

PART Q - OFFENSES INVOLVING THE ENVIRONMENT

1. ENVIRONMENT

§2Q1.1. Knowing Endangerment Resulting From Mishandling Hazardous or Toxic Substances, Pesticides or Other Pollutants

- (a) Base Offense Level: 24

Commentary

Statutory Provisions: 18 U.S.C. § 1992(b)(3); 33 U.S.C. § 1319(c)(3); 42 U.S.C. § 6928(e).

Application Note:

1. If death or serious bodily injury resulted, an upward departure may be warranted. See Chapter Five, Part K (Departures).

Background: This section applies to offenses committed with knowledge that the violation placed another person in imminent danger of death or serious bodily injury.

Historical Note: Effective November 1, 1987. Amended effective November 1, 2007 (see Appendix C, amendment 699).

§2Q1.2. Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification; Unlawfully Transporting Hazardous Materials in Commerce

- (a) Base Offense Level: 8

- (b) Specific Offense Characteristics

- (1) (A) If the offense resulted in an ongoing, continuous, or repetitive discharge, release, or emission of a hazardous or toxic substance or pesticide into the environment, increase by 6 levels; or
(B) if the offense otherwise involved a discharge, release, or emission of a hazardous or toxic substance or pesticide, increase by 4 levels.
- (2) If the offense resulted in a substantial likelihood of death or serious bodily injury, increase by 9 levels.
- (3) If the offense resulted in disruption of public utilities or evacuation of a community, or if cleanup required a substantial expenditure, increase by 4 levels.

- (4) If the offense involved transportation, treatment, storage, or disposal without a permit or in violation of a permit, increase by 4 levels.
- (5) If a recordkeeping offense reflected an effort to conceal a substantive environmental offense, use the offense level for the substantive offense.
- (6) If the offense involved a simple recordkeeping or reporting violation only, decrease by 2 levels.
- (7) If the defendant was convicted under 49 U.S.C. § 5124 or § 46312, increase by 2 levels.

Commentary

Statutory Provisions: 7 U.S.C. §§ 136j-136l; 15 U.S.C. §§ 2614 and 2615; 33 U.S.C. §§ 1319(c)(1), (2), 1321(b)(5), 1517(b); 42 U.S.C. §§ 300h-2, 6928(d), 7413, 9603(b), (c), (d); 43 U.S.C. §§ 1350, 1816(a), 1822(b); 49 U.S.C. §§ 5124, 46312. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. "Recordkeeping offense" includes both recordkeeping and reporting offenses. The term is to be broadly construed as including failure to report discharges, releases, or emissions where required; the giving of false information; failure to file other required reports or provide necessary information; and failure to prepare, maintain, or provide records as prescribed.
2. "Simple recordkeeping or reporting violation" means a recordkeeping or reporting offense in a situation where the defendant neither knew nor had reason to believe that the recordkeeping offense would significantly increase the likelihood of any substantive environmental harm.
3. This section applies to offenses involving pesticides or substances designated toxic or hazardous at the time of the offense by statute or regulation. A listing of hazardous and toxic substances in the guidelines would be impractical. Several federal statutes (or regulations promulgated thereunder) list toxics, hazardous wastes and substances, and pesticides. These lists, such as those of toxic pollutants for which effluent standards are published under the Federal Water Pollution Control Act (e.g., 33 U.S.C. § 1317) as well as the designation of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (e.g., 42 U.S.C. § 9601(14)), are revised from time to time. "Toxic" and "hazardous" are defined differently in various statutes, but the common dictionary meanings of the words are not significantly different.
4. Except when the adjustment in subsection (b)(6) for simple recordkeeping offenses applies, this section assumes knowing conduct. In cases involving negligent conduct, a downward departure may be warranted.
5. Subsection (b)(1) assumes a discharge or emission into the environment resulting in actual environmental contamination. A wide range of conduct, involving the handling of different quantities of materials with widely differing propensities, potentially is covered. Depending

upon the harm resulting from the emission, release or discharge, the quantity and nature of the substance or pollutant, the duration of the offense and the risk associated with the violation, a departure of up to two levels in either direction from the offense levels prescribed in these specific offense characteristics may be appropriate.

