and port security planner during his service with the Coast Guard. He has a broad-based practice, working for legislative solutions on the Hill, on regulatory and enforcement matters involving executive agencies, and on criminal and civil litigation cases on behalf of a diverse group of clients. He has published numerous articles and been a panelist on the criminal enforcement of maritime environmental laws. He was recognized in the 2013 edition of *Chambers USA* (Band 3), Transportation: Shipping: Regulatory (outside New York), Nationwide. He is a graduate of the United States Coast Guard Academy and St. Louis University School of Law.

Contributing Authors



David L. Feinberg is an associate in Venable LLP's Washington, D.C., office. He focuses his practice on litigation, including the litigation of environmental civil and criminal claims. He has been involved with some of the most high-profile civil environmental matters in recent history, including *In re Polar Bear Endangered Species Act Listing and 4(d) Rule Litigation* (D.D.C.), *In re Oil Spill by the Oil Rig "Deepwater Horizon"* (E.D. La.), and *Waterkeeper Alliance, Inc. v. Alan & Kristin Hudson Farm and Perdue Farms Incorporated* (D. Md.). His experience also includes defending corporations and individuals who are under investigation for possible environmental crimes. He also conducts internal investigations concerning potential environmental violations. He is a graduate of Bowdoin College, Emory University's Candler School of Theology, and the University of Virginia School of Law.



Margaret K. Kuhn is an associate in the environmental practice group in Venable LLP's Washington, D.C., office. She has experience in a variety of environmental enforcement matters and counsels clients on proper compliance with environmental laws. She is a graduate of the University of Texas and Duke University School of Law.

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United Nations Convention on the Law of the Sea (UNCLOS)
Vessel General Permit (VGP)
Victim and Witness Protection Act (VWPA)

Foreword

The federal Environmental Criminal Enforcement Program is a highly successful cooperative effort between federal prosecutors in the Environmental Crimes Section of the U.S. Department of Justice (DOJ) in Washington, D.C., line prosecutors in the 94 U.S. Attorneys' offices, and criminal investigators at the U.S. Environmental Protection Agency (EPA) and other federal agencies including the United States Coast Guard, the Customs Service, and the U.S. Department of the Interior's Fish and Wildlife Service. Over the last two decades, these groups have established a solid foundation for the criminal enforcement effort by establishing clear policies for instituting criminal prosecutions, devising sensible enforcement priorities, and achieving a series of court victories that have created an effective deterrent threat. The program has enjoyed broad public support and achieved exceptional results.

Criminal environmental law relies on two areas of the law that are both complex and vital: history-driven criminal law and science-based environmental law. The innovations of criminal environmental law can, therefore, move beyond the basics familiar to many criminal practitioners. Traditional concepts of knowledge and intent and employer responsibility have evolved rapidly and expansively, much to the chagrin of any corporate manager who runs afoul of the law. Above all, the sheer size and complexity of the task of bridging the two fields challenges the novice and demands expert assistance.

Enter the *Environmental Crimes Deskbook* 2nd Edition. This Second Edition greatly expands upon the first edition, both in breadth of issues and depth of analysis, offering the insight and expertise of Judson W. Starr, Amy J. McMaster, John F. Cooney, David G. Dickman, David L. Feinberg, and Margaret K. Kuhn—attorneys in the Washington, D.C., firm of Venable LLP—and recently retired Venable partner, Joseph G. (Jerry) Block, who have over a century of combined experience representing corporations and individuals in criminal environmental cases. These attorneys are recognized leaders in this area with a background in both government and private practice. I have had the pleasure of working with, learning from, or associating with many of them.

In plain English, the authors lay out the basic concepts of criminal environmental law and how they fit into the larger context of environmental regulation. As specialists in criminal environmental law, the authors relate how the emerging criminal and environmental law comes together. And, they illuminate complex matters by placing policy decisions in the context of the historical development of the field—developments that they helped shape.

Divided into three main subparts, the first discusses the history of the federal environmental crimes program, the various policies and factors considered by DOJ, EPA, and U.S. Attorneys' Offices in deciding whether to bring a criminal environmental case, and the primary means by which a case is initiated including, voluntary disclosure, routine compliance information, audits, inspections, information requests, anonymous tips, whistleblowers, and administrative and criminal warrants. The second is devoted to legal theory and strategy, including a detailed discussion of the knowledge element as it is particularly applied in environmental criminal law, a detailed “how-to” guide for responding to an environmental criminal investigation, and suggestions and issue-spotting in the pretrial, trial, and sentencing stages of the case. The third subpart provides a detailed analysis of the primary environmental statutes, identifying key issues and considerations for each, as well as a brief discussion of landmark cases.

In addition to the analysis, the *Environmental Crimes Deskbook* includes agency guidance on such issues as general enforcement policy, specific EPA and DOJ investigative and prosecutorial procedures, parallel proceedings, and environmental self-audits. It also includes sample forms and pleadings, such as search warrants, indictments, deferred prosecution agreements, plea agreements, and jury instructions.

As with all ELI Deskbooks, the *Environmental Crimes Deskbook* should be your ready reference. It is practice-oriented with expert advice that can assist you daily. All of us who practice environmental law consider this to be the premier reference source.

John C Cruden
President
Environmental Law Institute