6. Subsection (b)(2) applies to offenses where the public health is seriously endangered. Depending upon the nature of the risk created and the number of people placed at risk, a departure of up to three levels upward or downward may be warranted. If death or serious bodily injury results, a departure would be called for. *See* Chapter Five, Part K (Departures).
7. Subsection (b)(3) provides an enhancement where a public disruption, evacuation or cleanup at substantial expense has been required. Depending upon the nature of the contamination involved, a departure of up to two levels either upward or downward could be warranted.
8. Subsection (b)(4) applies where the offense involved violation of a permit, or where there was a failure to obtain a permit when one was required. Depending upon the nature and quantity of the substance involved and the risk associated with the offense, a departure of up to two levels either upward or downward may be warranted.
9. Other Upward Departure Provisions.—
 - (A) Civil Adjudications and Failure to Comply with Administrative Order.—In a case in which the defendant has previously engaged in similar misconduct established by a civil adjudication or has failed to comply with an administrative order, an upward departure may be warranted. *See* §4A1.3 (Departures Based on Inadequacy of Criminal History Category).
 - (B) Extreme Psychological Injury.—If the offense caused extreme psychological injury, an upward departure may be warranted. *See* §5K2.3 (Extreme Psychological Injury).
 - (C) Terrorism.—If the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, an upward departure would be warranted. *See* Application Note 4 of the Commentary to §3A1.4 (Terrorism).

Background: This section applies both to substantive violations of the statute governing the handling of pesticides and toxic and hazardous substances and to recordkeeping offenses. The first four specific offense characteristics provide enhancements when the offense involved a substantive violation. The fifth and sixth specific offense characteristics apply to recordkeeping offenses. Although other sections of the guidelines generally prescribe a base offense level of 6 for regulatory violations, §2Q1.2 prescribes a base offense level of 8 because of the inherently dangerous nature of hazardous and toxic substances and pesticides. A decrease of 2 levels is provided, however, for "simple recordkeeping or reporting violations" under §2Q1.2(b)(6).

Historical Note: Effective November 1, 1987. Amended effective November 1, 1993 (*see* Appendix C, amendment 481); November 1, 1997 (*see* Appendix C, amendment 553); November 1, 2004 (*see* Appendix C, amendment 672); November 1, 2010 (*see* Appendix C, amendment 746).

§2Q1.3. Mishandling of Other Environmental Pollutants; Recordkeeping, Tampering, and Falsification

- (a) Base Offense Level: 6
- (b) Specific Offense Characteristics
 - (1) (A) If the offense resulted in an ongoing, continuous, or repetitive discharge, release, or emission of a pollutant into the environment, increase by 6 levels; or
 - (B) if the offense otherwise involved a discharge, release, or emission of a pollutant, increase by 4 levels.
 - (2) If the offense resulted in a substantial likelihood of death or serious bodily injury, increase by 11 levels.
 - (3) If the offense resulted in disruption of public utilities or evacuation of a community, or if cleanup required a substantial expenditure, increase by 4 levels.
 - (4) If the offense involved a discharge without a permit or in violation of a permit, increase by 4 levels.
 - (5) If a recordkeeping offense reflected an effort to conceal a substantive environmental offense, use the offense level for the substantive offense.

Commentary

Statutory Provisions: 33 U.S.C. §§ 403, 406, 407, 411, 1319(c)(1), (c)(2), 1415(b), 1907, 1908; 42 U.S.C. § 7413. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. "Recordkeeping offense" includes both recordkeeping and reporting offenses. The term is to be broadly construed as including failure to report discharges, releases, or emissions where required; the giving of false information; failure to file other required reports or provide necessary information; and failure to prepare, maintain, or provide records as prescribed.
2. If the offense involved mishandling of nuclear material, apply §2M6.2 (Violation of Other Federal Atomic Energy Agency Statutes, Rules, and Regulations) rather than this guideline.
3. The specific offense characteristics in this section assume knowing conduct. In cases involving negligent conduct, a downward departure may be warranted.
4. Subsection (b)(1) assumes a discharge or emission into the environment resulting in actual environmental contamination. A wide range of conduct, involving the handling of different quantities of materials with widely differing propensities, potentially is covered. Depending

upon the harm resulting from the emission, release or discharge, the quantity and nature of the substance or pollutant, the duration of the offense and the risk associated with the violation, a departure of up to two levels in either direction from that prescribed in these specific offense characteristics may be appropriate.

5. Subsection (b)(2) applies to offenses where the public health is seriously endangered. Depending upon the nature of the risk created and the number of people placed at risk, a departure of up to three levels upward or downward may be warranted. If death or serious bodily injury results, a departure would be called for. See Chapter Five, Part K (Departures).
6. Subsection (b)(3) provides an enhancement where a public disruption, evacuation or cleanup at substantial expense has been required. Depending upon the nature of the contamination involved, a departure of up to two levels in either direction could be warranted.
7. Subsection (b)(4) applies where the offense involved violation of a permit, or where there was a failure to obtain a permit when one was required. Depending upon the nature and quantity of the substance involved and the risk associated with the offense, a departure of up to two levels in either direction may be warranted.
8. Where a defendant has previously engaged in similar misconduct established by a civil adjudication or has failed to comply with an administrative order, an upward departure may be warranted. See §4A1.3 (Adequacy of Criminal History Category).

Background: This section parallels §2Q1.2 but applies to offenses involving substances which are not pesticides and are not designated as hazardous or toxic.

Historical Note: Effective November 1, 1987. Amended effective November 1, 1989 (see Appendix C, amendment 205).

§2Q1.4. Tampering or Attempted Tampering with a Public Water System; Threatening to Tamper with a Public Water System

(a) Base Offense Level (Apply the greatest):

- (1) 26;
- (2) 22, if the offense involved (A) a threat to tamper with a public water system; and (B) any conduct evidencing an intent to carry out the threat; or
- (3) 16, if the offense involved a threat to tamper with a public water system but did not involve any conduct evidencing an intent to carry out the threat.

(b) Specific Offense Characteristics

- (1) If (A) any victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) any victim sustained serious bodily injury,

increase by 2 levels; or (C) the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels.

- (2) If the offense resulted in (A) a substantial disruption of public, governmental, or business functions or services; or (B) a substantial expenditure of funds to clean up, decontaminate, or otherwise respond to the offense, increase by 4 levels.
- (3) If the offense resulted in an ongoing, continuous, or repetitive release of a contaminant into a public water system or lasted for a substantial period of time, increase by 2 levels.

(c) Cross References

- (1) If the offense resulted in death, apply §2A1.1 (First Degree Murder) if the death was caused intentionally or knowingly, or §2A1.2 (Second Degree Murder) in any other case, if the resulting offense level is greater than that determined above.
- (2) If the offense was tantamount to attempted murder, apply §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder) if the resulting offense level is greater than that determined above.
- (3) If the offense involved extortion, apply §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) if the resulting offense level is greater than that determined above..

(d) Special Instruction

- (1) If the defendant is convicted of a single count involving (A) the death or permanent, life-threatening, or serious bodily injury of more than one victim; or (B) conduct tantamount to the attempted murder of more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the defendant had been convicted of a separate count for each such victim.

Commentary

Statutory Provision: 42 U.S.C. § 300i-1.

Application Notes:

1. Definitions.—For purposes of this guideline, "permanent or life-threatening bodily injury" and "serious bodily injury" have the meaning given those terms in Note 1 of the Commentary to §1B1.1 (Application Instructions).
2. Application of Special Instruction.—Subsection (d) applies in any case in which the defendant is convicted of a single count involving (A) the death or permanent, life-threatening, or serious bodily injury of more than one victim; or (B) conduct tantamount to the attempted murder of

more than one victim, regardless of whether the offense level is determined under this guideline or under another guideline in Chapter Two (Offense Conduct) by use of a cross reference under subsection (c).

3. Departure Provisions.—

(A) Downward Departure Provision.—*The base offense level in subsection (a)(1) reflects that offenses covered by that subsection typically pose a risk of death or serious bodily injury to one or more victims, or cause, or are intended to cause, bodily injury. In the unusual case in which such an offense did not cause a risk of death or serious bodily injury, and neither caused nor was intended to cause bodily injury, a downward departure may be warranted.*

(B) Upward Departure Provisions.—*If the offense caused extreme psychological injury, or caused substantial property damage or monetary loss, an upward departure may be warranted.*

If the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, an upward departure would be warranted. See Application Note 4 of §3A1.4 (Terrorism).

Historical Note: Effective November 1, 1987. Amended effective November 1, 1989 (see Appendix C, amendment 206); November 1, 2003 (see Appendix C, amendment 655).

§2Q1.5. [Deleted]

Historical Note: Effective November 1, 1987. Amended effective November 1, 1989 (see Appendix C, amendment 207), was deleted by consolidation with §2Q1.4 effective November 1, 2003 (see Appendix C, amendment 655).

§2Q1.6. Hazardous or Injurious Devices on Federal Lands

(a) Base Offense Level (Apply the greatest):

- (1) If the intent was to violate the Controlled Substances Act, apply §2D1.9 (Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances; Attempt or Conspiracy);
- (2) If the intent was to obstruct the harvesting of timber, and property destruction resulted, apply §2B1.1 (Theft, Property Destruction, and Fraud);
- (3) If the offense involved reckless disregard to the risk that another person would be placed in danger of death or serious bodily injury under

circumstances manifesting extreme indifference to such risk, the offense level from §2A2.2 (Aggravated Assault); or

- (4) 6, otherwise.

Commentary

Statutory Provision: 18 U.S.C. § 1864.

Background: The statute covered by this guideline proscribes a wide variety of conduct, ranging from placing nails in trees to interfere with harvesting equipment to placing anti-personnel devices capable of causing death or serious bodily injury to protect the unlawful production of a controlled substance. Subsections (a)(1)-(a)(3) cover the more serious forms of this offense. Subsection (a)(4) provides a minimum offense level of 6 where the intent was to obstruct the harvesting of timber and little or no property damage resulted.

Historical Note: Effective November 1, 1989 (see Appendix C, amendment 208). Amended effective November 1, 1990 (see Appendix C, amendment 313); November 1, 2001 (see Appendix C, amendment 617); November 1, 2002 (see Appendix C, amendment 646); November 1, 2010 (see Appendix C, amendment 746).

* * * * *

2. CONSERVATION AND WILDLIFE

§2Q2.1. Offenses Involving Fish, Wildlife, and Plants

- (a) Base Offense Level: 6
- (b) Specific Offense Characteristics
 - (1) If the offense (A) was committed for pecuniary gain or otherwise involved a commercial purpose; or (B) involved a pattern of similar violations, increase by 2 levels.
 - (2) If the offense (A) involved fish, wildlife, or plants that were not quarantined as required by law; or (B) otherwise created a significant risk of infestation or disease transmission potentially harmful to humans, fish, wildlife, or plants, increase by 2 levels.
 - (3) (If more than one applies, use the greater):
 - (A) If the market value of the fish, wildlife, or plants (i) exceeded \$2,000 but did not exceed \$5,000, increase by 1 level; or (ii) exceeded \$5,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount; or

- (B) If the offense involved (i) marine mammals that are listed as depleted under the Marine Mammal Protection Act (as set forth in 50 C.F.R. § 216.15); (ii) fish, wildlife, or plants that are listed as endangered or threatened by the Endangered Species Act (as set forth in 50 C.F.R. Part 17); or (iii) fish, wildlife, or plants that are listed in Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna or Flora (as set forth in 50 C.F.R. Part 23), increase by 4 levels.

(c) Cross Reference

- (1) If the offense involved a cultural heritage resource or paleontological resource, apply §2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 16 U.S.C. §§ 668(a), 707(b), 1174(a), 1338(a), 1375(b), 1540(b), 3373(d); 18 U.S.C. §§ 545, 554. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. "For pecuniary gain" means for receipt of, or in anticipation of receipt of, anything of value, whether monetary or in goods or services. Thus, offenses committed for pecuniary gain include both monetary and barter transactions. Similarly, activities designed to increase gross revenue are considered to be committed for pecuniary gain.
2. The acquisition of fish, wildlife, or plants for display to the public, whether for a fee or donation and whether by an individual or an organization, including a governmental entity, a private non-profit organization, or a private for-profit organization, shall be considered to involve a "commercial purpose."
3. For purposes of subsection (b)(2), the quarantine requirements include those set forth in 9 C.F.R. Part 92, and 7 C.F.R., Subtitle B, Chapter III. State quarantine laws are included as well.
4. When information is reasonably available, "market value" under subsection (b)(3)(A) shall be based on the fair-market retail price. Where the fair-market retail price is difficult to ascertain, the court may make a reasonable estimate using any reliable information, such as the reasonable replacement or restitution cost or the acquisition and preservation (e.g., taxidermy) cost. Market value, however, shall not be based on measurement of aesthetic loss (so called "contingent valuation" methods).

5. *If the offense involved the destruction of a substantial quantity of fish, wildlife, or plants, and the seriousness of the offense is not adequately measured by the market value, an upward departure may be warranted.*
6. *For purposes of subsection (c)(1), "cultural heritage resource" has the meaning given that term in Application Note 1 of the Commentary to §2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources).*

Background: *This section applies to violations of the Endangered Species Act, the Bald Eagle Protection Act, the Migratory Bird Treaty, the Marine Mammal Protection Act, the Wild Free-Roaming Horses and Burros Act, the Fur Seal Act, the Lacey Act, and to violations of 18 U.S.C. §§ 545 and 554 if the smuggling activity involved fish, wildlife, or plants.*

Historical Note: Effective November 1, 1987. Amended effective January 15, 1988 (see Appendix C, amendment 41); November 1, 1989 (see Appendix C, amendments 209 and 210); November 1, 1991 (see Appendix C, amendment 407); November 1, 1992 (see Appendix C, amendment 452); November 1, 1995 (see Appendix C, amendment 534); November 1, 2001 (see Appendix C, amendment 617); November 1, 2002 (see Appendix C, amendment 638); November 1, 2007 (see Appendix C, amendment 700); November 1, 2010 (see Appendix C, amendment 746); November 1, 2011 (see Appendix C, amendment 758).

§2Q2.2. [Deleted]

Historical Note: Section 2Q2.2 (Lacey Act; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants), effective November 1, 1987, was deleted by consolidation with §2Q2.1 effective November 1, 1989 (see Appendix C, amendment 209).